

1 COMSR STEVENS

2

3 HINDMARSH ISLAND BRIDGE ROYAL COMMISSION

4

5 TUESDAY, 17 OCTOBER 1995

6

7 RESUMING 10.38 A.M.

8 MR SMITH: The evidence today is the  
9 cross-examination of Philip Clarke continuing. I'm  
10 assured by counsel - and no other witness has been  
11 arranged for today, on the basis that I'm told by  
12 counsel that is going to take today. I hope that it  
13 will finish today so that we can get on with other  
14 evidence.

15 A couple of preliminary matters. First of all,  
16 Exhibit 197 is the State Department of Aboriginal  
17 Affairs documents.

18 COMSR: That's right.

19 MR SMITH: I seek leave to substitute, for the two  
20 volumes you have, these two volumes, which are a more  
21 complete, itemised list of the documents. That's just a  
22 substitution. If I could recover those two volumes and  
23 give to the tribunal these.

24 MR KENNY: If I can just seek some clarification of  
25 my friend while I think of it; we have been provided  
26 with copies. I merely enquire whether I have the  
27 original or new version.

28 MR SMITH: All counsel will have an updated version  
29 of Exhibit 197. So the 197 exhibit which I've just  
30 replaced is now the complete DOSAA documents indexed.

31 COMSR: They is, of course, restricted  
32 circulation to counsel, subject to the conditions as to  
33 confidentiality and return of the documents.

34 MR SMITH: Indeed.

35 MR KENNY: Did I hear you correctly? You require  
36 the return of those documents of that exhibit from us?  
37 Because I simply point out that we have been writing all  
38 over them.

- 1 COMSR: That doesn't matter.
- 2 MR KENNY: I don't want to hand them back in.
- 3 MR SMITH: At the end of the commission.
- 4 COMSR: I don't say now, at the conclusion of  
5 the commission for the purposes of simply ensuring the  
6 confidentiality of the information. I think you signed  
7 an undertaking, did you not?
- 8 MR KENNY: I've signed an undertaking, certainly.  
9 I perhaps didn't appreciate, or I don't recall that the  
10 undertaking said we had to hand them back in. I'm not  
11 concerned about that as a condition, I merely say that  
12 we have been writing all over these exhibits and writing  
13 questions, and I would then be concerned about handing  
14 them back.
- 15 MR SMITH: I can resolve that with Mr Kenny.  
16 Can I come to the suppression orders, then deal with  
17 Mr Anderson's client. The suppression order for the  
18 Exhibit 52 minute, you suppressed on the last occasion  
19 the evidence that was given by Dorothy Wilson in  
20 relation to -
- 21 COMSR: I don't know that I did it on the last  
22 occasion.
- 23 MR SMITH: It was two occasions ago, indeed.
- 24 COMSR: Evidence relating to that minute are you  
25 saying?
- 26 MR SMITH: Yes.
- 27 COMSR: Evidence relating to the meeting, or the  
28 minutes of meeting. Have we got a page reference?
- 29 MR SMITH: Yes, that's p.1047 you made the  
30 suppression order, and you will remember it was on the  
31 basis that some evidence was given by Dorothy Wilson as  
32 to the contents of that minute and, at that stage, the  
33 minute was unconfirmed. Her recent evidence has  
34 confirmed the minute.
- 35 COMSR: Application to lift the suppression.
- 36 MR SMITH: If you were minded to. You made the  
37 suppression order on a temporary basis pending the  
38 confirmation of the minute, and to allow Mr Kenny to get

1 some instructions about whether the minute was, in fact,  
2 confirmed.

3 COMSR: I think evidence was subsequently called  
4 from -

5 MR SMITH: Mrs Wilson.

6 COMSR: Yes, Mrs Wilson as to confirmation of  
7 the minute. Does anyone want to be heard on that  
8 application?

9 MR KENNY: Yes. I've made various comments about  
10 this before, and I repeat some of those to remind you  
11 that it is not my position to say whether they were or  
12 were not confirmed, that's a matter of me giving  
13 evidence, and I'm not.

14 COMSR: We have had evidence and you're not  
15 proposing to call any contrary evidence.

16 MR KENNY: Not at this stage. There may be later,  
17 but I'm not proposing to at this stage. Now I merely  
18 say that what occurred in this case was an exhibit of  
19 minutes of a meeting that this person, this witness, was  
20 not present at, it was simply put to her, and it was  
21 essentially reading the selected parts of that exhibit  
22 to the witness, who had no idea whether that had been  
23 said or not. Then the exhibit was tendered. Now  
24 essentially what has occurred is that an exhibit, which  
25 normally would not be distributed is, in highlight,  
26 being distributed via the media, so it's a selected  
27 reading of it, if you like, and a reading selected by  
28 one party, so it's their part that they wish to put.  
29 Now as you say, the normal rules of evidence don't  
30 apply, and you've allowed them to tender that document,  
31 but what I say is by releasing that part of transcript  
32 you are, in a sense, releasing on behalf of one party  
33 their preferred part and their preferred reading of it.

34 COMSR: Fortunately, several of your clients  
35 were present and are in a position to explain it more  
36 fully.

37 MR KENNY: That can be a question for them when  
38 they appear in the witness box. Perhaps the matter can

1 be re-explored at that time, but those are my  
2 submissions.

3 COMSR: Does anyone else - ? I propose to lift  
4 the suppression order which applies to pages -

5 MR SMITH: The actual evidence starts at p.1045,  
6 extends through to p.1046, with your suppression order -  
7 I suppose the evidence topic begins at p.1043, and then  
8 you make the suppression order at p.1047.

9 COMSR: It's the evidence relating to the  
10 minutes of the meeting of the - what is the correct name  
11 - Lower Murray Nunga's Club for a meeting held on 30  
12 July 1994.

13 MR ABBOTT: It's the Ngarrindjeri Action Group. The  
14 fax is from the Lower Murray Nunga's Club.

15 COMSR: That's right. It's the Ngarrindjeri  
16 Action Group. Are there any more preliminary matters?

17 MR SMITH: Yes. The other matter that you can deal  
18 with is the suppression order you made in relation to  
19 the 7.30 Report raw footage on 23 August of this year.  
20 Your order was made at p.1231 of the transcript. You  
21 will recall that you suppressed the footage of the 7.30  
22 Report raw tape touching on the conversation with the  
23 women at the end of the tape, Maggie Jacobs, Veronica  
24 Brodie and Betty Fisher, and you suppressed that at that  
25 stage. I don't think you suppressed anything else from  
26 the raw footage tape.

27 COMSR: That's right.

28 MR SMITH: If you want to deal with that, you will  
29 need to hear from Mr Anderson on that.

30 MR ANDERSON: It won't take long. We did ask for the  
31 suppression, and the reason, you will remember, was  
32 because it wasn't for our own interests, but because the  
33 ladies were recorded off-camera, and we thought it  
34 wasn't fair for them to be in the public arena when they  
35 thought they were off-camera. They have been in the  
36 public arena and have been since I made that submission,  
37 and we can't see any reason for that remaining.

38 COMSR: I order that that suppression order of

1 the raw footage of the 7.30 Report be lifted, so that  
2 the whole of the raw footage tape is not subject to any  
3 suppression order.

4 MR ANDERSON: Quite, thank you, and that's why I asked  
5 for your indulgence yesterday, so that I could check the  
6 circumstances of that overnight, and I'm obliged to you  
7 for allowing me to do that.

8 The second suppression order you made yesterday in  
9 relation to the allegations made by Mr Abbott; can I  
10 just tell you that we have been out to the ABC this  
11 morning, and I don't know whether Mr Abbott has got any  
12 instructions because he wasn't present, but we have  
13 viewed the Betacam tape, that is the original ABC tape  
14 from which the exhibit was copied on to VHS, and I can  
15 tell you that Exhibit 22B, which is the raw footage  
16 transcript which was taken from the alleged 'doctored'  
17 tape, is verbatim with the original which we saw and  
18 heard this morning. When I say 'verbatim', that's with  
19 the exception of perhaps a couple of ums and ers which  
20 weren't strictly recorded. My client made the  
21 application for suppression yesterday because of the  
22 rather outstanding allegation that was made by my  
23 learned friend. We're assuming, of course, that he made  
24 that allegation with instructions from his client. We  
25 therefore ask him to obtain fresh instructions from his  
26 client, and withdraw that allegation. No doubt he will  
27 need to take instructions on that, and I'd ask that that  
28 be relisted at 2.15, if that's possible, for that to be  
29 dealt with. In other words -

30 MR ABBOTT: This is just, dare I say it,  
31 grandstanding by Mr Anderson. It's not a matter on  
32 which I propose to take my client's instructions at all.  
33 The fact of the matter is that it was obvious to most,  
34 if not all of us here, that the raw footage videotape  
35 that was eventually supplied in VHS form had been  
36 doctored. It had been doctored in the sense, as I said  
37 to Ms Alison Caldwell, that someone had laid down on one  
38 of the two sound tracks a noise which distorts or ruins

1 the sound for part of the raw footage. Ms Caldwell  
2 agreed with me that that was the effect of what had  
3 happened.

4 COMSR: I suppose doctoring has something of an  
5 implication of perhaps a deliberate action rather than  
6 that it's the result of the normal consequences of  
7 trying to transfer one from system to another.

8 MR ABBOTT: Exactly.

9 MR ANDERSON: My friend went as far as saying, I  
10 remind him, that it was deliberately done to create a  
11 distortion so that the actual words couldn't be heard.  
12 That was his allegation.

13 MR ABBOTT: No, it's at p.3802. I said 'Someone's  
14 laid down, on one of the two sound tracks, a noise to  
15 distort or minimise what we can hear on the raw  
16 footage'. Ms Caldwell said she didn't know. 'I think  
17 that appears to be what happened'. She said 'I was in  
18 the Royal Commission, I don't know what happened'.  
19 'That's the effect of what happened, isn't it'. 'Yes'  
20 now she has agreed with me that it's been doctored. The  
21 only issue is in what sense is the word 'doctoring'  
22 appropriate. Like the word 'fabricating', it can mean a  
23 deliberate - my learned friend says this was accidental,  
24 he says that from the bar table. The suggestion that I  
25 should sort of go off and get instructions from my  
26 clients on a matter of what I would regard as fairly  
27 elementary scientific knowledge; that these camera tapes  
28 have two sounds tracks, one for the camera and one for  
29 the on-air, and that on one of the sound tracks there  
30 has been superimposed a noise or distortion to minimise  
31 what we can hear on the raw footage, is not a matter on  
32 which I need to seek instructions at all. Indeed it  
33 appears that that is the effect of what has been done.  
34 My learned friend comes along and says 'it wasn't  
35 deliberately done by the ABC, it just happened to have  
36 occurred as we were trying to create the raw footage  
37 tape'. If that's so, so be it. I'm not going to  
38 withdraw what I said to the witness. The witness has

1 answered the question, that's how it appeared to us at  
2 the time, and so be it.

3 COMSR: But Mr Anderson has given me an  
4 explanation, you're not querying that explanation?

5 MR ABBOTT: The fact of the matter is I don't know  
6 whether, on the Beta track, on the two tracks in the  
7 Beta recording, on one of those two sound tracks someone  
8 has recorded, at the time when the raw footage was being  
9 created on those Beta tracks, the jackhammers and  
10 whistles and bleeps and the other noise that we can  
11 hear. I don't know whether Mr Anderson is asserting  
12 that that was recorded at the time that the other  
13 soundtrack recorded the voices or not, or whether it's a  
14 distortion which has been somehow otherwise collected,  
15 but this is not a matter that I think should occupy our  
16 time. The fact of the matter is that we have now been  
17 given access to apparently what are `clean' in the sense  
18 of non-distorted raw footage, and it's something that  
19 should have happened weeks ago, instead of them  
20 producing a raw footage tape which they must have known  
21 had distortion and noise on it. They should have done  
22 the right thing weeks ago when they first produced it.

23 MR ANDERSON: I think my friend has missed the point.  
24 Distortions, as he alleges, were not such as to prevent  
25 those listening in authority within this commission from  
26 recording an accurate transcript verbatim, and if his  
27 allegation was that these noises, extraneous or  
28 whatever, were included to prevent a complete hearing of  
29 the transcript, then he must withdraw that allegation.

30 MR ABBOTT: That's not my allegation. The fact of  
31 the matter is that he didn't know what was underneath at  
32 the time when these noises were on. All we can hear  
33 were these wretched jackhammers.

34 COMSR: The allegation is not that they were  
35 done to cause it but, as a consequent of it, it might  
36 have.

37 MR ANDERSON: That's not doctoring, with respect.

38 MR ABBOTT: How did the jackhammer noises get on

1     there?

2   MR ANDERSON:     It's not doctoring, it's an unfortunate  
3     choce of words by my learned friend, and I ask him to  
4     withdraw it. It can easily be clarified if he makes a  
5     statement indicating what he is prepared to agree to.  
6     Until such time that he withdraws the allegation of  
7     doctoring, my client claims there has been an injustice  
8     by my learned friend in treating that matter in that way  
9     yesterday. The only impression from any member of the  
10    public hearing Mr Abbott yesterday could be that the ABC  
11    deliberately, with a view to preventing all the words  
12    being properly transcribed, introduced extraneous noises  
13    for the purpose of preventing the true words being  
14    known. That could be the only impression that came from  
15    that allegation yesterday, and I ask him to clarify it  
16    and make sure that there is no misunderstanding, that  
17    that's what he did not mean.

18  MR ABBOTT:        I don't feel that I have to respond to  
19    Mr Anderson. This is not trial by challenge.

20  COMSR:            I think the situation is this; I can't  
21    force Mr Abbott to say anything on this matter, Mr  
22    Anderson. You've given an explanation. I don't know,  
23    but I take it that there was someone in attendance from  
24    the commission this morning?

25  MR SMITH:         Yes, Ms Basheer went for the commission,  
26    and it's true and it's correct that the tape that Ms  
27    Basheer viewed was clearly audible, no background noise  
28    distorting any of the material on the raw footage tape.

29  COMSR:            I think all I have to say is that I  
30    don't propose - you've given the explanation.

31  MR ANDERSON:     Thank you.

32  COMSR:            I don't propose to take the matter any  
33    further.

34  CONTINUED



## A. CALDWELL REXN (MR SMITH)

- 1 MR SMITH: Because Mr Anderson is here, this may be  
2 a good time to resolve one small outstanding matter,  
3 from the Commission's point of view, in Alison  
4 Caldwell's evidence. And Mr Anderson doesn't object to  
5 Ms Caldwell taking the stand again. I want to ventilate  
6 one matter with Ms Caldwell.
- 7 MR ANDERSON: That is so. That was raised this  
8 morning. She is present.
- 9 COMSR: Yes, Ms Caldwell is present.
- 10 MR ANDERSON: There is no problem with that.
- 11 COMSR: Ms Caldwell, would you mind resuming? I  
12 think, in any case, you were released on the  
13 understanding that you might be required.
- 14 WITNESS A. CALDWELL ENTERS TO WITNESS BOX  
15 FURTHER RE-EXAMINATION BY MR SMITH
- 16 Q. Yesterday in evidence we canvassed with you really the  
17 existence of two documents.
- 18 A. Yes.
- 19 Q. The notebook of Betty Fisher, with cursive handwritten  
20 writing in it. And we canvassed also the typewritten  
21 transcript of that notebook, or part of it.
- 22 A. Yes.
- 23 Q. But I was reminded last night, by watching the 7.30  
24 Report, that there really is a third category of  
25 paperwork, isn't there.
- 26 A. Yes.
- 27 Q. Touching on this very topic. The category is, is it  
28 not, the photocopies of handwritten cursive writing.
- 29 A. Yes.
- 30 Q. With a fax header from Aboriginal Legal Rights Movement  
31 on it.
- 32 A. I'm not sure if there was a fax header on it.
- 33 Q. And that was material which was the subject of camera  
34 footage, was it not.
- 35 A. Yes.
- 36 Q. That was camera footage taken, according to the shot  
37 list, and I can show you the shot list, do you want to  
38 look at that.

## A. CALDWELL REXN (MR SMITH)

- 1 A. No, I know what you are talking about.  
2 Q. On 4 August 1995.  
3 A. Yes.  
4 Q. Is it the case, you told us yesterday that it was on 4  
5 August 1995, was it not, that you collected from Doreen  
6 Kartinyeri, at the bus station, the typed transcript of  
7 what you understood was in the notebook.  
8 A. Yes.  
9 Q. In fact, you were able to confirm, by seeing the  
10 notebook later, that it was, in fact, a typed transcript  
11 of the notebook.  
12 A. To the extent that I could see the notebook, yes.  
13 Q. Where then does this photocopy of the handwriting arise.  
14 How did the ABC come to have that.  
15 A. At the same time as I was handed the typed transcript by  
16 Doreen Kartinyeri, she also handed me photocopies,  
17 alleged photocopies of the notebook. I think they were  
18 only two pages, they may have been three.  
19 Q. You told us that you returned the typed transcript to  
20 Doreen, on 8 August.  
21 A. Yes.  
22 Q. But did you return the photocopy of the cursive  
23 handwriting, as well.  
24 A. Yes, at the same time and in the same package that I  
25 sent to Doreen Kartinyeri with the typed transcript was  
26 the photocopied pages of the notebook.  
27 Q. How many photocopied pages of the notebook were you  
28 given by Doreen Kartinyeri.  
29 A. As I said, I think only two, but there may have been  
30 three, possibly even four, I don't remember, but they  
31 were double pages. So, on a page you would see two  
32 sides.  
33 Q. For every page of typed transcript, were you given the  
34 corresponding page of photocopied cursive writing.  
35 A. I think so.  
36 Q. That had on it, or I asked you before, according to the  
37 7.30 Report, that had a fax header 'Aboriginal Legal  
38 Rights Movement' on it.

## A. CALDWELL REXN (MR SMITH)

1 A. The photocopy?

2 Q. The photocopy.

3 A. Did it?

4 Q. Do you remember that.

5 A. No, I don't, no. And I think, in the story that went to  
6 air that night, you see shots of the photocopy, but you  
7 only see the centre of the photocopy. You don't see the  
8 edges. I'm not sure.

9 MR MEYER: I think it would be useful if we saw it,  
10 because my recollection is that has got a header on it.

11 MR ABBOTT: Yes `Aboriginal Legal Rights Movement'  
12 it has got on it.

13 MR MEYER: Rather than have the witness guess.

14 MR SMITH: We can get to that pretty smartly. And  
15 it can be the 7.30 Report itself, rather than the raw  
16 footage.

17 COMSR: Is this going to occupy much time, Mr  
18 Smith? Is it the to-air tape you want? For what  
19 purpose? Are you asking the witness to confirm it?

20 MR SMITH: Yes, I just wanted the witness to  
21 confirm that.

22 MR ABBOTT: Can we have the raw footage tape on?

23 MR MEYER: We will find it. I presume that Ms  
24 Caldwell will often be here. We will find it and  
25 clarify it.

26 MR ANDERSON: She might be going to be here, but that  
27 is not fair if she is coming here every day to do her  
28 work and thinks she may be in the witness box.

29 COMSR: That is so.

30 XN

31 Q. You would accept, in any event, it seems to be an  
32 unanimous view, that the fax header was on the photocopy  
33 of the cursive writing that you collected from Doreen  
34 Kartinyeri.

35 A. I can't say that it was. I really can't. It may have  
36 been, but I can't say for sure, but it may have been.

37 Q. We will show you that.

38 A. Sure.

## A. CALDWELL REXN (MR SMITH)

- 1 Q. When you were telling us what happened yesterday,  
2 certainly I didn't direct your attention to that. Had  
3 you omitted to tell me that.
- 4 A. No, it was not a deliberate thing whatsoever. The first  
5 - when your officer Jayne raised it with me this  
6 morning, that was the first time since I had spoken to  
7 my counsel about that issue.
- 8 Q. The photocopy of what was in the notebook that you were  
9 given by Doreen Kartinyeri, did you compare that with  
10 the notebook when you were shown turning the pages of  
11 that.
- 12 A. No, not specifically. I didn't have a photocopy with me  
13 to compare, but it did look very much like the notebook.  
14 I had been told that it was a direct photocopy of the  
15 the notebook of certain pages in the notebook which  
16 corresponded to the typed transcript that I was given.  
17 It did look very much like the original, but I was more  
18 - I was far more interested in seeing the original  
19 notebook than I was on relying on the photocopy of the  
20 notebook.
- 21 Q. You told us that Doreen Kartinyeri had marked with stars  
22 the typed transcript being that part of the transcript  
23 that you could film.
- 24 A. Yes.
- 25 Q. Is that right.
- 26 A. Yes.
- 27 Q. I have got it right. Did she do the same for the  
28 photocopy of the handwriting.
- 29 A. I don't think she did.
- 30 Q. Although your cameramen did photograph the handwritten  
31 sections.
- 32 A. The sections that I had indicated I wanted photographed.
- 33 Q. One other matter: last night we had, on the 7.30 Report,  
34 some more shots of your hand turning the notebook. That  
35 is the same footage, is it, that was on the -
- 36 A. That is the same footage that appeared -
- 37 Q. On 7 August.
- 38 A. In the original story, on 7 August.

