

1 COMSR STEVENS

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4 HINDMARSH ISLAND BRIDGE ROYAL COMMISSION

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6

7 FRIDAY, 27 OCTOBER 1995

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9

10 RESUMING 9.35 A.M.

11 WITNESS N. DRAPER ENTERS WITNESS BOX

12 COMSR: Mr Meyer, I think you indicated that you
13 were going to put a number of documents to this witness.

14 Can you tell me to what end, concerned with my Terms of
15 Reference, that you will do that.

16 MR MEYER: To the end of establishing the process
17 of operation of DOSAA and the steps taken in relation to
18 the consideration of this proposal, the investigations
19 that took place. I mean, the documents I am going to
20 put -

21 COMSR: Are already in evidence before me,
22 aren't they?

23 MR MEYER: Sure and that is why I assume it to be
24 relevant and that is why I assume it to be important for
25 me to touch on them with I think what will be the only
26 witness who is closely associated with these documents,
27 ie Dr Draper.

28 COMSR: I know.

29 MR MEYER: We haven't had Dr Rathman. We have been
30 given this bundle, without any evidence so far having
31 touched upon them.

32 COMSR: Yes, I appreciate that they are
33 available, but I still have to know that what is
34 proposed is something which will add to my knowledge of
35 factors concerned with the issue of fabrication.

36 MR MEYER: I think it will and, when we get to
37 them, we will see how we go.

38 COMSR: Yes, I can't take up an inordinate

1 amount of time dealing with issues which, although they
2 may be important in other respects, are not really
3 central to the matter that I have to decide, or even
4 peripheral to it.

5 MR MEYER: No, I am very conscious of that issue
6 and I am very conscious of the time.

7 COMSR: The processes of the Department are not
8 necessarily of a great deal of significance. Certain
9 aspects may be.

10 MR STEELE: It was really for that reason that I was
11 seeking to intervene to the extent that I was at the
12 close of day yesterday. And I have explained my
13 position again to Mr Meyer this morning. In a sense,
14 the position is, so what? I mean, he can cross-examine
15 the witness on why his wife was employed. He can
16 cross-examine him on what Vanessa Edmonds may have said
17 and what he may have said to Lindy Worrell. But, at the
18 end of the day, from your point of view, so what? That
19 doesn't help you in your determination one iota. And,
20 to spend an inordinate amount of time going through this
21 documentary material, which largely speaks for itself,
22 the relevant part of which, from Draper's point of view,
23 appears as schedules to his statement, is, in my
24 submission, merely to waste your time and not to add in
25 anyway to your ability to weigh up the evidence to reach
26 the determination that you need to reach in due course.

27 COMSR: Yes, the significance of the documents
28 is to demonstrate that, up until a certain point of
29 time, as I understand it, the matters that concerned the
30 Department were the issues of sites on the island.

31 MR STEELE: Yes.

32 COMSR: And it wasn't until sometime thereafter
33 that any other issues arose. Unless there is some other
34 aspect of it, Mr Meyer.

35 MR MEYER: That is one of the very points, you see,
36 that concerns me, because anthropological matters aren't
37 necessarily only associated with sites.

38 COMSR: I know.

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- 1 MR MEYER: And the Department was very clearly
2 concerned about anthropological matters.
- 3 COMSR: That's right.
- 4 MR MEYER: At the very beginning.
- 5 COMSR: You can put a very general question to
6 the witness, so that we can see if there is any need to
7 pursue it in any detail, Mr Meyer.
- 8 MR MEYER: I can't think of a general question that
9 I can put and I get shot at for putting general
10 questions and get told to put something specific to the
11 witness.
- 12 COMSR: I suppose which was when you said you
13 were going to put 41 documents to the witness that I
14 already had before me.
- 15 MR MEYER: I didn't think I mentioned the number.
16 There are a considerable number. When we get to it, I
17 will see what I can do to shorten it up.
- 18 COMSR: All right, but, only if it is to
19 demonstrate that, before a certain point in time, there
20 was no suggestion of any other issue other than sites on
21 the island, then we might just put that question to the
22 witness.
- 23 CROSS-EXAMINATION BY MR MEYER CONTINUING
- 24 Q. I was asking you some questions late yesterday or
25 yesterday afternoon in relation to the letter of 9
26 November 1993 and I want to go back and work on that
27 issue.
- 28 COMSR: Which issue?
- 29 OBJECTION Mr Steele objects.
- 30 MR STEELE: I really don't want to expend all my
31 energy brawling with Mr Meyer throughout the day. I
32 suspect my energy may be needed elsewhere, at some
33 stage, but I make the point again. I take up your
34 Honour's point, which was the point I was trying,
35 perhaps not very well, to make yesterday. To deal with
36 this preliminary stuff really is not to deal with the
37 issue. I don't have any difficulty at all accepting
38 that the Chapmans are interested in the outcome of this,

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- 1 but all that initial assessment relates to sites. It
2 doesn't relate to the issue which you have to deal with.
3 And this witness has made it quite clear that all the
4 work that was done until late December 1993 had nothing
5 whatsoever to do with women's business. Nothing at all.
6 COMSR: Perhaps we can get that confirmed.
7 COMSR
8 Q. Is that the situation.
9 A. That is correct.
10 MR STEELE: So, anything before that, although it
11 might have marginal peripheral interest to the Chapmans,
12 is not going to assist you.
13 MR MEYER: Mr Steele might as well cross-examine
14 the witness. If this witness is going to say - and
15 let's put it in extreme terms - I disregarded the
16 possibility of there being women's business. I ignored
17 it. I deliberately misled the Government. I wrote a
18 false letter and listened to women's business in 1994.
19 If he concedes that, I have got no cross-examination.
20 If he doesn't concede that, then there is obviously a
21 need for cross-examination.
22 XXN
23 Q. Are you prepared to concede that proposition.
24 A. No.
25 COMSR: You can follow that up, Mr Meyer.
26 XXN
27 Q. Yesterday I established with you that you had
28 archaeological and anthropological qualifications.
29 A. Yes.
30 Q. We established that you were involved in briefing
31 Vanessa Edmonds in 1989 in relation to archaeological
32 matters.
33 A. Yes.
34 Q. We established I think or if I didn't I am about to that
35 you also briefed Mr Lucas in relation to doing an
36 anthropological report.
37 A. No.
38 Q. Did you receive an anthropological report from Mr Lucas.

- 1 A. No, I didn't.
- 2 Q. Never.
- 3 A. No, because I was not supervising that work.
- 4 Q. Have you ever seen Lucas's report.
- 5 A. Yes.
- 6 Q. When did you receive it.
- 7 A. I have read the Lucas report at some time after it had
8 been submitted to the Department, assessed and placed in
9 the Reports File of the Aboriginal Heritage Site
10 Register and Archives.
- 11 Q. Did you take account of it.
- 12 OBJECTION Mr Steele objects.
- 13 MR STEELE: In what regard? When?
- 14 XXN
- 15 Q. As an anthropologist, acting for the Department,
16 involved in this matter, in regard to the issue relating
17 to the Hindmarsh Island bridge, in regard to the EIS.
18 We all know what we are talking about, don't we.
- 19 A. Are you, for example, referring to the 1989/1990
20 Binalong environmental impact statement and its
21 assessment?
- 22 Q. And its issues relating to the Hindmarsh Island bridge,
23 yes.
- 24 A. I had a very limited role in the setting up, briefing,
25 running and assessment of that project, which was
26 limited to a short briefing with Vanessa Edmonds and
27 assessment comments at probably two stages, because
28 there are a couple of stages, of the Government
29 assessment on her report only. I did not have oversight
30 over the whole Aboriginal heritage involvement with that
31 environmental impact statement.
- 32 Q. I take it you are answering me in saying you didn't form
33 a view about the adequacy or otherwise of the Lucas
34 report.
- 35 A. It was not in my area of responsibility to do so, no.
- 36 Q. That didn't answer my question. Did you or did you not
37 form a view as to the adequacy or otherwise of the Lucas
38 report.

- 1 A. At that time, no.
- 2 Q. Since.
- 3 A. Yes.
- 4 Q. When did you form the view.
- 5 A. In reviewing previous reports through the course of my
6 involvement through 1993/1994 of Aboriginal heritage
7 issues.
- 8 Q. Prior to November 1993, did you form a view about the
9 adequacy of the Lucas report.
- 10 A. I hadn't, no, I had not formally considered the Lucas
11 report in this way, before that time.
- 12 Q. When did you formally consider it.
- 13 A. As I have just said, through the process of finding and
14 reviewing all previous reports and site records held by
15 the Department of State Aboriginal Affairs and the
16 Aboriginal Heritage Site Register in preparing for and
17 conducting the Aboriginal heritage surveys in late 1993
18 and 1994.
- 19 Q. Can you tell us when you did that. Was it before you
20 wrote the letter of 9 November or after.
- 21 A. Before that.
- 22 Q. Before you wrote the letter of 9 November, did you form
23 a view as to the adequacy or otherwise of the Lucas
24 report.
- 25 A. Yes.
- 26 Q. With the knowledge and with your view as to its
27 adequacy, you proceeded to draft the letter of 9
28 November.
- 29 A. I did not draft that letter specifically or solely on
30 the basis of the Lucas report.
- 31 Q. I didn't suggest that you did.
- 32 A. But I had no problem with the Lucas report. It was a
33 good report.
- 34 Q. The letter of 9 November was sent to the engineers.
- 35 A. Yes.
- 36 Q. Subsequently work was or preliminary work was commenced
37 in relation to the construction of the bridge.
- 38 A. I will have to check my history records.

1 Q. You gave us evidence yesterday that you went down as an
2 inspector, on instructions from the Minister, and
3 ordered work to stop.

4 A. That's correct.

5 Q. Generally at 9 November work must have started and you
6 went down and stopped it.

7 A. Run that by me again. I stopped the work at the end of
8 October?

9 Q. As I understand it, the chronology is that you wrote the
10 letter at the beginning of November.

11 A. Yes.

12 Q. Somebody else signed it. Work on the bridge started.
13 You went down as at inspector instructed by the Minister
14 or instructed by your CEO and ordered the work stop.

15 A. I suspect you are out of sequence. The occasion on
16 which I physically at the site stopped work, are you
17 referring to the end of October, 29 October, and putting
18 it after 9 November, or are you referring to another
19 occasion?

20 Q. No, if I am wrong in relation to the date, tell me.

21 A. I am just moving back to it.

22 MR STEELE: P.33 and p.34.

23 A. I believe that the events you are referring to me,
24 stopping construction, perhaps refer to 29 October in
25 the previous year, at the start of this business, that
26 is on pp.33 and 34.

27 XXN

28 Q. At the time, when you drafted the letter of 9 November,
29 you had already been involved in action to stop work on
30 the bridge.

31 A. Yes.

32 Q. But, in essence, the letter of 9 November is directed to
33 approving work proceeding on the bridge.

34 A. Yes.

35 Q. I think that subsequent to that you attended upon Mr
36 Jacobs.

37 A. Sometime later, yes.

38 Q. You knew that he was conducting an inquiry on the

1 instructions of the State Government.

2 A. Yes.

3 Q. As I understand it, you told Mr Jacobs that the letter
4 of 9 November should never have been sent.

5 A. That was my opinion. He asked for my opinion and I gave
6 it.

7 Q. Is that what you said to him.

8 A. Essentially, yes.

9 Q. Mr Jacobs, in his evidence, at p.3158 of the transcript,
10 at line 26, says this and finally he said, referring to
11 you `And he said finally that there had been inadquate
12 Departmental resources of money and personnel. He said
13 quite bluntly that the letter should not have been
14 written in the light of what he then believed to be
15 matters of significance to the Aboriginal community.'

16 Is Mr Jacobs right.

17 CONTINUED

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1 A. I am uncertain as to the meaning of the very last part
2 of that sentence.

3 MR MEYER: Could the witness be shown it?

4 COMSR

5 Q. That is a statement attributed to you, you understand.

6 A. I understand.

7 XXN

8 Q. Start at 3156. The question at the bottom of 3156,
9 'Could you tell us, I imagine that you, not exactly
10 confronted, but drew Dr Draper's attention to the state
11 of affairs as the documents had indicated to you.' He
12 commenced his answer on p.3157 and if you read it to
13 yourself it will probably be quicker.

14 COMSR

15 Q. I don't suppose it is suggested that that is verbatim
16 what you said, but the sense of it.

17 A. I would mostly agree with it, with the exception that, I
18 believe that I was saying to him that, as I have said in
19 my statement to this Commission, that, in hindsight, the
20 letter should not have been sent in the light of
21 information that came - that came to us after it was
22 written, not information that was available at the time
23 it was written. Although I have also said in my
24 statement, I felt at the time we wrote it, that it was
25 considered overdue, certainly by the engineers in the
26 Department of Transport but, considered premature by the
27 Lower Murray Aboriginal Heritage Committee. I hope that
28 that clarifies what I would agree with and what I am not
29 sure about in his reporting of that conversation.

30 XXN

31 Q. What I mean specifically putting to you firstly is, go
32 to 1.28.

33 A. Yes.

34 Q. He said 'Quite bluntly that the letter should not have
35 been written in the light of what he then believed to be
36 matters of significance to the Aboriginal community. He
37 said that "we fell down on our job", in effect, and the
38 letter shouldn't have been written.' Do you agree that

- 1 is what you said to Mr Jacobs.
- 2 OBJECTION Mr Steele objects.
- 3 MR STEELE: The difficulty with cross-examination on
4 this topic is the word `then'. Is the word `then'
5 reference to the time of the conversation being held
6 between this witness and Mr Jacobs, or is the word,
7 `then' relative to 9 November, 1993. It seems to me
8 clear, from what the witness is saying, that the word,
9 `then' in his mind, relates to January 1994, when he is
10 discussing the matter with Mr Jacobs. I can't see how
11 that issue can be taken any further in the absence of a
12 clarifying remark by Mr Jacobs and that is not there.
- 13 MR MEYER: I will have thought the witness could
14 have sorted that problem out, but never fear.
- 15 COMSR: I thought he had.
- 16 XXN
- 17 Q. Go to the statement of Mr Jacobs and turn to p.4, at
18 p.4, there is a heading `Conference with Dr Neale
19 Draper with the Department of State Aboriginal Affairs.'
20 It says that he spent more than five hours in
21 discussions with Dr Draper, is that right.
- 22 A. I accept his estimate of how much time was involved over
23 several sessions.
- 24 Q. Do you agree with it.
- 25 A. It seems reasonable. I did not keep track.
- 26 Q. `He told me that the departmental letters and documents
27 referred to above' and if you look higher up in the
28 statement in the second para. it refers to the 9th of
29 November.
- 30 A. Yes.
- 31 Q. You agree that is the letter being referred to, is where
32 I am reading from.
- 33 A. There is no specific reference to the letter, only to
34 the 9th of November. You are on p.4, aren't you?
- 35 Q. If you go to the second para. on p.4, `In the weeks
36 leading up to 9 November urgent archaeological
37 examinations were carried out by the Department of
38 Stat Aboriginal Affairs, which culminated in a letter

- 1 from the Department of State Aboriginal Affairs to Colin
2 Wagner, which asserted' and it goes on to make a point.
- 3 A. Yes, I see.
- 4 Q. We are talking about the same letter.
- 5 A. Yes.
- 6 Q. We go down to the para. which starts 'He told me that
7 the departmental letters and documents referred to
8 above "should not have been written" and reflect: 1.
9 inadequacies in the earlier Aboriginal Heritage Branch
10 of the Department of Environment and Urban
11 Planning and the Department of Aboriginal Affairs. 2.
12 Lack of proper consultation with and between
13 archaeological and anthropological consultants. 3.
14 unsatisfactory and perplexing structure and provisions
15 of the Aboriginal Heritage Act 1988, which officers have
16 difficulty in understanding and applying. And 4.
17 Inadequate departmental resources of money and
18 personnel.' Is that right.
- 19 A. That is, yes.
- 20 Q. Is that an accurate statement of what you told him.
- 21 A. Yes, it is.
- 22 Q. That doesn't refer to information which was gained by
23 you, between the 9th of November and when you saw him in
24 early January, it explains why there were deficiencies
25 prior to 9 November.
- 26 A. Yes.
- 27 Q. So, it is irrelevant as to what you learned after the
28 9th of November, and if we go back to the evidence of Mr
29 Jacobs, the word 'then' is referring to the 9th of
30 November.
- 31 A. No, I don't agree with your line of reasoning on that.
- 32 Q. I will put it to you in individual bits. You have just
33 agreed with me, that the statement which I read to you
34 commencing -
- 35 **OBJECTION** Mr Steele objects.
- 36 **MR STEELE:** I must arise again to object. The
37 witness has had this put to him now on a number of
38 occasions, he has made his position clear. In any event

- 1 in those circumstances, I think it is unfair that it be
2 put again and again. And, in any event, I repeat what I
3 have said before, in what way is this going to help you?
- 4 COMSR: The witness has covered this previously.
5 I mean, you may comment at some stage as to what -
- 6 MR MEYER: Where it is important for us to
7 establish, because Mr Jacobs has come along and given
8 this evidence and I assume Mr Jacobs' evidence is
9 important. It is important as far as I am concerned.
- 10 COMSR: It is important to the issue of what was
11 known at a particular point.
- 12 MR MEYER: It is important for your assessment of
13 this man's evidence because -
- 14 COMSR: Be that as it may, he has made his view
15 on this aspect of it. He has given his explanation and
16 I don't think we can take it any further can we Mr
17 Meyer?
- 18 MR MEYER: I will put the questions in a vacuum. I
19 will probably be attacked for doing so, but since the
20 objection has been made.
- 21 XXN
- 22 Q. Dr Draper, did you believe or accept the matters which
23 were contained in the letter of 9 November, when you
24 wrote them.
- 25 A. Yes, yes.
- 26 Q. On 9 November, you believed that it was proper that this
27 bridge be constructed.
- 28 A. I don't believe the letter says anything of the sort.
- 29 Q. Doesn't the letter authorise the construction of the
30 bridge.
- 31 A. No, it has to do with the provisions of the Aboriginal
32 Heritage Act and specifically that with respect to the
33 bridge.
- 34 Q. That is your involvement, isn't it.
- 35 A. Yes.
- 36 Q. From your involvement in it, the letter you wrote was a
37 letter which, from your position, allowed the bridge to
38 proceed.

- 1 A. You could say that I suppose.
- 2 Q. I am saying that and I am asking you whether it is right
3 or not.
- 4 A. To the best of my knowledge, which may or may not be
5 adequate in this regard, that approval was, at that
6 time, the only impediment to the commencement of
7 construction. So, to that degree, I would agree with
8 you.
- 9 Q. Dr Draper, we're not dealing with whether there was an
10 engineering problem with building with the bridge or
11 anything like that with your evidence, we're only
12 dealing with the Aboriginal issue. You were there to
13 deal with the relevant Aboriginal issues, weren't you.
14 That was your involvement.
- 15 A. I was working on that, as an officer of the Department
16 of State Aboriginal Affairs, yes.
- 17 Q. And when you drafted the letter of 9 November, you were
18 drafting it from the point of view of relevant
19 Aboriginal issues.
- 20 A. Yes.
- 21 Q. On the 9th of November, from the point of relevant
22 Aboriginal issues, you considered that it was proper
23 for the bridge to go ahead.
- 24 A. Yes.
- 25 Q. You also considered that, the consultation that had
26 taken place by Binalong was proper. Is that right.
- 27 A. I wasn't aware that Binalong had been undertaking a
28 consultation process with Aboriginal people at that
29 time.
- 30 Q. At any time, up until 9 November, your view was, that
31 Binalong had done what was required of it in relation to
32 Aboriginal matters.
- 33 OBJECTION Mr Steele objects.
- 34 MR STEELE: The objection is exactly the same. I
35 have been silent since the last objection for the lower
36 line of questions but the objection remains. I have no
37 doubt that this is important from the Chapmans' point of
38 view. This is not what you are investigating, all of

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- 1 this is a history of planning matters, as to the bridge.
2 It has nothing sensible to do with the matter which you
3 ultimately have to decide and to pursue this line of
4 questioning is unhelpful to you. It is obviously going
5 to take a great deal of time.
- 6 MR MEYER: It shouldn't.
- 7 MR STEELE: Having been now on my feet several times
8 I do ask you to make a ruling on the objection one way
9 or the other, but, if you rule against me, then I won't
10 stand up anymore.
- 11 MR MEYER: Then I will answer the issue that is
12 raised. Dr Draper has not been heard to say, at any
13 time, in any public way, that the consultation by
14 Binalong, the investigations made, have been right and
15 proper and that there was nothing that they could have
16 done or should have done that would have affected this
17 issue. Now, you see, he is coming along to give
18 evidence to say that women's business is a valid
19 matter. He is saying it only arose in April 1994.
- 20 COMSR: Yes.
- 21 MR MEYER: We have got to question whether it is a
22 fabrication or not. If people have properly conducted
23 their investigations and it always existed, as I assume
24 it must have, well, then, proper investigations by
25 Dr Draper and by other consultants engaged would have
26 revealed it.
- 27 COMSR: Perhaps we can put that question to him.
- 28 MR MEYER: We will get there eventually, but I
29 would have thought, since questions of this nature have
30 been raised in Mr Jacob's statement, that one assumes
31 that they are relevant and I should put them to this
32 man.
- 33 COMSR: It doesn't mean the whole of the
34 statement is necessarily relevant but, the question that
35 you are really wishing to address to the witness is,
36 whether or not, assuming the proper consultations have
37 been carried out by Binalong and the Chapmans, that
38 should have revealed the presence, if nothing else, of

1 the issue of women's business.

2 MR MEYER: Well, I wasn't going to put it in such a
3 rolled up way, but you have asked me to explain why it
4 is I am asking these questions to deal with the
5 objection, and that is the point that we lead to.

6 MR STEELE: Having got to that point, I submit it is
7 appropriate the witness answer that question and that
8 will resolve the issue.

9 MR MEYER: It won't, because if he doesn't agree
10 with me I have to go back inside that general issue to
11 tidy it up. If he does agree with me terrific.

12 COMSR: He may or may not.

13 MR STEELE: It is really that which I ask your
14 Honour to make a ruling. I will be up and down like a
15 jack-in-a-box and drive you nuts.

16 QUESTION AT P.4990 L.36 READ BY REPORTER

17 Q. Can you answer that question.

18 A. I think so. The answer to that is that, the revelation
19 by Aboriginal people, the Lower Murray, of the existence
20 of that information was something they had to decide.
21 It was not something that was accessible, I believe, to
22 anthropological research, because unless someone decides
23 to tell that it is important to tell you, you can't
24 know. It was, I believe, a situation that led to the
25 revelation of that information in the context of the
26 building of the South Australian government's bridge
27 without consultation to the community about that
28 proposal and its specific impact in a fairly short
29 period, in late 1993 I think, that causes that
30 information to come out. It has to come from the
31 Aboriginal end, it can't be extracted by force. So, I
32 think, from that point of view, in their time and
33 circumstance, we assessed the studies prepared for the
34 Binalong EIS as perfectly adequate for their purpose at
35 that time. We always operate on our best knowledge at
36 that time. Does that answer your question?

37 Q. No, because you start it off by answering the specific
38 question 'yes' and you finished up answering it 'no.'

- 1 OBJECTION Mr Steele objects.
2 MR STEELE: What he said yes to was, can he answer
3 the question? And he then went on and gave an answer.
4 MR MEYER: Go back to the beginning of the answer.
5 COMSR
6 Q. Let me ask you this. You are not in any way reflecting
7 on the adequacy of the consultative process or
8 investigation process carried out by Binalong and the
9 Chapmans.
10 A. In no way your Honour.
11 MR STEELE: In any event, all of that has been very
12 adequately rehearsed in the Federal Court proceedings.
13 It is of no assistance to you.
14 MR MEYER: Go back to the beginning of the
15 answer.
16 ANSWER AT P.4991 L.18 READ BY REPORTER
17 CONTINUED

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- 1 MR MEYER: Mr Palyga's recollection and mine are
2 the same; when the question was answered, his first
3 words were something like 'I think so', after the
4 question was read.
- 5 MR STEELE: My recollection is not that. My
6 recollection is completely in order with what has been
7 transcribed.
- 8 MR MEYER: I will ask the question again, because
9 we have got a confusion about this answer.
- 10 COMSR: I don't think so. I can only go on what
11 has been recorded here, what is taken down. Can you
12 just start the first words of the answer, that's all
13 we're concerned with.
- 14 REPORTER READS ANSWER AT P.4991 LINE 18
- 15 COMSR: 'I think I can answer it'.
- 16 MR MEYER: What was the question?
- 17 REPORTER READS QUESTION AND ANSWER STARTING P.4991 LINE 17
- 18 COMSR: I think the witness has given his
19 explanation of the reasons why the consultative process
20 might not have revealed the existence of the women's
21 business. I mean you might well query whether that
22 explanation is one you accept or not, Mr Meyer, but it's
23 the witness' explanation.
- 24 MR MEYER: My difficulty is that I didn't
25 understand that to be the witness' explanation, not
26 whether I accepted it or not.
- 27 COMSR: So we have got the situation, as I
28 understand it from the witness, that he agrees that
29 prior to a certain point in time, there was no
30 suggestion of women's business but that it arose
31 thereafter.
- 32 A. That's correct.
- 33 XXN
- 34 Q. For what period of time were you the senior
35 archaeologist responsible for coordinating relevant
36 information within the department for matters relating
37 to this development.
- 38 A. Could you repeat the last - 'Relating to matters' -?

N. DRAPER XXN (MR MEYER)

- 1 Q. To this development, to Hindmarsh Island Bridge.
2 A. From - I was the main, in fact only field officer
3 involved in the department from the evening, I guess, of
4 28 October 1993, throughout the current bridge issue and
5 until, I suppose, I went on leave in October 1994.
6 Q. You were involved prior to November 1993.
7 A. In a different department in a different role, still
8 within Aboriginal heritage.
9 Q. What was your role prior to November 1993.
10 A. In 1988, which I think is the first occasion we've
11 referred to, I acted as senior archaeologist in
12 supervising and assessing Vanessa Edmonds' first report,
13 although I did not set up the consultancy. In 1989, as
14 I've said to you earlier today, I think, I was involved
15 only in the verbal briefing of Vanessa Edmonds, not
16 actually setting up that brief or the anthropology
17 brief, and in providing assessment comment on Vanessa
18 Edmonds' report for the Binalong EIS only.
19 Q. After that.
20 A. After that period, I was involved, as an extension of
21 that assessment, with an inspection at a site where a
22 reburial was conducted at the Binalong marina, and that
23 would have been, to my memory, my last involvement with
24 Hindmarsh Island Aboriginal heritage and development
25 issues until 1993.
26 Q. From the point of view of the involvement of the
27 department at all, that was the next involvement, wasn't
28 it, after 1990, the reburial of some bones or something
29 of that nature.
30 A. The Aboriginal Heritage Branch of the department, I
31 believe, was involved in an assessment of a planning
32 application for a road traffic connector between Goolwa
33 and Hindmarsh Island in early to mid 1992 while I was
34 working in National Parks.
35 Q. How long were you working in National Parks.
36 OBJECTION Mr Steele objects.
37 MR STEEL: I do ask you to rule on this.
38 MR MEYER: I would have thought that question took

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- 1 less time to answer -
- 2 MR STEELE: So what? We get a whole series of
3 totally irrelevant questions; cumulatively they last
4 hours. If I let them all pass, we'll be here for hours.
- 5 COMSR: What is the relevance?
- 6 MR MEYER: It might have been as a result of a
7 badly asked question, but yesterday I thought he said
8 that he was involved in matters relating to this since
9 1988.
- 10 COMSR: I thought he gave the history of it
11 yesterday to me, so I'm wondering why are we retracing
12 it today?
- 13 MR MEYER: Because I'm finding that he hasn't been
14 involved with it the whole time. There is a period of
15 time that he hasn't.
- 16 MR STEELE: So what? How is that going to help you?
17 I invite you to uphold the objection.
- 18 COMSR: Yes, I can't see how -
- 19 MR MEYER: If your Honour rules against the
20 question -
- 21 COMSR: I'm hoping to add to my store of
22 knowledge, not to retrace ground that we have already
23 covered.
- 24 MR MEYER: That's what I was attempting to do.
25 XXN
- 26 Q. Would you turn to p.9 of your statement, paragraph
27 number 3. That paragraph says 'It is common, almost a
28 universal Aboriginal approach with regard to core
29 cultural traditions, for ignorance to', insert the word
30 'be', 'Feigned unless disclosure is unavoidable'.
31 That's right, isn't it.
- 32 A. Yes.
- 33 Q. Does that mean that in relation to core cultural
34 traditions, Aboriginal persons won't tell you the truth.
- 35 A. No, it's that they will not tell you anything, or will
36 feign ignorance of the topic, or change the topic, not
37 that they will lie about it. I believe I've covered
38 that point in my statement as well.

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1 Q. Let's go back and examine that for a moment, because to
2 feign ignorance when you, in fact, know something, is to
3 in fact not tell the truth, isn't it.