A. CALDWELL REXN (MR SMITH)  
XXN (MR KENNY)

- 1 Q. Is that a different camera angle, is it different in  
2 anyway.
- 3 A. No, that is exactly the same. That film last night I  
4 understand was taken from the original story broadcast  
5 on 7 August.
- 6 Q. So, to the extent that it gives the appearance of the  
7 camera dwelling on the page for a few seconds, that is  
8 the same as on the 7.30 Report of 7 August.
- 9 A. Yes, it may have been slowed down. It may have been  
10 frozen, freeze-frame on that shot, but it was the same  
11 shot taken from the story that went to air on 7 August.
- 12 MR SMITH: I have no further matters.
- 13 MR KENNY: I haven't cross-examined this witness.  
14 I understand that we will be reserving any  
15 cross-examination of her attendance at Mr Wardle's  
16 office until a later time, is that correct?
- 17 MR SMITH: Only on that limited topic.
- 18 COMSR: Yes, only on that limited topic.
- 19 MR SMITH: If it is still a problem.
- 20 COMSR: And to the extent, of course, that that  
21 matter is pursued.
- 22 MR KENNY: Exactly. At this stage, I don't propose  
23 to ask any questions. And, if it becomes apparent later  
24 that I need to ask some, I will, if I need to clarify  
25 something.
- 26 CROSS-EXAMINATION BY MR KENNY
- 27 Q. Looking at Exhibit 22B, now before you.
- 28 COMSR: You are cross-examining on those matters  
29 that relate to your clients' interest, I take it, Mr  
30 Kenny?
- 31 MR KENNY: The question I am going to ask is about  
32 Betty Fisher, really, but you may well appreciate that  
33 Betty Fisher is an important witness, as far as my  
34 clients are concerned, because they are accused of  
35 fabrication. And that is a point that no-one else has  
36 raised, except Mr Abbott, who has made quite some use of  
37 it.
- 38 COMSR: All right, then, go ahead and ask that.

## A. CALDWELL XXN (MR KENNY)

1 XXN

2 Q. Looking at p.21 of the last paragraph, marked `VB'.

3 A. Yes.

4 Q. `VB' is Veronica Brodie.

5 A. That's right.

6 Q. She there, I take it, was reading direct from the typed  
7 notes that you had been given by Doreen Kartinyeri, is  
8 that correct.

9 A. Yes.

10 Q. So that, when she read the sentence `By these ideas,  
11 these parts, these are parts of my mother, my granny's  
12 mother. She came from the Coorong.'

13 A. `My granny's stuff.'

14 Q. `My granny's stuff.' And that was a reference to  
15 Koomi's mother and granny, is that correct.

16 A. I would be assuming to say yes, I would be assuming so.  
17 Assuming that this is the section where - it looks like  
18 the section where she is reading from transcript. And I  
19 understand that that transcript was the transcript of  
20 the conversation with Koomi, or Rebecca Wilson. So,  
21 yes.

22 Q. You were here yesterday.

23 A. Yes.

24 Q. When Betty Fisher gave evidence and you may recall Mr  
25 Abbott cross-examined her about the question of where  
26 Veronica Brodie's grandmother and great grandmother came  
27 from.

28 A. I wasn't here when that happened, no.

29 Q. But, in any event, Veronica Brodie clearly read, in your  
30 presence, the fact that Koomi's mother and granny and  
31 the suggestion that those people came from the Coorong  
32 or, indeed, perhaps her granny came from the Coorong.

33 A. Yes.

34 Q. If you look over the page at p.22, in the middle of the  
35 page, the large paragraph marked `VB', you will see  
36 there again that Veronica Brodie is reading the material  
37 that refers to Koomi's granny's and Koomi's granny  
38 coming from the Coorong.

## A. CALDWELL XXN (MR KENNY)

1 A. Yes.

2 Q. Did, at any time, Veronica Brodie say to you that that  
3 was incorrect.

4 A. No.

5 Q. When I say `that', I mean that Koomi's granny came from  
6 the Coorong.

7 A. No.

8 Q. She read it twice to you, but at no time did she say  
9 that it was incorrect. Did anyone else question that.

10 A. No.

11 Q. Perhaps looking at the top of p.23, while you are there,  
12 if you look at the bottom of p.22, you will see it is  
13 again Veronica Brodie speaking.

14 A. Yes.

15 Q. In the middle of that top paragraph on p.23 she said `My  
16 sister, Leila, knew before me and I didn't query it, I  
17 heard, but she didn't tell me of the business, the  
18 stories that mum had told her and, I mean, she also  
19 may ask what they're doing with it and that's very  
20 important.'

21 A. Yes.

22 Q. Could you also have a look at p.25 in the middle, or  
23 slightly below the middle, Veronica Brodie again says  
24 `No, no, I wasn't told things. It was my elder sister.  
25 Leila, who was told of the women's business at  
26 Hindmarsh Island. It wasn't for me to know.'

27 A. Yes, that's there, yes.

28 Q. Outside of what is written here, did you have any other  
29 conversation or discussion with her about the fact that  
30 her sister was told, but she wasn't.

31 A. No.

32 Q. Looking at Exhibit 212, which are your notes, turning to  
33 the very back page of that exhibit, it is headed  
34 `Rebecca Wilson'.

35 A. Yes.

36 Q. They are your handwritten notes.

37 A. Yes.

38 Q. Underneath you have got `Maggie Jacobs, 75 years, heard

3904  
KC 47B

A. CALDWELL XXN (MR KENNY)

- 1 stories from grandmother at school.'
- 2 A. Yes.
- 3 CONTINUED



## A. CALDWELL XXN (MR KENNY)

- 1 Q. When did you record that note; do you recall.  
2 A. When?  
3 Q. Yes. Was it at the same time they were filming the raw  
4 footage on 7 August - sorry, I don't think it was the  
5 7th, it was the Saturday, I think.  
6 A. The 5th.  
7 Q. Yes, that's correct. At that time at Debbie Thomas's  
8 place. Was that before then.  
9 A. That was on the same day.  
10 Q. Was that as a result of the discussion with her at  
11 Debbie Thomas's house.  
12 A. Yes.  
13 Q. You wrote that after that discussion.  
14 A. Yes.  
15 Q. In fact, I think in Exhibit 22B there is a mention of  
16 it. In any event I can't find it for the moment. Your  
17 recollection of what Maggie Jacobs said is that she  
18 heard stories from her grandmother, she was referring to  
19 the fact that she had heard stories about the sacredness  
20 of Hindmarsh Island to women; is that what she was  
21 referring to.  
22 A. I understood she was talking about women's business.  
23 Q. In reference to Hindmarsh Island.  
24 A. Yes.  
25 Q. Did she say exactly what she heard.  
26 A. No.  
27 Q. Do you recall exactly what she said.  
28 A. No, I don't.  
29 Q. You have made a mention there of 'at school'. Is it  
30 possible that Maggie Jacobs was saying she was told when  
31 she was still at school.  
32 A. That's possible.  
33 Q. You, in fact, don't remember what the 'school' referred  
34 to.  
35 A. No. I think I assumed at the time she was talking about  
36 the school at Point McLeay.  
37 Q. She might have been told whilst she was at school at  
38 Point McLeay; is that your general impression.

## A. CALDWELL XXN (MR KENNY)

- 1 COMSR: This witness wouldn't know that.
- 2 MR KENNY: It depends on what Maggie Jacobs said to  
3 her. I'm trying to explore that.
- 4 NO FURTHER QUESTIONS
- 5 MR SMITH: If the witness could pause for five  
6 seconds, I think we have located that part of the tape  
7 which shows the fax header and showing the cursive  
8 writing and which is, indeed, in the wild footage. That  
9 is just being located and it will be - I will bring that  
10 in and that could - Miss Caldwell can complete this  
11 topic.
- 12 MR ANDERSON: Subject to that matter, do I understand  
13 that Miss Caldwell will be released save only for the  
14 possibility of coming back in the event that something  
15 arises out of Mr Wardle's consultation with whoever it  
16 is he is consulting?
- 17 COMSR: Yes, I think that is the situation.
- 18 MR SMITH: Yes, that is it and there is a prospect  
19 that it won't remain a huge issue.
- 20 COMSR: The investigative reporter takes a risk  
21 of investigating a matter as they may be required to  
22 give evidence concerning the results of the  
23 investigation. But I think that's the situation that we  
24 will not know for certain what might eventuate from Mr  
25 Wardle's situation.
- 26 MR SMITH: If the tape's not here in about a  
27 minute, I will abandon it. It's not that important to  
28 hold up the proceedings.
- 29 COMSR
- 30 Q. There is no dispute that there was a photostat copy of  
31 the pages from the notebook.
- 32 A. After I had seen the notebook, no. It looked very  
33 similar, but I still wasn't happy to rely on the  
34 photocopy.
- 35 COMSR: So, the issue now to be clarified is  
36 whether or not the fax numbers are there?
- 37 MR SMITH: That's the only issue. The video really  
38 speaks for itself. I'm not going to hold things up too

A. CALDWELL XXN (MR KENNY)  
REXN (MR SMITH)

1 much longer.

2 COMSR: I take it that the witness won't be able  
3 to say any more than she sees on the video?

4 MR SMITH: I'm reminded that the media need to  
5 assume that the discussion about the topic of doctoring  
6 this morning cannot be the subject of reporting either.  
7 The suppression order would be useless if that would be  
8 the case.

9 COMSR: Are you applying for that suppression  
10 order to continue?

11 MR ANDERSON: I would have to get some instructions  
12 now in view of what transpired this morning. It may be  
13 that we can be sensible and agree on something so that  
14 the media are not prevented from reporting parts that  
15 are not in issue. I wonder if I might have a couple of  
16 minutes to do that?

17 VIDEO PLAYED

18 FURTHER RE-EXAMINATION BY MR SMITH

19 Q. We are now watching, are we not, the photocopy of the -  
20 you see there, did you see there the fax header.

21 A. I saw the p.10, but I can't from this distance see what  
22 the words say. There is a number there, yes. Can I go  
23 up and have a look?

24 Q. Yes, you go up and have a look and pause it if you like.

25 A. There is the number there. Yes, that's here. There, I  
26 saw the word 'Aboriginal'. Yes, that's there, yes.

27 VIDEO STOPPED

28 Q. So you were looking at the raw footage of the 7.30  
29 Report there.

30 A. Yes.

31 Q. We were looking at filmed photocopies of the cursive  
32 writing.

33 A. Yes.

34 Q. And you have identified there, by closely looking at it,  
35 in addition to the cursive writing what.

36 A. Along the side of the page, there is typed 'Aboriginal  
37 Legal Rights' and a number, a fax number.

38 Q. So, a fax header.

## A. CALDWELL REXN (MR SMITH)

- 1 A. It looks like that, yes.  
2 Q. We see there, amongst other things, `p.10'.  
3 A. Yes.  
4 Q. Indicating, or well indicating that ten pages perhaps  
5 had been faxed off somewhere.  
6 A. Possibly. I couldn't say that.  
7 Q. Were you present when that was being filmed.  
8 A. I was in an out of the room.  
9 Q. Were any instructions given to you by Doreen Kartinyeri  
10 about the filming of that cursive writing on the  
11 photocopied sheets.  
12 A. No, none that I can remember, no.  
13 Q. So, the instructions were confined to the typed  
14 transcript.  
15 A. I think so, yes. Those are the instructions I clearly  
16 remember, but they didn't relate to the photocopies.  
17 Q. When at the bus station Doreen got something out of her  
18 bag, she got out of the bag the typed transcript.  
19 A. Yes.  
20 Q. And photocopies of what we have seen there.  
21 A. Yes.  
22 Q. Photocopies of the cursive handwriting presumably from  
23 the notebook.  
24 A. Yes.  
25 Q. Did she represent them as coming from the notebook to  
26 you.  
27 A. Yes  
28 NO FURTHER QUESTIONS  
29 WITNESS RELEASED.

1 MR ANDERSON: I have spoken with Mr Smith and Mr  
2 Abbott. We think, provided it doesn't offend you, that  
3 the easiest way to handle it would be to remove the  
4 suppression order made yesterday in so far as it relates  
5 to my application. Mr Wardle still has got one in  
6 relation to that aspect of it and I'm not concerned with  
7 that. To remove the suppression order, but to allow a  
8 suppression order to remain in so far as it relates to  
9 any of the allegations of doctoring and my responses to  
10 those allegations of doctoring this morning; in other  
11 words, the doctor's never arrived. It seems to me a  
12 practical commonsense way in view of the explanation I  
13 have given, in view of what Mr Abbott said this morning  
14 and in view of my client's instructions that it doesn't  
15 seek to hound Mr Abbott for an apology and it doesn't  
16 seek to maintain its position that they were  
17 unsubstantiated allegations. It's merely concerned with  
18 the connotation of the word 'doctoring'.

19 MR ABBOTT: Could I suggest an easier way out to.  
20 Cover everything. The only question and answer where I  
21 used this word is at p.3802. I would suggest that we  
22 specifically continue the suppression in relation to one  
23 question and one answer on p.3802 beginning lines 19 to  
24 22 where I said 'Look, the raw footage tape we have got  
25 which is the basis of the on-air tape has obviously been  
26 doctored', and the answer is 'I wouldn't necessarily say  
27 "doctored"! That is when I made the allegation and  
28 that is the answer I got.

29 COMSR: It's the use of the word 'doctored' and  
30 all counsel are agreed that that should -

31 MR ABBOTT: My learned friend is unduly sensitive  
32 about the word in view of his -

33 MR ANDERSON: No, I know what it means.

34 MR ABBOTT: I would suggest the way out of this is  
35 to suppress p.3802 lines 19 to 22 and thereafter the  
36 discussion between counsel that occurs on p.3804, line  
37 18.

38 COMSR: There is discussion this morning also,

1 so you are saying any use - I think what you are trying  
2 to achieve is any use of the expression `doctoring' in  
3 respect of the distortion that appears on the tape.

4 MR ABBOTT: Yes. They can report that there was a  
5 noise. Obviously if the media want to report that  
6 there was a noise, they have now produced a tape without  
7 the noise that has been inspected this morning and I  
8 imagine from what I'm told that with the number of  
9 cameras that are there filming, that those that went  
10 through the tape, the 7.30 Report tape, want the  
11 suppression lifted as much as my learned friend wants it  
12 lifted, otherwise they don't have a story for tonight.  
13 I'm concern and I'm grateful for my friend having made  
14 reference to last night's report of accusing me of  
15 having made unsubstantiated allegations, that I'm not  
16 mentioned in the 7.30 Report tonight on the basis that I  
17 have, as it were, agreed that the allegations are  
18 unsubstantiated. If the matter is merely suppressed so  
19 far as the allegation of doctoring, I'm happy with that.

20 MR ANDERSON: I am not quite happy with that and I  
21 will tell you why. If you look at p.3802, I agree with  
22 everything that my friend said as to the sense of it. I  
23 think if you just go as far as he went, if you read the  
24 next line 23 `Someone's laid down on one of the two  
25 sound tracks a noise to distort or minimise'. Now, I  
26 think that should be excluded as well, as that suggests  
27 that it has been deliberately done.

28 COMSR: I don't know how I'm going to be able to  
29 suppress it so the press know exactly what is sought?

30 MR ANDERSON: Any allegation of deliberate  
31 interference with the sound to obliterate the words  
32 being spoken. That is what we are concerned about,  
33 putting it in a nutshell. Any suggestion of any  
34 deliberate interference with the sound track so as to  
35 either mask or distort the words spoken is refuted.

36 MR ABBOTT: I'm happy to agree with that, providing  
37 that any allegation of unsubstantiated allegation on my  
38 part is similarly suppressed.

1 That's the thrust of what my learned friend was saying.  
2 He can't have it both ways. He can't get the 7.30  
3 Report to report what they obviously intend to do, that  
4 there are unsubstantiated allegations, without telling  
5 the public what they were.

6 COMSR: As I understand it, trying to marry both  
7 counsel's suggestions -

8 MR ABBOTT: It's important.

9 COMSR: Yes, what is being sought to be  
10 suppressed is any suggestion of doctoring or deliberate  
11 interference in any way with the sound tracks.

12 MR ABBOTT: And their response that that is an  
13 unsubstantiated allegation because at present, you see,  
14 their response was suppressed, and so last night, the  
15 7.30 Report went to air saying that I'd made  
16 unsubstantiated allegations. Now the tenor of the  
17 allegation was suppressed, they didn't publish those,  
18 they published the accusation that I'd made an  
19 unsubstantiated allegation, so they had their cake and  
20 ate it as well. I wouldn't want that to happen again  
21 nor, I'm sure, would my learned friend.

22 COMSR: This is taking up an inordinate amount  
23 of time.

24 MR ANDERSON: All for Mr Abbott's pride and honour.  
25 Can I make a respectful suggestion? In so far as the  
26 7.30 Report referred to those allegations made by Mr  
27 Abbott as unsubstantiated, it is accepted that if he  
28 meant by 'doctoring' the unintentional interference with  
29 the sound tracks, then there is no problem, and I  
30 understood from what he said this morning that that's  
31 what he did mean. He didn't mean doctoring in a  
32 surgical sense.

33 COMSR: If the press are not confused by now, I  
34 would be somewhat surprised.

35 MR ABBOTT: All I want is an undertaking my learned  
36 friend, on behalf of his client, that the ABC are not  
37 going to go to air and say anything to the tenor of  
38 unsubstantiated allegations having been made, when he

1 stands up and wants the allegation that I made  
2 suppressed. I'm happy to have the allegations that I  
3 made suppressed, but I do not want the 7.30 Report, or  
4 any other part of the ABC, to be allowed, then, to  
5 allege that they were unsubstantiated.

6 MR ANDERSON: The alternative of that is very simply  
7 to leave it as it is and remove the whole of the  
8 suppression order and let Mr Abbott's unsubstantiated  
9 allegations be dealt with, and let the explanation that  
10 he gave this morning be dealt with. I don't mind. I  
11 was trying to restore some balance to it. I think it is  
12 -

13 COMSR: Why not leave the order as I had it  
14 previously?

15 MR ANDERSON: I'm happy with that.

16 COMSR: Is that a problem as far as you're  
17 concerned?

18 MR ABBOTT: No, it's not a problem as far as I'm  
19 concerned, but I would regard that a reporter who says  
20 that I made unsubstantiated allegations is, in fact,  
21 breaching that order because they are, in essence,  
22 indirectly affecting the tenor of something that is  
23 suppressed. I'm not complaining about last night, but  
24 if they go on further, in view of the suppression order  
25 that you've continued today, I may bring the matter  
26 again to your attention.

27 COMSR: I think the simplest way is to leave the  
28 suppression order as I had it, unless you're unhappy  
29 with that.

30 MR ANDERSON: I don't mind.

31 COMSR: After all that, perhaps I should say  
32 that I don't propose to vary the suppression order.

33 MR MEYER: I think, as a matter of technicality,  
34 you should continue the suppression order.

35 MR SMITH: Can I ask you to make that - there are  
36 some difficulties about that with the media. I mean I  
37 think the media would want to be heard about how you  
38 have handled this, so could you make it clear that this



1 is on a temporary basis, because that means that the  
2 whole topic, the whole amorphous topic of this dispute,  
3 is now going to be clouded in doubt. It needs to be  
4 sorted out.

5 COMSR: We attempted to do that, and I don't  
6 think we had a great deal of success.

7 MR SMITH: It needs to be sorted out with the  
8 media, where they are going, whether they can be heard  
9 on it, what they can and can't report. I will speak to  
10 Mr Anderson and Mr Abbott about it, and hopefully I can  
11 resolve it with them and then with you.

12 COMSR: For the present, the existing order  
13 continues.

14 MR SMITH: And we'll discuss it.

15 COMSR: There are other matters in the case of  
16 existing suppression orders that have to be dealt with  
17 in any event.