4 OBJECTION Mr Steele objects.

5 MR STEELE: That's a semantic discussion which we
6 need not engage in with this witness. That really is a
7 matter for comment. This witness has given an answer to
8 the question. If Mr Meyer wants to make a submission at
9 the end as to this witness' interpretation of his own
10 statement being wrong, then let that be so, but to
11 engage in a semantic dispute as to what `feign' means is
12 unhelpful to you.

13 MR MEYER: Can I suggest that, in fact, it's super
14 helpful, because this whole Royal Commission is involved
15 in an issue of whether there is a fabrication by
16 Aboriginal persons of something associated with women's
17 business, and this witness is telling you, in his
18 statement, that in relation to Aboriginal people telling
19 you something, that there are times that they won't be
20 entirely frank with you, and that's very important. It
21 relates directly to the credibility of an informant who
22 is telling you something.

23 MR STEELE: The witness - the question was put, the
24 witness has answered that question, Mr Meyer now wants
25 to engage in what is a semantic dispute. He is not
26 asking the question again, he knows he wouldn't be
27 entitled to ask the question again, but he is engaging
28 in a semantic dispute. Now that is not helpful. He has
29 perfectly legitimately put a question, and he has got
30 the witness' answer. He doesn't like the answer, so he
31 now wants to engage in a semantic dispute. Now I ask
32 you again to uphold my objection.

33 COMSR: Look, I'm prepared to allow it. It's
34 obviously an issue that has to be explored. Whether or
35 not it follows that because somebody doesn't reveal
36 something that it necessarily indicates a degree of
37 dishonesty, might be something that can be disputed, but
38 nevertheless I think it's something that could be

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- 1 explored.
- 2 MR MEYER: I avoided the word 'dishonesty' because
3 it has implications.
- 4 COMSR: Perhaps I misunderstood what you were
5 putting to the witness.
- 6 MR MEYER: The same as I avoided the words 'tell
7 lies'. I tried to put it in the terms of 'not tell the
8 truth' or 'not be frank' which I considered to be -
- 9 COMSR: You put it in those terms.
- 10 MR MEYER: More acceptable terms.
- 11 XXN
- 12 Q. The next instance in relation to this matter is at p.15,
13 and at p.15 you make a reference 'To profess ignorance
14 of traditional culture has become, over several
15 generations, a universal way of deflecting perceived
16 threats' etc.
- 17 A. In fact the next reference to that matter is the last
18 sentence of the second paragraph of p.11, where I say
19 'Also it is a very serious offence', I mean against
20 Aboriginal tradition, 'To speak falsely about
21 tradition'. I wonder if that might clarify the issue.
- 22 Q. It doesn't for me, you see, because -
- 23 A. It creates -
- 24 Q. - what I'm attempting to establish is that it seemed to
25 be your evidence that Aboriginal persons won't tell you
26 about what you describe as core cultural matters, and to
27 avoid telling you they will feign ignorance.
- 28 A. Yes.
- 29 Q. They will pretend that they don't know anything.
- 30 A. Yes.
- 31 Q. When in fact they do know something.
- 32 A. Yes.
- 33 Q. Doreen Kartinyeri has said in the press that 'If men
34 enquire about these things, we'll tell lies to deflect
35 people from asking'. If Doreen Kartinyeri did say that,
36 do you agree with me.
- 37 A. I am speaking from my knowledge and experience. I have
38 not - and speaking with Doreen Kartinyeri on the matter

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1 is not a part of that experience, so I cannot be
2 responsible for her statement. From my experience, I
3 stand by what I've said.

4 Q. You see the thrust of what I'm driving at is that if you
5 recognise that, well then the expert anthropologist has
6 to be alive to the moment when Aboriginal persons may
7 cease misleading you and when they start telling you
8 information that's accurate and true. That's right,
9 isn't it.

10 A. Yes.

11 Q. Now what tests did you apply, as an expert
12 anthropologist, to decide when the misleading of you
13 ceased, and accurate information commenced to be given
14 to you.

15 A. There was no situation in which misleading information
16 was being provided to me. It was a case of nothing
17 being said about the subject until a certain time, and
18 then information beginning over a period of time and
19 through an Aboriginal community and State government
20 approved process being brought forward, so it was
21 assessed, for one thing, according to the terms of
22 reference provided by the Aboriginal Heritage Act, in
23 terms of there being a possibility that it could be
24 genuine information, and there were a lot of reasons why
25 it could be, not least the reputation and standing of
26 the people providing that information. That is primary
27 in this context, and it is also a viewpoint, I believe,
28 required under the terms of the Aboriginal Heritage Act.

29 Q. As an expert anthropologist, regardless of any
30 implication of any Act of Parliament, you, as a
31 professional anthropologist, recognise the need to
32 ascertain whether you're being told the truth.

33 A. To the degree that there is such a thing as `a truth'.
34 We're dealing with a cross-cultural situation where our
35 western truths and Aboriginal truths - `truth' is a
36 difficult word, `cultural beliefs', `traditions', are
37 better ways to describe this, but to the degree it's
38 possible, with associated information, to evaluate that

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- 1 under the circumstances, yes, I believe I did say it.
- 2 Q. Did you warn Vanessa Edmonds to be alert that people
3 might feign ignorance.
- 4 A. No.
- 5 Q. Why not.
- 6 A. There seemed no need to make that comment to Vanessa
7 Edmonds at any stage.
- 8 Q. At that time you were, as an expert, alert to the
9 possibilities that there may be other matters that could
10 arise.
- 11 A. Being alert and going hunting for something specific are
12 two quite different things.
- 13 COMSR
- 14 Q. Where there's evidence from a number of Ngarrindjeri
15 women that the very existence of women's business in
16 respect of Hindmarsh Island was unknown to them, and
17 given the significance of that business for all
18 Ngarrindjeri women, would you have considered that an
19 unusual circumstance, that they not know.
- 20 A. I did not have that information at the time.
- 21 Q. Well, if that is the case, that the very existence of
22 women's business was unknown to a number of the
23 Ngarrindjeri women who told us, who told the hearing
24 that it had it existed, who would have expected to know
25 of it, do you consider that a matter that might require
26 some degree of caution in accepting the possibility of
27 its existence.
- 28 A. If that question had arisen during the State government
29 heritage investigation of that matter, I'm sure it would
30 have been investigated seriously, but it did not come up
31 until after our investigations were completed. We only
32 knew that some people did have and very firmly believed
33 in these poorly known, from the outside, cultural
34 traditions. We did not have information about people
35 who did not know or did not believe in them.
- 36 Q. I'm putting to you 'did not know of its very existence'.
- 37 A. We were operating on positive rather than negative
38 information at the time, and we did not have any

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1 negative information, nor was there any real opportunity
2 to canvass such information, as we were dealing with the
3 community through the Lower Murray Aboriginal Heritage
4 Committee and, at a secondary level I suppose, through
5 the State Heritage Committee.

6 XXN

7 Q. But, in fact, in carrying out an investigation like
8 that, they are not the right people to consult, are
9 they. The important people to consult are the
10 traditional owners.

11 A. At the time we are speaking of, the Lower Murray
12 Aboriginal Heritage Committee, to the best of my
13 knowledge, was accepted by the State government as the
14 body representative of the traditional owners of that
15 region.

16 Q. Did you make any attempt to find out who were the
17 traditional owners, or did you just accept that it was
18 the Lower Murray Aboriginal Heritage Committee
19 representing them.

20 A. Basically I was required to accept that but, as a
21 professional anthropologist, I had good reason, I
22 believe, to accept that that group was representative.

23 CONTINUED

- 1 Q. Why did you do that if it is important to establish who
2 the traditional owners are.
- 3 A. The State government have been working on that since the
4 introduction of the Aboriginal Heritage Act in early
5 1989, and had gone through a process of several years of
6 establishing, with regional communities, those regional
7 heritage committees precisely for consultation purposes
8 on cultural heritage. My dealings over the years were
9 obviously more with Ngarrindjeri men than Ngarrindjeri
10 women up until this time. I think that's fairly clear,
11 but that's the process under which I was working for the
12 department.
- 13 Q. Regardless of that, as an expert, you wouldn't
14 prostitute your expert views. You would be honest as to
15 what your beliefs are as an expert.
- 16 A. Yes.
- 17 Q. As I understand it, your beliefs as an expert were, at
18 the time when you were involved, that it was important
19 to establish who the traditional owners were.
- 20 A. I believe at this time that that had been established,
21 and I was one of the professional officers of the
22 department over those years who undertook that work over
23 a period of years.
- 24 Q. What steps did you take to establish who the traditional
25 owners were.
- 26 A. It's not a matter of the steps I took. It is a matter
27 of the steps that the Aboriginal Heritage Branch, in its
28 various incarnations, took, and in which I took part as
29 an officer of that branch.
- 30 Q. What steps were they.
- 31 A. The consultation process, very briefly - we're talking
32 about several years here - began in 1987 with respect to
33 the provisions of the Act itself as it was being
34 drafted, and then, after the Act had been passed by
35 Parliament, all field staff of the Aboriginal Heritage
36 Branch were continuously involved in liaison with
37 Aboriginal communities, both in the normal operation of
38 the new Heritage Act, but, in particular, with respect

1 to establishing a network of regional committees and a
2 State representative committee as a means by which the
3 government or the Aboriginal Heritage Branch could
4 routinely consult with Aboriginal traditional owners of
5 particular localities and regions, and this involved a
6 lot of discussions by a lot of staff members over a
7 period from perhaps about 1988, I'd say, through to the
8 present. I believe it is still an ongoing process. It
9 pervades most of the work of the Aboriginal Heritage
10 Branch, certainly all the field-based work. So it is an
11 ongoing process of negotiation with those communities.

12 Q. In relation to Hindmarsh Island itself, is it or is it
13 not important to establish who the traditional owners
14 are.

15 A. Yes.

16 Q. The Lower Murray Aboriginal Heritage Committee aren't
17 the traditional owners, are they.

18 A. The Lower Murray Aboriginal Heritage Committee, at that
19 time, we believed - I believe, the department believes -
20 to have been representative of the traditional owners of
21 that region. It is an organisation set up by Aboriginal
22 people of that community for that purpose, as I
23 understand it.

24 Q. You said, as I understand it, on some occasion to a
25 journalist called Marcus Priest `Dr Draper said the
26 recent example of Hindmarsh Island and also a Tasmanian
27 Aboriginal group taking the LaTrobe academics to court
28 was a small taste of what could happen if matters were
29 not dealt with sensitively. The Hindmarsh Island affair
30 illustrates the careful efforts that are needed to
31 identify traditional owners'. I put to you that you
32 didn't make any careful efforts at all to identify who
33 the traditional owners of Hindmarsh Island were.

34 OBJECTION Mr Steele objects.

35 MR STEELE: I think this is again unfair. The
36 witness has been asked this question now for the last 10
37 minutes. He has answered it on about three or four
38 different occasions, and said repeatedly that, as an

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1 officer of a State government department, he had a
2 twofold role. First of all, it was to deal with the
3 committee, which he understood, as a member of that
4 department, had been formed for that purpose by the
5 Aboriginal community to speak for that Aboriginal
6 community; and that, secondly, he had his own views,
7 which was coincidental with the department view. My
8 friend goes on and on about it. I say he is now
9 badgering the witness.

10 COMSR: I think he has answered it.

11 MR MEYER: I am not badgering the witness at all.
12 I have asked two or three questions. I have received
13 some terminably long answers which, in my submission,
14 haven't addressed the question asked, because we have
15 established that this witness would place his own expert
16 views at the forefront, not what the department's views
17 might be, and that's why I ask the simple question:
18 What steps did he take, having identify that he has said
19 that careful efforts are needed? That is all.

20 COMSR: I think he has explained. He hasn't
21 claimed that any other steps were taken other than
22 consulting the Lower Murray Aboriginal Heritage
23 Committee, as I understand it.

24 WITNESS: Yes, your Honour.

25 XXN

26 Q. I show you a newspaper article headed `Aboriginal bones
27 a "political time bomb" for Queensland. Do you
28 recognise that report.

29 A. Yes, I do.

30 Q. Are you able to tell me where it comes from.

31 A. I believe that's from the `Brisbane Courier Mail'
32 earlier this year.

33 Q. Can you put any more accurate date on it than that.

34 A. No, I couldn't.

35 Q. First quarter, can we say, of 1995.

36 A. If that's the date it was published. I don't have that
37 information on me.

38 MR MEYER: I tender that article.

- 1 COMSR: It is relevant?
- 2 MR MEYER: In my submission it is.
- 3 COMSR: I haven't seen it, that is all. I
- 4 didn't realise this was the excerpt from which you were
- 5 quoting.
- 6 XXN
- 7 Q. The quotation that I read, that quotes you accurately,
- 8 doesn't it.
- 9 A. Some liberties have been taken and it is somewhat
- 10 paraphrased, and I have had words with Mr Priest about
- 11 that, but it is generally similar to what I said to him.
- 12 EXHIBIT 235 Article from Brisbane Courier Mail
- 13 headed 'Aboriginal bones a "political
- 14 time bomb" for Queensland' tendered by
- 15 Mr Meyer. Admitted.
- 16 Q. Would you look at Exhibit 15, please. At p.1 of that
- 17 report, under after the heading 'Introduction', there is
- 18 paragraph 1.2, 'Methods'. Is that right.
- 19 A. Yes.
- 20 Q. Mr Lucas reports that he consulted with Victor Wilson.
- 21 Is that right.
- 22 A. Yes.
- 23 Q. Paul Kropinyeri.
- 24 A. Yes.
- 25 Q. Tom Trevorrow.
- 26 A. Yes.
- 27 Q. And Robert Day.
- 28 A. Yes.
- 29 Q. Robert Day is one of the persons you say who came to you
- 30 with information about women's business.
- 31 A. Robert is one of the people I understand to have been
- 32 appointed or designated by the Lower Murray Heritage
- 33 Committee to convey that to me in April 1994, although
- 34 he didn't speak it, Sarah Milera did. He was present,
- 35 yes.
- 36 Q. He raised it with you.
- 37 A. He was one of the group of men who raised it with me,
- 38 yes.

- 1 Q. I think one of the Trevorrow's was involved in raising
2 matters of this nature with you.
- 3 A. Yes.
- 4 Q. And some time subsequently I think you have referred to
5 Doug Milera, who is not referred to here.
- 6 A. Yes.
- 7 Q. Did Victor Wilson ever speak to you about the subject.
- 8 A. He was one of that group I've mentioned on 15 April
9 1994, yes.
- 10 Q. So, in essence, the men who consulted with you are the
11 same men who were spoken to by Lucas.
- 12 OBJECTION Mr Steele objects.
- 13 OBJECTION Mr Tilmouth objects.
- 14 MR TILMOUTH: He said one of the Trevorrow's. He
15 hasn't been specific.
- 16 MR STEELE: In any event, the Lucas report refers to
17 four men, and this list has listed a much larger number.
- 18 QUESTION REPHRASED
19 XXN
- 20 Q. Victor Wilson and Robert Day were two men who were in a
21 larger group who spoke to you.
- 22 A. Yes.
- 23 Q. It is recorded that those are men who also spoke to
24 Lucas.
- 25 A. Yes.
- 26 Q. At the time that Lucas did his report, there was an
27 environmental impact study issued.
- 28 A. Yes, I believe this forms part of it.
- 29 Q. And the EIS referred to the construction of a bridge.
- 30 A. Yes, I think that's correct.
- 31 Q. And the Lucas report was sent to the Lower Murray
32 Aboriginal Heritage Committee.
- 33 A. I don't know. I - as I've said to you, I wasn't dealing
34 with the Lucas report at that time.
- 35 Q. You can't answer that.
- 36 A. I can't answer that.
- 37 Q. Did you take any steps to find out, in 1993, whether
38 that report had been provided to the Lower Murray

- 1 Aboriginal Heritage Committee.
- 2 A. It's my general understanding that it had.
- 3 Q. In fact, back in 1990 it was provided, wasn't it.
- 4 A. I assume so.
- 5 Q. There's no mention in Rod Lucas' report of anything that
- 6 could conceivably be deduced to be women's business.
- 7 A. Not to my knowledge.
- 8 Q. The Edmonds report I think was also forwarded to the
- 9 Lower Murray Aboriginal Heritage Committee.
- 10 A. Yes.
- 11 Q. They were the relevant persons, you say, with whom to
- 12 consult.
- 13 A. At that stage, for instance, in the Lucas report, the
- 14 gentleman you referred me to, came from more than one
- 15 organisation. There were three, I think. Maybe more.
- 16 Q. You have just said a short while ago that the Lower
- 17 Murray Aboriginal Heritage Committee were the
- 18 representatives of the traditional owners that you
- 19 thought you should be talking to.
- 20 A. In 1993, yes. This, I believe, is some time earlier.
- 21 Q. Would there have been any different view between 1990
- 22 and 1993.
- 23 A. Yes, there would have been.
- 24 Q. Why.
- 25 A. I don't believe there was a unified Lower Murray
- 26 Aboriginal Heritage Committee in 1989, 1990, which is
- 27 why, on p.1 of the Lucas report, he's consulted people
- 28 from several organisations.
- 29 Q. If it was forwarded to the Lands Association at
- 30 Meningie, and to Mr Rankine at Raukkan, would you accept
- 31 that that's traversing the possibly relevant
- 32 organisations.
- 33 A. Those and the other organisations named in the Lucas
- 34 report in consultation, I would think so, yes.
- 35 Q. At that stage we've got the threat of a bridge being
- 36 built, we know it is going to connect the mainland to
- 37 Hindmarsh Island, there's a public EIS, and yet there is

- 1 no suggestion of women's business. As an expert, why
2 not.
- 3 A. I cannot answer for Ngarrindjeri people. I know
4 something directly of when they did bring forward this
5 information, but it's very difficult for me to comment
6 on specifically why they did not on earlier occasions.
7 I presume they were trying to avoid revealing
8 information and hoping that it would not be necessary
9 that the bridge would not be approved.
- 10 Q. Let's turn to another subject. You have told us 15
11 April was when you found out about women's business.
- 12 A. Specifically, yes.
- 13 Q. You didn't know anything about it prior to that.
- 14 A. I had only, prior to that time -
- 15 Q. Received the coastal -
- 16 A. Received an indication from the community that they were
17 still very concerned about cultural sites concerned with
18 that area.
- 19 Q. But you hadn't received anything about women's business.
- 20 A. That's correct.
- 21 Q. And you hadn't connected the coastal bit of information
22 that someone had given you with women's business.
- 23 A. No.
- 24 Q. And then on 15 April you were approached by some men.
- 25 A. I was approached at different times on that morning by
26 women and separately by men, as detailed.
- 27 Q. So women approached you and told you the men wanted to
28 talk to you, as I understand it.
- 29 A. The women told me that the men were going to talk to me
30 on their behalf.
- 31 Q. And the men told you about women's business.
- 32 A. They told me of its existence, as I've detailed in my
33 statement. They do not describe it in detail in that
34 meeting room.
- 35 Q. All I'm trying to do is get into place a chronology. 15
36 April is the first time you hear about it, and the first
37 time you hear about it is from men.
- 38 A. Yes. Although that was introduced by the women.

- 1 Q. Don't mind who introduced it. The first time you heard
2 about it was from men.
- 3 A. Yes.
- 4 Q. Had you spoken with any Aboriginal person prior to the
5 men speaking to you, or prior to the women telling you
6 that they were going to get the men to speak to you
7 about the need for additional cultural information.
- 8 A. With respect to what?
- 9 Q. With respect to issues relating to the construction of
10 Hindmarsh Island Bridge.
- 11 A. I had suggested, for example, to George Trevorrow, when
12 he had raised the question of further important cultural
13 information to do with the waters in the Goolwa channel,
14 that if there was a genuine concern there, then that
15 would have to be backed up with further information.
- 16 Q. When was that.
- 17 A. That was back at the beginning of 1994, before I spoke
18 to Commissioner Jacobs, the end of 1993.
- 19 Q. At the time when the men raised this business with you
20 on 15 April, that was at a time when it had appeared
21 unlikely that the South Australian government was going
22 to stop the construction of the bridge.
- 23 A. That seemed to be the opinion of the Aboriginal people
24 at that meeting, yes.
- 25 Q. Would you look at document 111 of Exhibit 192.
- 26 CONTINUED

- 1 I show you document 111 of Exhibit 197. That is an
2 internal memorandum, which I think is written by you.
- 3 A. Yes.
- 4 Q. Your handwriting.
- 5 A. Yes.
- 6 Q. And it relates to a discussion in part that you have had
7 with a man called Roger Dobbs.
- 8 A. That's correct.
- 9 Q. He is a man who is from ATSIC, I think.
- 10 A. Yes.
- 11 Q. Did you have that conversation with him on 12 April.
- 12 A. Yes.
- 13 Q. Is part of the conversation that you have had with him
14 there, to quote your words, 'This should be more than
15 archaeological, ie cultural significance.'
- 16 A. Yes.
- 17 Q. But you hadn't spoken with anybody from the Aboriginal
18 community, between when you had that conversation with
19 Roger Dobbs and 15 April, about the need for cultural
20 information.
- 21 A. No.
- 22 Q. Then quite suddenly out of the blue the men come forward
23 and speak to you and tell you about the existence of
24 women's business.
- 25 A. It was not entirely out of the blue.
- 26 Q. You had had no previous suggestion of it, had you.
- 27 A. As I said, I recorded a site in April 1994 at 'The
28 meeting of the waters'.
- 29 Q. Can I interrupt you. That was subsequently.
- 30 A. Yes, it was.
- 31 Q. At 15 April, the raising of women's business was
32 something that was totally new.
- 33 A. To me, yes.
- 34 Q. It arises three days after you have been told by a man
35 from ATSIC that there is a need for cultural
36 information.
- 37 A. Yes.
- 38 Q. And you haven't transmitted that conversation to any

1 Aboriginal person.

2 A. Yes, I have. I have conveyed it to my Chief Executive
3 Officer, David Rathman, at the -

4 Q. Is he an Aboriginal person.

5 A. Yes, he is.

6 Q. Did you convey it to anyone else.

7 A. I believe that minute went directly to David Rathman and
8 did not go through intervening senior management. So, I
9 don't think so.

10 COMSR

11 Q. Just so that I am clear: this conversation that you had
12 concerning the cultural information, was that the same
13 conversation you were talking about when you said that
14 you were discussing the different requirements of the
15 State and Commonwealth legislation with someone from
16 ATSIIC.

17 A. That is the same conversation. We did not so much hold
18 a discussion on it as I was seeking information at the
19 request of my Chief Executive Officer on the progress
20 and status of the Commonwealth application for briefing
21 for our Minister.

22 XXN

23 Q. Just so that I can get the hang of the context of it.

24 And I will approach you again because you haven't got
25 the minute.

26 A. I do, in fact, because it is one of the documents that I
27 have submitted.

28 Q. Can you find it.

29 MR STEELE: It is sheet 21.

30 COMSR: I will have a look at that evidence. I
31 am not sure that we are not traversing ground that we
32 have covered already.

33 MR STEELE: I was waiting for the question, but I
34 was anticipating that I would be objection on the basis
35 that it was traversed in quite some degree yesterday by
36 Mr Smith.

37 If I might make a point? Mr Smith's examination was
38 something of a hybrid. It was largely examination, but

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- 1 there were times when it covered from examination to
2 cross-examination and there was certainly
3 cross-examination on this issue. And I suspect that we
4 are going to traverse the same ground.
- 5 MR MEYER: I will desperately try not to.
6 XXN
- 7 Q. Firstly, did you provide any of the information which is
8 set out in this memorandum to anybody other than David
9 Rathman.
- 10 OBJECTION Mr Steele objects.
- 11 MR STEELE: We are traversing that ground. That was
12 exactly the line of questioning undertaken by my friend
13 yesterday.
- 14 COMSR: Yes.
- 15 MR MEYER: What is the answer? I don't know what
16 the answer is.
- 17 MR STEELE: You should have paid more attention
18 yesterday.
- 19 COMSR: Yes, I am just trying to pick it up, but
20 it seems to me we spent sometime yesterday on it.
- 21 MR SMITH: I didn't cover that entire memorandum in
22 my questioning, at all.
- 23 MR ABBOTT: That question wasn't asked.
- 24 COMSR: Where is it taking us, Mr Meyer?
- 25 MR SMITH: I think, if I cover a topic, I would
26 submit to you that that doesn't mean no-one else can
27 question on the topic.
- 28 COMSR: Certainly, I don't mind questioning
29 something that adds to my store of knowledge, but there
30 is no point in us going over the same ground.
31 I can't pick it up, in any case.
- 32 XXN
- 33 Q. Did you tell anybody else about the matters that are set
34 out in this memo.
- 35 A. I did not, no.
- 36 Q. Do you know Doreen Kartinyeri.
- 37 A. Yes, I do.
- 38 Q. When did you first meet Doreen Kartinyeri, in

- 1 approximate terms.
- 2 A. I don't remember. I do not know her well. I can
3 remember a couple of specific occasions over the last
4 five years when I have encountered her, but I have no
5 detailed recollection of when I first met her or under
6 what circumstances.
- 7 Q. Was it prior to 1990.
- 8 A. I don't know. It may have been.
- 9 Q. How long have you known Mr Lucas, in approximate terms.
- 10 A. I think I first met Rod Lucas when he did an
11 anthropological report for the Department, I think in
12 1989, or late 1988 perhaps, or 1989, somewhere around
13 there.
- 14 Q. Was that Sellicks Beach.
- 15 A. I believe so, yes.
- 16 Q. And did you read the Sellicks Beach report.
- 17 A. I have read that report.
- 18 Q. Does that report refer to obtaining or consulting with
19 Doreen Kartinyeri.
- 20 A. I have no idea. I don't remember it in that much
21 detail.
- 22 MR MEYER: Can anybody help with the number of the
23 Sellicks Beach report?
- 24 MR SMITH: I am not aware of it being an exhibit.
25 I could be wrong.
- 26 XXN
- 27 Q. When did you first become aware of Doreen Kartinyeri's
28 involvement in the Hindmarsh Island bridge matters.
- 29 A. In May 1989 - May 1994.
- 30 Q. Had there been any suggestion of her involvement prior
31 to then.
- 32 A. Not to me.
- 33 Q. Looking at document no.132 of Exhibit 197. And I will
34 show you my copy. It will save everybody looking
35 through it. Do you recognise that document.
- 36 MR STEELE: Which document?
- 37 MR MEYER: 132.
- 38 MR STEELE: Of the DOSAA documents?

- 1 MR MEYER: DOSAA, yes, 197.
2 A. No, I don't.
3 XXN
4 Q. That is a document that emanates from the State
5 Aboriginal Affairs.
6 A. That's correct.
7 Q. And it is a claim for a payment for mileage of \$685.58
8 on 4 May relating to the travel of an informant from
9 Port Germein to Goolwa and return.
10 A. That's what it says.
11 Q. Do you understand Doreen Kartinyeri to live at Port
12 Germein.
13 COMSR: The witness has says that he doesn't
14 know the document.
15 MR MEYER: No.
16 XXN
17 Q. The next question is, do you understand Doreen
18 Kartinyeri to live at Port Germein.
19 A. I have been told that, yes.
20 Q. Did you speak with Doreen Kartinyeri before 4 May.
21 MR STEELE: About what?
22 XXN
23 Q. About matters relating to Hindmarsh Island.
24 A. No, I didn't.
25 Q. Between 4 May and the time when you attended at Rocky
26 Marshall's house, did you speak with Doreen Kartinyeri
27 in relation to matters pertaining to Hindmarsh Island.
28 A. No.
29 Q. Did you speak with Doreen Kartinyeri whilst you were at
30 Rocky Marshall's house, or did you only go with some
31 men.
32 A. I went there with some men in the morning. There were
33 no Aboriginal women there at the time I was there.
34 Q. From 4 May until 10 July 1994, did you speak with Doreen
35 Kartinyeri about matters relating to Hindmarsh Island.
36 A. No.
37 Q. In your discussions in respect to women's business, has
38 the information that has been conveyed to you - is that,

1 firstly, it is a matter which is associated with
2 Hindmarsh Island.

3 A. Yes.

4 Q. The fact of association with Hindmarsh Island is
5 integral to your understanding of the women's business.

6 A. That is the central part of the location that was
7 indicated for me when recording the site that I recorded
8 that was significant to women, yes.

9 Q. Is the first part of the proposition it is fundamental,
10 as step 1, that this business relates to Hindmarsh
11 Island.

12 A. The particular site I recorded had, by its nature, a lot
13 to do with the waters of the Goolwa channel and the
14 Murray Mouth in addition to the island.

15 Q. But what I am putting to you is that step 1, for your
16 understanding of this women's business, is that,
17 firstly, it involves matters with Hindmarsh Island. It
18 may be associated with that, the waters around Hindmarsh
19 Island, but you have got to know about Hindmarsh Island.

20 A. The information I was given and the site I specifically
21 recorded was to do with the waters surrounding Hindmarsh
22 Island rather than with the island, itself.

23 Q. But, to know about the waters surrounding Hindmarsh
24 Island, you have got to know about Hindmarsh Island.
25 Otherwise, you can't have water surrounding it.

26 A. Of the existence of that geographic place, yes.

27 Q. And that that's where the women's business relates to,
28 that geographic place.

29 OBJECTION Mr Steele objects.

30 MR STEELE: I must object to that. That hasn't been
31 established. Certainly not through this witness. And
32 this witness has been determinably saying that what he
33 has been talking about was the waters.

34 MR MEYER: That's why I am trying to establish it
35 with this witness, because it hasn't been established
36 and I am trying to establish what Dr Draper -

37 COMSR: He has given his answer, what
38 information he had. I don't suppose that he can do

1 better than that, Mr Meyer.

2 MR MEYER: No, I don't want an argument later that
3 the question has not been and the answer was not fixed.

4 COMSR: No, that was not put.

5 MR MEYER: No, I am trying to elicit a specific and
6 definite answer and that is:

7 XXN

8 Q. As far as your investigations are concerned, women's
9 business, for you, must relate geographically to
10 Hindmarsh Island and the waters around it.

11 A. Yes, in a general sense.

12 Q. And you can't have a knowledge of women's business, if
13 you don't know where it relates to.

14 COMSR: You mean, the women's business that we
15 are concerned with?

16 MR MEYER: Yes.

17 A. I don't know that. That is beyond my experience. If I
18 understand your question correctly.

19 XXN

20 Q. Let's go back a step: you have been told about women's
21 business, as far as you are concerned.

22 A. I was given the information that appears on the draft
23 site card for 'The meeting of the waters', yes.

24 Q. And that, for your purposes, relates to the women's
25 business.

26 A. It relates to the site that I had been asked to record
27 and provide assessment advice to the Minister upon.
28 That's directly what it does deal with.

29 Q. Let's not try and be nice about this. All I am
30 attempting to establish with you is that, for your
31 purposes, a knowledge of women's business must relate to
32 Hindmarsh Island and the waters around it.

33 A. For my purposes, at that time, yes.

34 Q. It wouldn't be possible for you to be told about this
35 women's business in a context of saying 'I don't know
36 where it relates to.'

37 A. It might well be possible, but it would not be useful,
38 because I cannot record a site without a location.

- 1 Q. But the person must know the site. They mightn't be
2 telling you, but they must know, mustn't they.
- 3 A. Are you talking about the people who told me this
4 information? I would like some clarification so I can
5 understand what you want me to tell you about.
- 6 Q. It doesn't matter who it is we are talking about.
- 7 A. All right.
- 8 Q. For you to be able to - for your concept of this
9 information, firstly, you are told that there is some
10 women's business, right.
- 11 A. Yes.
- 12 Q. Next you have got to learn about it.
- 13 A. Do you mean me, in particular?
- 14 Q. You, in particular, Dr Draper, so you can record a
15 site.
- 16 A. Not really. We stuck to specific information that
17 would satisfy filling in a site record card and
18 reporting to the Minister, not -
- 19 Q. Can I stop you there?
- 20 A. Yes.
- 21 Q. That's all I need to have for my word learning about
22 it. You have to got to find something out about it,
23 don't you.
- 24 A. Yes.
- 25 Q. And you have got to find out, firstly, where it relates
26 to.
- 27 A. Yes.
- 28 Q. To have the notion of this women's business without
29 knowing where it relates to wouldn't make sense.
- 30 A. Do you mean for the informant?
- 31 Q. No, I mean for anybody. The location and the knowledge
32 are inextricably entwined.
- 33 A. That's not quite the case. If you are referring to
34 Aboriginal people's knowledge of significant dreaming
35 tracks, cultural ancestors, the degree of information in
36 terms of the detail of the story and the specific or
37 general locations of places does vary among Aboriginal
38 people, I find, in my work.

- 1 Q. Let's explore that a little bit. Someone is reputed
2 to have this knowledge about the women's business.
3 Right.
- 4 A. Okay.
- 5 Q. Step one. They are going to leak bits of information to
6 you, as little as possible, so that you can record it
7 and protect it.
- 8 A. Yes.
- 9 Q. And otherwise maintain as much as they are able the
10 secrecy, because that is what their culture requires.
- 11 A. Okay.
- 12 Q. That is a fair series of propositions, isn't it.
- 13 A. Yes.
- 14 Q. They leak as much information or as little information
15 to you as possible, and get you to the point where you
16 can record the site, right.
- 17 A. Okay.
- 18 Q. We have got those three steps lined up. Go back to step
19 one. When the person walks up to you and says, I want
20 to leak a little bit of information to you about women's
21 business, right.
- 22 A. I have never been in that situation.
- 23 Q. Yes you have, because that is what happened on the 15th
24 of April, when the men came to you and said, 'There is
25 some information about women's business.' That's the
26 first time you got to hear about it. So, at this moment
27 for you we are at the 15th of April.
- 28 A. Yes.
- 29 Q. At that moment, the person who is going to provide the
30 actual information about the women's business, must know
31 where it relates to, mustn't they.
- 32 A. All I can really say to that Mr Meyer is that, the
33 person who gives the information for the site record
34 which, in fact, occurred at the end of April, must know
35 before they tell me. Who knew what, in detail, beyond
36 what was said to me on the 15th of April I have no way
37 of knowing.
- 38 Q. I put it another way. Somebody, the principal

1 informants, or whoever, somebody, must know where the
2 women's business relates to.

3 A. Yes.

4 Q. And knowing where it relates to is integral to the
5 whole women's business.

6 A. For the group of people who share that cultural
7 tradition, yes.

8 Q. Do you suggest that the women's business relates
9 to the whole of Hindmarsh Island or a limited part of
10 it.

11 A. From the information provided to me, it involves - I
12 have not conducted research on the subject of Hindmarsh
13 Island's women's business, I have recorded a site that
14 is confidential in nature and is of particular
15 significance to women.

16 COMSR

17 Q. If it is still confidential in nature you are not about
18 to give us any evidence.

19 A. No, I am just saying that, the report I wrote at the end
20 of April, and the map that accompanies that report,
21 shows my understanding as provided by those informants
22 of the area of that site and, in fact, the site contains
23 Hindmarsh Island - the site boundary contains Hindmarsh
24 Island, because the site boundary is to do with waters,
25 rather than the island itself.

26 XXN

27 Q. Can we try and shorten the answers a bit. Do you
28 understand it to include the whole of Hindmarsh Island.
29 I take it your answer to mean yes, because the waters go
30 all the way round.

31 A. Yes, in that sense, yes.

32 Q. In relation to the meeting of the waters, does it
33 involve the waters between Mundoo Island and Hindmarsh
34 Island, or is this meeting of the waters somewhere
35 else, or everywhere else.

36 A. The first part of the question is I believe, yes, it
37 does include the waters between Hindmarsh and Mundoo
38 Island. Could you repeat the second part of the

1 question please?

2 Q. Is that only part of it or is that where the meeting of
3 the waters are.

4 A. The meeting of the waters, in terms of the site of that
5 name recorded, is the area shown on that map.

6 Q. So, it is everywhere around Hindmarsh Island.

7 A. It is the stippled area, that area of those waters
8 that is stippled on that map and will be shown on
9 the site card.

10 Q. So, the answer is 'yes.'

11 COMSR

12 Q. What is the status of the site card.

13 A. It has been drafted.

14 Q. I mean, its status as to confidentiality I mean.

15 A. The same as whatever the Draper report of April 1994 is,
16 I presume, but I am not a State Government employee
17 anymore. I couldn't advise on that I am sorry.

18 XXN

19 Q. This women's business, this is an old tradition, isn't
20 it.

21 A. It has been reported to me as such, yes.

22 Q. It is not a tradition that started in 1994.

23 A. No.

24 Q. In fact, it is a tradition that predates white
25 settlement in Australia.

26 A. That is my understanding, yes.

27 Q. Next proposition: it is an oral tradition.

28 A. As I know it, yes.

29 Q. It is not written down anywhere - well it is now because
30 the Minister's got it in his secret envelope. Prior to
31 Dr Fergie writing it down, it was not written down
32 anywhere.

33 A. Not as far as I know.

34 Q. That is what you have been told.

35 COMSR: We have gone through this haven't we Mr
36 Meyer?

37 MR MEYER: I am just putting a series of
38 propositions to this expert.

1 XXN

2 Q. Next proposition is, it is an oral tradition. Somebody
3 must orally hand it on.

4 A. Yes.

5 Q. So there is a continuous link of the information.

6 A. Yes.

7 Q. That continuous link involves somebody telling you what
8 it is and where it is.

9 A. Yes.

10 Q. If you have that knowledge you have been told what it is
11 and where it is.

12 A. If that is the knowledge you have then that's the
13 knowledge you have. If you have some part of that then
14 you have some part of it. I don't really understand
15 what are you getting at really.

16 Q. If you have learned about it recently, well, then
17 you have to be able to identify the person who told you
18 recently.

19 A. I presume so.

20 Q. It must follow, mustn't it.

21 A. It does seem to, yes.

22 Q. 'I have learned this oral tradition, I learned it last
23 week.' 'Who did you learn it from?' 'I learned it from
24 Neale Draper.' Next question to follow this tradition,
25 'Who did Neale Draper learn it from?' 'I learned it
26 from Sarah.' That suggests there is a link, connection
27 always, isn't there.

28 A. Yes.

29 Q. You just can't learn it out of the blue.

30 OBJECTION Mr Steele objects.

31 MR STEELE: It seems to me that it is circuitous
32 at best. I fail to see the point of it, other than some
33 exercise in fairly apparent logic.

34 MR MEYER: There is no lack of theory about it. I
35 am asking questions in relation to Exhibit MFI 204,
36 which is a letter of 12 May.

37 XXN

38 Q. If you learnt about it recently, you must be able to

N. DRAPER XXN (MR MEYER)

- 1 identify who you learnt it from. We have already got
2 over that. The answer was 'yes.' You just can't learn
3 it out of the blue, can you.
- 4 COMSR: We have gone through that.
- 5 MR MEYER: We haven't got an answer to that one,
6 that is when it was objected to.
- 7 XXN
- 8 Q. The information just can't come on you in some
9 unconnected mythological spiritual way, can it. It has
10 got to come from a living person.
- 11 A. In some very well documented circumstances, I think
12 throughout Aboriginal Australia, Aboriginal people would
13 subscribe to the view that, the dreaming is a continuing
14 process which does unfold, on occasions, in a way that
15 might be consistent with what you are saying.
- 16 Q. We have just established with you Dr Draper, that an
17 oral tradition necessarily has to be handed from person
18 to person, from generation to generation.
- 19 COMSR: That is a different thing. I don't
20 understand the witness to be equating oral tradition
21 with a dreaming tradition.
- 22 MR MEYER: That is my difficulty, because we now
23 have a dreaming in here.
- 24 XXN
- 25 A. I think we are getting to the difficulty, if we say that
26 that oral tradition goes back and back and back to
27 Ngurunderi it is a question of who told Ngurunderi
28 or something.
- 29 Q. I say to you, 'I didn't know where this women's business
30 related to, but I know now.' If someone said that to
31 you, as an anthropologist, your first question to that
32 informant would be, 'Where did you learn it from?'
33 wouldn't it.
- 34 A. It might be.
- 35 Q. It would be, wouldn't it. That's number one. The test
36 in objectivity, 'Where did you learn it?'
- 37 A. It may be.
- 38 Q. If those informants, the person you learned it from, are

- 1 available, well then, an expert anthropologist would
2 say, 'Well, there is the prime source of the material, I
3 will go and talk to them.'
- 4 A. It may be, but in dealing with confidential information
5 you realize life is not quite that simple and straight
6 forward, but in general, yes.
- 7 Q. Let's take the next step; that you are a trusted female
8 anthropologist and you have been told about this secret
9 women's business, so you are in a privileged
10 situation. And and your informant says to you, 'I
11 learned about this recently.' As an expert
12 anthropologist, if you were in that situation, imagine
13 a parallel situation, such as dealing with men or
14 something like that, ignore the gender, your next
15 question would be, 'Who did you learn it from?' wouldn't
16 it.
- 17 A. That would be the next thing I would like to know, yes.
- 18 Q. And you are this trusted person, who presumably could be
19 introduced, by your informant, as a trusted person, to
20 the person who told your informant. That is what you
21 would try for, wouldn't it.
- 22 A. Depending on, I suppose, on who told me in that as well.
23 Because, you have said that I know about it, did I find
24 out about it from this person who also recently heard
25 about it?
- 26 Q. This is the scenario; the only person who you
27 have found out about it from is a person who says, 'I
28 learned about it recently.'
- 29 A. Right, yes.
- 30 Q. In fact, it is a person who says, 'I only learned about
31 the location of this secret sacred women's business in
32 the last few weeks.' Wouldn't your next question be,
33 'Who did you learn it from?' You have answered that,
34 'Yes.' Then wouldn't your next question be, 'Is the
35 informant still alive?' and if they are seek to meet
36 them.
- 37 A. Yes.
- 38 MR STEELE: Might I suggest that we could have a

1 five minute adjournment?

2 MR MEYER: That suits me because I can tidy up
3 where I am at. I am about to start on the DOSSA
4 documents after one or two documents.

5 COMSR: To what end?

6 MR MEYER: That is what we discussed at the very
7 beginning and I said I would start on some questions
8 then we would have the argument and you would then rule
9 as to whether it is relevant or otherwise.

10 COMSR: If it is only going to establish, as
11 from a particular date, that this witness was unaware of
12 any suggestion of women's business, I don't see that
13 that is going to assist me to go through those documents
14 at all.

15 MR MEYER: I will look at it over the break.

16 COMSR: Yes, I hope so.

17 ADJOURNED 11.30 A.M.

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1 RESUMING 11.43 A.M.

2 MR SMITH: Mr Meyer has got only a couple of more
3 questions.

4 MR MEYER: I've been open to conviction, and the
5 allied behind me, I'm sure, will be very grateful.

6 XXN

7 Q. Looking at Exhibit 178, second to last document, this is
8 a report prepared by Vanessa Edmonds to Binalong in May
9 1994, and I ask you to go to p.3. At p.3, halfway down
10 the page there is a reference to `1 p.m. meeting with
11 Neale Draper'. Have you found that.

12 A. Yes, I have.

13 Q. If you go to the last paragraph, `Neale also said that
14 the Ngarrindjeri community did not wish to talk to an
15 anthropologist appointed by Binalong, because the
16 Federal and State governments were each already sending
17 an Aboriginal anthropologist'. Did you say that to
18 Vanessa Edmonds.

19 A. No, not what's written there.

20 Q. Did you say anything of that nature.

21 A. I told - I remember telling Lindy Warrell this, I
22 presume I must have said a similar thing to Vanessa
23 Edmonds and, on this occasion, I don't know if I said
24 it, or if it was entirely me or Robert Day Sr but, in
25 any case, it was said to her that the Lower Murray
26 Aboriginal Heritage Committee expected that either I
27 think the Aboriginal Legal Rights Movement or the
28 Federal government enquiry that they expected to be
29 coming, would provide them with an opportunity to work
30 with a female anthropologist in depth on this matter,
31 and that that was what they had said how they wished to
32 approach that matter.

33 Q. Let's chop this up a bit. Did you say to either Lindy
34 Warrell or Vanessa Edmonds that the Ngarrindjeri
35 community didn't want to talk to an anthropologist
36 appointed by Binalong.

37 A. I said words to the effect that I believed that an
38 anthropologist appointed by Binalong might not receive a

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1 positive reception in that community, which is not - the
2 same sort of effect, but not the same sort of emphasis.
3 MR MEYER: I have no further questions
4 MR SMITH: Could I take this opportunity to seek
5 your leave to interpose a witness? It's a witness who's
6 only available today for personal reasons. He will be a
7 short witness, and therefore won't interrupt Dr Draper's
8 evidence too much. Counsel have not had notice of this
9 witness, but I'd be surprised if there was any lengthy
10 cross-examination involved. I seek leave from you to
11 call Wayne Posgate.
12 COMSR: Yes. If you don't mind, I understand
13 this is a short interruption to your evidence.
14 COMSR: I notice that Mr Tilmouth is not here.
15 MR SMITH: He has been told.
16 WITNESS NEALE DRAPER LEAVES WITNESS BOX
17 WITNESS STANDS DOWN

W.W. POSGATE XN (MR SMITH)

1 MR SMITH CALLS

2 WAYNE WILLIAM POSGATE SWORN

3 MR SMITH: I just indicate that I'll be seeking
4 from you an order that Mr Posgate's name be suppressed
5 from publication, and anything tending to identify him,
6 and he will give some evidence about a conversation with
7 a Mr Bill Longworth, and I will be seeking an order from
8 you that his name be suppressed as well, until such time
9 that I speak with him. I say that by way of instruction
10 for the benefit of the media.

11 COMSR: In due course.

12 MR SMITH: As we come to it.

13 EXAMINATION BY MR SMITH

14 Q. I think until recently you were the proprietor of a
15 business in Goolwa, is that correct.

16 A. That's correct.

17 Q. You are a resident in that area.

18 A. That's true.

19 Q. I think in connection with this enquiry, you've provided
20 a statement to the commission.

21 A. That's correct.

22 Q. With some reluctance, I think in terms of being
23 involved.

24 A. That's correct.

25 Q. Looking at this statement produced to you, do you
26 recognise that as the statement which you have provided.

27 A. Yes.

28 Q. That's your signature on the second page.

29 A. Yes.

30 EXHIBIT 236 Statement of Wayne William Posgate
31 tendered by Mr Smith. Admitted.

32 Q. You, I think, as your statement makes clear in its first
33 paragraph, have been involved in the Hindmarsh Island
34 bridge so far as an on-looker only, is that right.

35 A. Primarily, yes.

36 Q. I think, just to expand on that a bit, you are not in
37 support of the building of a bridge, are you.

38 A. That's correct.

- 1 Q. Could you go so far as to say that you're very much
2 antibridge.
- 3 A. No.
- 4 Q. You wouldn't go that far.
- 5 A. No. I can see some great economic benefits, but I think
6 my initial objections were based on political and
7 environmental reasons widely expressed in the earlier
8 days of this bridge fiasco.
- 9 Q. I think you make the point in the first paragraph,
10 despite your stand in relation to the bridge, you were
11 not a member of the group, the Friends of Goolwa and
12 Kumarangk.
- 13 A. That's correct, I never have been. I'm aware of some of
14 the members or people associated with this group mainly
15 through our cafe, and I still retain the friendship of
16 may be less than half a dozen of those people, but I
17 have never been a member of this particular group.
- 18 Q. You can have in front of you a copy of your statement,
19 Exhibit 236.
- 20 A. Thank you.
- 21 Q. Could I take you to p.2, para.2. It's the case, isn't
22 it, there are three incidents that you elaborate upon in
23 your statement, the first incident being the subject of
24 discussion in the second paragraph on the front page,
25 that's the first instance, where you actually played an
26 active role in some protest.
- 27 A. Sure.
- 28 Q. Then the next incident is a conversation you had at
29 Amelia Park with two - well, there was a conversation to
30 which you were a witness with two other men in Amelia
31 Park, then the third incident is a meeting in Centennial
32 Hall in Goolwa. Now I think the first of those
33 incidents was, in fact, the one you detail on the second
34 paragraph of p.2, isn't it.
- 35 A. That's correct, yes.
- 36 Q. At that time, which could I suggest to you is well
37 before October 1993.
- 38 A. Yes. I can't confirm the exact time or dates, even

- 1 within a couple of months, because of the amount of
2 activity happening at Goolwa. I've tried to come up
3 with a time frame and I'm unable to do so but yes, it
4 would be before early October.
- 5 Q. Now you attended a barbecue, you say, at Amelia Park,
6 again as an on-looker pretty much, is that right.
- 7 A. That's correct.
- 8 Q. That was a barbecue, as you make clear, held by the
9 antibridge lobby group, is that right.
- 10 A. Yes.
- 11 Q. Did that include, for instance, the members of the
12 organisation called the Friends of Goolwa and Kumarangk,
13 or some of them.
- 14 A. Yes. I don't know how many there are or who exactly
15 they are, but there was quite a few people, and I would
16 imagine that they were the people there.
- 17 Q. There was union representation there too, was there not.
- 18 A. Mr Tomlinson?
- 19 Q. Could it be Thomason, from the CFMEU.
- 20 A. Yes.
- 21 Q. I think on that occasion, as you detail in the second
22 paragraph there on p.2, you witnessed, as it were, a
23 conversation.
- 24 A. Yes.
- 25 Q. That was a conversation between how many people. Who
26 was present.
- 27 A. There was three people, Mr Thomason.
- 28 Q. Yes.
- 29 A. Mr Bill Longworth and myself.
- 30 Q. As you say, during that conversation Mr Bill Longworth,
31 you say in a casual manner, said something to do with
32 Aboriginal involvement.
- 33 A. That's right.
- 34 Q. Can you remember what that is. You've recorded that in
35 your statement, but can you remember what it is.
- 36 A. Yes. I must point out adamantly that in my opinion it
37 was a casual conversation, and what he in fact said
38 casually was 'Let's see if we can get some Aboriginals

- 1 down from Murray Bridge to help us with our cause', and
2 that's basically the end of the quote, and as per, I
3 think, my report here, there was really no response to
4 that by the unionist or the union person and myself, and
5 I subsequently left and went about my own business.
- 6 Q. To your knowledge, up until that point of time, was
7 there visible to you any Aboriginal involvement in
8 opposition of the bridge.
- 9 A. No. I think in those early days it was primarily
10 environmental reasons and issues, which is why the union
11 person was involved, and political unhappiness about the
12 situation.
- 13 Q. You did not offer any reply to Bill Longworth's comment.
- 14 A. No, I've thought over this a lot, other than may be a
15 return casual - I can't recall saying anything at all.
- 16 Q. From your point of view, was that a rather disarming
17 comment -
- 18 A. Sure.
- 19 Q. - looking back in retrospect.
- 20 A. I think through some of the friends we have made through
21 the cafe that were part of this group, for this
22 gentleman, Mr Longworth, to say this to me actually took
23 me back a bit, and I was immediately offended by the
24 comment.
- 25 Q. Mr Longworth, I think, was at that time a member of the
26 Friends of Goolwa and Kumarangk.
- 27 A. Yes. As far as I know from cafe conversations etc., I
28 was led to believe Mr Longworth was in fact the
29 organiser, along with a school teacher person from the
30 island, of the activities of this group.
- 31 Q. Can I take you to the next incident which is the subject
32 of your statement in the final paragraph I think, isn't
33 it, the gathering at Centennial Hall at Goolwa.
- 34 A. Yes.
- 35 Q. Looking at Exhibit 59, I think that's what we have been
36 calling a flier for a public meeting in Centennial Hall
37 in Goolwa.
- 38 MR ABBOTT: Centenary.

1 MR SMITH: Centenary Hall?

2 MR ABBOTT: Yes.

3 MR SMITH: Indeed.

4 XN

5 Q. Is that the gathering you think to which you were
6 referring in your final paragraph.

7 A. Yes, it is.

8 Q. So you would accept, then, that that was on 8 October
9 1993.

10 A. Yes.

11 Q. Does that help you to place, then, this conversation
12 that you've just spoken of in Amelia Park, sometime well
13 before then.

14 A. Yes.

15 Q. At that meeting, you've made the point that Mr Rankine
16 and Mr Trevorrow were on the stage.

17 A. That's correct.

18 Q. Was that the first time you became conscious of any
19 involvement in the bridge dispute of Aboriginal people.

20 A. No. I believe Mr Rankine and Mr Trevorrow, for some
21 weeks previous to that meeting in Centennial Hall,
22 Centenary Hall, they had in fact been walking up and
23 down the banks of the River Murray at the rear of our
24 property. We, of course, had seen these Aboriginal
25 gentlemen inspecting the area. This is probably some
26 three weeks prior to this particular meeting here where
27 they appeared (INDICATES).

28 Q. And after the conversation incident in Amelia Park.

29 A. Yes. The conversation in Amelia Park I believe still
30 took place sometime before that.

31 Q. You make the point in your statement that you were in
32 the body of the hall, were you, at that meeting.

33 A. No, I was adjacent to the rear door.

34 Q. Do you remember a question being directed to Mr Rankine
35 on the stage.

36 A. Yes. It's actually written here in my statement, and
37 one of the questions were 'Were there any significant
38 Aboriginal sites in the bridge area', but because of the

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1 evening itself, and quite a lot of speakers and a lot of
2 emotions etc., his response I cannot recall.

3 Q. Can I take you to what we have agreed is the third
4 incident in terms of - well, it's almost the fourth if
5 we take the walk along the foreshore of Rankine and
6 Trevorrow, isn't it.

7 A. Yes.

8 Q. But anyway, the last incident of significance that
9 you've recorded in your statement is an incident where
10 you got a bit more vigorously involved in opposition to
11 the construction of the bridge, didn't you.

12 A. That's correct.

13 Q. Would you just generally describe that for us.

14 A. Being in the cafe, where it's situated, we were often
15 made aware by the general public coming in of what in
16 fact was happening down at the wharf, and so on this
17 given day I recall a Mr Dick Traeger in his tractor
18 going past our shop, and I was aware that there was a
19 group of protesters at Amelia Park, and knowing the few
20 friends that I had amongst this group were quite
21 elderly, I felt unhappy about their safety, so I took it
22 upon myself to take my wife's car, and I proceeded down
23 to the park before the Amelia Park road was closed.
24 While what looked like a barbecue was in process, Mr
25 Traeger came in from the Liverpool Road end with his
26 tractor. I generally yelled at the group saying `What
27 do you think you're going when there's a tractor coming
28 in down the other end'. I had a rush of blood to the
29 head; I subsequently removed the `No Through Road' sign
30 and drove the car into an area where the tractor
31 couldn't go any further, then had a verbal slanging
32 match with Mr Traeger - we know each other fairly well,
33 he's done work for me - and subsequently left the car
34 there and went back to the gathering. Not long
35 thereafter, I believe the General Manager of Built
36 Environs came up the road and asked if it was my car. I
37 said `Yes'. He asked `Would you remove it', I said `No'
38 and, not long thereafter, the group of people had said

- 1 `It's best you move your car', and they themselves
2 organised a group of protesters to walk down the road to
3 surround the tractor and, at the same time, I removed my
4 car. I'd like to also say that my apologies were later
5 given to Mr Traeger and to the Built Environs person
6 concerned, and am quite happy to understand that my
7 apology was accepted.
- 8 Q. That's really your only, if you like, public involvement
9 in the protest against the bridge, is it.
- 10 A. Yes.
- 11 Q. Active public involvement.
- 12 A. Yes. I actually recall doing some great art work on two
13 signs that I gave to a group of people, and that they
14 subsequently were hung near the ferry. It was basically
15 a `Ban The Bridge' sign, and I simply chose to do that
16 of my own accord and gave it to the group; they were
17 putting up and taking away signs at the end of the day,
18 so that's the only other real involvement I had, other
19 than being an interested observer.
- 20 Q. Just to try and place that incident that you've just
21 recounted in time, is that the occasion which culminated
22 in the road being blocked off and any further
23 construction work on the bridge being stopped.
- 24 A. I believe that was the beginning of it. As for how many
25 days or weeks after, I'm sure, but it became that Amelia
26 Park was then subsequently blocked off to through
27 traffic, but it was the beginning of that period.
- 28 Q. Are we talking about days there.
- 29 A. I cannot be sure. There is television file footage of
30 the tractor being surrounded by the protesters, but my
31 car or myself is not in that footage. I'm sure the date
32 can be verified somehow.
- 33 Q. Yes, we have that, I think. (NOT ANSWERED)
- 34 MR SMITH: I've no further questions of this
35 witness. I ask that you suppress from publication his
36 name or any information tending to identify him. I
37 don't propose to argue for that, I can't imagine that
38 anyone has a vested interest in opposing that

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- 1 application. There are reasons for it which I will
2 elaborate upon if you want me to. In deference to Mr
3 Longworth, whom the commission will contact, I ask that
4 you, temporarily at least, suppress publication of his
5 name.
- 6 COMSR: I take it on the grounds of personal
7 hardship as far as this witness is concerned.
- 8 MR SMITH: Yes, it is.
- 9 COMSR: You're seeking that, and that's to do
10 with his business interests, is it.
- 11 MR SMITH: Yes, in a sense, and, in the case of Mr
12 Longworth, it's on the basis of fairness, to give him an
13 opportunity to -
- 14 COMSR: Be apprised of this?
- 15 MR SMITH: - to be apprised of what is said, and to
16 take issue with it in a clear atmosphere, if he does
17 take issue with it. So will you make those orders so
18 the media know the position they stand in.
- 19 COMSR: Does anyone want to be heard?
- 20 MR MEYER: My silence is consent.
- 21 CONTINUED

W.W. POSGATE XN (MR SMITH)
(MR MEYER)

- 1 COMSR: I will make an order suppressing the
2 witness's name from publication and anything tending to
3 identify him on the basis of hardship to him. And I
4 will make an order suppressing Mr Longworth's name from
5 publication until such time as you have been able to
6 contact him and determine whether or not he wishes to be
7 heard on the matter.
- 8 MR MEYER: I assume that includes the make of the
9 motor car since, in Goolwa, that would tend to identify
10 him?
- 11 COMSR: I am not in a position to say that.
- 12 CROSS-EXAMINATION BY MR MEYER
- 13 Q. Is the school teacher person that you refer to, Richard
14 Owen.
- 15 A. The name rings a bell. I would say yes.
- 16 Q. Do you know a Mr Jolly.
- 17 A. I know the name. I don't know what he looks like.
- 18 Q. He has given some evidence in these proceedings about
19 this meeting at the Centenary Hall. His evidence is at
20 p.3,003. He describes a meeting where the Premier, Mr
21 Brown, was present, George Trevorrow and Henry Rankine
22 being up on the stage. Are we talking about the same
23 meeting.
- 24 A. Yes.
- 25 Q. `Tell us what it was'. `Someone happened to ask that
26 was there any reason, as far as the Aboriginals knew,
27 were there any sites of significance that were in the
28 bridge corridor or the bridge approaches. Were there
29 any sites of significance that could hold up the
30 construction of the bridge. That was asked from the
31 floor of the meeting.' That's the sort of question that
32 you are talking about.
- 33 A. Yes.
- 34 Q. And Mr Jolly answers that he didn't know who asked the
35 question. `Was there a response to that and who made
36 it', was the question Mr Smith asked. Answer `Henry
37 Rankine made the response' and I interpose to say that
38 Mike Jolly knew Henry Rankine because he had served on a

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(MR TILMOUTH)

- 1 committee with him. `George Trevorrow wouldn't answer.
2 He said "I'll let my brother answer that one" meaning
3 Henry Rankine. And Henry said "Not that I know of" he
4 said "but" he said "I'm sure, if we have a look around
5 we can find something".' Do you remember an answer of
6 that nature.
7 A. Yes, I do.
8 Q. Does that sound right.
9 A. It does, indeed.
10 Q. You, in your statement, refer to a person called
11 Tomlinson, could it be Thomason.
12 A. Thomason, yes.
13 Q. Spelt T-H-O-M-A-S-O-N. That's possible.
14 A. You can't miss him.
15 Q. You can't miss him if you see him.
16 A. Yes.
17 Q. As a result of the conversation that you heard with Mr
18 Longworth, and the events that you witnessed at the
19 Centenary Hall, that caused you to down scale your
20 involvement in this matter. You have become less
21 active, so to speak.
22 A. Yes. I was offended by the suggestion that the
23 Aborigines should be unfairly used, but at this point
24 in time it was only a thought or a comment that was
25 made, but it was just a comment itself, that if it was
26 ever followed through, it was offensive to me. And,
27 subsequently, my wife requested that I have no further
28 involvement other than being an observer. This is what
29 took place.
30 CROSS-EXAMINATION BY MR TILMOUTH
31 Q. You have just had questions put to you about what Henry
32 Rankine might or might not have said. He was seated on
33 the stage, wasn't he.
34 A. I don't -
35 Q. Henry and Tom.
36 A. They were on the stage, yes.
37 Q. Indeed, near Deane Brown.