18 MR SMITH: Dr Clark now is in the witness box.

## P.A. CLARKE XXN (MR KENNY)

- 1 WITNESS P.A. CLARKE, CROSS-EXAMINATION BY MR KENNY  
2 CONTINUING  
3 Q. Do you have the transcript in front of you of your  
4 earlier evidence.  
5 A. No, I don't.  
6 Q. P.151, line 23.  
7 MR ABBOTT: That's suppressed.  
8 MR KENNY: Before I ask questions, I wish to alert  
9 people to the area that I'm going to ask questions on.  
10 I don't think this was initially suppressed at all. In  
11 fact no, it wasn't. There is no note on my -  
12 COMSR: I don't know what the question is or  
13 what it refers to yet, Mr Kenny.  
14 MR SMITH: Yes, the answer there is suppressed,  
15 lines 26 to 32.  
16 MR KENNY: It wasn't suppressed at the time it was  
17 originally asked.  
18 MR SMITH: It was only two days ago it was  
19 suppressed.  
20 MR KENNY: Certainly, but I wish to ask some  
21 questions about it. I don't know whether you wish to  
22 continue the suppression order at this stage.  
23 COMSR: Is it a matter for a closed hearing? Is  
24 it one of those matters to which the present authority -  
25 MR KENNY: I see no reason.  
26 COMSR.  
27 Q. Have you had a look at the lines of evidence.  
28 A. Yes, I have, and there are problems with those lines.  
29 Q. Is it because of the fact that I now have a new  
30 authority which is not so broadly placed as the other,  
31 or it's a sensitive area.  
32 A. I believe both are true.  
33 MR KENNY: I see that this witness has made a claim  
34 on behalf of himself. He is not there in that section  
35 referring to any Aboriginal tradition or belief. I  
36 don't see how it in any way relates to s.35. Perhaps if  
37 you care to have a look at the transcript yourself.  
38 MR SMITH: Well, does my learned friend contest

## P.A. CLARKE XXN (MR KENNY)

- 1 what is asserted there?
- 2 MR KENNY: Yes, I do.
- 3 MR SMITH: On instructions?
- 4 MR KENNY: Yes. Perhaps I don't say that it's not  
5 true, but what I should say is that we're unaware that  
6 it is true, and we're seeking some further information  
7 about it.
- 8 MR ABBOTT: How can you challenge it?
- 9 COMSR: I am in a bit of a difficulty because my  
10 authority does not relate to other areas now. It's more  
11 restricted.
- 12 MR KENNY: I'm not going to ask him anything about  
13 traditions, what I want to ask him is who, when and  
14 where, and questions along that line.
- 15 COMSR: I think that may well be area now that I  
16 cannot deal with, and certainly not, I would have  
17 thought, in open hearing.
- 18 MR ABBOTT: Having listened to what Dr Clarke said  
19 before, I am of the view that if he is to be allowed to  
20 ask these questions, they should be in closed hearing.  
21 Dr Clarke, I understood from his evidence, having sat in  
22 and listened to it, told you of some information which  
23 came to his attention as a result of the publication of  
24 this comment at p.151 previously, and how it had  
25 subsequently affected his work. My learned friend has  
26 no instructions that what was said there is incorrect.  
27 He merely seeks to embark upon what can only be a  
28 fishing expedition and, having heard what he just said,  
29 it is obvious - I regret to have to say this - that he  
30 has no instructions of any relevant type, because he now  
31 wants to ask who, when and where. It's as not as though  
32 he knows that what is said here is wrong, he wants to  
33 say 'Who gave you this, and where was it, and what was  
34 it and how was it'.
- 35 MR KENNY: Perhaps I can satisfy Mr Abbott by  
36 saying that my clients instruct me that they believe it  
37 is wrong. They can't prove that it's prong.
- 38 MR ABBOTT: They can't prove that.

## P.A. CLARKE XXN (MR KENNY)

- 1 COMSR: My authority is now confined to matters  
2 of the Ngarrindjeri customs and traditions. In my view,  
3 the authority I presently have would not permit me to  
4 embark upon any consideration of that area, Mr Kenny.
- 5 MR KENNY: I want to ask the questions that I have  
6 indicated.
- 7 COMSR: I appreciate that.
- 8 MR KENNY: And I don't think that there is any  
9 difficulty with Aboriginal tradition or belief  
10 associated with it. I mean he has made a claim for  
11 himself that we do not believe.
- 12 MR ABBOTT: But who, when and where must involve a  
13 s.35 matter belonging to someone else.
- 14 MR KENNY: It's framed in a very wide manner, if  
15 you look at the question on line 23. 'In Australia', it  
16 says.
- 17 MR SMITH: Can I ask my learned friend if he could  
18 come back to this and I'll speak to him, and I will  
19 relay the difficulties with this topic to him.
- 20 MR MEYER: Why can't your Honour just rule one way  
21 or the other?
- 22 COMSR: I have indicated that I don't think that  
23 my s.35 authority would permit an examination of matters  
24 outside the area to which it relates. That was the  
25 problem of the previous authority.
- 26 MR KENNY: I'm not saying that.
- 27 COMSR: I know what you're saying.
- 28 MR KENNY: If you're ruling -
- 29 COMSR: Yes, I am ruling.
- 30 MR KENNY: I am happy to accept the ruling, but I  
31 want it understood that I wish to question about that.
- 32 COMSR: I appreciate that you do, but I don't  
33 think we can.
- 34 XXN
- 35 Q. Perhaps if you care to turn to p.206 of the evidence.  
36 (NOT ANSWERED)
- 37 MR SMITH: It's the same problem again.
- 38 MR KENNY: It says, if I can read it -

## P.A. CLARKE XXN (MR KENNY)

- 1 MS SIMPSON: That matter was suppressed.
- 2 MR KENNY: Look at the words in the middle of line  
3 five on p.206. Now it appears that those matters have  
4 previously been published, according to -
- 5 COMSR: Some of them have been documented.
- 6 MR KENNY: They are the ones that I want to ask him  
7 about. I don't want to ask him about the unpublished  
8 ones.
- 9 COMSR: But you're going into another area.  
10 You're going into an area not Ngarrindjeri.
- 11 MR KENNY: As I understood your ruling in relation  
12 to s.35, it was that if it had been previously  
13 published, there is no fresh disclosure and,  
14 consequently, the matter can be heard, and that's simply  
15 the point that I wish to ask about. I don't want to ask  
16 about matters that may offend against s.35.
- 17 COMSR: You're going to have to elicit from the  
18 witness, first of all, whether there is something  
19 offensive. Now as I understand it, my authority limits  
20 me to dealing with matters that are to do with the  
21 Ngarrindjeri community. You now want to explore matters  
22 that are dealing with areas completely outside that.
- 23 MR KENNY: This witness' evidence is essentially  
24 that the Ngarrindjeri people have imported into their  
25 belief something from the western desert, something that  
26 did not exist before. Now this is central to his  
27 evidence, and if I'm not permitted to explore this  
28 further, it essentially means that we're seriously  
29 limited in challenging this man's arguments.
- 30 MR SMITH: Could I suggest this course? It really  
31 needs to be other Aboriginal tradition, the exploration  
32 of which would be contrary to that tradition, for a s.35  
33 authorisation to be necessary, but this material falls  
34 under a different heading, and is best dealt with in  
35 closed session. Could I ask for a couple of minutes to  
36 talk to the witness about it, and then suggest a way  
37 around these problems?
- 38 COMSR: Yes.

## P.A. CLARKE XXN (MR KENNY)

- 1 MR SMITH: I can do that now in private?  
2 MR KENNY: Provided I'm present while Mr Smith is  
3 speaking to the witness.  
4 MR SMITH: That's not necessary.  
5 MR KENNY: I'm cross-examining him.  
6 MR SMITH: I'm trying to find a way around your  
7 difficulty, so that you can do it. There is no sinister  
8 motive involved in this.  
9 MR KENNY: If there was some suggestion it was a  
10 sinister motive, I didn't mean that at all. I apologise  
11 if that was the inference.  
12 COMSR: Clearly, if we're going to go into this  
13 in any detail at all, we're going to have to do it in  
14 private session, but I don't want to spend three  
15 quarters of an hour discussing what we're going to do so  
16 we don't get on with doing it.  
17 MR MEYER: When I pressed you for a ruling, it was  
18 so that we could go straight into private session.  
19 MR SMITH: Can I have five minutes to speak to the  
20 witness? That's all it will take.  
21 COMSR: If it's going to facilitate matters.  
22 MR SMITH: Yes.  
23 ADJOURNED 11.57 P.M.

1 RESUMING 12.15 P.M.

2 MR KENNY: I take on board your comments on those  
3 matters and I won't ask any questions in relation to  
4 those areas. So perhaps I will move to a new topic.

5 XXN

6 Q. In relation to your thesis, did you prepare a field work  
7 plan when you commenced your thesis.

8 A. No, I didn't, because my field work - I was well and  
9 truly into the field work through my museum work and  
10 other connections. The field work that I did, once I  
11 started the thesis, was on a needs basis in the sense of  
12 perhaps following up some gaps, but I didn't consciously  
13 have a field work programme, because I was already well  
14 entrenched in a field work programme through the museum.

15 Q. You essentially are saying you did your field work  
16 before you enrolled to undertake your thesis.

17 A. It started long before I enrolled and continued right  
18 through the thesis and I am still doing field work  
19 today.

20 Q. Does the Department of Anthropology have any guides for  
21 field work.

22 A. I believe a PhD particularly for studies which are out  
23 of the country or remote locations where there is not  
24 the ability to check information, that they do have a  
25 minimum period for a masters, a PhD. What that is, I  
26 would have to guess, but it is a fairly lengthy period,  
27 I would agree, for a PhD. It would be a matter of quite  
28 a few months.

29 Q. Of field work, you mean.

30 A. Of field work, as a component of the overall thesis  
31 study.

32 Q. But that didn't apply to you. There was no plan  
33 prepared by you or submitted by you in relation to your  
34 field work.

35 A. No, for the reasons I have already outlined I can  
36 demonstrate that wasn't applicable.

37 Q. When did you start actively gathering information for  
38 your thesis.

## P.A. CLARKE XXN (MR KENNY)

1 A. If I take an indication of that being my journals, as an  
2 anthropologist, keeping a journal, writing down  
3 ethnographic information, it would have started on the  
4 very - one of the very first field trips when I came to  
5 the museum in 1982. I remember Philip Jones, Steve  
6 Hemming and I did have a lengthy field trip sometime I  
7 think in 1983. So that would be a beginning of a fairly  
8 intensive series of field trips in the Lower  
9 Murrumbidgee/South East region.

10 Q. I think that's really when you started your journals,  
11 but did you actually start your journals with the  
12 specific intention of using those for a thesis at a  
13 later date.

14 A. I wanted to use the data for publications. The thesis,  
15 it was in the back of my mind, but it hadn't really  
16 jelled exactly what I would be doing, but I had always  
17 assumed that there would be a greater body of work, in  
18 terms of the university, somewhere down the track.

19 Q. So, it was something that you essentially planned to do  
20 in the future.

21 A. In the future, the plans were very fuzzy in 1982/1983.

22 Q. When did they start getting clearer.

23 A. I think it was - it would be in my statement. I went  
24 back to university to study more anthropology in 1983.  
25 That's when I had made a decision that I was going to  
26 eventually do some form of higher degree work and I  
27 needed to flesh out my anthropological studies in order  
28 to do that, because I was essentially going off at a  
29 tangent from my Bachelor of Science studies, which were  
30 primarily in biology, even though I had done a little  
31 bit of anthropology.

32 Q. It is as far back as 1983 you started collecting  
33 information with clearly in mind that it would be used  
34 in your thesis or later.

35 A. A thesis, publications, all of that, yes.

36 MR KENNY: I assure you it is relevant,

37 Commissioner. I notice your concern.

38 COMSR: It is just we seem to have amply covered



1 the area of Dr Clarke's qualifications.

2 MR KENNY: I am not talking about his  
3 qualifications. I am not, I assure you.

4 COMSR: All right, proceed then, Mr Kenny.

5 XXN

6 Q. I think you have told us, or perhaps you can tell us  
7 about, in 1983, the long field trip you did with Steve  
8 Hemming.

9 A. And Philip Jones.

10 Q. And Philip Jones. Where was that field trip to.

11 A. It has been many years, or probably at least a year  
12 since I have looked at that particular set of notes,  
13 but, from memory, it was heading off from Adelaide,  
14 going down to Point McLeay, which Aboriginal people  
15 called Raukkan. We talked to a few of the Ngarrindjeri  
16 people there. We put up a display, which was a  
17 precursor to the Ngurunderi display, which was being a  
18 museum display. So, we spent some time around there and  
19 then we headed further down the Coorong, spent the night  
20 there. Went down towards the South East.

21 Q. It was essentially with the Ngarrindjeri people, is that  
22 correct.

23 A. That's correct.

24 Q. I understand, over the next few years, a lot of your  
25 activities were associated with the Ngurunderi display.

26 A. Yes.

27 Q. And gathering information in relation to that.

28 A. That was the main focus, yes.

29 Q. Was there any other focus, during that period.

30 A. At some stage, Steve Hemming and I started the Lower  
31 Murray Aboriginal Sites Project. I can't remember  
32 whether that was started after the Ngurunderi display  
33 opened, or towards the latter stages of it, but that was  
34 another large research project.

35 Q. Can you perhaps just remind us when that display  
36 actually opened.

37 A. I am guessing, I think it was about 1989, but I could be  
38 wrong. The publication that came out with it would have

## P.A. CLARKE XXN (MR KENNY)

1 the year. That would be -

2 Q. It was around about 1989. And then you went on to the  
3 sites project.

4 A. Yes, the sites project.

5 Q. How long did that continue for.

6 A. The intense field work component was roughly two years.

7 The write-up has been extended and I am not precisely  
8 sure when the grant money ran out for that. The project  
9 essentially ended when the final reports and the site  
10 forms had been lodged.

11 Q. When did your field work end for that.

12 A. The last field trip that I can remember, which had had a  
13 major focus being the Lower Murray Sites Project, would  
14 have been of the order of two or three years ago.

15 COMSR: Dr Clarke did go into rather a great  
16 deal of detail concerning these matters.

17 MR KENNY: Yes.

18 XXN

19 Q. Does the University Anthropology Department have any  
20 guidelines for the collecting of information from  
21 Aboriginal people.

22 A. Not that I am aware of or have through my supervisors  
23 ever been made aware of. My understanding is that the  
24 supervisors are responsible for keeping their students  
25 within ethical bounds. The supervisors, including my  
26 anthropology supervisor, were frequently briefed about  
27 how and what I was doing and what I had been doing,  
28 previous to undertaking the PhD.

29 Q. What do you say are the 'ethical bounds', as it were, of  
30 collecting information from Aboriginal people.

31 A. Whose ethical bounds? The university's, or the museums,  
32 or of what is ethical?

33 Q. Yours.

34 A. My personal views?

35 Q. Yes.

36 A. There is a lot that can come under that. To be as brief  
37 as possible, making it fairly obvious to indigenous  
38 people, I will broaden it to that level, that a course

## P.A. CLARKE XXN (MR KENNY)

1 of study is taking place. Aboriginal people, indigenous  
2 people, would naturally want to know how that research  
3 is being used. What are the potential benefits for  
4 them. The potential benefits for the researcher. So,  
5 all of that would have to be relayed to people with whom  
6 the researcher was going to work very closely. Apart  
7 from that, researchers I believe are bound, and again  
8 this is my personal view, to record what has happened  
9 accurately. That may cause problems if what the  
10 researcher records is at odds with perhaps what the  
11 community would want on a certain issue, but I think  
12 that needs to be discussed. And generally there are  
13 probably many - there are many other issues that can  
14 come in, but just continually telling people in the  
15 community that research is taking place and not trying  
16 to disguise it. And when the researchers -

17 Q. So, the people you worked closely with, I take it, are  
18 the ones you listed in your acknowledgements in your  
19 thesis, on p.3, is that -

20 A. They are people who, in most cases, I worked very  
21 closely with. In other cases, they were people who,  
22 through my talks with them, had an influence on me, in  
23 one way or another. I wouldn't want to too closely  
24 define what it is those people have done for reasons I  
25 have already discussed in terms of not wanting to set up  
26 any Aboriginal people with particular information that  
27 may be embarrassing to them in the thesis. So, I have -

28 Q. Perhaps we can talk about one of my clients, Robert Day,  
29 for example, he gets a mention.

30 A. Yes.

31 Q. And you understand that that Robert Day is the one that  
32 assisted Dr Draper and is a client of mine.

33 A. I have seen his photograph in newspaper articles  
34 concerning Hindmarsh Island, but I have never talked to  
35 Mr Day about Hindmarsh Island work, so I couldn't  
36 comment in detail.

37 Q. But you met Robert Day senior. I understand there is a  
38 Robert Day junior, as well, is there.

1 A. That's correct.

2 Q. Did you tell him you were writing a thesis.

3 A. It would have come up over the couple of years in which  
4 we were working quite closely. I was working with him  
5 as a researcher. He knew I was doing research. Whether  
6 he remembered that it was going towards a thesis or not,  
7 I couldn't say, but I certainly would not have hidden  
8 the fact that I was intending, at some stage, to work on  
9 producing a thesis.

10 Q. But what were you working closely with him on.

11 A. From memory, he accompanied Steve Hemming and I on  
12 numerous field trips, some down to the lower end of the  
13 Coorong. We actually camped on the Coorong itself for a  
14 number of days.

15 Q. Was this in relation to the sites.

16 A. It was -

17 Q. Your sites registry, that's what you were doing with  
18 him, is that correct.

19 A. It was primarily sites, but no field trip is ever just  
20 one project. Getting into the field meant that we would  
21 knock off several projects or undertake several studies,  
22 if you like, while we were out in the field. And often  
23 we would end up answering a family history enquiry, for  
24 example, out in the field, if we had the resources with  
25 us.

26 Q. But your primary purpose, when you were working with  
27 Robert Day, was in relation to the sites, is that not  
28 correct.

29 A. That's correct. And he was paid to work with us on that  
30 project.

31 Q. He wasn't paid to work with you on your thesis, though,  
32 was he.

33 A. No, he was not paid to work with me on my thesis.

34 Q. Did you use any of the information that he provided to  
35 you in your thesis.

36 OBJECTION Mr Meyer objects.

37 MR MEYER: I have waited for a long time, to see if  
38 we get anywhere near the point.

## P.A. CLARKE XXN (MR KENNY)

- 1 COMSR: Yes, I have too. I have been trying to  
2 follow where this line of -
- 3 MR KENNY: It is a slow link-up with the witness.
- 4 COMSR: However slow, or however fast, where  
5 will it lead us, Mr Kenny? Your clients are not  
6 anthropologists.
- 7 MR KENNY: No, they are the subject of an  
8 anthropology thesis, that they knew nothing about.
- 9 MR MEYER: Is that relevant here?
- 10 COMSR: How am I going to determine that issue,  
11 Mr Kenny? I have heard what the witness's  
12 qualifications are. They have been explored, at some  
13 length.
- 14 MR KENNY: I am not asking about his  
15 qualifications. I am asking about his dealings with the  
16 Aboriginal people, who happen to be my clients.
- 17 COMSR: Yes, but you are talking about a time  
18 far remote from the issues I have to deal with, Mr  
19 Kenny. I won't be able to explore the merits, or  
20 otherwise, of any incidents.
- 21 MR KENNY: No, I say it goes to this witness's  
22 credit and his expertise and the manner in which he uses  
23 information.
- 24 COMSR: There is a limit to how far we can go on  
25 those matters. I can't really be exploring other issues  
26 and determining the merits of matters that are some  
27 years back from any matter that I am concerned with  
28 here. You are dealing with four men who belong to or,  
29 at the time, belonged to a particular committee.  
30 Are there some particular matters that you want to  
31 put to the witness concerned with the issues before me?
- 32 MR KENNY: This witness's expertise and  
33 qualifications are based on his thesis. His thesis is  
34 based upon the information he has gathered from his  
35 chief Aboriginal sources which he lists. Of course, two  
36 of my clients he lists twice. He says:  
37 'George and Tom Trevorrow at Camp Coorong near Meningie  
38 have also greatly helped in a number of ways.'

## P.A. CLARKE XXN (MR KENNY)

- 1 COMSR: Yes, Mr Kenny, I can't look behind the  
2 granting of the witness's qualifications.
- 3 MR KENNY: I am not asking you to look behind it.  
4 I am asking to you examine this witness's position in  
5 relation to his dealing with Aboriginal people.
- 6 COMSR: And you will be calling evidence, will  
7 you, to confirm this matter?
- 8 MR KENNY: Yes, there will be evidence. I have  
9 instructions on this point, despite Mr Abbott's constant  
10 suggestion that I don't have instructions on various  
11 matters. I have very clear instructions on this point.
- 12 CONTINUED

## P.A. CLARKE XXN (MR KENNY)

- 1 MR ABBOTT: What's the point? That is what I say,  
2 what is the point? This witnesses should not in his  
3 evidence be treated with caution because he hasn't  
4 somehow dealt with your clients as your clients would  
5 wish he would have dealt with them. What is the point?
- 6 COMSR: The problem I have with this -
- 7 MR ABBOTT: It can only be to credit.
- 8 COMSR: With this line of questioning, the  
9 witness has obtained his qualifications. It's not up to  
10 me to look behind the university's granting of those  
11 qualifications.
- 12 MR KENNY: He has the qualification he has been  
13 granted by the university. I do not challenge that.  
14 But his qualification is based on his gathering of  
15 information from my clients. It's not as if my clients  
16 played a small role in it. In fact, they get a major  
17 role. Indeed, I'm trying to avoid any additional family  
18 connections here as well.
- 19 COMSR: There is a limit to how far I can cast  
20 afield and still keep within the terms of it.
- 21 MR ABBOTT: If there is an allegation, he ought at  
22 this time to put it. If this is an allegation that the  
23 field work was suspect because of some instructions from  
24 Mr Day or the Trevorrows that he didn't do this, that or  
25 the other, let's get him to put it and let's get on with  
26 that.
- 27 COMSR: I'm not too sure how far that is going  
28 to help me. Let's see where you are going then.
- 29 MR SMITH: There is a premise there in all the  
30 questioning that needs correcting. Dr Clarke's  
31 qualifications go back to the primary degree and they  
32 are not going to - to say that it is wholly dependent  
33 on his thesis, that is not quite right.
- 34 COMSR: Are you seeking in some way to -
- 35 MR KENNY: What I'm saying is that this witness has  
36 never heard of secret women's business and he has  
37 examined everything in relation to the Ngarrindjeri  
38 people. He read everything about them and has spent a

## P.A. CLARKE XXN (MR KENNY)

- 1 lot of time talking to all of them. What I say is that  
2 what he was doing was actually down there on other  
3 projects and without telling -
- 4 COMSR: Put it to the witness if that is what  
5 you want to put.
- 6 MR KENNY: That is what I was attempting to build  
7 up to and get to. I noted your earlier concern about  
8 the relevance of this and I attempted to reassure you  
9 that -
- 10 COMSR: There are certain matters I can't look  
11 behind. Let's get on with this questioning.
- 12 XXN
- 13 Q. You have heard what we have had to say. I put it  
14 essentially that you at no time told Robert Day that you  
15 were taking or seeking information for your thesis.
- 16 A. The information we received, of course, overlapped with  
17 a number of concerns.
- 18 Q. The question is: Did you say to Robert Day `Robert, I am  
19 preparing a thesis, it's going to be on you and the  
20 other people down here, can I talk to you about it?', or  
21 anything of that sort.
- 22 A. Well, for starters, the thesis was not on Robert Day or  
23 the other people around there. I was describing a  
24 cultural group, so you are quite wrong to frame the  
25 question that way. In terms of was he aware of the  
26 thesis, he was certainly aware that I was preparing a  
27 thesis. I was doing research. When you do research  
28 projects, a thesis is often one of the products, one of  
29 the publications being done. He and other men were  
30 aware that I was preparing the thesis.
- 31 Q. Did you tell him directly that you were preparing a  
32 thesis.
- 33 A. Although I can't remember the exact words, I'm certain  
34 that I made him aware that I was, had other functions  
35 including - or other aims.
- 36 Q. The answer to the question is: No, you did not tell him  
37 that you were preparing a thesis.
- 38 A. No. I'm saying the answer is yes. I'm qualifying it by



1 saying that I would not have told him in such a direct  
2 manner as you are putting to me.