5036

RF 55H

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- 1 A. I'm not sure if they were seated, but they were on the
- 2 stage.
- 3 Q. Deane Brown was near them or next to them.
- 4 A. Yes.
- 5 Q. To make sure this is the occasion, this is the meeting
- 6 at which Deane Brown assured the audience that if he got
- 7 into power there would be no bridge built.
- 8 A. Yes.
- 9 Q. Beg your pardon, George Trevorrow was on the stage.
- 10 A. Mr Trevorrow.
- 11 Q. The elderly Mr Trevorrow.
- 12 A. Yes.
- 13 Q. With the walking stick.
- 14 A. Yes.
- 15 Q. Do you remember the walking stick.
- 16 A. Yes, I do.
- 17 NO RE-EXAMINATION
- 18 NO FURTHER QUESTIONS
- 19 WITNESS RELEASED

1 WITNESS NEALE DRAPER CONTINUING

2 CROSS-EXAMINATION BY MR ABBOTT

3 Q. I want to recapitulate so, therefore, I want to cover,
4 very briefly, some ground that has already been covered,
5 but I want to set the perspective for the questions that
6 I ask you. Your involvement in this matter really
7 starts from late October 1993.

8 A. That's correct.

9 Q. If we call it the first period, it runs from October
10 through to end of December 1993, because then the next
11 part is January 1994, where you see Mr Jacobs and assist
12 him with a briefing.

13 A. Yes.

14 Q. What I'm getting at is your investigation phase, if I
15 can call it that, at least the first investigation
16 phase, was between October and end of December 1993.

17 A. That's correct, yes.

18 Q. In January, as I said, you had dealings with Mr Jacobs
19 and assisted him.

20 A. Yes.

21 Q. It is in January that George Trevorrow produced to you
22 the National Coastal Zone Inquiry material and had a
23 discussion with you. Do you recall this.

24 A. I'm just, before replying, trying to make sure whether
25 it was at the end of December, after Christmas, or the
26 very beginning of January, but I suspect -

27 Q. Your evidence was it was the end of December you got a
28 phone call, and January you made the contact.

29 A. You are correct, yes.

30 Q. So in January - perhaps if you put that down and listen
31 to my questions we will be quicker. In January there is
32 the meeting with Mr Jacobs, and that is also the period
33 where your contact with George Trevorrow and your
34 National Coastal Zone survey document.

35 A. Yes.

36 Q. February, I think, was on leave. End of January and
37 February on leave.

38 A. For most of that period, yes.

- 1 Q. In any event, there is nothing you have told us so far
2 that relates to that period which is referable to this
3 matter.
- 4 A. Yes.
- 5 Q. The same goes for March.
- 6 A. I believe so, if I refer to this.
- 7 Q. April of 1994 there's your contact with Roger Dobbs in
8 the second week of April. Do you remember the note that
9 Mr -
- 10 A. Yes.
- 11 Q. The file note is that you have rung him or he has rung
12 you and told you that Tickner hasn't got enough. Do you
13 remember that note.
- 14 A. Yes, I do. I phoned him.
- 15 Q. Then there is your meeting with Armitage and the events
16 of 15 April.
- 17 A. Yes.
- 18 Q. As you have told us, that's the first hint of women's
19 business emerging in this whole matter so far as you
20 were concerned.
- 21 A. Yes.
- 22 Q. Then there is the return to the investigatory phase that
23 you had left off in December of 1993, and then occupied
24 the long weekend, the Anzac week of 22 to 25 April.
- 25 A. Not exactly. The survey work that was stopped part-way
26 through in December was taken up in early May. The
27 Anzac Day weekend investigation was specifically for the
28 Minister's section 23 authorisation.
- 29 Q. Thank you for that clarification. So the investigatory
30 work, in terms of at the coalface, if I can use the
31 colloquial expression, resumed, albeit it for a
32 different purpose, over the Anzac Day long weekend of 22
33 to 25 April 1994.
- 34 A. Yes.
- 35 Q. That culminated in the report of 29 April 1994 to the
36 Minister.
- 37 A. Yes.

- 1 Q. May of 1994 you returned to the general investigatory
2 work.
- 3 A. Yes.
- 4 Q. And in June I think it had finished - or by June it had
5 just about finished, had it.
- 6 A. The field survey finished in early June.
- 7 Q. And there was the Rocky Marshall incident.
- 8 A. Yes.
- 9 Q. In June.
- 10 A. That's correct.
- 11 Q. What I've just detailed are really the high points of
12 your involvement that you have outlined in your
13 statement.
- 14 A. Yes.
- 15 Q. As an anthropologist/archaeologist, you keep notes of
16 what you do in the main. You have told us that you
17 didn't keep notes of everything, but you do keep notes
18 of some things.
- 19 A. I keep notes of some things, yes.
- 20 Q. For example, your field work, you keep notes of that.
- 21 A. Where it is appropriate and where it is possible, yes.
- 22 Q. When you are acting in the field wearing your
23 archaeologist's hat, you make notes of what you do,
24 don't you.
- 25 A. Yes.
- 26 Q. Do you have your notes of your field work for the first
27 phase of your investigation, that is, the period October
28 to December 1993.
- 29 A. They have been subpoenaed by the commission.
- 30 Q. And are here.
- 31 A. They are here.
- 32 Q. Would you please go to them, or could you look at your -
33 you have got two field notebooks. Do you identify those
34 two yellow covered notebooks as your field notebooks.
- 35 A. These are both my field notebooks, yes.
- 36 Q. They cover the period from at least October 1993 through
37 to June 1995, do they not.
- 38 A. That period is contained within this single notebook.

- 1 Q. In relation to the first phase, October to December
2 1993, we know during that period, from your statement,
3 you were investigating the western half of Hindmarsh
4 Island.
- 5 A. For the most part, yes.
- 6 Q. There was some involvement with the foreshore, the
7 Goolwa foreshore, but, for the most part, that was an
8 archaeological survey of the western half of Hindmarsh
9 Island.
- 10 A. It was an Aboriginal heritage survey, which is a
11 slightly broader context under the Act than purely an
12 archaeological survey.
- 13 Q. But essentially, it was looking for physical signs.
- 14 A. Yes, or the identification of other significance by
15 Ngarrindjeri field crew.
- 16 Q. Of course. For that entire period, from October through
17 to December, when you were in the field, I think you
18 started - have a look in your notes - on 29 October.
- 19 A. Yes.
- 20 Q. And you were in the field for most of November.
- 21 A. Intermittently for the first half of November, and then
22 from the commencement of the formal survey on Monday, 22
23 November, more or less full-time, yes.
- 24 Q. Your notebook, I take it, is numbered.
- 25 A. The pages are numbered, yes. That's page -
- 26 Q. Where does the pagination begin that is referable to
27 this first phase of October to December 1993, your field
28 notebooks, what page number.
- 29 A. On p.77.
- 30 Q. Then the next relevant page is.
- 31 A. The first notes in fact are made on p.78, subsequently
32 are notes being made on a blank page on p.77. The next
33 one that you have asked about is p.79, Tuesday, 11
34 November 1993.
- 35 Q. The notes go through to what page, that is, referable
36 to the Hindmarsh Island investigation and the period
37 October to December 1993.
- 38 A. The last notation for that period is on p.89.

- 1 Q. So we have got really some 10 pages of diary size notes
2 that relate to your work in the period from October
3 through to December 1993.
- 4 A. About 12 pages of this notebook relate to that work.
- 5 Q. Is that the entire body of notes that you made in the
6 field.
- 7 A. No, it is not.
- 8 Q. Where is the rest of them.
- 9 A. There are annotations on the maps used in field site
10 recording.
- 11 Q. Apart from that, any other notes.
- 12 A. There are a considerable number of photographs on
13 photographic slides.
- 14 Q. I am talking about your notes. I know you take
15 photographs of where you go. Put aside the photographs.
- 16 A. There are reports done on very specific matters to the
17 department during the period.
- 18 Q. But they are ex post facto reports. They are done based
19 on your notes, aren't they.
- 20 A. Yes. There are also some draft site record cards.
- 21 Q. Based on your notes.
- 22 A. No, not entirely. The notes, the photographs, the map
23 annotations and, in some cases, at some sites, draft
24 site record cards, together form the documentation for
25 those sites.
- 26 Q. Where are the draft site record cards for the period
27 October to December 1993.
- 28 A. They are here as well.
- 29 Q. Could you produce those, please.
- 30 A. I don't have them in my personal possession at the
31 moment.
- 32 Q. Maybe Mr Steele can produce them. Where are they. Let
33 us not beat around the bush and waste time. Can you
34 tell us where they are so we can get them.
- 35 A. There are some manilla folders with field numbers on
36 them which would contain up to that period for sites
37 that are mentioned here. Certainly the ones I can
38 recall are two sites on -

- 1 Q. No.
2 COMSR: We don't want to know where they are.
3 XXN
4 Q. Let us just concentrate on the issue. All right.
5 A. Yes.
6 Q. I am interested in what notes you have made of your work
7 done in the field in relation to the sites that you
8 discovered or investigated in the period October through
9 December 1993.
10 A. Yes.
11 Q. You have produced the pages in your field notebooks. We
12 know there are 10 to 12 pages. You said you also made
13 annotations on maps, and you think you may have also
14 prepared some draft site record cards. Where are the
15 draft site record cards that relate to this period, if
16 they exist.
17 A. The draft site records - cards that exist for this
18 period are in some field numbered manilla envelopes
19 which I have brought with me to Adelaide that -
20 CONTINUED

1 MR STEELE: Having heard them now identified, I can
2 produce them, but I can't produce them until after
3 lunch.

4 A. Yes, I wasn't sure if they were with the Commission or
5 with my barrister, at the time.

6 XXN

7 Q. And the maps that were annotated, do you have them, as
8 well.

9 A. I do have them in Adelaide.

10 Q. Can you produce those.

11 DOCUMENTS PRODUCED BY WITNESS

12 Q. Of the bundle of maps that you have, do all of those
13 relate to the period October-December 1993.

14 A. There may be one or two field maps which did not come
15 into use until the second period of survey because of
16 the part of the island they related to.

17 MR ABBOTT: I ask that the notebook be marked for
18 identification and the bundle of maps, also.

19 MR SMITH: The date on the field notebook?

20 MR ABBOTT: The date on the field notebook is from
21 29 October.

22 MFI 237 Field notebook marked 237 for
23 identification.

24 MFI 238 Maps marked 238 for identification.

25 MR SMITH: There are two field notebooks, just in
26 case we get confused. The one that has been marked for
27 identification is the field notebook from August 1992
28 through to July 1994.

29 XXN

30 Q. Over the Anzac Day weekend, 22 to 25 April, which is a
31 most important period, isn't it, since as you have told
32 us it is when certain things were revealed to you by
33 Sarah Milera and/or Robert Day.

34 A. Yes.

35 Q. Did you make notes of that weekend.

36 A. I did make notes during that field work.

37 Q. Could you look at your field notebook, MFI 237, now
38 before you, where do the notes start that relate to the

- 1 long weekend 22 to 25 April.
2 A. On p.93, 'Friday, 22.4.94, at Goolwa.'
3 Q. And goes through to page.
4 A. It goes through to p.99.
5 Q. You have not recorded anything in relation to your
6 evidence concerning Sarah Milera, Robert Day, the
7 existence of women's business, or any hint thereof in
8 your notes, have you.
9 A. No, I have not.
10 Q. That, I take it, was deliberate.
11 A. It was.
12 Q. Why.
13 A. As explained in my statement -
14 Q. No, I would like you to tell me.
15 A. I will tell you, yes, quite happily. It was their wish
16 that there should be minimal written recording of the
17 information to be discussed and they were, as I have
18 noted on the several occasions over this weekend that
19 this matter was discussed in order to have that
20 information provided, but -
21 Q. You haven't noted it, on several occasions over the
22 weekend.
23 OBJECTION Mr Steele objects.
24 MR STEELE: This is semantic games trying to upset
25 the witness. Let the witness answer.
26 COMSR: I don't think he was meaning made a
27 written note of. I think he means observed.
28 MR ABBOTT: Observed, right.
29 COMSR
30 Q. Is that the way you are -
31 A. Noted in the sense of an observation, yes. They were
32 most uncomfortable with the recording process and what
33 we negotiated as a way of overcoming this and recording
34 information was that the only written information I
35 recorded was directly on a draft site record card where
36 they could see the categories of information required on
37 the site card and the kind of information I was noting
38 down.

1 XXN

2 Q. We have your site record cards, version 1 and version 2,
3 that relate to this weekend, don't we.

4 A. We do, yes.

5 Q. They were tendered as part of your statement.

6 A. Yes.

7 Q. They comprise an annexure to part of your statement, do
8 they not.

9 A. Yes, they do.

10 Q. Are they the only notes that you made of this aspect,
11 what I might call the cultural aspects of the long
12 weekend in April.

13 A. Yes, they are.

14 Q. I want you then to go to your statement or the annexure
15 thereto. Do you have the annexures to your statement.

16 A. Yes, I do.

17 Q. In December 1993, you prepared a minute to your
18 Minister. It is the same one that you supplied to Mr
19 Jacobs QC to assist him in his work. That's the minute
20 I am talking about. Do you know the one I am talking
21 about.

22 A. Could we identify it?

23 Q. Yes, it is the minute of December 1993.

24 COMSR: Is that confidential?

25 MR ABBOTT: No, I don't have a number on mine. It
26 is in the Jacobs QC materials.

27 XXN

28 Q. And the South Australian Department of Aboriginal
29 Affairs number is, it is document 10 for the month. Do
30 you see the one I am talking about. It is the one you
31 said there were several drafts of it. I will pick it up
32 in your statement.

33 MR SMITH: It is in amongst that clump of minutes
34 marked 16.

35 MR ABBOTT: Yes.

36 XXN

37 Q. That is why I suggested it might be better for you to go
38 to the Jacobs material, because we know that is the

N. DRAPER XXN (MR ABBOTT)

- 1 final form, because it has got a number of stamps over
2 it. Do you have it in its final form.
- 3 A. I do not have it in its final form, no.
- 4 MS SIMPSON: Exhibit 196 is the minute.
- 5 COMSR: I have it here.
- 6 EXHIBIT 233B PLACED BEFORE WITNESS
7 XXN
- 8 Q. I think the final form is, in fact, the same as one of
9 the other formats attached to your statement. Have you
10 got the document now.
- 11 A. This is identical to my copy (INDICATES). It is the
12 draft. I don't have -
- 13 Q. Could you hand that back to the Commissioner, so she can
14 follow it.
- 15 A. I haven't seen a copy, a final copy.
- 16 COMSR: In respect to which page?
- 17 MR ABBOTT: I just want to ask the witness a
18 question.
- 19 XXN
- 20 Q. This is document no.10 for the month, isn't it.
- 21 A. From my memory of the Department filing system of the
22 time, that would be designated document 10 on that
23 particular Government docket.
- 24 Q. Yes, so it was document 10 for the month in relation to
25 the Hindmarsh Island bridge affair.
- 26 A. I don't - I am not so certain whether it is document 10
27 for the month or simply document 10 consecutively on the
28 file, I am not at all sure.
- 29 Q. In any event, you can date this, I suggest, to early
30 December, can you not.
- 31 A. The document SA A8/03/60/93-10?
- 32 Q. Yes.
- 33 A. That is the exact one? My draft copy underneath the
34 signature heading at the bottom of it for the chief
35 executive officer has a blank for the date and puts
36 December 1993 as the month. So if, in fact, it was -
- 37 Q. I know that. I am just asking whether you can date it
38 to early December or not. If the answer is no tell us

- 1 and then I will help you. If you can assist us that it
2 is early December say so.
- 3 A. The document says `December'. It appears to be from
4 December. I don't know whether it is early or late
5 specifically in terms of the final document.
- 6 Q. We have document no.14 for the month, which is your
7 schedule 13 - sorry, document no.14 for the month, or
8 for the file. It forms part of schedule 13.
- 9 A. Yes.
- 10 Q. We know that that is referable to a letter that went
11 off in late December, don't we.
- 12 COMSR: Is there some significance of that date,
13 Mr Abbott?
- 14 MR ABBOTT: I don't want to take up any time. There
15 is some little significance. I don't want to waste any
16 more time.
- 17 XXN
- 18 Q. Now that I have shown you document 13.
- 19 A. Yes.
- 20 Q. Are you able to assist us that document 10 came before
21 document 13. The probabilities are it was in the first
22 half of December.
- 23 OBJECTION Mr Steele objects.
- 24 MR STEELE: There is a confusion about that. He is
25 talking about schedule 13, which is document 14, and
26 contrasting that with schedule 16, which contains
27 document 10. So, the way that my friend phrased the
28 question was misleading.
- 29 MR ABBOTT: I reject that suggestion. I have been
30 referring to the document numbered - document numbers
31 which are typed on it. And it has been clear to the
32 witness -
- 33 MR STEELE: In that question my friend referred to
34 the document which has has previously been referred to
35 as document 13 as document 14.
- 36 MR ABBOTT: I won't waste time on it. I will ask
37 the question again, as it causes Mr Steele distress.
- 38 MR STEELE: It doesn't cause me distress. I want it

1 put to the witness.

2 XXN

3 Q. The document we first referred to, that is, the memo to
4 your Minister prepared by you although to go under the
5 hand of Mr Rathman and which is no.10 on the file - that
6 is the DOSAA file - preceded the documents which you
7 also prepared and which is under your hand and which is
8 no.13 on the file.

9 A. The -

10 Q. Yes or no.

11 A. Preceding - I can't answer yes or no unless you give me
12 some additional information, I'm sorry.

13 Q. I am just wondering whether you employed a numerical
14 system at DOSAA or whether it was purely random.

15 A. It would suggest to me definitely that the document
16 93-10 was typed, was drafted before 14. I couldn't
17 say which was signed in the first instance and I
18 didn't actually put them - the numbers were assigned
19 not by me.

20 Q. I am not asking you when it was signed. I am merely
21 asking when it was prepared. That's all. And my
22 question is, I will return to it, are you able to tell
23 us that document 93-10 was prepared in the first half
24 of December. (NOT ANSWERED)

25 Q. I won't spend any more time on it. You obviously
26 can't.

27 COMSR

28 Q. If you are able to do so, do so.

29 A. If I can have a moment I will be able to do so. I will
30 let you know whether I can do that or not.

31 XXN

32 Q. Yes or no. Let's not muck around.

33 OBJECTION Mr Steele objects.

34 MR STEELE: This is extremely unfair. If a question
35 is asked and the witness is trying to answer he should
36 be able to do so. If he wants to withdraw the question,
37 he should do so.

38 COMSR: The witness is looking at the document

- 1 here in an attempt.
- 2 MR ABBOTT: The witness is hedging what is a clear
3 issue.
- 4 OBJECTION Mr Steele objects.
- 5 MR STEELE: I object.
- 6 XXN
- 7 Q. Have a look at the Commissioner's copy.
- 8 MR STEELE: I am making an objection. I would like
9 Mr Abbott to show the courtesy of remaining silent
10 whilst I do so.
- 11 MR ABBOTT: I will rephrase it.
12 Could he have a look at -
- 13 COMSR: You are withdrawing the question and
14 reframing the question?
- 15 MR ABBOTT: Yes, I am reframing the question.
- 16 COMSR: Is there some purpose?
- 17 MR ABBOTT: Yes, I want a date when this man
18 prepared the document and try and relate it to whether
19 it is the first half of December or the second half.
- 20 XXN
- 21 Q. Going to the first page of that copy of 93-10.
- 22 A. Yes.
- 23 Q. The first page: right.
- 24 A. Yes.
- 25 Q. There is some writing up on the right-hand side.
- 26 A. No, this is identical to my copy. It is the draft.
- 27 Q. Looking at Exhibit 234A and hand the Commissioner back
28 her copy. Another document which I thought had come
29 from you. Has that got some writing on the top
30 right-hand corner.
- 31 A. Yes, it has.
- 32 Q. Does that indicate that you prepared the DOSAA document
33 93-10 sometime before 17 December.
- 34 A. Yes, it does.
- 35 Q. Work off that copy, since that is its final form, the
36 one that went to the - the one that went by your Head of
37 Department to the Minister.
- 38 COMSR: Are we going to reveal the contents?

1 These files are, I think -

2 A. I cannot be certain, because this copy doesn't have the
3 CEO's signautre and, unless it does, I don't know how I
4 can be sure that it was the absolute final. It appears
5 to be a final copy, yes.

6 XXN

7 Q. Go back to your copy then. You are probably more
8 comfortable working off that. At p.2 you deal with the
9 bridge controversy, 1993.

10 MR SMITH: I can indicate for Mr Abbott's benefit
11 and the witness's benefit there is no privilege claimed
12 for these letters on behalf of the Government, these
13 memoranda.

14 XXN

15 Q. And this is your potted history version, is it, of what
16 has happened and what has been happening.

17 A. I drafted this summary, yes.

18 Q. Look at the third paragraph, which deals with the
19 concerns of the Lower Murray Aboriginal Heritage
20 Committee `They are concerned with the overall impact
21 of the proposed bridge on Aboriginal sites at Goolwa
22 and on Hindmarsh Island and the impact on the
23 environment of the island and environmental context of
24 the Aboriginal sites, whether immediately related to
25 construction damage, the destruction of the visual
26 amenity and physical context of the sites or through
27 increased vehicle traffic and public access.' Those are
28 your words or something very close to them were your
29 words.

30 A. Yes.

31 Q. The next sentence is `In a very real sense, Hindmarsh
32 Island itself is a place of considerable cultural and
33 spiritual significance to Ngarrindjeri people and they
34 are concerned that a bridge will lead to the same order
35 of physical damage and degradation which has occurred
36 to its smaller counterpart Granite Island.' Your
37 words.

38 A. Yes.

- 1 Q. Had you, at that stage, made any notes anywhere, that
2 is field notes, recording considerable cultural and
3 spiritual significance of Hindmarsh Island to
4 Ngarrindjeri people.
- 5 A. Not that I am aware of.
- 6 Q. Where did you get it from.
- 7 A. That is the opinion of the Lower Murray Aboriginal
8 Heritage Committee, summarized by me for the chief
9 executive officer, as relayed to us in discussions with
10 members of the Lower Murray Aboriginal Heritage
11 Committee to that time.
- 12 Q. It is not presented as their words, it is presented
13 as your view, or in this case, your head of department's
14 view. It doesn't say 'the view of the Ngarrindjeri men,
15 or the committee is, that Hindmarsh Island itself is a
16 place of considerable cultural and spiritual
17 significance to Ngarrindjeri people.'
- 18 OBJECTION Mr Steele objects.
- 19 MR STEELE: If you go back to the beginning of that,
20 it is quite clear, in the context of the Lower Murray
21 Heritage Committee, it goes on to say, they say the
22 whole thing has to be read in context, which is a
23 different context than being by my friend.
- 24 MR ABBOTT: I will rephrase it anyway.
- 25 XXN
- 26 Q. Did you intend in writing that, that the reader would
27 appreciate that you were conveying the views only of the
28 Lower Murray Aboriginal Heritage Committee representing,
29 as you thought, Ngarrindjeri people.
- 30 A. Yes.
- 31 Q. You yourself had no evidence, other than what they told
32 you.
- 33 A. Of?
- 34 Q. That it had considerable spiritual and cultural
35 significance. It was a claim they had made.
- 36 A. That's correct.
- 37 Q. Did you ever investigate that claim.
- 38 A. I was, I believe, in the process of doing so, through

- 1 the cultural heritage survey work that the department
2 had told me to undertake with them, in respect to -
3 Q. When did you investigate that claim.
4 A. That issue -
5 Q. When did you investigate that claim.
6 OBJECTION Mr Steele objects.
7 MR STEELE: My friend is entitled to put the
8 question, but he has to allow the witness time to
9 answer. If the witness starts to answer he must allow
10 the witness to finish.
11 COMSR: It may not be capable of being
12 straightforward.
13 MR ABBOTT: If I could just get the year that would
14 be helpful first of all.
15 COMSR: The witness hasn't said he can identify
16 it at all.
17 MR STEELE: The witness has to be allowed an
18 appropriate amount of time. My friend is not entitled
19 to treat the witness in a way which is discourteous.
20 MR ABBOTT: Look, this is an attempt by Mr Steele
21 to interrupt my cross-examination as frequently as
22 possible on the basis that I am somehow being unfair to
23 this witness, who has come along as an expert, who is
24 obviously capable of answering the questions and I am
25 concerned that I am going to be told by him, and of
26 course by you, that time is up. I am concerned at the
27 time restraints and I am anxious to have answers,
28 direct answers to my question as quickly as possible.
29 COMSR: Yes, but, I know you want them as
30 quickly as possible, but the witness still has to be
31 given a sufficient opportunity you see. The question,
32 `When?' is not a question of an expert witness, it is a
33 question that any lay person could be asked and it may
34 require the witness to consider his material.
35 MR ABBOTT: I wasn't asking he respond immediately.
36 XXN
37 Q. Could I put it this way.
38 COMSR: He may be able to respond now.

1 XXN

2 Q. My question is when. And before you answer take as
3 much time as you like to think about the answer and
4 then tell us the period, the time, the month or the
5 year.

6 A. The cultural significance that Hindmarsh Island had to
7 Aboriginal people was the subject of the Department of
8 State Aboriginal Affairs investigations in late 1993 and
9 in 1994. With respect to cultural and spiritual
10 significance, if you are referring to the site that I
11 recorded as the meeting of the waters, I investigated
12 that as I became aware of it. You are aware of it
13 being raised by George Trevorrow with me and it was
14 specifically recorded on the Anzac Day weekend, of April
15 1994.

16 Q. Do I understand your answer to be this; that you are
17 saying, that in the course of the investigatory work,
18 done in the three phases, between October and December,
19 1993, being phase one, the Anzac Day long weekend, in
20 1994, being phase two and May 1994, being phase three,
21 you did investigate the cultural and spiritual
22 significance of Hindmarsh Island to the Ngarrindjeri
23 people.

24 A. I did investigate that, yes.

25 Q. Where, in your notes, in relation to the first phase
26 which you have identified, is there any reference to any
27 spiritual significance.

28 A. I would have to peruse my notes to ascertain that.

29 Q. I want you to do that during the lunch hour. In
30 relation to the second phase - it is only 10 pages, it
31 won't be too long.

32 MR STEELE: Perhaps that is a direction which should
33 come from you, rather than Mr Abbott and it might come
34 in the form of a request.

35 MR ABBOTT: I am sorry. I request that he identify.

36 COMSR: I will see what you are requesting of
37 the witness.

1 XXN

2 Q. I am repeating the request to the second phase,
3 the Anzac Day long weekend, 22 to 25 April,
4 where, in your notes, is there any reference to any
5 spiritual significance and in relation to the third
6 phase, from May 1994 onwards, where, in your notes, is
7 there any reference to any spiritual significance.
8 Would you be prepared to look at your notes to see
9 whether any such observations can be identified.

10 A. I am prepared to, yes. I don't know how long that will
11 take with respect to how long there is to have lunch,
12 but I can certainly do so.

13 COMSR

14 Q. Will you make an attempt to do so, will you.

15 A. I would be pleased to do that.

16 XXN

17 Q. Can you recall anything that was said about any
18 spiritual significance of Hindmarsh Island, put aside
19 the waters.

20 A. Well, aside from the waters, you are making a
21 distinction that the island was spiritually
22 significant.

23 Q. Please think about the question first. Take as
24 long as you like to think about it, then answer the
25 question.

26 OBJECTION Mr Steele objects.

27 MR STEELE: I object strongly to that. That is so
28 insulting to the witness. The witness is entitled to be
29 treated with courtesy. A question was asked.

30 MR ABBOTT: It is not insulting at all.

31 MR STEELE: Please let me put my objection. He
32 began to put an answer to it and he was interrupted
33 in a way which was discourteous. The witness is
34 entitled to be treated with courtesy and he is entitled
35 to give an answer without interruption.

36 MR ABBOTT: I am all in favour of giving an answer
37 to the question. I am happy for him to wait, think
38 about the answer and take as long as he likes to think

- 1 about the answer. This witness I suggest, starts
2 answering more or less without thinking, and then we
3 get a long answer, which is -
- 4 COMSR: He isn't given much of an opportunity
5 before the next question is shot at him and, I would
6 think that he - Dr Draper, if you are having difficulty
7 in answering the questions because you don't understand
8 precisely what is being sought, or because you think you
9 have already covered it previously, and you are
10 wondering if something additional is being asked of you,
11 perhaps you could let us know that. But, meanwhile Mr
12 Abbott, I think you are pressuring the witness a bit.
- 13 MR ABBOTT: I wouldn't want to do that.
- 14 COMSR: With the speed at which you are
15 delivering these questions.
- 16 MR ABBOTT: I will slow down.
- 17 XXN
- 18 Q. Could you tell us, in relation to any portion of your
19 investigations, in relation to Hindmarsh Island itself,
20 what you were told about the spiritual significance to
21 Ngarrindjeri people of Hindmarsh Island itself.
- 22 A. I was told, throughout the survey work with Ngarrindjeri
23 people, that the island itself and the sites that we
24 were recording on and near that island, were of cultural
25 and spiritual significance to those people.
- 26 Q. Were you told anything else, other than that bald claim.
- 27 A. I'm sure there were various anecdotal details from time
28 to time, about why a particular person felt a
29 relationship with a particular place on the island, just
30 in terms of its affect on them, not in a way that was
31 relevant to preparing site records or recording in field
32 notes.
- 33 Q. Did you make any record of these and anecdotal
34 experiences that you are sure you encountered.
- 35 A. I have done, yes.
- 36 Q. With reference to Hindmarsh Island and the period from
37 October 1993 through to May 1994.
- 38 A. Yes.

1 Q. Where are they.

2 A. I refer in my statement to conversations with Sarah
3 Milera regarding two places on Hindmarsh Island during
4 our survey in December 1993.

5 Q. Where are the notes of that, made at or shortly after.

6 A. Because of the nature of the discussion I made
7 annotations on my field maps as I recall, of the places
8 concerned, but I did not, quite deliberately, make field
9 notes of those conversations, as they were confidential.

10 Q. Is this the situation, that although you claim that
11 throughout this period, from October 1993 through and
12 including May 1994, you were, from time to time, given
13 anecdotal evidence, or at least, evidence which you
14 characterize as anecdotal which, in your view, supported
15 the view, that Hindmarsh Island itself was a place of
16 considerable cultural experience and spiritual
17 significance to Ngarrindjeri people, you never made a
18 note of any of these anecdotes.

19 OBJECTION Mr Steele objects.

20 MR STEELE: That is exactly the same question as my
21 friend put to the witness immediately preceding. He
22 said he made an annotation of two, with respect to two
23 anecdotes on a field map.

24 COMSR: I thought he said he deliberately didn't
25 make any notes.

26 MR STEELE: He did not make notes of the anecdotes
27 but he made an annotation on the field map.

28 MR ABBOTT: If he did make an annotation he can say
29 'you are you not right I have made an annotation.'

30 MR STEELE: That's exactly what he said.

31 MR ABBOTT: Let him answer the question rather than
32 you answer it.

33 XXN

34 Q. Except for the annotations that you made on your field
35 maps, as I understand it, did you make any other notes
36 concerning the anecdotal evidence that you were given
37 during the period of time which you mention.

38 A. I was referring to those two specific places and the

1 discussions with Sarah Milera and no your Honour, I did
2 not -

3 Q. Where else did you hear this anecdotal evidence, other
4 than Sarah Milera, in the period October 1993 to May
5 '94.

6 A. During this period Ngarrindjeri people with whom the
7 department had dealings with constantly, stated that
8 Hindmarsh Island was of cultural and spiritual
9 significance to them. It was not particularly in the
10 context of my field work on the island that those
11 general statements were made.

12 Q. Maybe you didn't understand my question. I will repeat
13 it with a preface to it. You told us that, in this
14 period, you had people recount to you anecdotal
15 experiences, which to them suggested and you took it as
16 being, that Hindmarsh Island had some cultural and
17 spiritual significance. You told us that was in the
18 form of anecdotal evidence. I have asked you whether
19 you made any note of it. You told us, the only notes
20 are the two notations on field maps. I asked you what
21 they related to. We found out it is Sarah Milera. I am
22 asking you, who else claimed that Hindmarsh Island
23 itself, was a place of cultural and spiritual
24 significance, in anecdotal form.

25 OBJECTION Mr Steele objects.

26 MR STEELE: Before the witness answers that I rise
27 again. I think that it is inappropriate - I submit it
28 is inappropriate for Mr Abbott to conduct his
29 cross-examination in this way. About five minutes away
30 you sought to remark to him as to the manner in which he
31 was conducting the cross-examination. He is shouting at
32 the witness. He is not allowing the witness to
33 answer. He is showing extreme discourtesy. It is
34 inappropriate conduct in any court and I take strong
35 objection to it and I will continue to do so. It is
36 unfair.

37 MR ABBOTT: I am giving the witness all the time
38 that he wants to answer.

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- 1 COMSR: I know, but it is the manner of the
2 questioning to which exception is taken. I note that it
3 is 1 o'clock. We will take the luncheon adjournment.
- 4 MR ABBOTT: We couldn't get an answer to the
5 question before we leave?
- 6 COMSR: I don't know if the witness -
- 7 MR STEELE: I think the question should be put in an
8 entirely different frame of mind by Mr Abbott.
- 9 MR ABBOTT: I would like an answer to the question.
10 Who else, other than Sarah Milera was the provider of
11 anecdotal material to this witness, which dealt with the
12 cultural and spiritual significance to Hindmarsh Island
13 itself.
- 14 COMSR: The witness has already answered in a
15 way which several people were.
- 16 MR ABBOTT: I am asking for their names.
- 17 COMSR
- 18 Q. Are you able to give any names or do you need to think
19 about that.
- 20 A. No. The problem is with how Mr Abbott's characterised
21 it as anecdotal evidence, anecdotal material, rather
22 than what I was intending in my previous answer to him,
23 referring to anecdotal statements of people's reactions
24 to places in a very very broad sense and not the sort of
25 matter - nothing specific in terms of information to be
26 recorded for recording sites.
- 27 MR SMITH: Before you leave, you were going to
28 request the witness. Mr Abbott's already done so and
29 you were going to collect up his request. I think the
30 one request was made.
- 31 COMSR: The witness has indicated that he will
32 do the best he can to look through the material to see
33 if you can identify particular passages.
- 34 MR ABBOTT: It is references to Hindmarsh Island
35 itself, being a place of considerable cultural and
36 spiritual significance.
- 37 COMSR: The witness has indicated he proposes
38 to do the best he can during the luncheon adjournment.

1 ADJOURNED 1.01 P.M.

2 RESUMING 2.15 P.M.

3 XXN

4 Q. Have you looked through the relevant parts of your field
5 notebook.

6 A. Yes, I have.

7 Q. Do you find any reference in your field notebook to any
8 claim by anyone of or associated with the Ngarrindjeri
9 people that Hindmarsh Island itself, firstly, is a place
10 of spiritual significance.

11 A. No, I don't.

12 Q. That it is a place of cultural significance.

13 A. No.

14 Q. Let me go on, then, to ask you about the occasion when
15 George Trevorrow approached you with, I think it was
16 called the coastal waters enquiry, you know the occasion
17 I'm talking about.

18 A. Yes, I do.

19 Q. By the way, before I get to that, I didn't quite cover
20 the topic; did you find any reference in your maps, or
21 notations on your maps, that related to the cultural
22 and/or spiritual significance of Hindmarsh Island itself
23 to the Ngarrindjeri people.

24 A. No, I did not.

25 Q. The reference to Trevorrow, I think it's clear from your
26 statement that that occurred sometime in January 1994 -
27 I'm referring to p.40 of your statement - is that right.

28 A. Yes.

29 Q. I take it that his approach to you was general in the
30 extreme.

31 A. In what sense.

32 Q. With reference to the fact as to whether or not the
33 considerations in that report applied to any claim made
34 by the Ngarrindjeri people.

35 A. His enquiry was specific to the degree that it related
36 to the kinds of Aboriginal sites and significance
37 referred to in that page from the Coastal Management
38 Report, an enquiry as to whether those kinds of sites,

- 1 sites belonging to the water, in or under water, were
2 recognised under the terms of the South Australian
3 Aboriginal Heritage Act.
- 4 Q. You told him they were. The submerged land is, in fact,
5 covered, according to your statement.
- 6 A. Yes.
- 7 Q. So far as specifics were concerned, and again they were
8 only topics, he made general reference to sites, burials
9 and such things as limestone cups which were submerged,
10 is that right.
- 11 A. That's correct.
- 12 Q. Do you have any note of this discussion.
- 13 A. No, I don't.
- 14 Q. Why not.
- 15 A. Because that discussion occurred in a period of general
16 discussion on the occasion of a meeting with the Lower
17 Murray Aboriginal Heritage Committee, it wasn't an
18 interview situation. I probably did not have a field
19 notebook with me at that time as I was attending a
20 meeting with that committee as a representative of the
21 department, not specifically undertaking fieldwork at
22 the time.
- 23 Q. I'm not confining my question to your field notebook;
24 any note at all, any time, anywhere.
- 25 A. I made a mental note of it. I did not made a written
26 note of it that I recall.
- 27 Q. When did you first endeavour to recall this discussion
28 you'd had with George Trevorrow. First of all, what
29 year. Was it 1995.
- 30 A. No, not at all.
- 31 Q. Well, what year.
- 32 A. 1994.
- 33 Q. In what circumstances. I mean, what's the event which
34 caused you to recall what George Trevorrow said to you.
- 35 A. I didn't need to recall it as I hadn't forgotten it, I
36 guess is the first thought that comes to mind there. It
37 was certainly of relevance in framing briefings for the
38 minister etc., and in management discussions within the

N. DRAPER XXN (MR ABBOTT)

- 1 department during that period from January through to
2 April, and it became, of course, of some significance
3 when it was referred to by George and the other men at
4 the meeting of 15 April.
- 5 Q. Do I take it then that what is at p.41 of your statement
6 is all that you can recall, 'George Trevorrow made
7 general references to sites, burials and culturally
8 significant features such as limestone cups submerged in
9 the Goolwa channel by the permanently high water regime
10 of the Murray Mouth barrages, but would not give me
11 anything more specific'.
- 12 A. Yes.
- 13 Q. That's all you can remember.
- 14 OBJECTION Mr Tilmouth objects.
- 15 MR TILMOUTH: It's more than that.
- 16 MR ABBOTT: Is he your client?
- 17 MR TILMOUTH: No, but George Trevorrow is, and that is
18 not solely what he attributed to George Trevorrow. He
19 should read the whole passage.
- 20 MR ABBOTT: I'm asking the specific -
- 21 COMSR: What he could recall.
- 22 MR TILMOUTH: But Mr Abbott only read part of it, he
23 didn't read it all. You said is that all he could -
- 24 MR ABBOTT: He answered and he said yes. He could
25 have said no, because the other bit is staring him in
26 the face.
- 27 XXN
- 28 Q. Now George Trevorrow wasn't telling you of any
29 particular area in the Goolwa channel, was he.
- 30 A. He was talking about the Goolwa channel Murray Mouth
31 area, basically the area including the Murray Mouth and
32 around the Goolwa channel.
- 33 Q. Well we're talking, then, all the way, as you understood
34 it, from the Murray mouth up to Finnis, Currency Creek.
- 35 A. Not specifically, no. Certainly the Goolwa channel I
36 understood to mean the elbow area in general that's
37 between Goolwa and Hindmarsh Island, but it wasn't - no
38 particular boundaries of that area were discussed

1 either.

2 Q. So you didn't really know where, in that extensive area
3 from the Murray Mouth up around past Goolwa to the end
4 of the elbow, he was referring.

5 A. I did not know that, or whether the whole area was the
6 area he was referring to.

7 Q. The end the elbow, could you point to what you regard as
8 the end of the elbow.

9 A. I want you to understand that no map was involved.

10 Q. I understand that.

11 A. In this discussion, here is the Murray Mouth (INDICATES)
12 and this area here. The elbow, as it's known, around
13 Goolwa, that's what I would have understood the Goolwa
14 channel to be, this area that's marked 'Goolwa channel'
15 which comes up around here (INDICATES). I don't know
16 whether this area was intended to be involved or not.

17 Q. When he referred to the Goolwa channel, you understood
18 him, rightly or wrongly, to be referring to the area of
19 the Murray which runs from approximately the Murray
20 Mouth to the where Currency Creek enters the system.

21 A. I had not considered any particular boundaries.
22 Certainly I considered that to be the area central to
23 what he was talking about but, as I said, I had no
24 information from him as to the exact parameters of the
25 area he was concerned with.

26 Q. You said he made general references to sites, burials.
27 How did he put it, if you can remember, and if you
28 can't, tell us.

29 A. What I remember is that in the context of his enquiry
30 about the kinds of sites mentioned by the coast zone
31 enquiry extract, and then the question about the
32 Aboriginal Heritage Act, he was giving examples of the
33 kind of sites that he was asking about in that context,
34 so for example cultural - or just simply significant
35 Aboriginality sites, whether culturally or
36 archaeologically it wasn't said, I agree with
37 'Culturally significant features such as limestone
38 cups'.

- 1 Q. I didn't catch that, he actually mentioned the limestone
2 cups.
- 3 A. Yes. I have said that there on p.41.
- 4 Q. All right.
- 5 A. So these were, as I understood it at that stage,
6 hypothetical, because nothing specific was being pointed
7 out, but hypothetical, if you like, cases in point with
8 respect, though, to that particular area.
- 9 Q. I mean can I put it this way; you gained the impression
10 from Mr Trevorrow that he was alluding to the
11 possibility that when the barrages went in and the
12 Murray waters were permanently raised, particularly in
13 the area of the Goolwa channel, maybe there were some
14 areas of what was then covered by water which contained
15 burials, middens and limestone cups.
- 16 A. I believe that that was part of what he was talking
17 about, but I have no indication that it was restricted
18 to that kind of situation.
- 19 Q. But no indication that it was not restricted, have you.
- 20 A. No information suggesting either way.
- 21 Q. I want to go back to Sarah Milera, who spoke to you
22 towards the end of your survey that finished in the
23 first half of December 1993. Do you remember the
24 occasion which you gave evidence about, about Sarah
25 speaking to you on a couple of occasions, wanting to
26 discuss with you sites which she felt were, you used the
27 expression 'culturally significant'.
- 28 A. Certainly places she considered were culturally
29 significant, yes.
- 30 Q. Places, not sites.
- 31 A. There - it was not clear in my mind from that
32 discussion, and I don't think it was clear to Sarah at
33 that stage whether they wished those places to be placed
34 on record as Aboriginal sites or not.
- 35 Q. As I understood your evidence, you were of the view that
36 at least on one occasion during this preliminary survey
37 between October and the second week of December 1993,
38 Sarah Milera said something directly to you which you

N. DRAPER XXN (MR ABBOTT)

- 1 interpreted as being a reference to a desire to tell you
2 more about something that was culturally significant to
3 her. Putting it no higher than that.
- 4 A. If you're referring to those two places on the island
5 that I've mentioned in the statement which she talked
6 about, then that's the case, I think, yes.
- 7 Q. How did she put it. First of all, was it directly to
8 you or via your wife.
- 9 A. The information that I have was directly to me from
10 Sarah Milera.
- 11 Q. In relation to this period, and this episode that you
12 recount on p.37 of your statement, did you get any of
13 that information via your wife.
- 14 OBJECTION Mr Steele objects.
- 15 MR STEELE: I don't object to the question, but to
16 the tone that has crept back into Mr Abbott's voice.
- 17 MR ABBOTT: I will undo that.
- 18 COMSR: I must say when Vanessa Edmonds was
19 cross-examined by you, she wasn't entirely spared
20 something of the same.
- 21 MR STEELE: If that was so, I could have been
22 subjected to rebuke at the time. That does not mean
23 that it's right to treat a witness with continuing
24 discourtesy.
- 25 COMSR: That is true, but the witness, I
26 suppose, can withstand a certain degree of robustness in
27 the degree of questioning.
- 28 COMSR
- 29 Q. Dr Draper, are you discomfited by it.
- 30 A. Not at the moment.
- 31 MR ABBOTT: If you are, just mention it to her
32 Honour.
- 33 COMSR: One has to expect a certain degree of
34 probing, if I can put it that way, Mr Steele.
- 35 MR STEELE: I don't mind that at all, I don't seek
36 to protect the witness from that, it's the question of
37 shouting.
- 38 MR ABBOTT: I didn't get the impression that he was

1 a shrinking violet.

2 COMSR: And it's difficult for the reporters,
3 where there are two or three people speaking at once, to
4 know what to take down.

5 XXN

6 Q. Could I have an answer to my question.

7 A. Please repeat the question for me.

8 Q. The question was, in relation to the incident and events
9 that you describe vis-a-vis Sarah Milera at p.37 of your
10 statement, did you receive any of that information, or
11 anything supplementary to that information, via your
12 wife.

13 A. With respect to one of those occasions, my wife was not
14 present at that place at that time. On the other
15 occasion she was, and I do know that Sarah had a
16 discussion with her at that place before I was called
17 over by Sarah to talk to her - the men on the survey
18 team had already moved beyond that place - so I
19 understand that Sarah was discussing her interest in and
20 concern about that place with my wife before Sarah spoke
21 to me, but it was Sarah who spoke to me about it, and
22 I'm not aware of having received any supplementary
23 information from my wife on that occasion beyond what
24 Sarah told me.

25 Q. So the answer is no.

26 A. No.

27 Q. What did Sarah tell you.

28 A. I do not, as I've said here before, of her agreement to
29 give that information in detail. Whether the map of
30 those two places will be formally recorded for the
31 Aboriginal site register has still not been resolved.

32 COMSR

33 Q. We take it it had to do with sites.

34 A. It had to do with places that might well come to be
35 recorded as significant Aboriginal sites that has not
36 yet been resolved.

37 XXN

38 Q. Are we talking about places in respect of which you have

5066

TN 55L

N. DRAPER XXN (MR ABBOTT)

1 filled out, in whole or in part, site cards.

2 A. No.

3 Q. I'll try again. Apart from the notation you made on
4 your map in relation to each of these two places, have
5 you made any other note of any of the incidents
6 involving Sarah Milera which are set out on p.37 of your
7 statement.

8 CONTINUED

1 A. No, I have not.

2 Q. As to the notation on your map, is that merely a circle
3 around the spot.

4 A. I believe that that is the case, yes.

5 Q. Do you accept the view that you are out of step with the
6 mainstream of anthropological investigation insofar as
7 your failure to take notes and keep notes is concerned.

8 A. I do not consider that I am out of step with
9 anthropological professional practice at all.

10 Q. Mainstream, I said. I am not talking about a minority.

11 A. Neither am I, Mr Abbott, that I'm aware. I consider
12 that on the occasions you spoke of, where the person
13 speaking to me did not want me to take notes and spoke
14 to me on that basis, that it would have been a basic
15 breach of faith with an informant to have taken notes.

16 COMSR

17 Q. Even to the extent of recording the reason why you are
18 not making notes on the particular topic.

19 A. Your Honour, on that occasion I simply marked the
20 places. It was understood, and I have mentioned this in
21 my statement, that we would discuss those further
22 because we expected the survey to resume very very soon
23 after. This was very close to the end of the first
24 survey session when the funds had nearly run out. We
25 had the expectation at that time that we would be
26 shortly resuming the survey, and that Sarah would think
27 some more about whether she wanted those places
28 recorded, and that we would return to that topic. Now,
29 as it happened, that opportunity has not presented
30 itself because of subsequent events. So it was a
31 preliminary indication only, and very very clearly
32 understood, I believe, by both parties as just that.

33 XXN

34 Q. Maybe so, but we have no note of even the fact that you
35 spoke to Sarah Milera, let alone on the topic, do we.

36 A. That is true.

37 Q. We have no note that in any way supports your claim that
38 Sarah Milera spoke to you toward the end of your survey.

- 1 No independent note, other than two circles on a map.
- 2 A. That's correct.
- 3 Q. We have no note of what George Trevorrow said to you, do
- 4 we.
- 5 A. Apart from what has been recorded, no.
- 6 Q. Nothing has been recorded. (NOT ANSWERED)
- 7 Q. Nothing has been recorded, has it.
- 8 A. Up until this time, no.
- 9 Q. We have no note of what Sarah Milera and Robert Day said
- 10 to you in the Anzac day long weekend, do we.
- 11 A. We do indeed, I believe. We have the report I produced,
- 12 we have the draft site records that I made at that time,
- 13 and then immediately afterwards, back at my motel room,
- 14 when I made a second and more detailed copy.
- 15 Q. They are the only notes then.
- 16 A. Yes.
- 17 Q. I will come to those. Sarah Milera, was she claiming
- 18 that - or at least did she say anything which indicated
- 19 to you that she was claiming a site was a woman's site,
- 20 or was she claiming that a site was merely a site, or
- 21 don't you know. This is in the 1993 period we are
- 22 talking about.
- 23 A. With respect to the two places concerned, it is my
- 24 understanding that Sarah considered those two places to
- 25 be culturally significant. She remarked to me that the
- 26 Ngarrindjeri men on the survey had observed those places
- 27 and passed on and not said anything about them, and on
- 28 that basis she made a comment to me that she believed,
- 29 on that basis, that their significance might be
- 30 specifically to women because she had recognised them as
- 31 significant places, but the men had not.
- 32 Q. Did she tell you how she recognised them.
- 33 A. No, she did not.
- 34 Q. Was there anything there that you could recognise. Was
- 35 it a midden or a burial or -
- 36 A. She was referring to a specific physical feature of the
- 37 landscape in each case.
- 38 Q. What, like a hill or a swamp or a creek.

- 1 A. Along those lines, yes.
- 2 Q. Do you have the map there on which you marked the two
3 pencil circles.
- 4 A. I have handed them over.
- 5 MR SMITH: I don't think we gave an exhibit number
6 to these in the end, although Mr Abbott did purport to
7 tender them.
- 8 MR ABBOTT: Yes, I did and I appreciate an exhibit
9 number.
- 10 COMSR: The maps were MFI 238.
- 11 MR ABBOTT: I apply to tender them as an exhibit.
- 12 EXHIBIT 238 MFI 238 tendered by Mr Abbott.
13 Admitted.
- 14 Q. Looking at exhibit 238, would you please find the map
15 that you drew the two circles on.
- 16 A. The first of those which I can show you while I'm
17 looking for the second, if you like, is here on this map
18 here, and I'll locate the second for you as quickly as I
19 can. I have the annotation for the site on one section.
20 I presume I shouldn't state the name of it.
- 21 COMSR
- 22 Q. No.
- 23 A. I find no particular annotation on the second.
24 XXN
- 25 Q. We are missing a circle, are we.
- 26 A. We simply don't have a circle.
- 27 Q. So there is no annotation at all.
- 28 A. There is only an annotation in one case that I can find
29 at this time, yes.
- 30 Q. What does the annotation consist of.
- 31 A. A circle and three words of comment.
- 32 Q. What are the three words of comment.
- 33 COMSR
- 34 Q. Is there any problem about it.
- 35 A. I don't think so, because I think this came up
36 yesterday. I think it is okay. It says scattered pippi
37 shell.

- 1 XXN
2 Q. Scattered.
3 A. Pippi shell. P-I-P-P-I.
4 Q. A common feature of Hindmarsh Island, middens.
5 A. Common on Aboriginal occupation sites, not - these were
6 not particularly common.
7 Q. Why not.
8 A. Because they were fossilised.
9 Q. Indicating that they were of some great age obviously.
10 A. Yes. They were of some antiquity certainly.
11 Q. Do you have any problem showing Dr Philip Clarke the
12 location of this notation. I don't want to look at it,
13 but I would like someone who would at least be able to
14 comment at some stage to look at it.
15 COMSR: I suppose that could be done by
16 arrangement.
17 MR SMITH: Your authority permits that, of course.
18 WITNESS: Then I have no objection in that case.
19 XXN
20 Q. Did Sarah Milera tell you in what way either of these
21 two sites was culturally significant.
22 A. She did make some comments on that matter in each case,
23 yes.
24 Q. I think your view is that you cannot tell us.
25 A. I cannot tell you unless that informant agrees that I
26 may tell you. I am unsure of the status of that
27 information.
28 Q. May we take it then, that by the time you came to write
29 the briefing paper on behalf of Mr Rathman to the
30 Minister, document 93-10, you were aware of at least a
31 claim made by one person, Sarah Milera, that Hindmarsh
32 Island was a place of cultural significance to not just
33 Ngarrindjeri people, but she was asserting to
34 Ngarrindjeri women.
35 A. My - the paragraph you are referring to in that minute
36 is an overview of the situation to date and the
37 department's understanding to that date of the
38 Ngarrindjeri position based on our internal senior

- 1 management meetings and our collective understanding of
2 what we had been variously told in person, in writing by
3 the Lower Murray Aboriginal Heritage Committee. It does
4 not relate specifically to those two specific cases
5 involving Sarah Milera specifically.
- 6 Q. At all.
- 7 A. It is not specific to that, no.
- 8 Q. Just on that document, could you open it up. I have one
9 question before we move onto another document.
- 10 A. Could I be given the number of it once more because
11 there are several similar ones? I think it is -
- 12 MR STEELE: 16.
- 13 COMSR: Where are we going on this?
- 14 MR ABBOTT: To another document in about 10 seconds
15 once I get one more answer.
- 16 XXN
- 17 Q. On the section headed 'Summary' -
- 18 A. It must be 14, not 16. Perhaps in my numbering -
- 19 MR STEELE: No, it is within 16.
- 20 XXN
- 21 Q. The section headed 'Summary - Aboriginal heritage
22 significance of proposed bridge site.'
- 23 A. Not in my number 16. My copy, which has been renumbered
24 at one stage and drafted - I have that on my 14, but not
25 on my - yes, 93-10 is the one that you -
- 26 Q. Yes.
- 27 A. I have the summary section. I think I do. Yes, I have
28 it.
- 29 Q. I don't want to read out any detail. I think some
30 matters are within the public knowledge, but
31 nevertheless I propose to merely identify the
32 paragraphs. The first paragraph refers to a certain
33 number of sites on Hindmarsh Island and the hope that
34 more might be found.
- 35 A. Yes.
- 36 Q. That is a reference to specific identifiable areas on
37 Hindmarsh Island.
- 38 A. Yes.

- 1 Q. The second paragraph is referable to a large site
2 identified as no more than this 'The Goolwa foreshore
3 site.'
- 4 A. Yes.
- 5 Q. The third paragraph, I will identify it in this way, is
6 referable to the Hindmarsh Island side of the proposed
7 bridge alignment site.
- 8 A. Yes.
- 9 Q. So what this summary is saying is that there is a site
10 on the foreshore side that affects the bridge environs,
11 there is a site on the Hindmarsh Island side which
12 affects the bridge environs, and there are a number of -
13 and I will not mention the number - known other sites on
14 Hindmarsh Island which could well be affected.
- 15 A. It does mention those two sites you've referred to. The
16 first paragraph and the number of sites there would
17 include those. I don't think that number is separate
18 from that because it is an -
- 19 Q. That number includes that.
- 20 A. Yes, it is an introductory statement to what follows.
- 21 Q. Then you say 'on these grounds' that is reference to the
22 preceding three paragraphs about the sites - they are
23 the grounds you are talking -
- 24 A. This is what David Rathman says. As I said, I am merely
25 a drafting officer, drafting a minute under
26 instructions.
- 27 Q. But it is your words, isn't it.
- 28 A. The words on the paper are my words, yes. I did the
29 drafting, but I am merely the drafting officer.
- 30 Q. But you are responsible for this. You submit it to
31 Rathman to sign, don't you, if he is happy with it. You
32 composed it.
- 33 A. At his instruction.
- 34 Q. Yes.
- 35 A. And following - and on the instructions of the senior
36 management group of the department, after discussion of
37 what was to go into it, yes.