3 Q. What did you tell him.

4 A. I've just said that I can't remember the exact words. I  
5 spoke very freely with Mr Day. We got along very well.  
6 I haven't spoken to him since the Hindmarsh Island  
7 business, but I was always very open on all topics with  
8 Mr Day. And whether he realised what I was studying for  
9 on the PhD or producing a thesis, or what I produced, I  
10 would suggest to you that it's through this Hindmarsh  
11 Island debate and the unfortunate circumstances that my  
12 thesis is taking a major role in that. That he now is  
13 looking back and doesn't, you know, doesn't like the  
14 idea that I produced a thesis. But, I mean, that's the  
15 benefit of hindsight for him. I certainly had never  
16 hidden the fact I was doing a thesis on numerous  
17 occasions with a wide range of Ngarrindjeri people and  
18 made it quite clear to them I was doing it; and they are  
19 all people who talk with each other. I do remember an  
20 occasion -

21 Q. What, did you remember an occasion of talking to Mr Day  
22 about the thesis.

23 A. I can remember many occasions, I have spent many hours  
24 talking to him in the car, in the field. We were -

25 Q. About your thesis.

26 A. I've already said that I can't remember an exact  
27 conversation, but I am certain that not just one but  
28 several conversations would have taken place which would  
29 have referred to my study towards a PhD and the thesis.

30 Q. Did you ever tell him that the information that he was  
31 providing to you would appear in your thesis.

32 A. The information he was providing to me is, in the way  
33 you put it, primarily for the Lower Murray sites and was  
34 just raw data. The overall perception of the  
35 Ngarrindjeri use of the landscape that I gained is  
36 through interaction with literally hundreds of people.  
37 What I've done is acknowledged by the people that I was  
38 quite close to in a professional sense through the

## P.A. CLARKE XXN (MR KENNY)

1 period of my Museum field work and in many cases through  
2 the actual period of my PhD. I'm acknowledging the fact  
3 that they were, you know, close to me. Had there not  
4 been a Hindmarsh Island debate going on, I would suggest  
5 to you that all of those people listed would have been  
6 very happy and felt honoured that I was acknowledging  
7 them in an official way on p.3 of my thesis. It's  
8 unfortunate that they now hold views that are opposite  
9 on this issue to mine and, therefore, they -

10 Q. I'm not asking you to provide us with some explanation  
11 of what you think they may be thinking. What about  
12 George and Tom Trevorrow. You spent a lot of time with  
13 them.

14 A. Yes.

15 Q. They spent to lot of time talking to you about their  
16 traditional culture.

17 A. About a whole wide range of issues, yes.

18 Q. Indeed, apart from Henry and Jean Rankine - I think they  
19 are the only two that get a mention twice.

20 A. Yes. And in view of the long history that I and the  
21 Museum had with them, I still think that is appropriate.

22 Q. Were they a couple of your main informants, would you  
23 say.

24 A. No, not 'main informants'. They were people who we were  
25 working with in the Museum on a variety of projects,  
26 including the Lower Murray sites project, but we were  
27 also assisting in every way possible with the setting up  
28 of the Camp Coorong displays and they were well aware  
29 that, you know, helping them to set up displays meant  
30 research. All of the people -

31 Q. But I put to you that what you told them, that you were  
32 doing research into the displays, the Ngurunderi  
33 exhibition and the sites, was not your thesis.

34 A. I never specifically said - well, I did specifically say  
35 on each occasion that I met them what I would be  
36 researching, but I maintain that they did know that I  
37 was doing other studies in relation to the university  
38 and my PhD. And I never made a big deal out of it, but

## P.A. CLARKE XXN (MR KENNY)

- 1 there were conversations that they were having with  
2 Steve Hemming, for example, who did talk to them a lot  
3 more about his PhD. But I imagine my PhD, you know,  
4 came up with discussion, as a topic of discussion as  
5 well.
- 6 Q. I put to you that you at no time told Tom or George  
7 Trevorrow that you were using the information provided  
8 by them in your thesis.
- 9 A. That implies that they have given me precise information  
10 which I have then holus-bolus precisely put in my  
11 thesis. I said in relation to Mr Day that it is through  
12 interacting with those people in a variety of situations  
13 that one gets an overview, and that overview is what  
14 eventually gets into the thesis. So, I can't point to  
15 exact parts of the thesis and say, you know, 'This is  
16 what Mr Day gave me, this is what Mr Trevorrow gave me'.  
17 But they were aware that I was doing research and the  
18 PhD was involved.
- 19 Q. They might have been aware that you were doing research,  
20 but they didn't expect that research would be put into a  
21 thesis.
- 22 A. I believe they did. As I said, I didn't make a point of  
23 it.
- 24 Q. You didn't make a point of telling them that.
- 25 A. I made a point of telling them that I was doing research  
26 that was leading to a PhD. I didn't make a lot of it in  
27 terms of what they -
- 28 COMSR: How many more times are you going to ask  
29 this question? The witness has been asked and he has  
30 answered it two or three times.
- 31 MR KENNY: It's an evasive answer that he has  
32 given. He is not saying 'Yes, I told him -
- 33 COMSR: What sort of an answer are you trying to  
34 elicit? Because he hasn't given the answer that you  
35 want, doesn't mean you have to repeat the question time  
36 and time again. We don't have the time to do that.
- 37 MR KENNY: That doesn't mean I should give up  
38 because I don't like the answer. I am trying to explore

1 it a little further.

2 COMSR: Once the witness has been questioned and  
3 has answered, that is sufficient.

4 XXN

5 Q. You have told us that your primary ethical ground is to  
6 make it obvious that a course of study is taking place.

7 A. That's correct.

8 Q. Did you make it obvious in this case in relation to  
9 Robert Day, George Trevorrow and Tom Trevorrow.

10 A. Given that each occasion I went down there was to do  
11 research - they knew that I as an outsider - went down  
12 there to do research. You're trying to -

13 Q. What you are saying is that you made it obvious you were  
14 down there doing research. Did you make it obvious that  
15 you were doing a course of study; namely, your thesis.

16 A. I believe that I made it obvious by letting them know,  
17 you know, what was going on in my life and the fact that  
18 I was enrolled in a PhD. I can't, you know, think of a  
19 specific conversation among the probably thousands of  
20 conversations I had with those people. I never  
21 disguised the fact and I believe I made it obvious that  
22 I was doing research. I made it obvious that the PhD  
23 was just one part of that overall research programme.  
24 But the research programme, the outcomes of the research  
25 programmes, such as the Lower Murray sites projects, one  
26 of the outcomes that would have been stated when we were  
27 negotiating or consulting with the community would be,  
28 would have been a series of publications and a gleaning  
29 of a thesis as a preliminary to those publications.

30 COMSR: Are we going to pursue this any longer,  
31 Mr Kenny? The witness has been asked and has answered  
32 the question on a number of occasions now. Perhaps we  
33 could move on to another topic.

34 XXN

35 Q. Of the other people listed there, did you make it  
36 obvious - and when I say `there', I mean p.3 of your  
37 thesis - did you tell any of them directly that you were  
38 gathering information from them for your thesis in an

## P.A. CLARKE XXN (MR KENNY)

1 obvious manner.

2 COMSR: Mr Kenny, isn't this the same question  
3 you are putting?

4 MR KENNY: It's in relation to the other people  
5 that he has listed there. I haven't got instructions in  
6 relation to the other people. I have only named three  
7 so far.

8 MR ABBOTT: He could hardly speak for my client,  
9 Dulcie Wilson, who is named there.

10 COMSR: There are other of your clients there?

11 MR KENNY: No, there are not. There is one - I'm  
12 not asking about the Rankines.

13 XXN

14 Q. Was there anyone you went to and said 'I am writing a  
15 thesis and I would like to talk to you about specific  
16 information so that I can use it in my thesis'. That is  
17 what I call obvious. That is really obvious.

18 A. When turning up to talk to people, it was often not with  
19 the intention of eliciting information that would go in  
20 that form into a thesis. So, as I have said or several  
21 points earlier in the Commission, a lot of my  
22 information is gathered just through participating; it  
23 could mean helping someone.

24 Q. This long question, are you saying to me to the best of  
25 your recollection, no, you did not ever tell any of them  
26 that the specific -

27 A. You asked me a question that appeared to relate to  
28 greeting someone and then coming out with I'm about to  
29 record something in my thesis. I'm saying that over a  
30 course of a number of years, I made it plainly obvious  
31 to people that I was going down there as a Museum  
32 person, I was down there as a family member, as a  
33 university student. I made it plainly clear that I was  
34 wearing a number of hats and that was always accepted.  
35 I certainly wouldn't, if I was turning up to someone's  
36 house probably for personal reasons, say 'Well, look,  
37 I'm about to record something for my thesis'.

38 Q. You never did that, did you.

1 A. We are now talking about -

2 Q. Turning up at someone's house and saying 'I'm now  
3 recording something for my thesis'.

4 A. I have never heard anyone do field work in that manner.  
5 The correct way would be making it quite clear to the  
6 community why you are there and then you set about the  
7 business - and business may well be having to work in a  
8 number of ways with the community which may never even  
9 end up producing results that end up in your thesis.

10 Q. Your primary purpose of being amongst the community, was  
11 it not, was initially for the Narrunga exhibition.

12 A. Initially, that would be correct.

13 Q. And later for the sites project.

14 A. While the sites project was going on. I'm trying to  
15 work out all the years. I suspect that the site project  
16 actually started earlier.

17 Q. But Robert Day, for example, was actually paid to work  
18 with you on the sites project, wasn't he, not to work  
19 with you on your thesis.

20 A. Yes. And I'm saying that I'm not aware of anything that  
21 he said as a paid person that directly, without  
22 contributing to an overview, has ended up in my thesis.

23 Q. I suggest to you that you never went down to the Lower  
24 Murray Aboriginal communities at any time with the main  
25 purpose of gathering information for your thesis. In  
26 fact, your main purpose was to gather information in  
27 relation to a project from the Museum.

28 A. I had the Museum's full support in doing the PhD, and  
29 that was built into part of me actually doing field work  
30 in the region, including to the Lower Murray site  
31 project. You are trying to separate threads of  
32 professional life that can't be cleanly separated.  
33 People knew why I was down there. As I said,  
34 information comes in unexpected forms and it's through  
35 participating in a wide number of project and functions  
36 within the community that I have an overview. That  
37 overview is the thesis. It's not a matter of spending  
38 an hour taping someone and then I go and submit that

3935

CJ 47F

P.A. CLARKE XXN (MR KENNY)

- 1 tape or the transcript to my thesis. That's not how
- 2 scholarly work is done.
- 3 CONTINUED

## P.A. CLARKE XXN (MR KENNY)

1 COMSR: I think that we have explored this issue  
2 repetitively, Mr Kenny.

3 MR KENNY: I agree I may not be the greatest  
4 questioner in the world, but I have two more questions  
5 that I want to put.

6 COMSR: Are they the same two questions or are  
7 they two different questions.

8 MR KENNY: It's a matter that there are a couple of  
9 things that I need to put to him so that the issue is  
10 put on behalf of my client.

11 XXN

12 Q. I put to you that you never asked Tom Trevorow, George  
13 Trevorow or Robert Day if you could use information you  
14 gathered from them for your thesis.

15 A. With the words that you're using, that is correct, and  
16 I'm saying that information that was gained from the  
17 Lower Murray Sites Project by and large hasn't ended up  
18 in my thesis at all, whereas the overview through me  
19 participating that project certainly has, but the bulk  
20 of that data is still with Steve Hemming and, presumably  
21 with the course of PhD work that he is intending, he is  
22 negotiating with those people involved in that project  
23 to use it, because it's more important for his thesis.  
24 I've tried to get an overview, but although I've said I  
25 have not asked 'Can this bit of information you've given  
26 me come into the thesis', I still maintain that they had  
27 full knowledge of what I was doing and, had they had any  
28 complaints, worries, sensitivities, that they would have  
29 been raised with me, and because all of my thesis was  
30 submitted in March 1994, it was never intended to be  
31 part of the Hindmarsh Island debate, that would have  
32 been fine. The fact that this thesis has become  
33 sensitive itself is the fact that that I'm giving  
34 evidence here in this Commission.

35 Q. I also put to you that you never told Tom Trevorow  
36 George Trevorow or Robert Day that you were actually  
37 writing your thesis.

38 A. That's the same question.



## P.A. CLARKE XXN (MR KENNY)

- 1 Q. Well, I accept the same answer. (NOT ANSWERED)
- 2 MR ABBOTT: I'd like to ask some questions.
- 3 COMSR: I note that it's 1 o'clock, do you want
- 4 to start now?
- 5 MR ABBOTT: I take it that there is no-one else
- 6 other than Mr Meyer?
- 7 COMSR: There is someone else, that would be -
- 8 MR SMITH: Ms Nelson.
- 9 MR ABBOTT: Ms Nelson is returning tomorrow,
- 10 apparently.
- 11 MR SMITH: Perhaps counsel might be prepared to sit
- 12 on to 5 o'clock tonight if arrangements can be made.
- 13 COMSR: We'll see how we go.
- 14 ADJOURNED 12.57 P.M.
- 15 RESUMING 2.18 P.M.
- 16 MR ABBOTT MAKES APPLICATION FOR A CLOSED COURT HEARING
- 17 CONCERNING THE FERGIE REPORT
- 18 COMSR: I think it would be convenient, if you
- 19 wish to deal with that matter first.
- 20 MR ABBOTT: Yes, I do, there is basically really the
- 21 Fergie report and the Saunders report, and I could start
- 22 with the Saunders report and, in so far as the Fergie
- 23 report is referred to in the Saunders report, it would
- 24 be easier to go through the Fergie report and go through
- 25 that, which leaves a little only of the Saunders report
- 26 which needs to be covered.
- 27 COMSR: We'll move from public session into
- 28 private session while you deal with the matter of the
- 29 Fergie report. I think under the terms of my
- 30 authorisation, that will restrict it to counsel
- 31 assisting, Commission staff, counsel for the parties
- 32 and the parties. It can't be - if you're asking the
- 33 questions, it's not a matter where only women can hear.
- 34 MR ABBOTT: I don't think so.
- 35 MR MEYER: I've been in possession of the Fergie
- 36 report at all times. There's never been that
- 37 restriction - at all relevant times, I should say.
- 38 COMSR: I can indicate now that we're now moving

## P.A. CLARKE XXN (MR KENNY)

1 from public session into private session and, other than  
2 the persons who are permitted under the terms of my  
3 authorisation to be present at the hearing, all other  
4 people will have to vacate the hearing while this matter  
5 is being dealt with, that is 'Any person other than  
6 parties, witnesses, for divulgence of information to a  
7 witness or a potential witness'. Is there somebody not  
8 in those categories of legal representative, witness or  
9 potential witness, or his or her legal representative?

10 MR SMITH: No, everybody - the only potential  
11 exception to that is Mr Miller, who you have permitted  
12 to stay in on the basis that he is Mr McLachlan's agent.  
13 That's in lieu of Mr Martin, rather than Mr Martin be  
14 here at times.

15 COMSR: Does he come under the category of 'his  
16 or her legal representative'? Under the authorisation  
17 that I had previously, I could permit persons to remain  
18 in the hearing. Now I don't have that latitude under  
19 the new authorisation. It's spelled out those persons  
20 who can remain in, which is a more restrictive  
21 authorisation.

22 MR SMITH: Is there no room for you to allow Mr  
23 Miller as you've done before?

24 MR MEYER: I thought he stayed here last week.

25 COMSR: 'For divulgence of information to a  
26 witness or potential witness, and his or her legal  
27 representative, and any person assisting the Royal  
28 Commission', so 'his or her legal representative' is now  
29 the area to which I must address my opinion.

30 MR SMITH: He would come under 2(iv), Mr Miller.  
31 It's through him that some investigations have been -  
32 it's not proposed to call him because of the secondhand  
33 nature of his involvement.

34 COMSR: It's not clear to me that he is within  
35 the expression 'potential witness', and I know that Mr  
36 and Mrs Chapman are here, and I don't know that they  
37 will necessarily be disadvantaged by having to exclude  
38 their representative during this part of the hearing,

## P.A. CLARKE XXN (MR KENNY)

- 1 but it's not clear to me that I can permit someone who  
2 is not a legal representative or a potential witness.  
3 It must surely carry the implication that there is some  
4 likelihood -
- 5 MR SMITH: He has no connection with the Chapmans,  
6 other than to know them.
- 7 COMSR: This is to represent -
- 8 MR SMITH: Mr McLachlan and Mr Martin. The basis  
9 upon which no lawyer was left in the Commission to  
10 represent Mr McLachlan's interests was that Mr Miller  
11 would be here on that basis.
- 12 MR MEYER: Vicariously, he is the client.
- 13 MR SMITH: He is the agent of Mr McLachlan.
- 14 MR MEYER: He is Mr McLachlan's adviser, or  
15 whatever you call them.
- 16 COMSR: I know that previously I didn't find any  
17 trouble under the terms of my authorisation. It's not  
18 so clear to me now what the situation is. Is it going  
19 to be any disadvantage, as far as Mr McLachlan is  
20 concerned, this evidence, if it's taken without the  
21 attendance of his agent? He is not directly affected,  
22 is he, by this?
- 23 MR SMITH: Well, no, but - that maybe right. Above  
24 it all, I would suggest there is nothing in the Fergie  
25 report that requires this measure anyway.
- 26 MR ABBOTT: I'm only doing it out of an abundance of  
27 caution.
- 28 COMSR: If we get to the situation where the  
29 s.35 authorisation comes into play, then I will have to  
30 consider it.
- 31 HEARING CONTINUES IN CLOSED SESSION

## Closed Hearing

17.10.95

Pages 3940 - 3999

4000  
CJ 48A

1 COMSR STEVENS

2

3 HINDMARSH ISLAND BRIDGE ROYAL COMMISSION

4

5 WEDNESDAY, 18 OCTOBER 1995

6

7 RESUMING 10.09 A.M.

8

9 MR SMITH: There are a couple of preliminary  
10 matters before the cross-examination of Dr Clarke  
11 continues. There is the question of the suppression  
12 order on the allegation of doctoring and there is the  
13 question - and I think you proposed delivering your  
14 ruling on the ALRM subpoena this morning. I should  
15 mention this in relation to this because I think it  
16 would be helpful.

17 I spoke to Mr Anderson about the suppression order  
18 relating to doctoring this morning. He told me that he  
19 had instructions to consent to the lifting of the  
20 suppression order in toto. No halfway house. Either it  
21 gets lifted in toto or it doesn't get lifted at all.

22 COMSR: Does he intend to be present?

23 MR SMITH: No, he doesn't. I then got a telephone  
24 call from Mr Gretsas, the solicitor acting for the ABC  
25 who then told me he was getting instructions.

26 COMSR: Perhaps if we leave that matter until  
27 later in the day. There is no degree of urgency about  
28 it.

29 MR SMITH: I took the view that the left hand  
30 didn't seem, to me, to know what the right hand is  
31 doing. Out of an abundance of caution, I will wait.

32 COMSR: Perhaps I should make it clear at  
33 present that this hearing is in open session because  
34 last night it was in closed session.

35 MR SMITH: I will contact Mr Gretsas.

36 COMSR: I will just deliver my ruling re the  
37 subpoena duces tecum delivered to the Aboriginal Legal  
38 Rights Movement Incorporated.

1       On 5 October 1995, a subpoena to produce documents  
2       was issued to Miss Sandra Saunders, Director of the  
3       Aboriginal Legal Rights Movement Incorporated, seeking  
4       production of the file kept by Mr Tim Wooley, solicitor,  
5       in respect of work done by him on behalf of the Lower  
6       Murray Aboriginal Heritage Committee in connection with  
7       the opposing of the construction of the Hindmarsh Island  
8       Bridge.

9       Mr Wooley is and was an employee of the Aboriginal  
10       Legal Rights Movement Incorporated (referred to  
11       hereinafter as ALRM), and he is a witness in this  
12       inquiry. Production of the file was sought to enable Mr  
13       Wooley to refer to it while giving his evidence.

14       The summons was returnable for 11 October 1995 at  
15       which time counsel for the ALRM attended and refused to  
16       produce the file, contending that the file ought not to  
17       be produced because of the following:

- 18       1. Legal professional privilege;
- 19       2. Inconsistency s.109 of the constitution; and,
- 20       3. Breach of s.35 Aboriginal Heritage Act (SA)  
21       1988.

22       The ALRM submitted that the summons was invalid.  
23       The ALRM, by its counsel, contended that Mr Wooley was  
24       acting for the Lower Murray Aboriginal Heritage  
25       Committee and five Aboriginal women, namely: Connie  
26       Roberts, Maggie Jacobs Edith Rigney, Sarah Milera and  
27       Doreen Kartinyeri. That the file related to those  
28       persons.

29       The basis upon which the ALRM has the appropriate  
30       standing to oppose the production of the file is not  
31       entirely clear. Mr Tilmouth QC said that he was acting  
32       for persons who comprised the Lower Murray Aboriginal  
33       Heritage Committee and contended that his clients did  
34       not waive legal professional privilege. It seems clear  
35       these person do not constitute the represent committee.  
36       No satisfactory indication was given to me as to the  
37       present membership of the committee and, further, that  
38       his instructions properly came from that organisation.

1 In any event, Mr Tilmouth, supported by Miss Layton QC  
2 in her arguments on behalf of the ALRM, and in  
3 particular claimed legal professional privilege on  
4 behalf of his clients. While he does not claim that his  
5 clients constitute the present committee, he submits  
6 that they are the persons to whom the privilege  
7 attaches.

8 Mr Gray QC appeared for the Law Society of South  
9 Australia Incorporated, which body wished to make  
10 submissions that the Commission is bound by legal  
11 professional privilege. Mr Gray submitted that I was  
12 not empowered by the provisions of the Royal Commission  
13 Act to abrogate legal professional privilege.

14 Mr D.F. Stratford, counsel for Mr Wooley, supported  
15 the submission of the ALRM in it's opposition to the  
16 production of the file. As this Commission has sought  
17 production of the file to assist Mr Wooley to give  
18 evidence at this inquiry at what I understood was Mr  
19 Wooley's request after he had been advised that the  
20 Commission did not propose to issue such a subpoena, I  
21 expressed by surprise.

22 In any event, I did not insist on production of the  
23 file as a prelude to hearing argument, but rather heard  
24 arguement and then adjourned the question of the  
25 subpoena. (See *Waind v Hill & National Employers'*  
26 *Mutual General Association Limited* (1978), 1 NSWLR 372;  
27 and *Discovery and Interrogatories* by Simpson Bailey and  
28 Evans, 1st Edition, 1984 at p.249).

29 Turning to the matters argued in support of the  
30 refusal to produce the file.

31 Legal professional privilege. Legal professional  
32 privilege does not excuse production of the file.  
33 Moreover, the file could not, in its totality, be the  
34 subject of a claim for such privilege. The boundaries  
35 of such privilege are well known. (See *Attorney-General*  
36 *Northern Territory v Maurice* (1986) 161 CLR 475).  
37 Moreover, the claim for privilege is properly made not  
38 by the ALRM but by the client in whom such privilege

1 resides.

2 Certainly in this case Mr Tilmouth's clients purport  
3 to claim that the privilege resides in them. That issue  
4 remains unresolved, but, in view of the circumstance  
5 that I propose to accept that legal professional  
6 privilege should apply in this instance, that may be  
7 academic.

8 I do not propose to rule in this instance that legal  
9 professional privilege does not apply in this  
10 Commission. I indicate that I will uphold any  
11 appropriate claim of legal professional privilege where  
12 it arises in respect of the conduct by Mr Wooley of the  
13 legal business of the committee and the five named women  
14 whom he asserts to be his clients. The issue,  
15 therefore, will be the extent to which the file is  
16 protected by that privilege.

17 Inconsistencies in s.109 of the constitution. This  
18 issue is one that requires to be argued in another  
19 forum.

20 The file of Mr Wooley, as I understand  
21 correspondence already before me from the agencies of  
22 the South Australian Government, concerns not only the  
23 applications made pursuant to ss.9 & 10 of the  
24 Aboriginal and Torres Strait Islander Heritage Act 1984,  
25 (Commonwealth), but also relates inter alia to  
26 applications to the State Minister for Aboriginal  
27 Affairs pursuant to s.23 of the Aboriginal Heritage Act  
28 1988 (South Australia). There is also correspondence  
29 with the construction company Built Environs and with  
30 the District Council of Port Elliot and Goolwa. So, the  
31 file cannot be said to be wholly devoted to the  
32 application to the Federal Minister.

33 Let me make it clear that I have no intention of  
34 allowing this inquiry to canvas the exercise of  
35 ministerial discretion by the Federal Minister. I have  
36 consistently adopted the approach that the Terms of  
37 Reference of this Commission indicate that I should  
38 avoid this matter.

1        However, this inquiry can legitimately and may well  
2        traverse some of the same subject matter as the  
3        applications to the Federal Minister under the  
4        Aboriginal and Torres Strait Islander Heritage Act.

5        I indicated when embarking on the evidence of Mr  
6        Wooley, the inquiry's attention will be focused upon the  
7        part played by him in the events surrounding the claim  
8        of women's business in respect of Hindmarsh Island; in  
9        other words, this inquiry will not permit Mr Wooley's  
10       evidence to stray outside the parameters set by the  
11       Terms of Reference.

12       Under those circumstances, it appears to me that  
13       while the potential for a conflict to arise may be  
14       present, it is one that can be avoided. If such a  
15       problem arises in the course of Mr Wooley giving  
16       evidence, then it can be addressed at that time, but, in  
17       the absence of an actual conflict, it would seem that  
18       s.109 does not constitute a bar to Mr Wooley refreshing  
19       his memory from the file.

20       Breach of s.35 of the Aboriginal Heritage Act 1988  
21       (South Australia). If there is information in the files  
22       about Aboriginal tradition which is not the Aboriginal  
23       tradition of the Ngarrindjeri people or the peoples of  
24       the Lower River Murray, and any divulgence of such  
25       information would be in contravention of that other  
26       Aboriginal tradition, then, having regard to the terms  
27       of the s.35 authorisations, such could not be the  
28       subject of evidence and ought not to be divulged.  
29       Similarly, any evidence of sites not on or about  
30       Hindmarsh island and its environs could not neither be  
31       divulged nor the subject of evidence, nor would this  
32       Commission be seeking to adduce such evidence.

33       The fact that the file was neither specifically  
34       mentioned in the authorisation itself nor canvassed in  
35       the consultation with the Aboriginal communities does  
36       not support an objection to its production. It is, of  
37       course, necessary for the evidence of Mr Wooley and any  
38       document tendered through him or otherwise adduced in



1 evidence from his file, if it is a divulgence in  
2 contravention of Aboriginal tradition, is to be within  
3 the terms of the authority, otherwise such evidence  
4 cannot be led.

5 I am unable to decide in advance whether there is  
6 any such material in the file. I can only say that I  
7 will be alert to the requirements of guarding against  
8 breaches of s.35.

9 Accordingly, I rule that the production of this file  
10 for the purpose of facilitating the evidence of Mr  
11 Wooley does constitute a breach of the provisions of  
12 s.35 of the Aboriginal Heritage Act.

13 I confirm that I will recognise a properly based  
14 claim for legal professional privilege whenever it  
15 arises if the course of Mr Wooley's evidence. But the  
16 fact that such privilege is conceded in connection with  
17 the work done by Mr Wooley for his clients is no basis  
18 for the ALRM's refusal to produce the file to facilitate  
19 Mr Wooley giving his evidence. And, in my opinion, the  
20 mere production of the file does not involve breaches of  
21 s.109 of the constitution, nor s.35 of the Aboriginal  
22 Heritage Act and provides no basis for refusing to  
23 produce the file.

24 Mr Wooley is to give evidence on Friday, 20 October  
25 1955. I will adjourn the subpoena until then. Counsel  
26 will be provided later in the day with copies of the  
27 ruling.

28 MR ABBOTT: Your Honour said concerning the  
29 subpoena, I take it that you ordered the production?

30 COMSR: Yes, I will order the production of the  
31 subpoena on that date.

32 MR ABBOTT: That is the next return date for the  
33 subpoena, in other words?

34 COMSR: Yes, that's right.

35 MR ABBOTT: I have questions to ask of the Fergie  
36 report.

37 COMSR: That means we will have to move from  
38 public session into private session.

1 MR ABBOTT: I hope to finish by 11 o'clock with the  
2 Fergie report and then have to move to the Saunders'  
3 report. That can be in public.

4 COMSR: How long are you going to take in the  
5 private hearing?

6 MR MEYER: I wasn't going to address you on that,  
7 but on the question of closing the court. Yesterday,  
8 listening to almost the entirety, except for about ten  
9 minutes of the cross-examination when I was out of the  
10 room, I admit there turned out to be nothing that was  
11 the subject of a s.35 matter in terms.

12 COMSR: The report itself is protected.

13 MR ABBOTT: In any event, I think I would feel more  
14 comfortable - and I am sure that the witness does - in  
15 being able to, I can freely ask questions and he can  
16 freely answer them in closed session without having to  
17 take up the time on the s.35 issue by the proper  
18 objections of Miss Pyke and those can be done at least  
19 in closed session and we can get on it and not worry  
20 about it.

21 MS PYKE: I support Mr Abbott - it might be the  
22 one and only time - but it seems to me that the report  
23 is subject to s.35 and there would be endless arguments  
24 about it.

25 COMSR: It would seem to me the appropriate  
26 thing to do is to take the evidence in its entirety and  
27 then consider to what extent -

28 MR ABBOTT: Then it can be released.

29 MR MEYER: I won't take it any further. If we  
30 address that step quickly, that is not a problem.

31 COMSR: In that case, we will back into private  
32 session while this evidence concerning Dr Fergie's  
33 report is stated.

34 HEARING CONTINUES IN CLOSED SESSION

**Closed Hearing**

**18/10/95**

**Pages 4007-4014**

4015

TN 48B

P.A. CLARKE XXN (MISS NELSON)

- 1 HEARING CONTINUES IN OPEN SESSION  
2 CROSS-EXAMINATION BY MISS NELSON CONTINUING  
3 Q. In your examination-in-chief, you gave a chronology of  
4 what happened essentially relating to Dr Kartinyeri and  
5 Mr Hemming, and discussions you had prior to your  
6 becoming aware of any mention of secret sacred women's  
7 business. Do you recall that. It's a long time ago.  
8 A. I recall the chronology, yes.  
9 Q. A written statement of yours was tendered to the  
10 commission, I think. First of all, you say that Dr  
11 Kartinyeri contacted you by telephone from her home, and  
12 asked you for some information on Hindmarsh Island.  
13 A. That's what I believed happened.  
14 Q. I think I'm correct in saying that you made no note of  
15 that conversation at the time.  
16 A. Not at the time.  
17 Q. Certainly at that time you were quite prepared to do  
18 what you could to assist Dr Kartinyeri in relation to  
19 the information she required.  
20 A. It was not a matter of whether I was prepared to assist,  
21 she had asked for public domain-type information, and I  
22 gave it, regardless of whether I was assisting her or  
23 believed in the cause.  
24 Q. If you have some difficulty with the word `assist', you  
25 were certainly quite comfortable about providing her  
26 with what information you had.  
27 A. Yes. It's a standard thing, yes.  
28 Q. As I understand your evidence, that didn't in any way  
29 contravene the policy, as you understood it, of the  
30 museum.  
31 A. That's correct.  
32 Q. You say in your statement that Dr Kartinyeri told you  
33 that the Ngarrindjeri people had very little to stop the  
34 bridge, and were looking for anything that may help  
35 them.  
36 A. Words to that effect, yes.  
37 CONTINUED

1 Q. Can you recall what she actually said, because what you  
2 have given the Commission is your interpretation of what  
3 she said.

4 A. I can't remember the very exact words. It would have  
5 been fairly close to those words, but said in her own  
6 style. She was certainly pushing me for information.  
7 And part of that push was to demonstrate to me that it  
8 was something that she really did need. It wasn't just  
9 a minor matter. And the situation was the Ngarrindjeri  
10 people were desperate. I heard a similar tone of  
11 desperation when she was talking to other people about  
12 other aspects later on.

13 Q. Did you get the impression that it was certainly  
14 important to her.

15 A. It was certainly important to her, yes, very important.

16 Q. She had a view that it was important to other members of  
17 her people.

18 A. Yes, she had a view that it was important to  
19 Ngarrindjeri people.

20 Q. In response to that, you gave her some references to  
21 various things.

22 A. Yes, they were all what I considered public domain, and  
23 public domain being information that is freely  
24 available, if one had the time to do the research. The  
25 library archival-type research.

26 Q. At that stage you say, that is, on this first phone call  
27 in April, there was no mention by Dr Kartinyeri of  
28 women's or men's business.

29 A. That's correct.

30 Q. But the fact that she didn't on that occasion mention  
31 women's business standing by itself doesn't mean that  
32 such business didn't exist, does it.

33 A. Yes, the fact that she didn't mention it can't be taken  
34 any further than the fact that she didn't mention it.

35 Q. I think you later spoke to her, because you made some  
36 note to yourself, didn't you, on 12 April, that you must  
37 give her some reference.

38 A. Yes, she contacted me again, the essence being that I

## P.A. CLARKE XXN (MS NELSON)

1 was dragging my feet, you know, coming up with the  
2 information. I appreciated the reminder, because I was  
3 pretty busy and scribbled it in the notebook, which is -  
4 sorry, the diary, which is in evidence.

5 Q. In addition to some reference, you also reminded  
6 yourself that you must give her a print out from your  
7 data base which had originally been prepared for your  
8 thesis.

9 A. Yes, that was part of the reminder. From memory, what  
10 is in the diary is the word 'Carter', which referred to  
11 the newspaper article I had, which, after having  
12 discussed it with her, she considered it important and  
13 she wanted it. So there was a bag of material  
14 basically.

15 Q. Then I think you faxed some material to her.

16 A. I faxed some material to her. At this stage I imagine  
17 the parcel of information all went in one hit. That is  
18 my memory of it. I am just not sure how well some parts  
19 of that would have faxed.

20 Q. But you saw your involvement, at that stage, as simply  
21 the provider of publicly available material and  
22 certainly not as someone who was interpreting that data  
23 for her.

24 A. No, I had no intention of offering any interpretation.

25 Q. She didn't ask you to either, did she.

26 A. Her general request for information could have been  
27 considered a request for an interpretation. I didn't -  
28 wasn't interested in going down that line. She didn't  
29 ask me to interpret the information for her, but the  
30 opening would have been there in the general way that  
31 she wanted help and she was desperate, but I didn't  
32 pursue that. Whereas giving her public domain  
33 information was certainly part of my or the museum's  
34 professional understanding.

35 Q. From time to time, are you called upon to interpret  
36 data, as well as supply data.

37 A. Yes, it does happen, yes.

38 Q. In this particular area, that is, the Aboriginal

1 community, in the past you have been asked to interpret  
2 data for people.

3 A. That's correct.

4 Q. There was nothing sinister in this situation, as you saw  
5 it. It was simply a request for material.

6 A. That's right. There was nothing sinister. At the same  
7 time, anything that is related to a dispute over  
8 development or something that is potentially going to  
9 draw the museum in we back off, in a sense. So there is  
10 nothing sinister in that I was thinking that anyone was  
11 behaving, at that stage, unprofessionally, but it  
12 certainly was a, sort of, a hands-off situation for me.  
13 We make it a policy, in other parts of our division,  
14 that, when there is, for example, community or family  
15 dispute within the community, that we try - endeavour to  
16 give the same information to all parties without  
17 entering into any interpretation.

18 Q. Who do you mean when you say 'we'.

19 A. We, the Anthropology Division.

20 Q. Does that include Philip Jones.

21 A. That includes Philip Jones. Chris Anderson, who was our  
22 head up until shortly before 1994.

23 Q. I understand Philip Jones gave an interview to the  
24 media, a television interview. Are you aware of that.

25 A. Yes, he discussed it with me and Chris Anderson prior to  
26 giving that interview.

27 Q. And that interview expressed certain opinions, didn't  
28 it.

29 A. That interview expressed opinions which the museum,  
30 because of its wanting to maintain a nonposition on the  
31 issue, that those opinions are the opinions of Philip  
32 Jones, yes.

33 Q. The fact of that interview doesn't seem to sit  
34 comfortably with what you have just said about museum  
35 policy, does it.

36 A. I would agree with that. The situation became very  
37 complicated. Things, from our point of view, seemed to  
38 be getting worse in the sense of the involvement of or

1 the potential involvement of staff in a number of  
2 different areas. On the basis of that, Chris Anderson  
3 allowed Philip Jones to make his own call, but our  
4 Director, that is, Chris Anderson, was fully aware that  
5 the interview was about to take place.

6 Q. It seems to me, having been involved in this Commission  
7 and read, as a result, a lot of anthropological work,  
8 that even in a noncontentious situation, in the public  
9 sense of the word, you find disagreement amongst  
10 anthropologists about events and how they should be  
11 interpreted. As a basic statement, do you disagree with  
12 that.

13 A. I think it is overgeneralising. Disagreement over  
14 detail can often be easily resolved.  
15 Anthropologists/historians, if we include them in the  
16 same category, often disagree over detail. But, on most  
17 issues hopefully when all the facts are known and the  
18 various influences, they all agree on the major points  
19 and the strategies to, in the case of the museum, to  
20 avoid unnecessarily becoming involved.

21 Q. In the context of this particular situation relating to  
22 Hindmarsh Island and what, if any, significance it is to  
23 the Aboriginal community, you have a very strong view,  
24 do you not, that secret sacred women's business did not  
25 exist until recently.

26 A. That's my view, yes.

27 Q. And you are aware that other anthropologists have a  
28 different view.

29 A. There are other - there are different views. Not all of  
30 them are perhaps as extreme. Some are. 'Extreme' in  
31 the sense of being opposite to mine.

32 Q. Some are opposite to yours and some in between, where  
33 there are other views, is that what you are saying.

34 A. That's what I am saying. However, I believe that I am  
35 one of the very few who have enough facts in order to  
36 come up with a view that I think is easy to support. I  
37 think if other anthropologists had the command of the  
38 ethnographic literature, the field work that I had, I

- 1 suggest that they would have come to the same  
2 conclusion.
- 3 Q. Who, if anyone, do you suggest in South Australia, at  
4 this particular time, has a comparable fund of knowledge  
5 to yours.
- 6 A. I would suggest there is no-one very close, but one  
7 of the reasons that I had so many discussions with  
8 Steve Hemming was the fact that I was trying to reach  
9 him in the sense of providing a logic and seeing  
10 whether our positions could either come together or be  
11 modified in some way or another. Philip Jones is  
12 someone who is, although not anywhere as intimate as  
13 Steve Hemming and myself in the Lower Murray, has still  
14 been in the museum long enough to have a good overview  
15 of what was going on through his involvement in the  
16 Ngurunderi display, in particular. And also other  
17 people that I was talking to, or trying to talk to.  
18 Dr John Stanton was someone -
- 19 Q. You only telephoned Dr Stanton once, didn't you.
- 20 A. I have had several conversations with him over the  
21 Past few months. I phoned him once sometime around  
22 about the time when the Commission was either starting  
23 up or about to. And I have had several conversations,  
24 some over the phone, with him since.
- 25 Q. Since I was last cross-examining you, you have had  
26 several conversations, is that the position.
- 27 A. That's correct, yes.
- 28 Q. Prior to that, you had had one, I suggest.
- 29 A. We were contacting each other, or attempting to, quite  
30 a few times. There was only one long conversation I  
31 can remember.
- 32 Q. I will come back to that. In any event, it is the  
33 position, is it not, that you were anxious to talk to  
34 Mr Hemming, to see if your view was reconcilable with  
35 what you understood his view to be.
- 36 A. That's part of the reason why I was wanting to talk to  
37 Mr Hemming. I also wanted more information. He,  
38 through working with a different set, or a slightly



## P.A. CLARKE XXN (MS NELSON)

1 different set of Aboriginal people more closely than  
2 the set of people I was working closely with, had some  
3 chance of having additional information. So I was  
4 talking with him for a number of reasons.

5 Q. You, I think, went on leave from 15 April to 11 May  
6 1994.

7 A. That's correct. It was extended by a few days with  
8 other forms of leave, extended past the 11th.

9 Q. Just so that I am clear about that, was your last day  
10 at work 14 April.

11 A. As far as I know. I have got a habit of, when I go on  
12 leave, never being able to make a clean break. So I'm  
13 not sure how many times I popped into the museum for a  
14 few minutes or an hour, just to finish reports and  
15 things. So, I can't say that I was necessarily absent  
16 during that earlier period. I certainly would have  
17 briefly popped in the museum a few times during that  
18 leave.

19 Q. You returned on 11 or 12 May.

20 A. No, from around about 11 May through to the 13th, 14th,  
21 I spent most of the time in the hospital awaiting the  
22 birth of my son. So I can't quite remember, because I  
23 was using a variety of other forms of leave, I can't  
24 remember exactly the day I would have returned. It  
25 would have been a couple of days after the - two or  
26 three days after the 11th.

27 Q. In any event, can we assume that, from your point of  
28 view, no-one mentioned the allegedly secret sacred  
29 status of Hindmarsh Island to you, in that period, when  
30 you were on leave, irrespective of whether you were in  
31 or out of the museum.