- 1 Q. You had a discussion that what was to go into it was a
2 paper which would go to the Minister, and you were to
3 draw up a paper which ought to convince the Minister
4 that there were grounds that the bridge should not be
5 constructed. Is that what you are telling us.
- 6 A. No, that's not what I'm telling you.
- 7 Q. Well, that's the conclusion that's expressed in this
8 paper.
- 9 A. The Minister asked for an up-to-date briefing on these
10 matters, and this is the draft of the briefing that was
11 supplied back to the Minister.
- 12 Q. I know, but the conclusion in it is your conclusion,
13 isn't it. It is not a conclusion you were told to put
14 in it.
- 15 A. It is not my conclusion. It is the conclusion of the
16 Department of State Aboriginal Affairs.
- 17 Q. Maybe so. Maybe that's the eventual conclusion -
18 COMSR: I think the witness has answered the
19 question. He might not have given you the answer you
20 want.
- 21 MR ABBOTT: I want to know whether he came to the
22 view first that the bridge - as a result of what he put
23 in this paper, the bridge should not be constructed.
- 24 COMSR: Whether the witness came to the view?
- 25 MR ABBOTT: Yes, whether he had that view when he
26 first wrote out the draft.
- 27 COMSR: What use will that be to me?
- 28 MR ABBOTT: Because it will indicate his biased
29 approach.
- 30 OBJECTION Mr Steele objects.
- 31 MR STEELE: I object to the question. The witness
32 has -
- 33 MR ABBOTT: We are investigating a witness who,
34 after this, has said there were certain discussions. I
35 want to evaluate where this man is coming from, and
36 where I detect he is coming from is that, at an early
37 stage, when he had only been on the project for a month
38 or two, he formed the view that there were ready grounds

- 1 under the South Australian and Commonwealth Aboriginal
2 Heritage Legislation to ask that the bridge should not
3 be constructed.
- 4 COMSR: `Was that your personal view' is that
5 what you are asking?
- 6 MR ABBOTT: Yes, that's all.
- 7 COMSR: At that time.
- 8 MR ABBOTT: Yes.
- 9 XXN
- 10 Q. At that time, December 1993.
- 11 A. That was not my personal view at that time, and, quite
12 frankly, I feel my personal views would be irrelevant to
13 me doing my professional job for the Department of State
14 Aboriginal Affairs at that time.
- 15 Q. If that wasn't your personal view, did you have a
16 personal view.
- 17 MR STEELE: Does that help?
- 18 COMSR: Where are we going with this?
- 19 MR ABBOTT: We are going to another document now.
- 20 XXN
- 21 Q. You say that's not your personal view and wasn't at that
22 time.
- 23 A. I expressed no personal view at that time.
- 24 Q. You expressed no personal view. That is not the
25 question. The question was was that your personal view.
- 26 COMSR: We have gone over this ground now
27 several times.
- 28 MR ABBOTT: Very well, I will move on.
- 29 XXN
- 30 Q. In March 1994, or by March 1994, we know that you had
31 finished the first phase, the site work up until
32 Christmas 1993, you had seen Mr Jacobs, you had prepared
33 material for him, you had met George Trevorrow, but
34 nothing else had happened relevant to this matter, had
35 there. You had gone on leave and come back.
- 36 A. That's true. We were still providing, as a department,
37 briefing notes and materials to the Minister on this

1 matter throughout that period, but it was that kind of
2 role that we had.

3 COMSR: I think Mr Meyer covered this ground,
4 too.

5 MR ABBOTT: I am having difficulty conducting an
6 examination of this witness with a hubbub from the rear
7 of this commission room. I will disregard Mr Tilmouth's
8 remarks, and I would ask -

9 COMSR: I would ask people in the hearing room
10 not to make comments.

11 MS VAN DER BYL: Don't look at me, Mr Abbott. It wasn't
12 me. You are always accusing me, but it wasn't me this
13 time.

14 MR ABBOTT: Is that my friend Muriel?

15 CONTINUED

N. DRAPER XXN (MR ABBOTT)

- 1 COMSR: I will simply make the general request
2 that people in the hearing room not make comment while
3 the examination is being conducted.
- 4 Mr Abbott, where are we going to now?
- 5 MR ABBOTT: We are on to March 1994.
6 XXN
- 7 Q. On 29 March 1994, you prepared and signed a briefing
8 paper for the Lower Murray Aboriginal Heritage
9 Committee, didn't you.
- 10 A. Could we be specific as to which document we are
11 referring to?
- 12 Q. Yes, it is not one of the ones that you have produced.
13 I will just get a copy for you. Looking at the letter,
14 now before you, which went with your briefing paper. It
15 is in the DOSAA papers. It is 86A in the DOSAA papers,
16 86 and 86A in the DOSAA papers. Can you remember what I
17 am talking about.
- 18 A. I don't know that I have seen this cover. No, it would
19 help if I could see the documents you are referring to.
- 20 Q. I hand it to you. I will just make sure that is a
21 signed copy. The copy of the DOSAA file is the unsigned
22 original or unsigned file copy. Do you accept that you
23 signed a copy and sent it out to the Lower Murray
24 Aboriginal Heritage Committee.
- 25 A. No, I would not agree with that.
- 26 Q. I show you a signed last page.
- 27 A. Yes.
- 28 Q. Is that your signature.
- 29 A. That is.
- 30 Q. Do you now accept that you have signed it.
- 31 A. I did sign it, yes. I did not send it to the Lower
32 Murray Aboriginal Heritage Committee.
- 33 Q. You signed it for it to be sent.
- 34 A. I understood that that was the intention of the chief
35 executive officer, yes.
- 36 Q. Look at the documents 86 and 86A, you typed out that
37 briefing, that document 86A, which is entitled `Briefing
38 for the Lower Murray Aboriginal Heritage Committee',

1 typed or had it typed.

2 A. Yes, I cannot be certain whether I keyboarded it and it
3 was consequently edited by the Head of Department's
4 secretary or whether they keyboarded it directly from a
5 draft that no longer exists, but -

6 Q. Take up, in one hand, that document and, in the other
7 hand, document 93-10, which was the report to the
8 Minister of December 1993.

9 COMSR: We are not going into the contents of
10 it?

11 MR ABBOTT: No.

12 XXN

13 Q. And you will see that the two documents, apart from the
14 fact that one is entitled 'Briefing for the Lower Murray
15 Aboriginal Heritage Committee' and the other is entitled
16 'To the Minister of Aboriginal Affairs re: Hindmarsh
17 Island bridge - Aboriginal heritage', are to 99.9%
18 identical.

19 A. That's correct.

20 Q. However, I don't want to go into respects in which they
21 are identical, I want to go into respects in which they
22 are different. In March 1994, in the document that you
23 wrote and signed and which was sent out as the 'Briefing
24 for the Lower Murray Aboriginal Heritage Committee',
25 there is, I suggest, a significant addition. Go back to
26 the passage in document 93-10, which we have been
27 concerned with. The passage that says 'In a very real
28 sense, Hindmarsh Island itself is a place of
29 considerable cultural and spiritual significance to the
30 Ngarrindjeri people.'

31 MR TILMOUTH: What page?

32 A. What page?

33 MR ABBOTT: It is under 'S.3 The Bridge
34 Controversy'.

35 A. I have got s.3, which paragraph of s.3?

36 XXN

37 Q. It is the third paragraph of s.3. You will see that
38 appears word-for-word in the 1994 document. Can you see

- 1 that.
- 2 A. I am reading them now. They appear to be the same.
- 3 Q. Now go on to s.4 in the 1993 document.
- 4 A. Yes.
- 5 Q. Which we have just been through. And the passage, which
- 6 I put to you, which you said wasn't your opinion `On
- 7 these grounds and based on the broader perspective and
- 8 the more detailed information now available from recent
- 9 survey work, it would appear that, according to previous
- 10 advice, that the Lower Murray Aboriginal Heritage
- 11 Committee does have grounds under both South Australian
- 12 and Commonwealth Aboriginal heritage legislation to ask
- 13 that the bridge should not be constructed on the grounds
- 14 of its detrimental impact upon significant Aboriginal
- 15 heritage sites.' That is found in s.5 of the 1994
- 16 document. May we take it that it is your view, then.
- 17 A. The March document?
- 18 Q. Yes, the March 1994 document.
- 19 A. You may take it that that is the Department's view.
- 20 Q. Still not your view.
- 21 A. Certainly not.
- 22 Q. Just above that section, -
- 23 COMSR: Where is this taking me?
- 24 MR ABBOTT: Bear with me. I am just coming to this
- 25 now.
- 26 XXN
- 27 Q. Just above that passage.
- 28 MR STEELE: Can you identify the passage for me?
- 29 MR ABBOTT: Yes, for Mr Steele's benefit, in
- 30 document 86. I have just read the first paragraph of
- 31 s.5, on p.4.
- 32 MR TILMOUTH: Has it got a C or D on the top?
- 33 MR ABBOTT: I haven't got it.
- 34 MR TILMOUTH: The first paragraph?
- 35 MR ABBOTT: Of s.5, beginning `On these grounds'.
- 36 COMSR: Yes, and are you going to read from
- 37 these documents in any greater detail?
- 38 MR ABBOTT: No, I am going to read one section.

1 XXN

2 Q. In 199 -

3 COMSR: The witness has said these are not -
4 this is not his point of view.

5 MR ABBOTT: No, again.

6 XXN

7 Q. In 1993, you wrote in the previous paragraph which deals
8 with the Hindmarsh Island site again `Aboriginal people
9 are concerned that the proposed bridge will destroy the
10 physical character of this site as a feature of the
11 landscape which is fundamental to its cultural
12 significance to them.' That's what you wrote in 1993,
13 isn't it.

14 A. Yes.

15 Q. In 1994, you wrote again `Aboriginal people are
16 concerned that the proposed bridge will destroy the
17 physical character of this site as a feature on the
18 landscape which is fundamental to its cultural
19 significance to them. For the Ngarrindjeri people, both
20 of these sites together with the Goolwa channel between
21 them constitute a single site of significance within the
22 broader scope of Hindmarsh Island as a culturally
23 significant place in itself.' Where did you get that
24 from.

25 A. That was the Department's view, at the time. It is -

26 Q. It was the Department's view.

27 A. Yes.

28 COMSR: The witness has just said that this did
29 not represent his view.

30 XXN

31 Q. Who in the Department gave you that.

32 A. I didn't say anyone in the Department did give me that.

33 That was the - I wrote the report for the Department,
34 for the CEO. In fact, it wasn't produced from scratch,
35 as you can see. It was updated from previous briefings,
36 as were many during 1994. That's what -

37 OBJECTION Mr Steele objects.

38 MR STEELE: The witness should be allowed to finish

1 the answer.

2 MR ABBOTT: Mr Steele can sit down.

3 XXN

4 Q. At least finish.

5 A. At the time that the briefing paper that went to the
6 Lower Murray Aboriginal Heritage Committee was produced,
7 that was the best summary of the Departmental position
8 on that matter. Now we had meetings that David Rathman
9 had been to or that I had been to or that I had been to
10 separately or in combination, perhaps other people
11 during that period, with the Lower Murray Aboriginal
12 Heritage Committee. We have the matter of the
13 preliminary enquiries and statement made by George
14 Trevorrow about the significance of the Goolwa channel,
15 but culturally in general, but without giving us great
16 detail. And those are the sort of considerations that
17 went into the minor updating of those paragraphs in that
18 briefing, but I cannot recall it more specifically than
19 that.

20 Q. See, I want to know from you where you got to put in
21 this report the information 'For the Ngarrindjeri, both
22 of these sites', that is, the foreshore and the
23 Hindmarsh Island shoreline site abutting where the
24 bridge was to go 'For the Ngarrindjeri, both of these
25 sites together with the Goolwa channel between them
26 constitute a single site of significance within the
27 broader scope of Hindmarsh Island as a culturally
28 significant place in itself.' Where did you get the
29 information from.

30 OBJECTION Mr Steele objects.

31 MR STEELE: Hasn't the witness answered this on
32 about three or four different occasions?

33 MR ABBOTT: No, I haven't asked him that. If he
34 says 'I have already answered it', let that be the
35 answer.

36 MR STEELE: He has said on a number of occasions
37 already that he was but a member of the Department and
38 this was a collective view of the Department -

N. DRAPER XXN (MR ABBOTT)

- 1 MR ABBOTT: I object to this. I don't need Mr
2 Steele to answer the question. I want the witness to
3 answer. Mr Steele is paraphrasing what he wants the
4 witness to say.
- 5 MR STEELE: I am not doing that.
- 6 MR ABBOTT: It is an old trick and I have heard it
7 for many, many years. And it doesn't get any better to
8 repeat it.
- 9 MR STEELE: I am gratified to see I have learnt a
10 few tricks. This is what the witness has said for
11 sometime now and you have indicated that the ground has
12 been gone over time and time again and I submit you
13 should rule against the question.
- 14 MR MEYER: I have a comment to make, because I
15 refrained from proceeding down this path after I
16 established from Dr Draper that, as an expert, what he
17 put his name to he accepted as being correct. And there
18 were some objections behind me, because I asked some
19 question about would he prostitute his expertise by
20 putting his name to something he didn't agree with.
21 Now, as I understand it, he wants to say that pp.86
22 D and E he doesn't agree with when he has put his name
23 on to that.
- 24 MR ABBOTT: No, I am not asking that. Mr Meyer
25 might like to. I want to know whether he can provide us
26 specifically and he may not be able to do so -
- 27 COMSR: He has already indicated -
- 28 MR ABBOTT: Where that information came from. If
29 the answer is 'I cannot tell you', let him say so.
- 30 A. In general the information came from the Lower Murray
31 Aboriginal Heritage Committee via a number of Department
32 sources and then summarised. That is, I think,
33 demonstrated by the fact that the sentence starts 'For
34 the Ngarrindjeri', so that that context is clear. But,
35 no, I am unable to be more specific than that.
- 36 XXN
- 37 Q. So the information that is there you got from other
38 people in the Department who told you they had got it

1 from Ngarrindjeri people.

2 A. I didn't say that at all. I said that I cannot be more
3 specific than what I have told you. That -

4 COMSR: Look, I am sure we have covered this.

5 MR ABBOTT: Yes, I will get on.

6 XXN

7 Q. Did you ever investigate the claim that 'both these
8 sites together with the Goolwa channel between them
9 constituted a single site of significance within the
10 broader scope of Hindmarsh Island as a culturally
11 significant place in itself.'

12 A. This was certainly one of the general aspects of
13 Ngarrindjeri concern over Aboriginal heritage matters
14 that was being placed before us, that the survey work
15 that I did was set up to deal with.

16 Q. Did you ever investigate this claim that you have put
17 your name to in this report.

18 A. Yes, I conducted a survey, which included the Goolwa
19 foreshore and the other side and it canvassed the
20 significance of the channel in between.

21 Q. Do you have any notes which support the view that 'both
22 these sites together with the Goolwa channel between
23 them constitute a single site of significance.'

24 A. Those areas, to my understanding, all are related to the
25 same aspect of cultural significance of, on the one
26 hand, that locality at Goolwa as being a major
27 ceremonial and trade centre for the Lower Murray and for
28 the - and that there was also at - this locality was
29 part of, in other words, that these places are all
30 within the - either within or adjacent to, I should say,
31 'The meeting of the waters' site that was recorded.

32 COMSR

33 Q. Now I am not quite clear about this: are you saying that
34 somewhere you have recorded some notes to that effect.

35 A. No, what - no, I apologise, I am not saying that. What
36 has been recorded there, on that topic, is in the Draper
37 report, which deals with that as three separate elements
38 and in notes on the current survey.

1 XXN

2 Q. The Draper report, of 29 April, deals with three
3 separate sites. It deals with the foreshore site near
4 the bridge, the Hindmarsh Island site near the bridge
5 environs and 'The meetings of the waters site'. This
6 site, which is described in the report of March, is a
7 different anthropologically-speaking site. It talks
8 about the channel between these two sites and the two
9 sites making an integral whole. Any notes of that.

10 A. No further notes on that specifically, no.

11 Q. Not at all. It is not a question of 'no further', no
12 notes, at all.

13 A. Apart from this mention, no.

14 Q. But these aren't your notes. You have told us that. I
15 am asking about whether you have any notes.

16 A. No, I do not.

17 Q. Now I want to ask you about the notes you do have and
18 that relates to the site recording that you made when
19 you went down there on the Anzac long weekend. And that
20 relates to the period of the principally 25 April, does
21 it not 1994.

22 A. Could you repeat that one? In particular, you were
23 looking for the - related to 25 April?

24 Q. Yes, it is p.53 of your statement.

25 A. I have it, yes.

26 Q. And it relates to 25 April, doesn't it.

27 A. Yes, it does, that page.

28 Q. You have told us that you did make notes of their claim,
29 that's Robert Day and Sarah Milera's claim: Right.

30 This is the Mouth House meeting.

31 A. Yes, I have noted that, I have recorded here that I made
32 written notes on a site record card.

33 Q. This was at the Mouth House, wasn't it.

34 A. Yes, it was.

35 Q. You had arranged for the Mouth House to be occupied by
36 the Mileras, at that stage.

37 A. The Department of State Aboriginal Affairs had arranged
38 for that rental property to be represented for

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KC 55N

N. DRAPER XXN (MR ABBOTT)

- 1 Aboriginal -
- 2 Q. Amongst others, the Mileras.
- 3 A. Yes, the Mileras.
- 4 CONTINUED

- 1 Q. You said, I had in my possession copies of aerial
2 photographs, topographic maps of the area. In fact,
3 they were on the wall, weren't they.
- 4 A. No, I am referring to maps and aerial photographs that I
5 took with me to that meeting.
- 6 Q. Were there not aerial photographs on the walls.
- 7 A. There were aerial photographs on the walls of the house.
8 The one in the room, that dining room, to my
9 recollection, was an oblique aerial photograph that
10 showed only part of the area of concern and therefore
11 was not suitable for the interview which I was
12 conducting.
- 13 Q. How did you come to have this interview on the 25th of
14 April 1994.
- 15 A. As I recall, we finished our field survey work, our
16 outdoor work for the day. I had dinner etcetera. And
17 having arranged to meet them in the evening, I went to
18 that place in the evening, for the purpose of recording
19 the information that the Lower Murray Aboriginal
20 Heritage Committee had told the department and the
21 Minister would be forthcoming to record a site of
22 cultural significance to women, for this report to the
23 Minister.
- 24 Q. They told you that, or you expected to be told some
25 information.
- 26 A. Yes, I did.
- 27 Q. Would you look at your notebook, your field notebook for
28 that day, 24 April, p.99.
- 29 A. Do you mean the 25th of April or the 24th?
- 30 Q. You haven't any notes in your notebook for the 25th
31 of April. We have to deal with the 24th of April. Do
32 you see that.
- 33 A. Just a moment please. Yes, I have them.
- 34 Q. On the 24th of April you met Mr Rathman, your
35 department head.
- 36 A. Yes.
- 37 Q. Where.
- 38 A. I believe that I met him at the car park near - in front

- 1 of Signal Point, near the railway station.
- 2 Q. These notes record that you visited the site, is that a
3 marina.
- 4 A. That is, that is a site within the marina area, yes.
- 5 Q. And you showed him around.
- 6 A. He wanted to inspect the site and the survey crew
7 members there at the time, and I conducted an
8 inspection of that site with him, yes.
- 9 Q. So, in the afternoon of the 24th, you were showing your
10 departmental head the two major, or at least, one of the
11 major sites, that is the Goolwa foreshore site, not
12 the Hindmarsh Island site, weren't you.
- 13 A. These notes make mention of two sites. One of them is
14 on Hindmarsh Island, in the marina Goolwa area and the
15 other I have noted is the Amelia Park along the Goolwa
16 foreshore.
- 17 Q. They are basically, or, form part of the Goolwa
18 foreshore site and the Hindmarsh Island environment
19 site.
- 20 A. Amelia Park is certainly part of the Goolwa
21 foreshore site. The other site referred to is not part
22 of the site you are referring to, no.
- 23 Q. Having taken him there, did you take him to the
24 Mouth House.
- 25 A. Not as far as I can remember, no.
- 26 Q. You see that there is a notation down the bottom of the
27 page of your notes.
- 28 COMSR: What is the purpose?
- 29 MR ABBOTT: To test the veracity of his claim of
30 what occurred on the 25th.
- 31 XXN
- 32 Q. You see, you have made relatively inconsequential
33 notes in your field notebook, haven't you. I mean, Mr
34 Rathman's come down and where you have taken him,
35 that's not recorded anywhere else. It is not put in any
36 report. The boss has come down so you made a note of
37 it.
- 38 A. That's what happened that afternoon and I have made a

1 note of it, yes.

2 Q. The notes - there are no notes in your field notebook
3 about the 25th though. There we have to look to these
4 site recording sheets.

5 A. You would for the 25th I believe, although I don't have
6 it with me at the moment, I think it is most likely you
7 will find that information recorded on the 25th, there
8 are notations on the field maps directly.

9 Q. Also the, what are called, these site recording sheets.

10 A. Without - I do not believe that - without looking at
11 them I can't be sure, but I don't think there are
12 separate site record sheets referring to that day's
13 work. I think it was involved along the Goolwa
14 foreshore, filling in detail for our site recording work
15 there, which was best done on detailed maps.

16 Q. Could you show us the maps that you have used for that
17 purpose. Looking at Exhibit 238.

18 A. Some of the notes that I believe relate to this date are
19 here on this 1 to 10,000 map sheet here.

20 Q. May I look at the notes. The notes that are recorded
21 appear to relate to the area directly - do not appear
22 to relate to the larger area of the meeting of the
23 waters.

24 A. That is correct.

25 Q. I asked you for your notes that related to the
26 identification of the meeting of the waters site.

27 A. And I told you that, those were the written notes
28 appearing on the site record card, produced on the
29 evening of the 25th of April.

30 COMSR: Are we still on issues of credibility?

31 MR ABBOTT: Yes, issues of the existence or
32 otherwise of this site and the lack of anthropological
33 information to base it on. I will be as brief as I can,
34 but there are a couple of topics in this matter I must
35 take up.

36 XXN

37 Q. Dr Draper, on the evening of Sunday the 24th of April,
38 1994, you met with Robert Day and Sarah Milera at the

- 1 Mouth House, did you not, Sunday 24 April.
- 2 A. I accept, without a diary in front of me, that Sunday
3 was the 24th, but, yes, you are referring to the
4 occasion referred to at the bottom of p.52 of my
5 statement?
- 6 Q. I am. Nothing of significance was obtained by you then
7 and no note was made.
- 8 A. That is correct.
- 9 Q. You made arrangements, I suggest, to meet with them the
10 next day, so you claim.
- 11 A. We met the next - the next day was taken up on the field
12 survey. We returned to the topic of recording that site
13 at a meeting the next evening.
- 14 COMSR: Hasn't this been covered?
- 15 MR ABBOTT: No, not this area.
- 16 XXN
- 17 Q. It is obvious that you showed them, that's Sarah Milera
18 and Robert Day, the aerial photographs and maps which
19 you had. You were the one that produced them.
- 20 A. Yes. Not for the first time I would add. We had been
21 using these throughout the survey work, but I
22 specifically took those with me that evening.
- 23 Q. Presumably you had a large selection of maps. We're
24 talking about 10, 15 maps.
- 25 A. At least, yes.
- 26 Q. Who made the claim first, or who first made the claim,
27 that all the waters from the Murray Mouth, right through
28 to the lake's entrance, formed a sacred site.
- 29 A. That information was provided to me by Sarah Milera,
30 with the corroboration of Robert Day, on that evening.
- 31 Q. You see, I just want to look at your - I ask you this -
32 I suggest that they made it clear to you, that they were
33 revealing this information in an effort to defeat the
34 Hindmarsh Island bridge proposal.
- 35 A. No.
- 36 Q. Did they refer to the Hindmarsh Island bridge proposal.
- 37 A. Frequently.
- 38 Q. In what context.

- 1 A. In every context imaginable. We were conducting a field
2 survey in the middle of a considerable public
3 controversy about the same general topics so, everyone;
4 shopkeepers talked about it, people, farmers, everyone
5 talked about it and everyone had some sort of opinion.
6 I concentrated on the survey.
- 7 Q. I mean, with reference to the discussion when
8 Sarah Milera told you, for the first time that anyone
9 had told you, of the existence of a site, which you have
10 subsequently described as the meeting of the waters,
11 which apparently encompasses all the water in the Murray
12 from the entire or from the Murray Mouth to the lake's
13 entrance, all round those islands. Now, in the course
14 of that discussion, was this site and the Hindmarsh
15 Island bridge proposal mentioned.
- 16 A. As I have already said, to you, no.
- 17 Q. No.
- 18 A. The information was revealed in the context of recording
19 that site, not in the context of the proposed bridge.
- 20 Q. So, the Hindmarsh Island bridge proposal wasn't
21 mentioned.
- 22 A. I cannot say to you that it wasn't mentioned, I simply
23 don't remember. I was concentrating on recording site
24 information. Had it been mentioned I would have
25 considered it irrelevant to the task in hand.
- 26 Q. Really. Have a look then at your handwritten notes.
27 We're dealing with a note -
- 28 A. I am afraid that my set is incomplete in one way in
29 that, the photocopy of the actual pencil document - yes,
30 the pencil document, is missing from mine. I only have
31 the second one.
- 32 Q. Do you have a copy of the pencilled note.
- 33 A. No, that's the one I do not have at the moment. Thank
34 you.
- 35 COMSR: We cannot spend any more time on the
36 issue of credibility. We are getting in the nub of the
37 matter now?
- 38 MR ABBOTT: Yes.

1 XXN

2 Q. This site note was made by you at the time, that is when
3 Sarah Milera was telling you about the meeting of the
4 waters, wasn't she.

5 A. The front and back page -

6 Q. You have just turned over and read what was on the back,
7 haven't you.

8 A. I am not sure about the very part of the back, whether
9 that was done at the time or afterwards, but certainly I
10 see what you are getting at I think.

11 Q. I tell you what I am getting at. On this site note,
12 which you claimed in evidence yesterday, was written at
13 the time.

14 A. Yes.

15 Q. You have written down in your own handwriting,
16 under the heading 'causes of site damage, Goolwa
17 and other barrage, Hindmarsh Island bridge proposal.'

18 A. Yes.

19 Q. Now, I suggest that is the context in which this sacred
20 site and its creation was discussed.

21 A. That, as I have said to you, is not the case. It is
22 mentioned here, as it should be, on this site form under
23 the category, where the condition of the site and the
24 causes of site damage are to be recorded, but it is not
25 the context in which I came to record the site
26 information concerned.

27 Q. Dr Draper, I suggest you are just making this up as
28 you go along and that at the time, when you discussed
29 this matter with Sarah Milera, on the 25th of May, 1994,
30 you discussed this site, which you identify as the
31 meeting of the waters, in the context of the Hindmarsh
32 Bridge proposal and how the Hindmarsh Island bridge
33 proposal could be defeated.