32 A. I have no memory of it being mentioned, at that stage,  
33 in those words, or with all the meaning that we put  
34 behind those words.

35 Q. You spoke of a visit to the Tindale collection involving  
36 Dr Kartinyeri, Mrs Hilda Day and Mrs Sarah Milera, in  
37 April 1994.

38 A. That's correct.

## P.A. CLARKE XXN (MS NELSON)

1 Q. Do you recall when that took place.

2 A. No, I have been able to locate it roughly using the  
3 dates of when I started leave from one end and when  
4 the Tindale collection was being unpacked at the other.  
5 So, those two main dates are the dates that I have been  
6 able to -

7 Q. What are those two main dates. We know when you went  
8 on leave.

9 A. Yes.

10 Q. When was the Tindale collection unpacked.

11 A. Very early April. It arrived some weeks beforehand and  
12 was in crates in our holding area and then, in early  
13 April, it was being unpacked in the room in which the  
14 two visits which are spoken of in my statement  
15 eventually took place.

16 Q. How long after it arrived did you have this visit from  
17 Dr Kartinyeri and others.

18 A. As I have said, it arrived some weeks earlier. How  
19 long after the Tindale collection had been unpacked,  
20 I can't precisely remember. It was just a matter of  
21 some days. It is hard to pin down more than that. It  
22 was one of the first things that I had to do when we  
23 were on or when the Tindale collection had been  
24 unpacked, to actually start going through all the  
25 journals looking for references to Hindmarsh Island.  
26 And it was at that date that I was essentially  
27 becoming familiar with the Tindale collection through  
28 the process of doing that. So I spent many hours going  
29 through each volume.

30 Q. Apart from the women I have named, was there anyone else  
31 there, on that occasion.

32 A. From my memory, at some stage during the visit Kate  
33 Alport popped into the room for a second. I don't  
34 believe she was there for more than just a couple of  
35 minutes. She was possibly putting some other volume  
36 back and, from my memory, wasn't paying - wasn't part of  
37 the visit. She certainly wasn't there to begin with.  
38 She just came in and she went out very quickly.

## P.A. CLARKE XXN (MISS NELSON)

- 1 Q. Do you suggest that Mr Hemming was there.  
2 A. Yes, I do.  
3 Q. You sure of that, or may you be mistaken.  
4 A. I'm certain that he was there for that visit.  
5 Q. You see, you knew in April 1994 that he was based at the  
6 Fullarton Road annex of the Museum.  
7 A. That's right. And I can remember ringing him up to tell  
8 him of the visit and to come over and help.  
9 Q. Would you just say that to me again. I just don't quite  
10 understand what you mean by the `visit' and he was to  
11 come in and help.  
12 A. Okay. I'll step back a bit further. I got a message  
13 from our head of division that some women, Ngarrindjeri  
14 women, were coming in to look and inspect the Tindale  
15 collection. Would I handle it. I said yes. And, out  
16 of courtesy, I rang up Steve Hemming and said `Come on  
17 over'.  
18 Q. What do you mean `out of courtesy'. Why did you think  
19 it was necessary for you to invite him to attend.  
20 A. I was still trying to include Steve on all of the  
21 projects that related to the Lower Murray area. I would  
22 have expected that he would have been likewise for me.  
23 And there was some people coming over, he knew those  
24 people, I knew those people. It was out of professional  
25 courtesy.  
26 Q. So, he was there at your invitation; is that your  
27 position.  
28 A. Yes. I'm not suggesting that I had a stronger role in  
29 the actual visit than he did, but I informed him that  
30 they were there. He could have said `No, I'm too busy,  
31 you handle it', but he came along.  
32 Q. You didn't mention in your statement that he was there  
33 at your invitation, did you.  
34 A. I haven't got the statement in front of me. When I say  
35 `invitation' -  
36 Q. Would you like to see the statement.  
37 A. Yes, thank you.  
38 Q. Looking at your statement produced and in particular at

## P.A. CLARKE XXN (MISS NELSON)

- 1 p.2 of the second section. It's in two sections. P.2  
2 of the section headed 'My knowledge of the events  
3 forming the Hindmarsh Island issue'. Looking at the  
4 second paragraph, the first sentence reads 'The next  
5 visit to the Tindale collection a few days later was by  
6 Miss Doreen Kartinyeri, Miss Hilda Day, Miss Sarah  
7 Milera and Mr Steve Hemming, a curator of anthropology.  
8 See that.
- 9 A. Yes.
- 10 Q. Was that worded in that way to give the impression that  
11 Mr Hemming was accompanying these women who were  
12 visiting the Tindale collection.
- 13 A. No. I did not intend to word it in that way to give  
14 that impression. Steve was with me before these three  
15 women arrived and I fully acknowledged that at that  
16 stage he didn't have much more or less of an idea of  
17 what was going on than I did.
- 18 Q. I suppose he was with you when they left.
- 19 A. Yes, he was with me when they left.
- 20 Q. Without going into all of the detail, there was a  
21 conversation between you and the women; is that right.
- 22 A. We're all talking about what was in the Tindale  
23 collection.
- 24 Q. 'They' asked - that presumably means some of the women  
25 or one of the women - asked something of you and Mr  
26 Hemming.
- 27 A. That's correct. They asked us as a collective.
- 28 Q. The request was that you and Mr Hemming look through the  
29 Tindale collection and find references to Hindmarsh  
30 Island and the extended Coorong region.
- 31 A. That's correct.
- 32 Q. Subsequently, you did that, I think.
- 33 A. I had already been looking through the collection, but  
34 it's a massive collection. I kept on looking. There  
35 were still parts of the Tindale archive that I'd only  
36 glanced through. The researching that I was doing, and  
37 presumably Mr Hemming as well could have started before  
38 and continued past that visit.

- 1 Q. Did you and Mr Hemming together discuss what, if  
2 anything, you might do about that request after the  
3 women left.
- 4 A. I have no precise memory. We were - we kept on looking.  
5 The fact that if we had found something significant,  
6 then we would have to have had it in conversation. But  
7 nothing significant in relation to Hindmarsh Island was  
8 found in the Tindale archive.
- 9 Q. Whilst certainly I accept that you looked through, was  
10 it practicable for Mr Hemming to look through, was it.  
11 He wasn't working in that part of the Museum.
- 12 A. He came into our North Terrace offices a couple of times  
13 a week and I remember him saying just he couldn't keep  
14 away from the Tindale collection. I acknowledged that  
15 he didn't have anywhere near as much time as I had  
16 because of where my office was, but he was looking  
17 through parts of that collection at that stage.
- 18 Q. But you would understand that naturally he would be  
19 interested in the collection as a collection.
- 20 A. Sorry, I'm not quite sure - he is interested in the  
21 whole of the Tindale collection, in particular, the  
22 Lower Murray, South East component of it.
- 23 Q. The Lower Murray area, as you understood it, was his  
24 area, his area of interest.
- 25 A. Well, that's a major area of interest of Steve Hemming  
26 and I would understand that he would, you know,  
27 concentrate on those. I would guess - and this is a  
28 guess - that he would concentrate on those parts of the  
29 archive first.
- 30 Q. You didn't understand him to go searching the Tindale  
31 collection on behalf of Dr Kartinyeri, did you.
- 32 A. At that stage?
- 33 Q. At that stage.
- 34 A. No. Well, we had been asked as a collective to search  
35 in case, continue to search through the archive.
- 36 Q. What I'm trying to establish is that given that the  
37 Tindale collection had arrived, you would have expected  
38 Mr Hemming to come and go through it anyway, even if Dr

1 Kartinyeri had never said anything, wouldn't you.

2 A. Yes, I would agree with that.

3 Q. The fact that he did look at the Tindale collection  
4 doesn't and shouldn't mean that he was searching there  
5 on behalf of Dr Kartinyeri, does it.

6 A. Well, I would put it that at that stage, his approach  
7 would have been pretty as much the same as mine. I  
8 wanted to go through the Tindale collection, and having  
9 that request was a good excuse, in terms of our rather  
10 hectic work schedules, to spend a bit more time going  
11 through the collection.

12 Q. That is an assumption that you made.

13 A. I've made an assumption, yes.

14 Q. Were you aware that Mr Hemming took a number of field  
15 trips in April and May for that matter.

16 A. I was usually generally aware that he was spending, you  
17 know, the odd day here and there, as I do, going to  
18 places such as Point McLeay. Being based out at  
19 Fullarton Road, I wouldn't have had any precise, you  
20 know, knowledge of which particular days.

21 Q. Certainly during your leave you say Mr Hemming rang you  
22 to ask you for all your Hindmarsh Island data; do you  
23 recall saying that.

24 A. Yes, I do.

25 Q. He rang you at home, I suppose.

26 A. Yes, that's correct.

27 Q. Have you made any note of that conversation.

28 A. No. What I have here is my recollection of that phone  
29 conversation and what he asked me to do and what I did  
30 do.

31 Q. Can you tell me what he said and what you said in the  
32 course of that conversation.

33 A. Well, he was ringing up after the data base that he was  
34 aware that I had constructed in relation to the, you  
35 know, preliminary work that I had done on my thesis. I  
36 had a data base which was keyed into place. So there  
37 were a number of records, for example, that I had taken  
38 out of historical sources under the name of Goolwa and

## P.A. CLARKE XXN (MISS NELSON)

1 Hindmarsh Island, that type of thing. So he was  
2 interested in getting that. He also knew, because it  
3 happened several times previously, that I had a copy of  
4 a book written by Bellchambers in 1931 which had some  
5 reference to Hindmarsh Island. He had access to a copy  
6 of that book. But there is a lot in the book and it's  
7 very - its reference is a very different way, so he  
8 quickly wanted to get to those page numbers. So he rang  
9 me so I could - asking me to turn my computer on and get  
10 the reference page numbers for him and give them to him  
11 back over the phone.

12 Q. What did you say.

13 A. Well, I told him, well, I've already given the  
14 information to Doreen - Dr Kartinyeri, so I was  
15 questioning, you know, why he wanted it. Surely he  
16 could get it from Dr Kartinyeri. For whatever reason,  
17 he said 'She doesn't have them or access to them'. He  
18 wanted it from me. It was easier. So, again, I was  
19 questioning why, you know, why he needed them, you know,  
20 if she is got the information, to leave it. And he  
21 said, well, she needed - words to the effect of -  
22 special assistance in terms are interpreting them. So,  
23 I accepted that. He would have noted by my tone that I  
24 wasn't happy -

25 Q. You can't tell us what he would have known. You don't  
26 know what is going on in his mind.

27 A. That is my tone. Okay. I expected that he would have,  
28 you know, seen that I was unhappy with it, but it's  
29 public domain information and I behave in a professional  
30 manner and I certainly wasn't going to withhold  
31 information from a curator, a fellow colleague asking  
32 for the information, and so I gave it to him. He knew  
33 my information, or I had given him my information. He  
34 had the data. He had to make - he would then have to  
35 make a professional decision.

36 Q. The decision being whether or not he would interpret it  
37 for Dr Kartinyeri.

38 A. Well, whether or not, or how much, yes.

1 Q. Can you explain to me - because, as I understand your  
2 evidence, you use the word `interpret' in a particular  
3 sense in the anthropological context -what is involved  
4 in the interpretation of data in your field of  
5 expertise.

6 A. It could mean quite a few different things, depending on  
7 what the nature of the data is. Often, it's the  
8 ability, through having an overview in Aboriginal  
9 studies or Aboriginal anthropology in general, to pick  
10 up on little bits of historical information that may  
11 relate to one particular area, and to make sense of it  
12 in the sense of constructing a model which explained  
13 those fragments of historical records. So,  
14 `interpreting' I would interpret as providing a model  
15 which made sense of the raw data which I have described  
16 as the public domain data.

17 Q. In relation to this particular set of data, were there  
18 aspects of it that would require interpretation for them  
19 to make sense.

20 A. Well, there were a number of issues in relation to the  
21 information concerning burials on Hindmarsh Island: How  
22 to make sense of that; why were they on Hindmarsh  
23 Island; which particulars; you know, was it, you know,  
24 the practice of people who lived on the islands or was  
25 it - I'm just putting out a hypothetical - whether it  
26 was an area where people from much broader areas buried  
27 their dead. There was the explanation of or the  
28 possible derivation of the Taplin word for `Hindmarsh  
29 Island' that was - I'm not suggesting Steve did that,  
30 but I'm saying that is another area which could be put  
31 into an overall model. There's archaeological, there  
32 are some records of archaeological material being  
33 somewhere on the island, for example, which could be  
34 interpreted, and also reference to, if my memory serves  
35 me, a spear fight very early on in just after the turn  
36 of the century on Hindmarsh Island. So, `interpret' in  
37 this situation could be just coming up with an  
38 historical overview. It could also, in terms of some of



## P.A. CLARKE XXN (MISS NELSON)

1 the place names, brought in possible links with  
2 dreamings and other things. So, someone who's  
3 interpreting in this situation could go to many  
4 different levels and different directions.

5 Q. Did Mr Hemming, in that conversation, discuss with you  
6 the possibility that human remains from a burial  
7 platform which were held in the Museum may have come  
8 from the area.

9 COMSR: Well, this is -

10 MS NELSON: Am I intruding? It seems to me it is  
11 something in the public domain.

12 COMSR

13 Q. Is this a matter in the public domain.

14 A. I think so. My answer is fairly short, and I can't  
15 remember that specific question being asked.

16 XXN

17 Q. But it may have been.

18 A. It is a possibility that it had been asked during that  
19 phone conversation, somewhere presumably in late April  
20 of 1994.

21 Q. At that particular time of your statement, you say that  
22 Mr Hemming approached Miss Franchesca Cubillo-Alberts  
23 and asked her if she would become involved as a female  
24 anthropologist, as he thought he could no longer act as  
25 an advisor to Dr Kartinyeri due to the cultural  
26 restrictions of women's business. Do you see that.

27 A. Yes, I do.

28 Q. How do you know that. You weren't there, I take it.  
29 Did someone tell you.

30 A. Yes. When I came back from leave and caught up with  
31 Miss Cubillo-Alberts, she told me what had gone on. So  
32 that paragraph is based on a conversation I had with  
33 her. She's been in the Commission and reported on the  
34 conversation.

35 Q. So I understand, is that what she told you.

36 A. That was at the time of writing this statement. That  
37 was my memory of what she told me. She's since said  
38 that it was both Mr Hemming and Doreen Kartinyeri that

1     approached her. So, I acknowledge that that paragraph  
2     should read 'Mr Hemming and Dr Kartinyeri' -

3     COMSR

4     Q. Were you present.

5     A. No, I wasn't, but I'm just saying in terms of in  
6     relation to that phone conversation.

7     XXN

8     Q. What I'm asking you is what Miss Cubillo-Alberts told  
9     you. And from what you said, she's told you two  
10    different things.

11    A. No, she's only told me what - she's only told me or my  
12    memory of what she told me is in this report. I'm  
13    saying that I would not with the benefit of having heard  
14    her evidence.

15    CONTINUED

## P.A. CLARKE XXN (MISS NELSON)

- 1 Q. You were in court when she gave her evidence, were you.  
2 A. Yes, I was.  
3 Q. Let's just deal with your memory. When you supplied  
4 this statement, your clear memory was that she, Ms  
5 Cubillo-Alberts, told you that Mr Hemming had asked her  
6 to be involved for the reasons expressed in that  
7 paragraph, is that right. Since then, Ms  
8 Cubillo-Alberts has said to you that it was Mr Hemming,  
9 with Dr Kartinyeri, who made that request.  
10 A. She hasn't said it to me, she said it in the commission.  
11 Q. So you haven't had a second conversation, but that's  
12 what you heard her say in evidence.  
13 A. That's correct.  
14 Q. Dealing with the conversation that you had with Ms  
15 Cubillo-Alberts, when did that conversation take place.  
16 A. It's difficult to pin down on a particular day. I'd  
17 assume that it was sometime shortly after I came back  
18 from leave but, as I've already stated, it was a bit  
19 messy when I came back because of the circumstances in  
20 which I was away, so I really can't say when it was she  
21 caught up with me after I came back from leave but, to  
22 the best of my knowledge, I've put that date somewhere  
23 in mid May.  
24 Q. Can I suggest that it was after you became aware that a  
25 letter had been sent to Mr Tickner.  
26 A. Not to my knowledge.  
27 Q. Is it your recollection the conversation took place  
28 before you became aware that a letter had been sent to  
29 Mr Tickner.  
30 A. Which letter was sent to Mr Tickner?  
31 Q. The letter you refer to in your statement, 'Dr  
32 Kartinyeri's letter to Minister Tickner' is how you  
33 describe it on the same page.  
34 A. I have difficulty knowing whether it was before or  
35 after.  
36 Q. Was this something which Ms Cubillo-Alberts volunteered  
37 to you.  
38 A. From my memory, yes. It would have come to me as a way

## P.A. CLARKE XXN (MISS NELSON)

1 of her asking me what was going on.

2 Q. Did it come to you in that connection. What was said.

3 A. Basically what's written in the statement. I can't come  
4 up with the exact words.

5 Q. No, but conversations don't take place in the sense of a  
6 statement in vacuo, what else was said. Did you say  
7 something, did she say something more.

8 A. From my memory, I advised her not to have anything to do  
9 with it if it came up again, so I imagine she was giving  
10 me this information as a way of me being in a position  
11 of advising her what was going on. That was quite a  
12 standard approach. She was not a very experienced  
13 curator at that stage, and I had an unofficial role of  
14 checking her work and helping her in whatever way I  
15 could as a more senior curator.

16 Q. What do you mean by 'an unofficial role'. Was that  
17 something you took upon yourself, or was it part of your  
18 job description.

19 A. Neither is the case, really. It was a practice that we  
20 sort of fell into, but it was on a number of occasions.  
21 Earlier on it was suggested to her by our head of  
22 division to check with me - had Steve Hemming's office  
23 been closer, then he could have had that role, or shared  
24 that role, but she came into the museum without any  
25 experience as a curator, and she needed to be brought up  
26 to speed as quickly as possible on things, and certainly  
27 back then she preferred to check things with either  
28 myself or the head of division or possibly, on some  
29 occasions, Mr Hemming, I don't know.

30 COMSR: I've had a fair bit of evidence  
31 concerning this.

32 MISS NELSON: I've read that. I haven't had an  
33 opportunity yet to cross-examine the witness.

34 COMSR: I appreciate that. I wonder if you're  
35 putting something to the witness other than what  
36 appears.

37 MISS NELSON: Well, I do propose to cross-examine that  
38 witness.

## P.A. CLARKE XXN (MISS NELSON)

1 XXN

2 Q. In any event, you told her not to have anything to do  
3 with this request to help Dr Kartinyeri or advise her.

4 A. That particular matter had already solved itself. My  
5 advice was more general, just saying basically `This is  
6 getting serious, best not to have anything to do with  
7 it'. She didn't have any expertise in this particular  
8 area. I couldn't see why she should have anything to do  
9 with it.

10 Q. How did you and Dr Kartinyeri get along.

11 A. Well, until I gave evidence to the Commission, very  
12 well.

13 Q. You say in your statement `Mr Hemming helped Ms  
14 Kartinyeri compose and send her letter to Minister  
15 Tickner'. Now stopping there, you weren't present when  
16 any letter was composed or when any letter was sent,  
17 were you.

18 A. That's correct.

19 Q. What is your basis for making that statement.

20 A. Conversation that I've had with Mr Hemming.

21 Q. When did the conversation take place.

22 A. Sometime after the events.

23 Q. How long after the events.

24 A. Well, given that I wasn't seeing him on a daily basis,  
25 it may have been a week or two, it's hard for me to say,  
26 but of that order.

27 Q. What did he say.

28 A. He basically said that he had helped her type out and  
29 send the letter.

30 Q. He didn't at any time say he had helped her compose the  
31 letter, did he.

32 A. He wouldn't have used that word.

33 Q. He would not have used the word.

34 A. He wouldn't have used the word `composed', no.

35 Q. He made no secret of the fact that he helped her by  
36 typing the letter, and helped her to send it.

37 A. That's correct, and I've also helped Dr Kartinyeri with  
38 her letters in the past, and I know that that always

## P.A. CLARKE XXN (MISS NELSON)

- 1 entails changing grammar and overall structure.
- 2 Q. That may have done for you, but you can't say that that  
3 is what Mr Hemming did, can you.
- 4 A. I agree that I can't say with a hundred per cent  
5 certainty that that took place.
- 6 Q. You can't say at all, because you weren't there and you  
7 don't know.
- 8 A. What, that he had helped her type out the letter?
- 9 Q. No.
- 10 A. He certainly told me that.
- 11 Q. No, I don't dispute that, but you cannot say that he  
12 assisted her by changing the grammar or anything like  
13 that.
- 14 A. That's correct.
- 15 Q. When you say that you yourself in the past had assisted  
16 Dr Kartinyeri with letters, do you mean in the  
17 composition of letters, or more in the sense of settling  
18 or revising what she had composed, and put it in into  
19 perhaps more appropriate language.
- 20 A. Both are true. On one occasion I basically wrote the  
21 whole letter. It was a letter from the museum to an  
22 Aboriginal council, a standard letter requiring access  
23 to materials. She asked me to do it because she was  
24 having difficulty. I basically typed out the whole  
25 letter, checked it with her, what each sentence meant,  
26 and she was happy that that conveyed what she wanted,  
27 and signed it and off it went. On other occasions it  
28 may have been just a simple couple of changes depending,  
29 of course, on where the letter was going.
- 30 Q. Did you type any letters yourself for her from time to  
31 time.
- 32 A. Yes. The examples that I've given would have been  
33 having typed them for her. She didn't - from my  
34 knowledge she can't type, she certainly can't use a  
35 computer.
- 36 Q. In your statement, you say -  
37 COMSR: I'm just wondering how much further  
38 we're going to take that particular matter.

## P.A. CLARKE XXN (MISS NELSON)

1 MISS NELSON: I wasn't going to take that any further.

2 XXN

3 Q. In your statement you say 'In a series of arguments  
4 between Mr Hemming and myself over his active role in  
5 the developing Hindmarsh Island issue', do you see that.

6 A. Yes, I do.

7 Q. Now what do you mean by the statement 'his active role  
8 in the developing Hindmarsh Island issue'.

9 A. Well, as you've already been discussing, I consider his  
10 role of interpreting for Dr Kartinyeri in relation to  
11 that phone conversation while I was on leave classifies  
12 it as active. Also, in the various discussions that I  
13 was having with him, he was rather vigorous in defending  
14 it, but that's of secondary importance, the primary  
15 importance being at this stage his role, in whatever way  
16 he was defining it, of giving special assistance to Dr  
17 Kartinyeri.

18 Q. But it wasn't 'special' in the sense that it wasn't  
19 unusual, as I understand your evidence, for museum  
20 curators to interpret data for people.

21 A. I think it would be certainly unusual and not prudent in  
22 this case.

23 Q. Well, that's your view that it wasn't prudent, but you  
24 have already told me that it was not uncommon for you  
25 and other curators to interpret raw data.

26 A. Not uncommon in the wider universe of enquiries.  
27 Anything to do with land disputes, it was very clearly  
28 put on a number of occasions from the directors and  
29 heads of division that we were not to be involved.

30 Q. But it didn't stop Mr Jones leaping to a television  
31 interview, did it -

32 A. No, and as I've already said -

33 Q. - with the blessing of his head of department.

34 A. And the director. No rules or policies are applicable  
35 in all situations. As I've said the events, by the time  
36 that Mr Jones spoke out, were very complicated, and he  
37 made a decision. It could have been vetoed by the  
38 director. It wasn't. He behaved in an appropriate

## P.A. CLARKE XXN (MISS NELSON)

1 manner. Just like if I'd wanted to do likewise, I would  
2 have to have got the director's permission as well to  
3 have any involvement other than just giving out  
4 information.

5 Q. Is this not the position; that you understood from Mr  
6 Hemming that he believed there was some basis for the  
7 suggestion that there was secret sacred women's business  
8 connected with Hindmarsh Island. Just stopping there,  
9 is that correct.

10 A. Yes, that's correct.

11 Q. You had the opposite view, there was no basis.

12 A. No basis on the terms of the historical and preEuropean  
13 period, that's correct.

14 Q. You and he debated that issue, did you not.

15 A. That's correct.

16 Q. On more than one occasion, I imagine.

17 A. That's correct.

18 Q. As I understand your evidence, you say that there was at  
19 least an area where you were in agreement, which you say  
20 was that, at the very least, there had been a  
21 reinvention of tradition.

22 A. Yes, he agreed.

23 Q. Sorry, a recent invention of tradition - what is the  
24 correct expression.

25 A. I would have been using both terms.

26 COMSR

27 Q. Do they mean the same.

28 A. In this connection, invention of tradition is correct.

29 Yes, I put that phrase to him. He, of course, realised  
30 that it was related to the book that's already been  
31 mentioned in evidence, Osborne and Ranger, and yes, he  
32 agreed that there were at least some elements that had  
33 to be recent.

34 XXN

35 Q. Just so that I'm clear about this, bear with me - it's  
36 some weeks since I've been here - as I understand your  
37 evidence, that isn't to be taken to mean that someone's  
38 gone out and made something up, but in the



## P.A. CLARKE XXN (MISS NELSON)

- 1 anthropological connection of explaining events in a  
2 simplistic way, is that correct.
- 3 A. Often it does mean a more active role in one or two  
4 people massaging, to use that term, the historical  
5 records and coming up with another model, and then that  
6 gains validity and, in a sense, gets set in concrete by  
7 a growth of followers of that new or extended or altered  
8 tradition, whichever we we would look at it, so  
9 invention of tradition certainly doesn't rule out  
10 fabrication at one extreme. In fact, in one of the  
11 papers it's pretty clear that in that volume that  
12 fabrication did take place, and then it was followed up  
13 with a growth of believers that eventually, through the  
14 passage of time, covered up the change or the deviation  
15 from what the historical records reflect.
- 16 Q. Providing the historical record was correct in the first  
17 place, I suppose.
- 18 A. Or in terms of the examples given in this volume,  
19 there's been ample historical data to show the shift.
- 20 Q. You've already said in your evidence that, in your view,  
21 Dr Kartinyeri and the other women who share her point of  
22 view genuinely believe in the women's business.
- 23 A. The extremely basic account, if it was possible to  
24 distil what that basic account is, but yes, I believe  
25 that, or certainly the followers of the secret sacred  
26 women's business on Hindmarsh Island fully believe in  
27 it, and I believe that Dr Kartinyeri herself believes in  
28 some form of a basic account, even though there's been a  
29 number of shifts in terms of the data she is giving on  
30 it, so she is possibly even now still trying to work it  
31 out, in her words.
- 32 Q. Can you just help me by telling me on what basis do you  
33 form a view that it's a genuine belief.
- 34 A. Well, I don't think it's a genuine belief in the sense  
35 of the historical preEuropean background.
- 36 Q. No, the genuine belief on their part.
- 37 A. A genuinely held belief.
- 38 Q. A genuinely held belief.

4038

TN 48E

P.A. CLARKE XXN (MISS NELSON)

- 1 A. Just my knowledge of the women involved, some of their
- 2 actions back then and now, my personal knowledge of Dr
- 3 Kartinyeri, I think that deep down she is basically an
- 4 honest woman, all of those things. I mean it's my
- 5 perception.
- 6 CONTINUED

1 COMSR

2 Q. Is it a genuinely held belief, but the belief itself is  
3 not genuine, is that what you are saying.

4 A. That is the unfortunate situation. The latter part of  
5 that statement being on the basis of my knowledge of the  
6 literature and field work situation prior to sometime in  
7 March/April 1994. Of course, I am not suggesting that  
8 Dr Kartinyeri is entirely the fabricator in this  
9 situation.

10 XXN

11 Q. In these various discussions that you had with Mr  
12 Hemming, is it the case that he said to you that he  
13 supported Doreen Kartinyeri's right to have a say.

14 A. I can't remember those exact words, or a statement along  
15 those lines, no.

16 Q. You don't suggest, do you, that Mr Hemming said he was  
17 justified in backing the effort to stop the bridge.

18 A. He said words to that effect on the basis that two older  
19 women that he knew quite well were supporting him. So  
20 his support was on the basis of the two elderly ladies  
21 who supported it.

22 Q. But you didn't understand him to have any sort of  
23 personal view about this bridge or any personal  
24 investment in whether it went ahead or whether it  
25 didn't.

26 A. No, I think he probably like me thought that it would  
27 probably be better if there wasn't a bridge, but neither  
28 he nor I had formed any strong opinion on the bridge, if  
29 we were able to remove that totally from the Aboriginal  
30 sites. So there were no elements of our conversation  
31 along those lines.

32 Q. On another occasion at least there was a discussion in  
33 which Mr Hemming, you say, told you that he had heard Dr  
34 Catherine Berndt and Professor Ronald Berndt state that  
35 the Lower Murray landscape was perceived in a certain  
36 way. I am conscious of the difficulty that may arise if  
37 you elaborate on an answer, but is that what you say.

38 A. Yes, and our conversation didn't elaborate, so I don't

## P.A. CLARKE XXN (MS NELSON)

1 think there is any problem with acknowledging that.

2 Q. That conversation is a matter to which I will have to  
3 return in closed court, I think.

4 MR SMITH: Ms Nelson may not be aware that that has  
5 gone a fair distance.

6 MS NELSON: I am, but I am just not too sure how far  
7 it has gone and I would like to consider it.

8 COMSR: We will be going into a closed session.

9 MS NELSON: I think, rather than transgress, I think  
10 I would err on the side of being cautious.

11 COMSR: One never knows the response, in any  
12 case, Ms Nelson and how far that may cause difficulties.

13 MS NELSON: I think that is the problem.

14 XXN

15 Q. Of course, this particular difference of opinion between  
16 you and Mr Hemming on an anthropological issue isn't the  
17 first time the two of you have had a difference of  
18 opinion in the anthropological area, is it.

19 A. Over 13 odd years I have known him we have disagreed at  
20 one time or another in many areas. That is certainly  
21 true.

22 Q. But, of course, from your point of view, there was a  
23 particular significance in statements being made about  
24 secret sacred women's business, and that was that you  
25 had lodged your thesis to be marked and there is no  
26 mention of it in your thesis.

27 A. That's correct. But had I missed it, and let's assume  
28 that it was true, then it wouldn't bother me. I gave an  
29 accurate view of Aboriginal relationships to the  
30 landscape through all the historical and anthropological  
31 literature that was available on the basis of my own  
32 field work. I am sure that with the passage of time the  
33 thesis as any body of work will show one or two  
34 hopefully minor errors in it. With a body of work that  
35 large, it would be very idealistic to expect that it  
36 would survive the passage of time without some source of  
37 error creeping into it. It is just such a massive work.

38 Q. This wouldn't have been a minor error. It would have

## P.A. CLARKE XXN (MS NELSON)

1     been quite a significant thing, would it not, if there  
2     had been a whole area of sacred secret business that you  
3     hadn't even mentioned.

4   COMSR:            But isn't the thing, Ms Nelson, that is  
5     being put that the very existence of this women's  
6     business is what makes it secret?

7   MS NELSON:        But that is what I was putting.

8   XXN

9   Q. You have published a thesis, which -

10  A. I haven't published.

11  Q. Which, in your view, is definitive.

12  A. I haven't published the thesis.

13  Q. You have handed one up to be marked and if it doesn't  
14     come up to scratch you are not going to get your  
15     doctorate, that is it, isn't it.

16  A. Come up to scratch in the theory involved or the  
17     ethnographic data?

18  Q. In what way the examiner considers it, I suppose.

19  A. In how relevant my thesis was to those conversations.

20     My memory is that the situation that you are putting  
21     forward never occurred to me. I mean, I was so certain  
22     that the secret sacred women's business on Hindmarsh  
23     Island didn't exist or couldn't exist that I just wasn't  
24     worried about my thesis. And the people marking that  
25     thesis would have been - if they were aware of the  
26     Hindmarsh Island issue - would have been in a position  
27     of acknowledging that it started after I submitted my  
28     thesis. The so-called truth of my thesis was never an  
29     issue. There is some possibility down the track that  
30     there will be other areas in my thesis and I will take  
31     them on the chin when that happens, but I have got  
32     confidence that they will be minor errors when they  
33     eventually appear. But I know of no thesis that is  
34     regarded as the first and last word on any topic. A  
35     thesis is like a rights of passage document. It is only  
36     when you in later years work on that thesis to publish  
37     it as a book that one would be extra sensitive about  
38     what is or isn't contained within it. If, for example,

## P.A. CLARKE XXN (MS NELSON)

1 we assume that secret sacred women's business is proven  
2 by the Commission or suggested by the Commission, in  
3 whatever way, to exist and it is not in my thesis  
4 doesn't bother me in the slightest. I think the way it  
5 has been argued from the proponent women's side if I had  
6 to rely on their description would be explanation in  
7 itself. So my thesis was never an issue in relation to  
8 arguments with or discussions, whatever, with Mr  
9 Hemming.

10 Q. It may not have been an issue in discussions between you  
11 and Mr Hemming, but the fact is, is it not, that this  
12 issue arose after you had lodged your thesis and before  
13 you got the results.

14 A. It arose in April, May sort of June being the main  
15 months, that's correct. That is the way it happened.  
16 There is a mention I might add of the Hindmarsh Island  
17 debate in my thesis, but, at that stage, it was an  
18 archaeological debate. I was aware of, through my  
19 contact down at Point McLeay, that people were worried  
20 about Hindmarsh Island in the sense of the archaeology  
21 on the island and what might happen. So that is  
22 mentioned in the thesis. And there has to be a cut off  
23 point with a thesis. I have already mentioned in giving  
24 evidence in cross-examination that the Berndt book  
25 became available in the last stages of writing up my  
26 thesis. My supervisors gave me the option of either not  
27 referring to it at all, or just making partial reference  
28 to it. So everyone who writes a thesis is always going  
29 to get caught out by things appearing just before or  
30 just after submitting it. It is a fact of life and my  
31 supervisors did their job in not allowing me to be  
32 overanxious about last minute books or material that  
33 became available or, indeed, things that became publicly  
34 available or apparent after I submitted it. The markers  
35 of -

36 Q. I really think you have answered, or I think you have  
37 answered the question and it will be a lot quicker if  
38 you confine yourself to answering the question.

## P.A. CLARKE XXN (MS NELSON)

1 A. You have asked the question in several different ways  
2 and I think I should be allowed to answer fully.

3 COMSR

4 Q. I think you have covered it, but just for the sake of  
5 completeness, are you saying that, at the time you  
6 submitted your thesis there had been no suggestion of  
7 the existence of women's business, secret women's  
8 business, or secret sacred women's business.

9 A. That's correct.

10 XXN

11 Q. And there was no mention of any of those three things in  
12 your thesis.

13 A. That's correct.

14 Q. Do you think, after reflecting upon it, that that fact  
15 has reinforced the stand which you have taken over  
16 whether the women's business exists or not.

17 A. No, I don't believe the thesis has set me in cement. I  
18 may well over the next few years publish papers which  
19 deviate from my thesis as I get more information and  
20 become more mature. That thesis is not the statement of  
21 the rest of my life in terms of publishing it.

22 MS NELSON: There may be other questions. There is  
23 certainly one area I need to deal with that I think as  
24 presently advised should be done in a closed session.  
25 And I have really exhausted this topic.

26 COMSR: Would you prefer that we go into closed  
27 session now, so that you can?

28 MS NELSON: Mr Abbott isn't back.

29 COMSR: No, he isn't back and that hour might  
30 well be more of an approximation than anything else.  
31 And I think that perhaps if we go ahead and conclude  
32 your cross-examination in its entirety it would be more  
33 satisfactory and convenient from your point of view.

34 How long do you anticipate that we might have to go  
35 into private session?

36 MS NELSON: Not long.

37 MR SMITH: Could I raise something?

38 Before that happens, could the suppression order

## P.A. CLARKE XXN (MS NELSON)

- 1 matter be disposed of now? Do you mind doing that now?  
2 The media has got an interest in you doing that.  
3 COMSR: I am lifting the suppression order?  
4 MR SMITH: Yes, I have instructions from the ABC  
5 now, but it is contingent on me saying two things.  
6 First of all, that the Commission was satisfied with  
7 the viewing of the raw footage camera tapes at the ABC  
8 premises at Collinswood, on 17 October. And that the  
9 transcript made by the Commission prior to that viewing  
10 was confirmed in substance as accurate by the viewing.  
11 COMSR: And that is the case?  
12 MR SMITH: Yes, and both those comments are the  
13 case. And, on that basis, you can lift the suppression  
14 order on the debate that took place.  
15 COMSR: Concerning the use -  
16 MR SMITH: As to the evidence as to the question of  
17 we called it `doctoring'.  
18 COMSR: Yes, all right.  
19 I will lift the suppression order as to the evidence  
20 and the discussion which took place concerning the use  
21 of the word `doctoring' in relation to the ABC tapes and  
22 endorse those two statements that you have made, Mr  
23 Smith.  
24 Does that leave anyone in any doubt as to the effect  
25 of that?  
26 MR SMITH: The suppression order remains in place  
27 in respect of the allegations made in respect of the  
28 conversation between Mr Wardle and Alison Caldwell.  
29 COMSR: Yes, I haven't purported to lift the  
30 whole of it. I hope I have made explicit the part of it  
31 that is lifted.  
32 We can now move into private hearing.  
33 HEARING CONTINUES IN CLOSED SESSION



**Closed Hearing**

**18/10/95**

**Pages 4045-4049**

4050

CJ 48G

P.A. CLARKE XXN (MR MEYER)

1 HEARING CONTINUES IN OPEN SESSION

2 XXN

3 Q. Dr Kartinyeri is an articulate person.

4 A. I would consider her articulate, yes.

5 Q. She is able to read ordinary material without any  
6 difficulty.

7 A. Well, I would say it's unlikely she would be able to  
8 read anthropological texts, but if you are talking about  
9 ordinary material, yes, she would be able to quite  
10 easily read ordinary material.

11 Q. For example, she could read the newspaper without any  
12 trouble at all.

13 A. I believe so.

14 Q. Do you know Dr Kartinyeri to read the newspaper; have  
15 you observed her to do so.

16 A. I've observed her collecting the obituaries of the  
17 newspaper for her work in the Aboriginal Family History  
18 Project, so, yes, I have observed her reading parts of  
19 the newspaper.

20 Q. Is Dr Kartinyeri still working at the Museum.

21 A. She's still officially working with the Museum. She's  
22 based at her mid-north home. She works from home.

23 Q. Has that always been the system that she works from  
24 home.

25 A. Some time prior to the beginning of 1994, she moved up  
26 there. It was a work situation that the head of the  
27 division, the director, and the department had worked  
28 out.

29 Q. Prior to that, do I understand you to say that  
30 principally she carried out her work activities by  
31 attending at the Museum.

32 A. Yes. She had an office and a desk and a phone.

33 Q. Was her position one that involved her attending at the  
34 Museum basically in ordinary working hours.

35 A. Yes, nine to five type work.

36 Q. Had you the opportunity to get to know her quite well,  
37 working in the same environment.

38 A. Yes.

- 1 Q. Do you know her as an argumentative person, or is she  
2 not an argumentative type of person.
- 3 A. She can be very argumentative. She is a very firey  
4 person. I've seen many arguments and I've had arguments  
5 with her.
- 6 Q. The construction of the Hindmarsh Island Bridge or  
7 issues relating to the construction of a bridge at  
8 Hindmarsh Island have been around for quite a few years  
9 now, haven't they.
- 10 A. Yes, many. Well, I have been aware of them through the  
11 media for quite a few years.
- 12 Q. In fact, from a chronological point of view, the  
13 discussion started about building a bridge in the late  
14 1980s in the public arena.
- 15 A. Yes.
- 16 Q. Through that period of time in the late 1980s to late  
17 1993, you were continuing to do field work and had a  
18 close association with Aboriginal persons associated  
19 with the Lower Murray.
- 20 A. That's correct.
- 21 Q. During that time, was there, to your knowledge, any  
22 discussion about the construction, or the proposed  
23 construction, of the Hindmarsh Island Bridge and by  
24 people that you mixed with; I mean by that, Aboriginal  
25 people that you mixed with.
- 26 A. I wasn't aware of any discussion until November 1993.  
27 From my knowledge, it based from informal contact with  
28 the Aboriginal people in that area. That it wasn't a  
29 talking point until late 1993.
- 30 Q. Wasn't an issue.
- 31 A. That's my opinion.
- 32 Q. At p.257 of your evidence, you were giving  
33 evidence-in-chief to Mr Smith. Have you a copy of the  
34 evidence there.
- 35 A. Yes, I have.
- 36 Q. Reading from line one and looking at line one, you refer  
37 to being consulted by Rod Lucas.
- 38 A. That's correct.

- 1 Q. Was that in relation to the report that he was doing for  
2 Hindmarsh Island.
- 3 A. That's correct.
- 4 Q. Just to get the terminology correct, he has been called  
5 Mr and doctor. Is Rod Lucas Dr Lucas or Mr Lucas.
- 6 A. Mr Lucas.
- 7 Q. If someone is writing a report such as Mr Lucas was  
8 doing for Hindmarsh Island, is it common for contact to  
9 be made with the Museum to obtain information.
- 10 A. It was a practice that he had already set up as being a  
11 consultant, so the answer is yes.
- 12 Q. Besides providing raw data as such, would the Museum, in  
13 consult with an anthropologist, provide any  
14 interpretations of that data.
- 15 A. Under those circumstances, since it's a consultant with  
16 another branch of the State Public Service, we would go  
17 and look at it further in terms of interpreting.  
18 Interpreting it would still be the consultant's  
19 responsibility to either reject our advice or take it,  
20 but certainly we would offer a bit more of an  
21 interpretation or a guestimate and, you know, the  
22 consultant would deal with that.
- 23 Q. What that means is that you would have a professional  
24 discussion.
- 25 A. That's correct, a consultant being another profession.
- 26 Q. Rather than being a purveyor of facts.
- 27 A. That's correct.
- 28 Q. Nothing that Mr Lucas came up with or discussed  
29 suggested any nature of women's business with Hindmarsh  
30 Island.
- 31 A. No. There's nothing in that report that suggests  
32 women's business.
- 33 Q. In fact, you have seen a copy of Mr Lucas's report.
- 34 A. Yes. He presented me with a copy of it, which I still  
35 have behind me.
- 36 Q. When did he present you with a copy, back at the time it  
37 was current.
- 38 A. That's correct.