34 A. I deny that Mr Abbott. It was certainly discussed in
35 the general context of the Hindmarsh Island bridge
36 proposal, because I was engaged in preparing a report
37 for the Minister and recording sites for that report on
38 a s.23 for the bridge, but, this information was

- 1 recorded in the context of recording site information,
2 it was not a bridge protest meeting in any way.
- 3 Q. I know that, but that makes the notation all the more
4 significant, on the front page, which says `Hindmarsh
5 Island bridge proposal' under `causes of site damage.'
6 It indicates, at least, that that topic was discussed in
7 the context of Sarah Milera allegedly revealing to you
8 the existence of a site called the meeting of the
9 waters, doesn't it.
- 10 OBJECTION Mr Steele objects.
- 11 MR STEELE: We have now gone from putting this to
12 the witness, quite properly, a number of times, to
13 really what is a question of address to you and I
14 invite you to uphold my objection.
- 15 COMSR: We can't keep going over the same
16 ground.
- 17 MR ABBOTT: We have had my clients here for days on
18 end on the most obtuse and irrelevant material. I am
19 endeavouring to cross-examine this witness on matters
20 which are extremely relevant. That is, that this claim
21 was concocted on the 25th of April 1994.
- 22 COMSR: Once he has answered the question is
23 what I am putting. To keep putting it to him again -
- 24 MR ABBOTT: I will move on to some other aspect of
25 this.
- 26 XXN
- 27 Q. I suggest Dr Draper that, what, if anything, was told to
28 you, first of all, was a claim that there was - that the
29 - where the ocean met the fresh water from the Murray
30 Mouth was a sacred site and that you have subsequently
31 altered it to include, what you now claim to be, the
32 meeting of the waters.
- 33 A. That is not true Mr Abbott.
- 34 Q. Let's just go through this site record sheet. This is
35 the contemporaneous note of what Sarah Milera was
36 telling you, wasn't it.
- 37 A. These are notes that I made on that occasion, it is not,
38 with respect - putting information under headings on a

- 1 site form. It is not a narrative account of what my
2 informants were saying on that evening, no.
- 3 Q. I suggest that you wrote down, first of all, meeting of
4 the waters was the Murray Mouth and the ocean, not what
5 you now claim it to be, the waters that stretch from the
6 mouth to the lake. Do you see that.
- 7 A. Mr Abbott that's not so. There is a number one and
8 there is a number two there and on the same evening I
9 recorded a boundary for this site, which is as it
10 appears on the map, contained in the Draper report and
11 that same map was, in fact, subsequently filed by me, as
12 it is from that original information in this folder, to
13 be included as part of this final site record.
- 14 Q. You agree that you wrote down, first of all, that the
15 name of this myth was `the meeting of the waters' the
16 Murray Mouth and the ocean.
- 17 A. I don't know that I am supposed to be reading notes
18 there. That is a part of what is written there. That
19 is the first line, more or less, under the category,
20 name of myth/association.
- 21 CONTINUED

N. DRAPER XXN (MR ABBOTT)

- 1 Q. Let me read out your first strike.
2 COMSR: This isn't going to identify -
3 MR ABBOTT: It's nothing more than generality.
4 XXN
5 Q. You describe this site, 'The meeting of the waters', is
6 that 'associated', abbreviated for associated.
7 A. I'm sorry, is what -
8 Q. The words under - you see the printed section attached
9 to the site report, then there's your handwriting.
10 A. You're - have we changed documents? I'm still looking
11 at this handwritten site card.
12 Q. Yes.
13 A. I see what you mean, 'assoc', associated with.
14 Q. So you wrote down, after Sarah Milera first told you
15 about this site, these words, and I'm amplifying them
16 where you have abbreviated them, 'Meeting of the waters,
17 associated' you've added later on 'creation' and then
18 'Renewal and continuity of life, e.g. birds, fish,
19 animals, vegetation, the country in general and
20 Ngarrindjeri themselves. The flow of waters is
21 essential to this process both culturally and
22 ecologically. The Murray Mouth also completes life
23 cycle of the waters of creation'.
24 A. I don't think we should probably read further than that.
25 Q. I'm not going to, that's why I paused there. Now I
26 suggest you immediately regarded that as what you'd read
27 about in some of these New Age theories predominant in
28 anthropological literature.
29 A. I'm not aware of having read anything much about New Age
30 theories and anthropology, particularly in this period.
31 I was too busy doing this.
32 Q. There was nothing there in that, in what you were told,
33 that indicated that the meeting of the waters was the
34 entire area from the Murray Mouth up to the entrance to
35 the lakes.
36 A. That's because -
37 OBJECTION Mr Steele objects.
38 MR STEELE: My friend has been misleading in what he

N. DRAPER XXN (MR ABBOTT)

1 is not drawing attention to in this document, and it is
2 quite clearly set out in the lines below the connection
3 that he says the witness did not make at the time. It's
4 quite clearly spelled out. It is quite misleading to
5 put part of a quote to a witness and try and draw a
6 conclusion from that, when the whole makes that
7 conclusion untenable.

8 MR ABBOTT: He expressly rejected the whole of that
9 document because what is on the other page he says may
10 not have been on it at the time. I can only do it bit
11 by bit.

12 MR STEELE: Mr Abbott should read this whole part
13 out.

14 MR ABBOTT: I'm entitled to cross-examine in my own
15 way. I'm entitled to do it section by section. I'm
16 dealing with the first part.

17 COMSR: As long as it's clear.

18 MR STEELE: The cross-examiner isn't entitled to
19 cross-examine in a way which is unfair and misleading.
20 If you're talking about a document and there are
21 integral parts of the documents which connect, you are
22 bound to put that to the witness, not parts of it.

23 MR ABBOTT: Mr Steele has again directed the witness
24 to the way in which the witness should answer the
25 question. We're not dealing with, I hope, an
26 unintelligent witness. The witness has the document in
27 front of him. Contrary to what Mr Steele might think,
28 he can read it, and if there was anything he wanted to
29 add to his answer, I'm sure by now Dr Draper has the
30 capacity to do so.

31 XXN

32 Q. Am I right.

33 A. To the degree that I comprehend your questions at times,
34 Mr Abbott, they are not always clear.

35 MR STEELE: These are very serious allegations which
36 are being made against my client. My friend in putting
37 that to you, seriously I gather, suggesting that I have
38 no role to play in this. I have a role to play in this,

1 and my role is to see that what is being put to my
2 client is being fairly put to my client. That is what I
3 am seeking to do.

4 COMSR: I think at least to this extent that you
5 should distinguish whether what you are putting to him
6 is the whole of what he says or just partly something
7 that he said.

8 XXN

9 Q. I'm suggesting to you that whatever took place, what was
10 initially suggested to you, at least, or what you
11 initially recorded, was that the meeting of the waters
12 was really where the sea met the fresh water at the
13 Mouth. That was the thrust of what was being claimed at
14 that stage.

15 A. All of this took place on one evening. You see at the
16 top there the start of note taking at the start of the
17 interview, the culmination of the interview at the other
18 end of the evening was the identification of the
19 boundaries of the site. It's a continuous process, and
20 part of this documentation is the map which I did not
21 undertake to draw at that time, but did subsequently.

22 Q. I will repeat my question. My question was that what
23 was initially suggested to you, and I emphasise again
24 `initially' suggested to you and claimed to be the site,
25 was where the fresh water met the salt water at the
26 Murray Mouth.

27 A. No.

28 Q. That was said to be the meeting of the waters.

29 A. No, that was the origin of the term. `The meeting of
30 the waters' applied to the site, and an important aspect
31 of the site. It was not initially given to me as the
32 entire site. I did not initially, at this interview,
33 have a picture, until it was given to me, of the
34 parameters of the entire site.

35 Q. When you came to write it up later on, you relied on
36 this document in front of you.

37 A. Yes.

38 Q. You wrote a more detailed site report.

N. DRAPER XXN (MR ABBOTT)

1 A. I relied additionally on memory and what had been done
2 from the maps, yes.

3 Q. Go to the next site report, will you please. You better
4 look at the originals rather than your copies. Have you
5 got that.

6 A. Yes, I do.

7 Q. Under the section 'Details' where it says 'Provide a
8 concise summary of the significance of the site', you
9 have written 'The meeting of the waters (Goolwa channel
10 and lakes meet ocean at Murray Mouth), is a minor but
11 definitive aspect of Ngarrindjeri confidential women's
12 cultural knowledge'. You're talking about where the
13 water, where the ocean meets the lake, aren't you.
14 Those are your own words.

15 A. I'm talking about what it says there, which is the
16 Goolwa channel, where the Goolwa channel and lakes -

17 Q. Meet the ocean.

18 A. - meet the ocean.

19 Q. At the Murray mouth.

20 A. And that is the area defined in the map.

21 Q. But it's not the area defined in the map, you see,
22 that's my whole point.

23 A. I disagree with you. I think you misunderstand it.

24 Q. You have said here 'The meeting of the waters', and then
25 you go on to define what it is, don't you, in brackets,
26 and the words you've used are 'Goolwa channel and lakes
27 meet ocean at Murray Mouth'. That's the meeting of the
28 waters, isn't it.

29 A. 'The meeting of the waters' refers to the area
30 traditionally of the mixing of those waters, and you
31 will note that it includes the tidal reaches of the
32 channel, the coastal creeks around Goolwa and Hindmarsh
33 Island - the extent of that particular meeting of the
34 waters of salt and fresh is what was recorded.

35 Q. Let me put it plain to you; I'm suggesting that you may
36 have been told something by Sarah Milera of a claim that
37 where the Murray Mouth was was the meeting of the
38 waters, and that she somehow recorded that as sacred,

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- 1 but you have embroidered and embellished that story to
2 what is now the meeting of the waters site that you
3 claim exists.
- 4 A. No.
- 5 Q. There is nothing in either of these two site reports to
6 indicate that the meeting of the waters is not the
7 position at which the ocean and the water from the lakes
8 meet at the Murray Mouth. That's what these documents
9 say, isn't it.
- 10 OBJECTION Mr Steele objects.
- 11 MR STEELE: The witness has said on a number of
12 occasions, by reference to the documentation, that the
13 answer to that question is `No'. It's been put to him
14 about a third or a fourth time.
- 15 MR ABBOTT: I tender the originals of these. It's
16 important we have the originals.
- 17 COMSR: If you're not pursuing that question.
18 What are they, are they sites?
- 19 MR SMITH: They are draft site cards.
- 20 MR STEELE: As they are being tendered I invite you
21 to now read the entire context.
- 22 MR ABBOTT: That's a matter for your submissions.
23 You've had your go.
- 24 EXHIBIT 239 Original draft site cards tendered by Mr
25 Abbott. Admitted.
- 26 XXN
- 27 Q. I want to contrast your wording in the first version
28 where you said -
- 29 A. Could you perhaps pause for a moment until I have them
30 back in front of me? They are being dealt with at the
31 moment.
- 32 Q. Sure. There are three versions here, one made at the
33 time, one subsequently compiled later that night, and
34 one on the site card.
- 35 A. There are two on site cards, and - do you mean perhaps
36 the report is the third?
- 37 Q. Yes.
- 38 A. I understand.

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- 1 Q. First version in point of time, 'Meeting of waters -
2 Murray Mouth and ocean', correct.
- 3 A. What is written there is undeniably written there, yes.
- 4 Q. Version two, 'The meeting of the waters (Goolwa channel
5 and lakes meet ocean at Murray Mouth)'. Version two.
- 6 OBJECTION Mr Steele objects.
- 7 MR STEELE: The witness is having only part of what
8 he has recorded directed to him. It is very misleading
9 and unfair to him.
- 10 COMSR: Let's see if he admits that or says
11 something else.
- 12 MR STEELE: It's not really - it should not be left
13 to witnesses to take objections. It's my role to take
14 objections on behalf of witnesses.
- 15 COMSR: I'm not suggesting the witness take
16 objection, but whether or not -
- 17 MR ABBOTT: He agrees with the question.
- 18 COMSR: - he agrees that that is all.
- 19 MR STEELE: If the question is objectionable, it
20 ought not to be put to the witness for answer.
- 21 COMSR: I don't have the card in front of me to
22 see.
- 23 MR STEELE: It was for that reason that I requested
24 that you read it before the matter be taken further.
- 25 MR ABBOTT: You can make submissions on it.
- 26 MR STEELE: It's not a question of making
27 submissions. Mr Abbott is continuing to question the
28 witness. I'm asking that the witness be given the
29 opportunity of having the full information put before
30 him. What is being put to him, in my submission, is
31 misleading.
- 32 MR ABBOTT: He has the words in front of him. If he
33 doesn't agree with the question, he will no doubt say
34 so.
- 35 MR STEELE: I invite you to look at the cards to
36 resolve the matter.
- 37 COMSR: Let's see them. Which one is it, which
38 card is it?

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- 1 MR STEELE: It starts with the card in pencil, and
2 then it moves to the one, the green card in pencil, then
3 it moves to the green card in pen.
- 4 MR ABBOTT: Then the white card.
- 5 COMSR: It might resolve the issue more if the
6 witness is asked to say what he did say in respect of
7 that.
- 8 MR ABBOTT: I'm asking him what Sarah Milera told
9 him, you see. I'm suggesting that Sarah Milera told him
10 that 'the meeting of the waters' was just where the
11 Murray Mouth and the ocean met, a proposition which he
12 has already accepted, and I've asked him whether he
13 recorded as the first version that was the meeting of
14 the waters, in the second version that was the meeting
15 of the waters, and only when it came to be registerable
16 was there this later embellishment.
- 17 COMSR: He's got one in circle and then two in
18 circle.
- 19 MR STEELE: Then I invite your Honour to read all of
20 that, including that which appears under 'Details', and
21 it makes it plain, in my submission, that what is being
22 put to the witness is unfair and misleading.
- 23 COMSR: If your question is suggesting to the
24 witness that that is all -
- 25 MR ABBOTT: No, it's not.
- 26 COMSR: Well, I think perhaps it would be better
27 to ask the witness what he was told in respect of it,
28 then, rather than suggesting that what he was told was a
29 portion of what appears.
- 30 MR ABBOTT: Mr Steele has effectively interrupted my
31 cross-examination, so I'll approach it another way.
- 32 XXN
- 33 Q. At no stage in the course of making the notes which you
34 claim were made in the presence of Sarah Milera, did you
35 note anything about it being women's business, did you.
- 36 A. There's no written note to that effect.
- 37 Q. I'm only asking about the written notes.
- 38 A. I'm aware of that.

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- 1 MR STEELE: That's not accurate either.
2 XXN
3 Q. Was one of the most significant aspects of what you
4 learned from Sarah Milera that she was claiming that it
5 was women's business.
6 OBJECTION Mr Steele objects.
7 MR STEELE: This is again a misleading question, it
8 does not appear in the card.
9 MR ABBOTT: Please stop interrupting. This is
10 latent interruption of the cross-examination. Whenever
11 I get near to getting an answer that Mr Steele thinks is
12 inappropriate, or not the answer that he or Mr Tilmouth
13 wants, I get an objection.
14 MR TILMOUTH: You said there is nothing on there about
15 women's business and there is.
16 MR STEELE: The witness is being misled.
17 MR ABBOTT: The witness is capable of reading his
18 own document. If he can't see anything there about
19 women's business, than so be it.
20 MR STEELE: I suggest the witness has been misled in
21 that question. It is simply not an accurate question,
22 and he knows it.
23 MR ABBOTT: It is accurate.
24 COMSR: Is the question `Can you see anything in
25 the document in relation to women's business'.
26 MR ABBOTT: No.
27 XXN
28 Q. My question was did you record in any way, when you
29 first made notes when Sarah Milera was talking to you,
30 on the pencilled site report, that what she was telling
31 you was women's business.
32 A. I was already aware of that.
33 Q. Yes or no.
34 A. Such an important -
35 Q. Yes or no.
36 A. - fact in front of it that I did not write the words
37 `women's business' on the pencilled card that I can see.
38 Q. Did you in any way indicate on the pencilled card that

- 1 this site was referable to women, and women only.
- 2 A. Those words do not appear there.
- 3 Q. But there is nothing that would indicate that sense, is
- 4 there.
- 5 A. It refers to the map the aspects of significance that
- 6 were told to me as being of significance to women and
- 7 which were recorded in that way, so certainly there is
- 8 information there that is, in my understanding, at that
- 9 time and since, referable to particular beliefs and
- 10 traditions of women, yes.
- 11 Q. There is a box to tick which says 'women only'. It's
- 12 blank. All you have to do is to put a tick in it.
- 13 A. There are a lot of blank boxes on that pencilled draft.
- 14 I did not attempt to complete the entire thing in the
- 15 middle of conducting an interview that was very
- 16 difficult for the informants.
- 17 Q. You agree that in relation to your first recording of
- 18 this alleged secret site, there is no reference to the
- 19 site being secret, and no reference to the site being
- 20 referable to women only, is there.
- 21 A. There is not there, no. That information was already
- 22 emphatically known.
- 23 Q. But so important - in fact the two most important things
- 24 are not on this document.
- 25 A. I saw no reason at the time why they should be.
- 26 Q. When you came to write it up that night, your second
- 27 attempt, which is in biro.
- 28 OBJECTION Mr Steele objects.
- 29 MR STEELE: That is a wholly unnecessary thing to
- 30 say. One document is clearly a draft, it has to be
- 31 written up. To talk about it in a pejorative tone about
- 32 'your second attempt' is grossly unfair.
- 33 MR ABBOTT: I will go back.
- 34 XXN
- 35 Q. Go back to the pencilled draft. You did concern
- 36 yourself with who were the custodians of the site, and
- 37 instead of putting 'women' or 'Ngarrindjeri women', you
- 38 put 'Lower Murray Aboriginal Heritage Committee', didn't

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1 you.

2 A. That's what is noted on that initial form, yes.

3 Q. Go on to the next one. That night you had come to the

4 view that you could write more about it from what you'd

5 learned that day.

6 CONTINUED

- 1 A. No, Mr Abbott, as I have said to you before, we didn't
2 deal with this matter during the day. We concentrated
3 in the daylight hours on the field survey, and in the
4 evening hours, when field survey was out of the question
5 because it was dark, we dealt with this matter.
- 6 Q. But the second draft is not during the course of your
7 discussions with Sarah Milera and Robert Day, but later
8 on.
- 9 A. It is indeed, yes.
- 10 Q. On your own.
- 11 A. Yes.
- 12 Q. Where you are writing up what was on the first draft.
- 13 A. No, I was writing up the results of the interview, both,
14 if you like, what was written on the form, which was
15 written in the early part of the interview when I was
16 introducing the form and the recording process as an aid
17 to them recognising what information was required, then
18 we moved onto discussion of a map and a boundary for
19 that site. Some of the relevant information was
20 discussed in that context as well. As soon as I got
21 back to my motel room, I sat down, while it was all
22 fresh in my memory, and I produced -
- 23 Q. Number 2.
- 24 A. A more adequate draft of what I had been told.
- 25 Q. When did you do the site card. That's the South
26 Australian Aboriginal site card which is dated, and I
27 tell you it is dated, May not April.
- 28 A. Mr Abbott, that is merely a cover sheet. South
29 Australian Aboriginal site cards consist of a cover
30 sheet. I did not take one to that meeting as it wasn't
31 particularly relevant, and there are more than one kind
32 of specific site type cards. The kind that the
33 Aboriginal Heritage Branch uses are listed on the front
34 of the general introductory page, so those -
- 35 Q. I am just asking you when you wrote out the South
36 Australian Aboriginal site card, the third document.
- 37 A. It is not a third document. The pen - the material
38 written in pen forms a single site card. That's what

- 1 I'm telling you.
- 2 Q. So the documents that night consisted of - you wrote out
3 in your motel room - the green page in ink and the white
4 page in ink.
- 5 A. Yes, without a specific date, but it simply says May
6 date unspecified because the final version, which would
7 be based on these drafts, would obviously, as it was
8 already - as I was booked up, if you like, writing a
9 report on 29 April, would be in fact the final - would
10 be some date, I presumed, as yet unspecified in May.
- 11 Q. But why, when you are writing on 29 April and writing up
12 notes on 29 April, would you date them May 1994.
- 13 A. I didn't date them May in that sense.
- 14 Q. It says 'date' and you have written 'May 1994'.
- 15 A. I am making a more complete draft there to get down all
16 of the relevant information which I was directly
17 provided with, in preparation, to copy that as a very
18 neatly written and mapped final site card to be put in.
19 It is a draft and that -
- 20 Q. Dr Draper, my question is: When you were writing back
21 in your motel on the evening of 25 April and you come to
22 the section marked 'date', why do you write, on 25
23 April, 'date, May 1994.'
- 24 A. Because I'm preparing a draft for something that will be
25 - that I anticipated would be turned in in May. The
26 date - this particular version, if you will excuse me,
27 was not intended and was not turned in. I'm preparing
28 something in advance, and I don't give a specific date
29 for the simple reason that I didn't know what that date
30 would be.
- 31 Q. But why not put April.
- 32 A. Because I was already aware that it wasn't going to be
33 turned in in April, as I've said to you. We were nearly
34 at the end of April, and this wasn't going to be
35 submitted in April. I anticipated, wrongly as it turned
36 out, that a final version written - copied from this,
37 with additional information, for instance a map on the
38 front, would be turned in in May. It's that simple.

- 1 Q. I suggest you just made this up when it suited you at a
2 later stage in May.
- 3 A. Well, that's not true, Mr Abbott.
- 4 Q. Are you telling us that back in your motel room, as a
5 result of a discussion between Sarah Milera and Robert
6 Day and yourself, you wrote down that night that your
7 recommendations in respect of the preservation and
8 management of this site, the meeting of the waters, was
9 'Restoration of the natural water flow, eventual removal
10 of the barrages, prohibition on bridges and barrages
11 which impede water circulation and the flushing of the
12 Lower Murray system and permanently link islands to the
13 mainland'. Those were going to be your recommendations.
- 14 A. No. Those were the recommendations of the Aboriginal
15 traditional owners provided to me, which it was my duty
16 to record on that form.
- 17 Q. What, that every barrage to be removed, every link with
18 the mainland to be removed. That's what Sarah Milera
19 and Robert Day were on about.
- 20 A. What I recall they were on about is exactly what I have
21 written there. Whether that extends beyond that or
22 which barrages, you would have to ask them. I only know
23 what I've - to the extent that it was given to me at
24 that time.
- 25 Q. Don't you ask them. You're the person - you are not
26 just a receptacle into which information is poured, are
27 you.
- 28 A. No, Mr Abbott, I'm not.
- 29 Q. Was there a discussion with them in relation to this
30 site, the meeting of the waters, that to preserve and
31 manage it you would need, or they would need, or they
32 would seek the removal of all the barrages, a complete
33 prohibition on all bridges. Was there such a
34 discussion, or did you just dream that up.
- 35 A. I've already told you, Mr Abbott, what I have written
36 there with respect to recommendations, and as this is a
37 record card for cultural significance as defined by the
38 Aboriginal traditional owners under the terms of the

- 1 Aboriginal Heritage Act, I recorded, as I was required
2 to do at the time, their views on what they considered
3 relevant recommendations. That's what I was required to
4 do there. My - it would have been wrong of me to edit
5 or misrepresent those views. It was my duty to report
6 them at that time.
- 7 Q. So it wasn't just that they were telling you that the
8 ongoing fertility of the area was a threat if a bridge
9 was built. They were telling you this site was being
10 desecrated and had been desecrated since 1930 when the
11 barrages were built. Is that what they told you.
- 12 A. They certainly considered, and I've seen and heard this
13 in a number of places -
- 14 Q. On 25 April, please.
- 15 A. On 25 April they certainly said then that they
16 considered that the barrages also constituted a serious
17 problem to that site, and that they would like to see
18 them removed and the natural water flow restored to the
19 Murray, yes.
- 20 Q. This is not just the Goolwa barrage. This is barrages
21 plural. This is Tauwitchere, Mundoo, Ewe Islands and
22 Goolwa.
- 23 A. Specific -
- 24 Q. Isn't it.
- 25 A. The barrages, I presume, referred to there are the
26 barrages within the area marked on the site record.
- 27 Q. Which includes the Tauwitchere, Mundoo, Ewe Islands and
28 Goolwa barrage.
- 29 A. I don't recall specifically whether Tauwitchere is
30 within that area or not, but it is quite likely that it
31 does, if it is within that area.
- 32 Q. If it is within that area, it includes all the barrages.
- 33 A. If they are within that area of the site card.
- 34 Q. Have a look at inside the manilla folder in front of
35 you.
- 36 A. Yes, but the map I prepared doesn't have the barrages on
37 it.
- 38 Q. But it includes the area containing the barrages.

1 A. Any barrages within that area I would consider to be the
2 subject of that recommendation, yes.

3 Q. That's all of them. There aren't any others. Do you
4 agree.

5 A. Yes. If that's the case, then that's the case.

6 COMSR: The witness is not saying it is his
7 recommendation, as I understand it.

8 MR ABBOTT: I want to get to that.

9 XXN

10 Q. You say that this site registration card - has this site
11 been processed. Have you lodged this as a registration
12 of a site.

13 A. No, I haven't as yet. It has - these sites are unusual
14 in terms of the registration process, in terms of the
15 Minister called for an urgent report to make an urgent
16 determination on those sites and the Minister, and
17 presumably Cabinet, placed, as a deliberate first
18 priority, the production of the report, advice, et
19 cetera, that was provided to them rather than the
20 associated paperwork. It does take time to put site
21 cards through a registration process, and they wanted a
22 reply within a very short time, by 29 April.

23 COMSR: I hope we are not going to go into any
24 identification of the extent of the sites in the area.

25 MR ABBOTT: No.

26 XXN

27 Q. Could you tell me why, having received this information,
28 and having filled in this South Australian Aboriginal
29 site card on the evening of 25 April 1994, you've taken
30 no further steps to register this site under the
31 Aboriginal Heritage Act if you genuinely believe it to
32 be such a site.

33 A. Mr Abbott, I proceeded with the write-up of the
34 Hindmarsh Island Aboriginal heritage survey to the
35 degree that my duties at the department allowed until
36 the time of my resignation from the department. I have
37 subsequently been asked to, and have agreed to, continue
38 that write-up work on a consultancy basis which has

- 1 again been interrupted by this commission and won't be
2 able to be completed until I have this material back
3 from the commission.
- 4 Q. In the course of the discussions on 25 April 1994, was
5 the word 'fertility' mentioned.
- 6 A. To that I could only say if it appears in writing
7 somewhere here we may assume that it was. If that
8 particular word doesn't appear in writing here - I think
9 it was though. I don't see it written down, but it's -
10 I believe that 'fertility' was mentioned in terms of the
11 matters to do with life cycle and reproduction.
- 12 Q. Why have you described the traditional owner of this
13 site, the meeting of the waters, as 'Ngarrindjeri
14 women's business', giving the address of that entity as
15 the Lower Murray Aboriginal Heritage Committee.
- 16 A. Because that's the way that the Lower Murray Aboriginal
17 Heritage Committee, to the best of my knowledge, wished
18 it to be recorded, as something of significance to that
19 corporate group and care of that corporate group rather
20 than singling out, at that stage, single informants.
- 21 Q. A curious traditional owner, Ngarrindjeri women's
22 business. Did you ask any questions about why they were
23 ascribing as the traditional owner the concept of
24 Ngarrindjeri women's business.
- 25 A. This is still a draft, Mr Abbott. I cannot say to you
26 that the final version will say that, because the draft
27 record has to be reconfirmed with that committee, and
28 that is yet to happen as a final card, but it was
29 specifically said to me that, although I could and I
30 have named there the direct informant, that it was not
31 appropriate to name a particular Aboriginal person as
32 traditional owner. And you will remember that the Lower
33 Murray Aboriginal Heritage Committee was recognised by
34 our government as being representative of the
35 traditional owners, so that was considered an
36 appropriate way to record it.
- 37 Q. This record card refers to notes. What does the
38 reference to notes cover.

- 1 A. It refers to the draft site record card. In fact, on
2 the final - with respect to the final copy of the site
3 record card it would refer to both of these record
4 cards.
- 5 Q. So all it does is refer to the - the expression 'notes'
6 is not something extrinsic. It is the document that's
7 created the same day.
- 8 A. It refers to these documents here in front of us.
- 9 COMSR: You have asked a great many questions
10 about this.
- 11 MR ABBOTT: I am just about to leave that topic and
12 go onto a couple more.
- 13 COMSR: We are not going to canvass any grounds
14 now that have been covered by counsel?
- 15 MR ABBOTT: No.
- 16 XXN
- 17 Q. You have, in your work as an anthropologist, made a
18 number of claims in relation to women's business and/or
19 fertility aspects in relation to sites from the 1980s
20 onwards, have you not.
- 21 A. I don't understand what you are referring to. Could you
22 be more specific, please?
- 23 Q. As of 25 April 1994, you are making or assisting in a
24 claim being made that Hindmarsh Island and the waters
25 that surround it was somehow related to women's
26 business.
- 27 A. I recorded, on that date, the information you see here
28 before you in these two site cards and the report that,
29 yes, do relate to Aboriginal women's business.
- 30 Q. This is not the first time that you've assisted in such
31 a claim being made, is it.
- 32 A. Mr Abbott, I wasn't assisting in any claim being made.
33 I was recording a site for the State government, and I
34 don't know what other occasions you might be referring
35 to. Perhaps you could specify.
- 36 Q. Have you not been involved in Moana and the sand dunes
37 at Moana.

- 1 A. As an officer of the Aboriginal Heritage Branch from
2 1987 to 1995, I could hardly avoid it. I've been
3 involved in many aspects of the conservation and
4 research of the Moana site over a period of a decade.
- 5 Q. I just want to know whether you have assisted, or you
6 yourself have made, on behalf of anyone else, a claim in
7 relation to women's business and/or fertility and the
8 Moana sand dunes site.
- 9 A. Not to my knowledge, Mr Abbott, no.
- 10 COMSR: Are these matters of public record?
- 11 MR ABBOTT: Yes. I will deal with them in due
12 course.
- 13 XXN
- 14 Q. But you don't have any recollection if you had made such
15 a claim or assisted in such a claim being made.
- 16 A. I don't know what you mean by a claim, making a claim.
- 17 Q. I wouldn't want my question to founder on some obtuse
18 interpretation. Perhaps if I use the word 'assertion'.
19 Have you been party to, or yourself made any assertion
20 in relation to the Moana site that it is in any way
21 connected with women's business of any sort.
- 22 A. I am aware that in the early 1990s, I suspect somewhere
23 around 1993, that an aspect of the already documented
24 Moana site, referring to female fertility, was made
25 known to the department and was made public in the
26 Adelaide press by two Kurna Aboriginal people, who
27 were, I believe at that time, members of the Kurna
28 Aboriginal Heritage Committee.
- 29 Q. I'm not asking you about what they did. I'm asking you
30 about your involvement or your association with any
31 claim made.
- 32 A. What they did was, I believe, make a baby in the sand
33 dunes. I was definitely not involved with that.
- 34 COMSR: Mr Abbott said he is not asking you
35 about that. He is asking you about whether you had any
36 involvement with -
- 37 MR ABBOTT: Any claim, any assertion.