- 1 Q. Or when it was currently done back in 1990, or whatever.  
2 A. That's correct.
- 3 Q. Are you able to recollect any specific matters that Mr  
4 Lucas discussed with you when he consulted with you in  
5 1990.
- 6 A. He was interested in the ethnography, historical  
7 records, and whom to speak to.
- 8 Q. Did you give him names of persons to speak to.
- 9 A. Yes. On a previous visit, on another consultancy, I  
10 took him down to Point McLeay to introduce him to  
11 people, so he had a fair idea of the organisations from  
12 the consultancy report he had done just prior to this  
13 one.
- 14 Q. Are you saying that he had had previous appointments or  
15 projects involving the Lower Murray Aboriginal group.
- 16 A. Yes. The report on Sellicks Beach, although being on  
17 the Adelaide side, there was a perceived Lower Murray  
18 interest and I facilitated an introduction, put it that  
19 way, between him and the people living at Point McLeay.
- 20 Q. Did you effect any introductions to any persons other  
21 than persons at Point McLeay.
- 22 A. It's possible that we went via Point McLeay on that  
23 earlier occasion, the Sellicks Beach consultancy, but  
24 I'm not sure - my main memory is Point McLeay and I  
25 think, from my memory, that Mr Lucas was more interested  
26 in that particular community with its perceived major  
27 role in the heritage matters.
- 28 Q. As I understand some of the comments that have been made  
29 by Doreen Kartinyeri to various TV stations or in the  
30 newspaper, she suggested that she has been a person  
31 specially chosen to be told about secret sacred women's  
32 business, or secret women's knowledge, or matters of  
33 that nature. Have you heard that sort of suggestion.
- 34 A. I have heard that type of suggestion from her, yes.
- 35 Q. Virtually in relation to the Lower Murray Aboriginal  
36 culture, is there a system that you know of which a  
37 singular person as being the chosen person to receive  
38 knowledge.

- 1 A. Not as the chosen person. It's certainly true, as  
2 reflected in the Berndt book, that certain people would  
3 have an aptitude towards certain functions within that  
4 society, and that is a level of choice both ways, I  
5 would suggest. And I don't think what the Berndts  
6 described there as amounting to a degree of  
7 specialisation within the culture, would amount to being  
8 the chosen one.
- 9 Q. Is it likely that in that cultural setting, it would end  
10 up with only one person being the repository of special  
11 knowledge.
- 12 A. No. Special knowledge would have to be known by a  
13 number of persons, if only just to protect that  
14 knowledge. So there would - there may well be a precise  
15 kinship rule about the transference of knowledge. But  
16 from what we know about other parts of Australia,  
17 knowledge is usually stored laterally as well in case a  
18 particular lineage of people die out through natural or  
19 other reasons.
- 20 Q. In relation to this notion of there being a singular  
21 person who receives knowledge, it occurs to me that a  
22 risk, for example, is that somebody could die  
23 prematurely before one expects them to die.
- 24 A. That's correct, particularly of younger people. The  
25 population of all hunting and gathering societies is  
26 such that there is a very high death rate for virtually  
27 all age groups. So, for that reason, information would  
28 need to be stored laterally. Young people in particular  
29 are involved, more heavily involved in hunting,  
30 gathering, strenuous hunting and gathering activities  
31 and are more likely to come to an untimely death.
- 32 Q. To extend that from the boundaries of the Lower Murray  
33 Aboriginal people to similar cultural systems  
34 world-wide, is there any fundamental difference, or is  
35 there again, because of this possibility of premature  
36 death, a spreading of any important knowledge wider than  
37 one single person.
- 38 A. That's correct. Knowledge would be disbursed throughout

1 the community. And the way that people receive  
2 knowledge is an unveiling process which may not end  
3 until someone was well into their 40s or 50s.

4 Q. So, it's a gradual learning process.

5 A. That's right. And in some cases, the people who, for  
6 whatever reason, are not considered worthy or  
7 trustworthy and responsible for that knowledge, their  
8 education, if we term it that, would stop rather  
9 abruptly and they may never get that full knowledge.

10 They would have partial knowledge.

11 Q. In Exhibit 171A - that's the Ray Martin interview on 22  
12 May 1995 - at p.2 Ray Martin asks the questions `At the  
13 age of 17, you knew there was women's business on that  
14 island', and the reply by Dr Kartinyeri was `At the age  
15 of 17, I was told, because I lost my mother when I was  
16 ten "Is now time my girl".' What she says is `It is  
17 now, my girl, to tell you what I think your mother would  
18 have told you".'

19 CONTINUED

- 1 `It was told to me by elder members of my family'.  
2 Firstly, do you have a comment to make about the age of  
3 17 as being an age when persons would receive that  
4 knowledge.
- 5 A. For the reasons I've just outlined, I think it's  
6 unlikely that full knowledge of the degree of importance  
7 that it is given would have been relayed to someone of  
8 17.
- 9 Q. Secondly, in the last sentence of that quotation where  
10 it says `It was told to me by elder members of my  
11 family', does that in fact contradict the suggestion of  
12 there being a notion of a chosen one.
- 13 A. That's my opinion. It suggests a much broader base of  
14 the knowledge, and yet all the other evidence suggests  
15 that there's just one line of passing down that  
16 knowledge.
- 17 Q. If, in fact, such knowledge existed, you would expect to  
18 find a common knowledge of it in a broad section of the  
19 elder section of the female community.
- 20 A. That's correct. Even if the details of that knowledge  
21 were not known, then I'd still expect there would be  
22 broad knowledge that there was a category of secret  
23 sacred women's business.
- 24 Q. In particular, a broad knowledge of post menopausal  
25 women.
- 26 A. In particular, they would be regarded as the most  
27 responsible component of the community on the female  
28 side.
- 29 Q. You've got a copy of the Fergie report, haven't you.  
30 A. Yes.
- 31 COMSR: Are you going to go into any detail?  
32 MR MEYER: No. Has your Honour got a copy of the  
33 report.
- 34 COMSR: Yes, I have.  
35 MR MEYER: P.5, second paragraph, the question I'm  
36 going to ask is directed towards speaking to a number of  
37 persons as outlined in the first sentence of the second  
38 paragraph, which I don't think offends, so the question

1 I'm going it put is in the connection of being a chosen  
2 one, and then in the connection of there being a number  
3 of people referred to in the first four lines of that  
4 paragraph, so I don't think that creates a s.35 problem.

5 XXN

6 Q. Do you think that creates a problem. My question is  
7 this; in the report, Dr Fergie refers to Doreen  
8 Kartinyeri giving an account of the women's secret  
9 knowledge to inform the younger women who did not  
10 themselves have this knowledge. Now my question is if  
11 there is a system of having a chosen one, doesn't the  
12 very step of disclosing that to a group of younger women  
13 again contradict the notion of there being some singular  
14 system of dissemination.

15 A. Yes, it does. It suggests a rather radical broadening  
16 out of the knowledge base.

17 MR MEYER: That's the end of the topic. If Mr  
18 Abbott wishes to resume.

19 COMSR: How much longer do you think you will  
20 be?

21 MR MEYER: I'm happy to go through to lunchtime.

22 COMSR: We do have a problem with a witness this  
23 afternoon, a witness has come here from interstate.

24 MR MEYER: Maybe it's better to keep going because  
25 otherwise we need to close the court.

26 XXN

27 Q. In the Point McLeay community, in your understanding of  
28 how it worked, was there, if you can call it, a  
29 commonality of knowledge amongst various age groups  
30 within the community.

31 A. I would say in general that's true, the Point McLeay  
32 community defined as Ngarrindjeri community all the  
33 people who trace decent or a high degree of affinity  
34 with Point McLeay. I would say that's true, yes.

35 Q. Thinking back to the system that would have been in  
36 place at the time when Doreen Kartinyeri was a girl, and  
37 when a number of the Aboriginal ladies who have given  
38 evidence in these proceedings were children at Point



1 McLeay, so we're now back before the war, aren't we.

2 A. About then, yes.

3 Q. At that time there were a lot more people living on  
4 Point McLeay.

5 A. The population was very high then. From my knowledge,  
6 it would have been a bit higher.

7 Q. The thrust of my question is at that time, did the Point  
8 McLeay community work, as far as your researches tell  
9 you, whereby there would have been common knowledge of  
10 matters of Aboriginal relevance between various age  
11 groups in the community.

12 A. In general that's true. People who had been born prior  
13 to the 1880s, 1890s, had a lot of preEuropean knowledge.  
14 People born, say, after the Aborigines Act of 1911,  
15 which radically changed the nature of their life, making  
16 it a missionised population, they received in general  
17 much less information from the older generations.

18 Q. Would you look at Exhibit 172, that's the Lower Murray  
19 Aboriginal Heritage Committee agenda. That document has  
20 a handwritten date of 11 September 1990.

21 A. That's correct.

22 Q. That was at a time when you were actively involved with  
23 the Lower Murray Aboriginal Ngarrindjeri people.

24 A. Yes, I was actively involved then.

25 Q. There is a reference in para.1 about a proposal for  
26 building or reconstructing the main road in the vicinity  
27 of Tailem Bend and Wellington. Were you aware of  
28 discussions about that matter.

29 A. The museum, that is Steve Hemming and I, were involved  
30 at various stages with those discussions.

31 Q. Para.2 refers to 'Developer proposes to build on  
32 Aboriginal sites at Granite Island, Cape Jervis,  
33 Hindmarsh Island and Kangaroo Island'. Were those  
34 matters that were at least of common knowledge amongst  
35 people that you were mixing with.

36 A. Certainly the people we were involved with.

37 COMSR: What is the status of this, is this an  
38 exhibit?

- 1 MR MEYER: Yes.  
2 COMSR: Not suppressed?  
3 MR MEYER: That's not suppressed, is it?  
4 MR SMITH: I don't think so.  
5 COMSR: I wonder in what degree of particularity  
6 you intend going into this.  
7 MR MEYER: No further than the fact of its  
8 existence.  
9 COMSR: Because it concerns areas out of the  
10 area.  
11 MR MEYER: The fact of it, not the matters involved  
12 in the fact of it.  
13 A. Yes, I was aware of these development issues being  
14 discussed in the community, particularly with the people  
15 that the museum were talking to in relation to the Lower  
16 Murray Sites Project.  
17 XXN  
18 Q. You've got the Sellicks Beach report prepared by Mr  
19 Lucas.  
20 A. I have a copy in my bag.  
21 Q. As I understand it, in relation to that report, Mr Lucas  
22 consulted with both you and Steve Hemming.  
23 A. That's correct.  
24 Q. With Henry Rankine.  
25 A. That's correct.  
26 Q. With Doreen Kartinyeri.  
27 A. That's correct.  
28 Q. Val Power.  
29 A. I believe so, I'd have to have a look.  
30 Q. Would you check.  
31 A. Yes, Val Power.  
32 Q. That report was prepared, as I understand it, under the  
33 auspices of the Aboriginal Heritage Branch of the  
34 Department of Planning.  
35 A. That's correct.  
36 Q. Did Mr Lucas provide you with a copy of that report.  
37 A. This copy that I have, yes.  
38 Q. You would have had a professional interest in that as an

- 1 anthropologist interested in Ngarrindjeri matters.  
2 A. That's correct.  
3 Q. I assume that it's common for the museum to receive  
4 material of that nature.  
5 A. That's correct.  
6 Q. When was the Sellicks Beach report prepared.  
7 A. It's dated 1989.  
8 Q. So it was prepared before Mr Lucas prepared his  
9 Hindmarsh Island report.  
10 A. That's correct.  
11 Q. So prior to 1989, Doreen Kartinyeri and Val Power, at  
12 least as two Ngarrindjeri women, are persons who Mr  
13 Lucas knows of to consult in relation to Ngarrindjeri  
14 matters.  
15 A. That's correct.  
16 Q. Had you provided those names to Mr Lucas, or do you not  
17 know where he got the names from.  
18 A. He came to speak to both Steve Hemming and myself when  
19 he was embarking upon this. We gave him names and he  
20 would have, through his own work, come up with other  
21 names as well.  
22 Q. I think that Mr Abbott asked you some questions about the  
23 Ngarrindjeri verse, didn't he.  
24 A. That's correct.  
25 Q. I don't want to retrace that background but,  
26 following on from those questions, is there a general  
27 structure of verse or matters like that in Ngarrindjeri  
28 culture.  
29 A. Are you talking about songs or rhymes, that type of  
30 thing?  
31 Q. Well, I have a mind more along the lines of poetry and  
32 verse, rather than songs as such. There were clearly  
33 songs, weren't there.  
34 A. The songs that people sing today are English, in many  
35 cases, 19th century songs. I'm not aware of any  
36 Ngarrindjeri songs that are still sung today.  
37 Q. The ones that are sung today, do they emanate from a  
38 source like hymns and things like that.

- 1 A. Yes, it's of church hymns.
- 2 Q. In your report, you refer to talking to Dr Draper on 9  
3 August 1994, is that right.
- 4 A. I haven't got my statement, but -
- 5 Q. I may be misquoting you. Have you got your statement.
- 6 A. Yes, I have.
- 7 Q. It's in the last section, p.3.
- 8 A. That's correct - hang on.
- 9 Q. Dr Draper approached Mr Jones. Did he talk to you on  
10 that occasion.
- 11 A. No, he didn't.
- 12 Q. Was there some occasion in 1994 when you talked to Dr  
13 Draper.
- 14 A. Yes, on 31 August 1994.
- 15 Q. On the next page of your report you say 'The remarks I  
16 made concerning my doubts clearly had little impact on  
17 him'. Can you recall what you said to Dr Draper.
- 18 A. I gave him a very brief overview of why I didn't think  
19 there was any substance to it. He didn't comment, he  
20 just kept on talking about other things.
- 21 Q. Have you talked with him since.
- 22 A. No, I haven't.
- 23 Q. From the time when this question of women's business on  
24 Hindmarsh Island first came to your notice, at any time  
25 since then has your position in relation to the matter  
26 changed.
- 27 A. My position in relation to my doubts?
- 28 Q. Yes.
- 29 A. No, it hasn't.
- 30 Q. Have you approached the matter with an open mind, i.e.  
31 if you stumbled over some valid material, would you  
32 consider that.
- 33 A. Yes, I would, and I'd be capable of changing my mind. I  
34 would be very rigorous with testing new material that  
35 suggested otherwise, but that would be expected in any  
36 case.
- 37 Q. In fact you view yourself, listening to your evidence as  
38 you give it, as a disciplined scholar.

- 1 A. That's correct.
- 2 Q. As a disciplined scholar, you must be open to changing
- 3 your mind.
- 4 A. That's right. I never totally rule out the possibility
- 5 of modifying, to whatever extent, what it is I've
- 6 previously thought or said or written.
- 7 Q. In fact, that's what discipline involves, isn't it.
- 8 A. That's correct.
- 9 Q. Otherwise you're an advocate.
- 10 A. Yes.
- 11 ADJOURNED 12.52 P.M.

1 RESUMING 2.03 P.M.

2 Q. I show to you MFI 9 in these proceedings. I understand  
3 that is volume 17 of your field notebooks.

4 A. That's correct.

5 Q. In your field notebook you have got a newspaper cutting.

6 A. That's correct. On p.173 of my notebook.

7 Q. Is your writing on the top of that newspaper cutting.

8 A. That's correct.

9 Q. Saying `Advertiser 16 September 1994.'

10 A. That's correct.

11 MR SMITH: The notes were generally marked for  
12 identification only.

13 MR MEYER: I understand the procedure was so that  
14 relevant pages could be copied and otherwise the exhibit  
15 could be returned.

16 COMSR: That's right.

17 XXN

18 Q. In that newspaper report there is the following extract  
19 `Mr Meyer said one of the key informants for Professor  
20 Saunders's report, Mrs Doreen Kartinyeri, wrote to Mr  
21 Tickner on May 12 and she said she only "recently"  
22 discovered the significance of the Hindmarsh Island  
23 region to Aboriginal women. "I have always known about  
24 the stories associated with Ramindjeri and Ngarrindjeri  
25 women's business, but, until recently, I did not know  
26 the exact place that they referred to", says Mrs  
27 Kartinyeri's letter.' In your view, is it possible to  
28 know of the alleged Ngarrindjeri and Ramindjeri women's  
29 business, without knowing the place or the exact place  
30 referred to, given the publicity that has taken place of  
31 the matters relating to Hindmarsh Island.

32 OBJECTION Miss Nelson objects.

33 MISS NELSON: I don't think the witness could possibly  
34 answer it. Is it possible to know X without knowing Y?

35 I really think it is an unfair question. Frankly the  
36 answer is not going to be helpful anyway.

37 COMSR: No, I think it is probably more a matter  
38 to put by way of submission. If you were putting to the

1 witness 'Is it possible to know the legend without it  
2 being related to a particular place?', that is, from an  
3 anthropologist's point of view, perhaps that. In other  
4 words, 'Is there any inconsistency between claiming one  
5 without the other?'

6 MR MEYER: I adopt your Honour's question, because  
7 that is what I was trying to put. Perhaps clumsily.

8 A. In anthropological terms it is difficult to see how the  
9 women's business could exist without the level of  
10 landscape knowledge that is such an integral part of  
11 that secret sacred women's business. One couldn't know  
12 the overall message or belief without having intimate  
13 knowledge of parts of that landscape. I draw that  
14 conclusion on the basis of various formulations that we  
15 have through the media and my knowledge of the Fergie  
16 report. I can't see how a key owner or a proponent of  
17 that women's business could not have known about the  
18 landscape as is suggested in that statement.

19 XXN

20 Q. From the information that you have been able to gather,  
21 do you understand the secret sacred women's business or  
22 knowledge to refer to the whole or only part of  
23 Hindmarsh Island.

24 A. It is fairly clear from the knowledge available without  
25 knowing what is in the restricted appendices of the  
26 Fergie report, but from what we do know it talks about  
27 the whole of Hindmarsh Island. And, from my knowledge  
28 of land use and perception of land, that is  
29 inconsistent.

30 Q. Prior to European settlement are you able to say whether  
31 Hindmarsh Island was populated by Aboriginal persons.

32 A. The Lower Murray region, which includes the region along  
33 the coast, the Murray Mouth and the islands and lake  
34 shore behind the Murray Mouth was one of the most  
35 densely populated parts of Australia. It is very  
36 difficult and I would argue impossible to envisage a  
37 whole island or equivalent large piece of land or land  
38 mass having some form of secret sacred restrictions

1 placed upon it. It is just not consistent with the  
2 large number of descent groups spread throughout the  
3 whole region and the full range of activity that would  
4 have taken place in all of those descent group  
5 territories.

6 Q. As I understand the literature, in fact, there were I  
7 think three distinct family plans or groups on Hindmarsh  
8 Island.

9 A. That's correct.

10 Q. There may have been some difference in language between  
11 those three groups.

12 A. The Tindale and Berndt data agree to the extent of  
13 saying that there were, that those three descent groups  
14 happen to be each from a different dialect group which  
15 is a broader group. Each group containing a number of  
16 descent groups that spoke a similar dialect.

17 Q. Would it have been likely that there would have been  
18 areas on Hindmarsh Island that permanently resident  
19 groups of Aborigines would have avoided.

20 A. It is quite likely that there were parts of the island  
21 which have some form of restriction, either through  
22 being associated with spirits regarded as being  
23 dangerous and possibly other activities, but these would  
24 be very small parts. Perhaps we are talking about the  
25 side of a hill, a cluster of trees, places of that size.

26 Q. If they were, in fact, restricted, would it follow that  
27 it was necessary for those communities to know,  
28 generally speaking, that there were such restrictions.

29 A. Yes, the knowledge would have to be widespread in order  
30 to stop people inadvertently wandering into an area that  
31 would be considered, in cultural terms, dangerous to  
32 them.

33 MR MEYER: I have no other questions for Dr Clarke.

34 MR SMITH: Could I interpose, at this stage,  
35 Vanessa Edmonds?

36 COMSR: I will just ascertain: will you be  
37 wanting to cross-examine any further, Miss Nelson?

38 MISS NELSON: No.



## P.A. CLARKE XXN (MR MEYER)

1 MR ABBOTT: And I am happy to wait until after Ms  
2 Edmonds.

3 COMSR: What is proposed, Dr Clarke, is that a  
4 witness be interposed because she is here from  
5 interstate and has to return. I appreciate that it  
6 means extending your time in the witness box.

7 I think it is not anticipated the witness will take  
8 all afternoon, is it?

9 MR SMITH: No.

10 MR ABBOTT: Dr Clarke can wait in the body of the  
11 Commission.

12 WITNESS P.A. CLARKE LEAVES WITNESS BOX AND RETURNS TO BODY  
13 OF HEARING ROOM

14 MR SMITH: Yes, and Vanessa Edmonds you will recall  
15 is the archaeologist and her evidence touches upon the  
16 reports that are subject to s.35 and is to do with  
17 sites.

18 COMSR: It will mean a private hearing then.

19 MR SMITH: In the sense that the locating of sites  
20 would be a breach of the Act we would require the s.35  
21 authority.

22 COMSR: The authorisation, yes, which would  
23 mean, of course, it would have to be restricted then to  
24 those persons to whom the authority applies. It would  
25 extend no further then.

26 I think that we will have to be prudent and cautious  
27 about this and, under those circumstances, I will order  
28 that the hearing go into private session and be  
29 restricted to counsel, legal representatives, witnesses  
30 and any person assisting the Royal Commission.

31 HEARING CONTINUES IN CLOSED SESSION