1 COMSR

2 Q. That you facilitated or promoted it.

3 A. The department has produced many documents with respect
4 to the nature of the Aboriginal heritage significance of
5 the Moana sand dunes. I have been involved in the
6 writing of a ream of them myself. I can't say whether
7 the department, in general, or I, as an officer of the
8 department, in producing written documentation, may or
9 may not have recorded what the Kaurna Aboriginal
10 Heritage Committee said. If that's the only context, I
11 can imagine that you might be referring to, and it's
12 possible, if the Kaurna Heritage Committee puts an
13 aspect of significance to us, that we may write it down
14 and report that they have done so.

15 XXN

16 Q. The Onkaparinga River area, have you ever been involved
17 in any assertion that the Onkaparinga River -

18 COMSR: Again, is this a matter of public
19 record?

20 MR ABBOTT: Yes, it is in the Kaurna Journal.

21 XXN

22 Q. The Onkaparinga River bore a resemblance to women's
23 reproductive organs.

24 A. I am - I have conducted some archaeological and
25 historical research for the State government on the
26 Onkaparinga River estuary, however -

27 CONTINUED

1 Q. I am not asking you that.

2 A. Just bear with me a moment, please. However, I am aware
3 of the matter you speak of, because, after they had
4 written and published the article together, I think
5 Lewis O'Brien gave me a copy of the article that he and
6 Georgina Williams had written. I was not aware of that
7 detail that they write in that article until I was given
8 a copy after its publication. Although I was aware that
9 the area of the Onkaparinga River below the South Road
10 bridge had been - was well-known. I can't give you the
11 specific historic sources, but certainly it was
12 well-known in the heritage community generally, but
13 certainly of significance to women. And I had heard it
14 was a place of peace, where women could have sanctuary,
15 or be at peace. It was more a place where others could
16 not intrude. That's all I had heard about that place,
17 until the publication of that article.

18 Q. I am not asking you about that. Exhibit 210, could you
19 just identify that we are talking about the same
20 article.

21 A. Yes, this is the article -

22 Q. That is the article. You can put that down.

23 A. Which Lewis O'Brien gave me a photocopy.

24 Q. Do you know the Aboriginal Legal Rights Movement in
25 Adelaide.

26 A. Yes, certainly.

27 Q. In relation to the matters that arise in this Commission
28 and what you have spoken of, have you ever given them
29 any statement.

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

31 Q. Have you ever gone in there and spoken to them about
32 these matters.

33 A. I have. If you mean have I on my own recognizance gone
34 to the Aboriginal Legal Rights Movement to discuss these
35 matters, no. I have certainly been to their offices and
36 they have - and members of the Aboriginal Legal Rights
37 Movement have been to DOSAA offices at various times
38 over the years and through this matter dropping off

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- 1 documents, picking up documents. Just in the normal
2 course of business, but I am not aware of anything
3 outside of our normal course of business.
- 4 Q. Putting aside a sort of messenger system, have you gone
5 to the ALRM, or have you had anything to do with them,
6 by way of assisting them in their case that involved the
7 Chapmans in the Federal Court.
- 8 A. No.
- 9 Q. I want you to look at your diary note for 8 September
10 1994.
- 11 COMSR: Mr Abbott, is this again an issue as to
12 credibility?
- 13 MR ABBOTT: Yes, it is.
- 14 XXN
- 15 Q. Could you go to the back.
- 16 A. Could you give me the date again?
- 17 Q. It is a separate sheet of paper at the back.
- 18 COMSR: Credibility is ultimately going to be an
19 issue for me, Mr Abbott.
- 20 MR ABBOTT: Yes. No, this is a matter right on
21 point.
- 22 A. Which paper are you -
- 23 XXN
- 24 Q. The one that is headed '8 September 1994 Aboriginal
25 Legal Rights Movement', is that your handwriting. Is
26 that your handwriting.
- 27 A. That's my handwriting, yes.
- 28 Q. Does that refer to an attendance, on 8 September 1994,
29 at the Aboriginal Legal Rights Movement.
- 30 A. It has the - it has that date and it refers to ALRM and
31 that's -
- 32 Q. And it refers to you commenting on Lindy Worrell's
33 comments on the Fergie report and on Vanessa Edmonds's
34 report, doesn't it.
- 35 A. I think these - this, I believe, is a note I have made,
36 which, in fact, has nothing to do with the diaries.
37 Just - it just hasn't been filed anywhere, from a
38 telephone conversation, as far as I'm aware. And I have

1 made notes of things that have been said to me.

2 Q. At the ALRM.

3 A. By ALRM. And I would -

4 Q. Have a look at the bottom of the page, 'Court
5 deposition', you have described or do you know -
6 'obscene, irrelevant, racist, inaccurate and
7 misleading' - who said all that.

8 COMSR: How is that going to assist me?

9 MR ABBOTT: Because these are comments which this
10 witness has recorded in a discussion apparently with
11 ALRM in relation to the Fergie report and the Edmonds
12 report, reports which are crucial to this matter.

13 OBJECTION Mr Steele objects.

14 MR STEELE: Certainly the witness hasn't admitted to
15 that. That might be my friend's assertion, but the
16 witness has not accepted it.

17 MR ABBOTT: I will put it to him.

18 XXN

19 Q. These are notes of your discussion with ALRM, isn't it.

20 A. This is notes of information that I ascertained from
21 ALRM, when they called me, when they phoned me to ask
22 for comments, which I did not give. I recorded this
23 information from them. As to the contents of reports
24 that had - that concerned me and my work, that had been,
25 as I understood it, provided to, or were being provided
26 to the Federal Court, I had not seen and I still haven't
27 seen these reports. And that's what was reported to me.
28 And the comments you refer to at the bottom with respect
29 to court depositions meaning those ones, I have made a
30 note of my immediate reactions to what was reported to
31 me as being in those reports. As I have said, I have
32 not actually seen the reports.

33 Q. Who, at the ALRM, did you have these discussions with.

34 A. I cannot be certain, because it is simply not recorded
35 here. And this was a very, very busy time. So, I am
36 not certain. It quite possibly was a call to me at my
37 office from Tim Wooley at ALRM, but I can't be certain
38 about that.

- 1 COMSR: Mr Abbott, I just don't see where this
2 is taking me.
- 3 MR ABBOTT: You will.
- 4 XXN
- 5 Q. The note starts off 'Warrell re Fergie two reports', and
6 you have recorded 'Doesn't have a sufficient level of
7 knowledge to understand the context, issues,
8 anthropological assessment, or the cultural matters
9 being discussed. Doesn't come to grips with it.' Was
10 that Tim Wooley's view or yours or both.
- 11 COMSR: Mr Abbott, have I got any report in
12 front of me from -
- 13 MR ABBOTT: Yes, you have Lindy Worrell's report on
14 the Fergie report.
- 15 A. This appears to record my personal reactions as I was
16 being told things. It was not my intention to, in fact,
17 leave that in the diary, because it is not part of the
18 diary. It is personal thoughts to what I was being told
19 at the time. I am not particularly -
- 20 XXN
- 21 Q. But this is your -
- 22 A. Keen to pursue -
- 23 Q. This is your view of the Worrell comments on the Fergie
24 report. And your view was that Lindsay Worrell's report
25 'Doesn't have a sufficient level of knowledge to
26 understand the context, issues, anthropological
27 assessment, or the cultural matters being discussed.
28 Doesn't come to grips with it.' That was your view.
- 29 A. Those were my notes.
- 30 OBJECTION Mr Steele objects.
- 31 MR STEELE: I object to the line of questioning. We
32 have been pursuing it for sometime. I raise the issue
33 whether it is of any significance to know what this
34 witness thinks or did not think about Lindy Worrell's
35 evidence or the report in connection with the Federal
36 Court case.
- 37 MR ABBOTT: Come off it. This is from the same
38 mouth that bagged Vanessa Edmonds. This is the same

1 counsel who was critical of Vanessa Edmonds making a
2 mild comment about this very witness. It is nothing
3 compared to the comments of his about other witnesses.

4 I say this reveals him in his true colours.

5 MR STEELE: That is the second time Mr Abbott has
6 made a reference to the true colours. It is an
7 extraordinary thing to say. It doesn't advance it
8 before you at all. There is an hysterical element to
9 that which I submit does not help you. The witness has
10 been tested on this time and time again. He shows no
11 sign of giving way to whatever Mr Abbott wishes him to
12 give way to. I submit the time has come to put a stop
13 to this line of questioning.

14 MR ABBOTT: I am glad to see Mr Steele has got some
15 support for his view from the back of the hearing room.

16 MR STEELE: I am actually not interested in what Mr
17 Abbott thinks of the support I get. I am interested in
18 the support I get from you and that is the only interest
19 I have.

20 COMSR: I want to know what use is this going to
21 be to me?

22 MR ABBOTT: I will tell you the use that you can
23 make of this.

24 This man comes into this Commission, presents
25 himself as an independent witness with expert views
26 contrary to those of Messrs Jones and Clarke and, in
27 effect, says to you that 'You should accept my view
28 rather than their views in your eventual
29 considerations', or at the very least is saying 'Here is
30 my view as an independent impartial, unbiased expert.'

31 I say this is damning evidence, that he is not
32 impartial, not unbiased, and is biased. And that, far
33 from being nonpartisan, this demonstrates that he has
34 taken a highly partisan view in this whole matter. And
35 I want to ask him some questions about what he has
36 recorded here.

37 I invite you to have a look at it. He has written
38 down his view of his criticisms of Fergie's report and

1 other things and so on and so forth. This is a very
2 relevant document on this man's credibility and lack of
3 impartiality.

4 MR STEELE: Mr Abbott has been attacking this
5 witness's credibility for a very long time now, in the
6 course of which he has accused him of acting on his own
7 account to fabricate what has become known as women's
8 business. He thus joins a fairly illustrious and
9 ever-increasing group of people so challenged. But, at
10 no time, despite the severity of the attack, has there
11 been a slight indication that the witness agrees with
12 any aspect of it. What he may think of Ms Warrell in
13 the context of evidence given in the Federal Court can
14 be of no assistance to you at all. When he was being
15 asked questions of his view of Ms Edmonds, he has
16 indicated that he had no criticism at all of the quality
17 of her work.

18 I submit that this simply is not an issue any longer
19 which can be of interest to you. It is moving beyond a
20 proper testing of credibility to harassment.

21 COMSR: Yes, I must admit -

22 MR MEYER: I rise to support Mr Abbott's argument.
23 And I raise the support for this reason: the very fact
24 of Dr Draper coming here to give evidence as an expert,
25 it is proper A. For an expert's views on another
26 expert's report to be obtained. That is what we have
27 done in relation to Dr Clarke and Mr Jones. It is
28 proper to test that expert as to his views. Not only in
29 relation to what he is actually expressing of his own
30 expertise in relation to his conclusions, but to other
31 people's conclusions. Equally, just because of the fact
32 that there might be some powerful words used, it doesn't
33 alter the absolute relevance of testing this man in
34 relation to what he thinks of somebody else's view.

35 It is no different from Mr Abbott putting, as he did
36 without objection, various matters in relation to Dr
37 Fergie's report to Dr Clarke when he went through, you
38 will recall, Dr Fergie's report in some detail. Had Mr

N. DRAPER XXN (MR ABBOTT)

- 1 Abbott put a question to Dr Draper along the lines of 'I
2 put this to you', or 'I put that to you in relation to
3 Dr Fergie's report', that would have been totally
4 unobjectionable. He is doing exactly the same thing,
5 just in a slightly different form, because he already
6 has written down what apparently is Dr Draper's view.
7 And it is very proper for him to put it, in my
8 submission.
- 9 MR ABBOTT: These are Dr Draper's own comments and
10 they demonstrate all that I have said and more. They
11 are relevant, because I understand that Professor
12 Tonkinson is going to be called and possibly another
13 anthropologist. And I understood at the beginning that
14 it was Professor Tonkinson.
- 15 MR SMITH: Yes.
- 16 MR ABBOTT: I think his name was mentioned. And I
17 haven't had the opportunity of putting to Dr Clarke
18 whether what is in here is a proper approach to an
19 anthropological assessment of another anthropologist's
20 report. But I intend to ask Professor Tonkinson whether
21 he would regard it as a proper approach.
- 22 MR STEELE: I maintain the objection that I put and
23 I do seek a ruling on it.
- 24 COMSR: We have spent a considerable time
25 testing this witness on the issue of credibility. How
26 much further, Mr Abbott, can you go?
- 27 MR ABBOTT: I want to finish the credibility issue
28 with this document this afternoon. I can finish it
29 before 5, but I won't finish all the questions I have on
30 this topic and I submit it is very relevant.
- 31 CONTINUED

- 1 COMSR: It is taking an unconscionable
2 long time.
- 3 MR ABBOTT: I am sorry, I don't apologise for the
4 time it is taking, but I do submit that I will be
5 brief in reference to this. He has already said his
6 comments and I think I want to tender the document and
7 perhaps that is a quick way of dealing with it.
- 8 MR STEELE: I still maintain my objection. I ask
9 for a ruling on it.
- 10 COMSR: I will permit him to put the document to
11 the witness and as far as the issue of credibility is
12 concerned, I think we have taken it as far as we can.
- 13 XXN
- 14 Q. Dr Draper, you have admitted this is your handwriting
15 and these are your comments.
- 16 A. Only in the sense that this is a personal and private
17 note, made in reaction to some disturbing information
18 received at some time. I did not subsequently adopt or
19 express or publish these views, in contrast to the other
20 people you have concerned, so these are not my expressed
21 public views or professional opinion. It is a personal
22 note made on a particular occasion, which I did not even
23 know was still in existence.
- 24 Q. Fortunately for us they are your personal views.
- 25 A. I am not - I am not - I have not tendered this or
26 credentialled this in any way. These are some notes I
27 made at a particular time, in reaction to hearing some
28 particular information. I think you can see how
29 seriously I took these notes, in that I acted no further
30 on them, did do nothing with it, did not pursue these
31 things in any way.
- 32 MR ABBOTT: I tender the notes.
- 33 COMSR: There is some fairly damaging comments
34 in these notes.
- 35 XXN
- 36 A. They weren't intended for this sort of forum or for
37 any public or subsequent use.
- 38 MR ABBOTT: That has nothing to do with it. This

- 1 man, has come along -
- 2 COMSR: I am not thinking about the witness, I
3 am thinking about the nature of the comments he has made
4 concerning other people.
- 5 MR ABBOTT: I am thinking about the comments he has
6 made in his report about Jones and Clarke, and my
7 clients and he is not shy -
- 8 COMSR: They are represented here.
- 9 MR STEELE: As far as I know the witness hasn't said
10 anything in his report about Mr Abbott's client or Jones
11 and Clarke.
- 12 MR ABBOTT: He has said that, insofar as those - the
13 women assert that they would know of the existence of
14 secret sacred Aboriginal women's business in relation to
15 Hindmarsh Island he has categorically -
- 16 MR STEELE: That is an entirely different context.
- 17 MR ABBOTT: This man's credit, his qualifications,
18 and his ability as an anthropologist are all in issue.
- 19 COMSR: That may be so. I am talking about the
20 persons about whom he has commented, expressed.
- 21 MR ABBOTT: I am happy to suppress his comments.
22 Can I just ask him about that so we know who he is
23 commenting on?
- 24 XXN
- 25 Q. The first half is your comments on Lindy Warrell's
26 reports, which were critical of Dr Fergie's report, is
27 that right.
- 28 OBJECTION Mr Steele objects.
- 29 MR STEELE: I rise again. Your ruling, as I
30 understood it, the document could be put and tendered.
31 It has now been put, let it be tendered. If there is to
32 be a suppression order let there be a suppression order.
33 Given the witness's answers to it and the context that
34 he gave around it, that should be the end of it.
- 35 MR ABBOTT: No.
- 36 COMSR: How much further do you anticipate to
37 go?
- 38 MR ABBOTT: Can we give it an exhibit number first

1 of all?

2 COMSR: I am not quite sure of the status of
3 these. These are, as I understand it, off the cuff
4 expressions and opinion.

5 MR ABBOTT: They are hardly off the cuff. It is in
6 a telephone call to the ALRM.

7 MR STEELE: They are not context. They are off
8 The cuff comments that he has not sought to maintain, he
9 has not sought to publish. Their weight is absolutely
10 negligible.

11 MR ABBOTT: You would like it to be negligible.

12 MR STEELE: It ought to be the end of the matter.

13 COMSR: I certainly intend to suppress the
14 comments until I look at the document.

15 MR SMITH: They came with the diary, the witness's
16 diary, pursuant to the subpoena. I suggest that they
17 just get put back in the diary and the diary gets
18 tendered, if it is going to the subject of the
19 examination and we deal with it that way. And if
20 anything untoward is said about people it can be
21 suppressed.

22 COMSR: All right. It is part of the diary I
23 take it?

24 MR SMITH: It came with the diary.

25 MR ABBOTT: I ask this and the diary be one.

26 XXN

27 A. It came accidentally with the diary, the note. I was
28 not aware of its existence there or anywhere else,
29 because I have not considered it at the time it was
30 written and not acted upon it. It does not form a part
31 of the diary and I don't place any personal weight on
32 it.

33 MR STEELE: I have no objection to it being part of
34 the exhibit of the diary, but so long as it is
35 understood it is not part of the diary. It is a
36 document which was inside the diary.

37 XXN

38 A. It was inside the back pocket.

N. DRAPER XXN (MR ABBOTT)

- 1 COMSR: It is one of those matters which I think
2 comes within the terms of reference that matters which
3 are otherwise confidential, which get confidential. I
4 propose to make a suppression order as to the contents
5 of that note.
- 6 MR ABBOTT: What exhibit number is it?
7 COMSR: Exhibit 240.
8 EXHIBIT 240 Note and diary, tendered by Mr Abbott.
9 Admitted.
- 10 MR ABBOTT: Could the sheet be placed before the
11 witness?
- 12 COMSR: Now what are we going to do?
13 MR ABBOTT: Ask him some questions about the note
14 of December 1994.
- 15 OBJECTION Mr Steele objects.
16 MR STEELE: My friend has been cross-examining on
17 what he claims are issues of credibility for a very long
18 time now.
- 19 MR ABBOTT: I would have finished if you hadn't
20 objected.
- 21 MR STEELE: Let me finish my submission. He has
22 sought to raise this issue as an issue of credibility.
23 The witness has answered it, in my submission, whether
24 Mr Abbott likes that answer or whether he doesn't like
25 that answer, that is the end of it. I implore you to
26 make a ruling to uphold my objection.
- 27 MR ABBOTT: You will need to look at this because I
28 tell you what this document is; it is Wooley and Draper
29 talking about the reports which are critical of the
30 Fergie report and it provides this witness's response as
31 to what he - how he suggests, in particular, the
32 Edmonds' report can be disposed of.
- 33 MR STEELE: It does not do that.
34 MR ABBOTT: I will show you.
35 MR STEELE: The witness has answered what it was.
36 It was a discussion in an entirely different context, it
37 was off the cuff.
38 MR ABBOTT: Off the cuff or not off the cuff, it was

- 1 an attempt by this witness to give Wooley the
2 information by which the ALRM could marginalise, the
3 Edmonds' criticisms of the Fergie report.
- 4 MR STEELE: Mr Abbott is now giving evidence.
- 5 MR ABBOTT: That is what I want to show.
- 6 COMSR: I don't propose to take it any further.
7 The document is in there.
- 8 MR ABBOTT: Could I ask that you look at it before
9 you rule.
- 10 MR STEELE: I think it is improper for my friend to
11 stand up here and challenge a ruling that you have
12 given.
- 13 MR ABBOTT: I am not challenging a ruling, I ask you
14 look at it before you close off any further questions on
15 it.
- 16 COMSR: This is a conversation, as I understand
17 it, between the witness and Mr Wooley.
- 18 MR ABBOTT: Whom, if I had known had said this, I
19 would have asked him some questions about it.
- 20 COMSR: To me it is a document that is properly
21 kept confidential.
- 22 MR ABBOTT: I am not talking about it being kept
23 confidential or suppressed, I am talking about my
24 right to ask questions about what the effect of what he
25 is saying. If you look at where it says, 'Edmonds'
26 report' halfway down, you will see that there is a
27 number of bullet points. It is clearly referenced to
28 the various matters in Edmonds' report. The second
29 bullet point for example is, then the third bullet
30 point, possible defamation. He is talking about ways in
31 which Edmonds can be prevented or marginalised, from
32 expressing her opinions. It needs some clarification by
33 way of questions, as to why he wrote some of these
34 cryptic comments, for you to properly understand its
35 purport and true nature.
- 36 MR STEELE: We have been on this issue for 20
37 minutes.
- 38 MR SMITH: We haven't had any evidence about this

1 issue. We have just had the most inconsequential
2 argument in court. If you are going to let that become
3 an exhibit the witness must be able to deal with it in
4 some way, mustn't he.

5 MR STEELE: He has dealt with it.

6 MR SMITH: We must get on with this hearing.
7 If that becomes an exhibit, which it obviously has
8 become, it can't be just dropped in an abyss and ignored
9 for the rest of this hearing. It is either relevant to
10 your enquiry or not. And if it is it needs to be
11 explored one way or the other.

12 MR STEELE: If that is to be the submission I ask
13 the tender be recalled.

14 COMSR: I must say Mr Abbott, I am in some
15 unease about -

16 MR ABBOTT: You are suppressing the evidence on this
17 topic. I am not in any way seeking anything to be
18 made public. I adopt what Mr Smith said. I am entitled
19 to ask a couple of questions to come to grips with what
20 is in here.

21 MR STEELE: Actually, we really have been on the
22 threshold of you making a ruling on it for some time.
23 Every time you are about to do so Mr Abbott tries to
24 cajole you out of the ruling that I anticipate you are
25 going to make. I really implore you to make a ruling.

26 COMSR: I have never seen the document
27 previously.

28 MR ABBOTT: I understood you made a ruling, it is
29 an exhibit and the issue is whether I am allowed to ask
30 any more questions on it. I am happy to leave it up to
31 counsel assisting, it doesn't worry me.

32 COMSR: If I am going to allow any questions on
33 that I personally think that Miss Warrell should be
34 advised of the nature of this.

35 MR STEELE: I didn't hear what your first words
36 were.

37 COMSR: Miss Warrell should be advised of the
38 matter so she can be present.

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MST 55S

N. DRAPER XXN (MR ABBOTT)

- 1 MR SMITH: I will have a look at that and I will
- 2 speak to Dr Warrell, but I think if it continues in the
- 3 same vein, pending that, you should perhaps suppress
- 4 anything further that comes out that is very personal
- 5 and harmful.
- 6 CONTINUED

- 1 MR ABBOTT: I will continue then.
- 2 XXN
- 3 Q. Could you look at this exhibit, part of Exhibit 240,
4 this sheet. The first just under half a page are your
5 criticisms of Lindy Warrell and her reports which deal
6 with criticisms of the Fergie report, aren't they.
- 7 A. That's not entirely correct, no.
- 8 Q. In the main it's correct, though, isn't it.
- 9 A. No, it is, I think, a misinterpretation by you of what
10 this piece of paper represents. I couldn't agree with
11 your characterisation of it at all.
- 12 Q. They are your words.
- 13 A. Yes. This is a private note which was not intended to
14 be seen by any person, and including Mr Wooley. It
15 wasn't provided to ALRM, it wasn't provided to anyone,
16 it was not referred to me any further. In fact, I
17 thought it had been destroyed.
- 18 Q. You've said that.
- 19 A. It doesn't represent my expressed or considered views on
20 any matter.
- 21 Q. No, but it expressed a view of yours as of 8 September
22 1994, didn't it.
- 23 A. It represented an immediate reaction to information I
24 received by telephone, but didn't ever see the actual
25 reports afterwards, as an immediate reaction in the heat
26 of that moment; not before, not since, not even for that
27 entire day.
- 28 Q. The first piece of information was, as I said before,
29 Lindy Warrell's two reports on the Fergie report.
- 30 A. It refers to that, yes.
- 31 Q. The second section is your reaction to what you were
32 told about the Edmonds report.
- 33 A. I'm assuming that's an Edmonds report written for the
34 Federal Court case as well.
- 35 Q. Yes.
- 36 A. Yes, it is, it says 'Federal Court'.
- 37 Q. The third section down the bottom with the bullet point,
38 'Court depositions', relates to your reaction to what

1 was said in the court about this matter.

2 COMSR: No.

3 Q. What did it refer to then.

4 A. It refers to my immediate, soon forgotten, reaction to
5 what I had been told by telephone was contained in those
6 depositions. I did not convey this impression in
7 writing or by word to any other person.

8 Q. Your reaction to the depositions of Warrell and Edmonds.

9 A. To what I was told were key points of those depositions.
10 I stress I have not subsequently or then seen those
11 depositions.

12 Q. Your reaction to what you were told about the
13 depositions of Warrell and Edmonds was that they were
14 'Obscene, irrelevant, racist, inaccurate and
15 misleading'.

16 A. I appear to have quite - yes, I appear to have got quite
17 hot under the collar having been told some of these
18 things.

19 Q. By Mr Wooley.

20 A. I think so, I can't be absolutely certain because it
21 doesn't say.

22 Q. You wrote the words 'very hostile' and 'a pack of lies
23 now published'.

24 A. Yes, I did.

25 Q. What was that in reference to.

26 A. That refers to published newspaper comments by Lindy
27 Warrell about my dealings with her over her involvement
28 in this matter, which I think has already been covered
29 in examination in this hearing.

30 Q. Do you remember how Wooley came to ring you in the first
31 place.

32 COMSR: Does it matter?

33 MR ABBOTT: Yes. It might make sense whether this
34 was off the cuff, out of the blue. You remember I that
35 prefaced this with whether he had any previous contact
36 with ALRM on this matter, and he said 'No, it was just
37 like a messenger. We were delivering stuff to them,
38 they were delivering stuff to us'. That's why I was

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- 1 asking the question. I invite a reconsideration of the
2 evidence which was to the effect that he had no real or
3 significant contact with ALRM in the light of this file
4 note.
- 5 COMSR: This witness is here as an expert
6 witness to give anthropological evidence, which we don't
7 seem to have as yet reached.
- 8 MR ABBOTT: If you think it's irrelevant, I won't -
9 COMSR: I can't see that it's going to help me
10 at all.
- 11 XXN
- 12 Q. I want to ask you a question about claims that you have
13 made, I suggest, and I want you to think about this very
14 carefully. I suggest to you that you have used the
15 words in 1994 and/or 1995, 'I am the saviour of the
16 Ngarrindjeri people', or words to that very same effect.
- 17 A. No.
- 18 Q. Nothing like that.
- 19 A. Nothing like that.
- 20 Q. I'd like you to consider that answer. You've never said
21 anything like that, those words 'Saviour of the
22 Ngarrindjeri people'.
- 23 A. Certainly not to my recollection. Those - no, I don't
24 have that view, and I've never had that view, so I
25 believe that I've never stated such a view.
- 26 Q. Not to anyone.
- 27 A. Not to anyone.
- 28 Q. You understand I have instructions or information that
29 you have. You'd say that information is not correct.
- 30 A. I don't know, I haven't heard it yet, but on the face of
31 it, I would think it may well be.
- 32 Q. Have you ever heard of a claim that the Murray Mouth was
33 the vagina of Australia.
- 34 A. Do you mean - in what - can you provide some sort of
35 context for that please.
- 36 Q. Yes, I can. If I suggest in 1994 one of the claims that
37 you were making - perhaps on your own behalf or on
38 behalf of those whom you were dealing with - was a

- 1 slightly different aspect of this whole Hindmarsh Island
2 exercise, namely that the mouth, the Murray Mouth
3 itself, was specifically sacred because of its
4 connection with that part of the female anatomy.
5 A. Can you be more specific about this claim as to what, to
6 whom am I supposed to have -
7 COMSR
8 Q. To anyone.
9 A. It sounds entirely unfamiliar to me that I've made that
10 claim. I don't believe so.
11 XXN
12 Q. It's not just in the context of the Ngarrindjeri, it's
13 in the context of the whole of Australia. You see I'm
14 putting it that at one point in time, in 1994, you were
15 asserting that this area was peculiarly special because
16 of the mouth of the Murray, being the end of the Murray,
17 where the Murray waters met the sea, had that peculiar
18 significance because it was considered to be that part
19 of the female anatomy. Do I make myself clear, or would
20 you rather I expanded on it.
21 A. Yes, I do. The context - I'm not aware of any such
22 claim. Perhaps if you had some additional information
23 regarding the context.
24 COMSR: Are we going to continue much more with
25 issues of credit with this witness?
26 MR ABBOTT: Yes, I had some more. Perhaps I needn't
27 put any more of those sorts of matters.
28 COMSR: The issue of credit can be explored to a
29 certain extent.
30 XXN
31 Q. Did you attend a proofing at the Crown Law office on 28,
32 29 July 1994, 4 August and 5 August.
33 COMSR: Where is this going to take me?
34 MR ABBOTT: I want to know whether - this is
35 attached to his statement and was supplied by him as
36 part of his material.
37 COMSR: That may be so, but -
38 MR ABBOTT: It's put forward by him, I assume, as

N. DRAPER XXN (MR ABBOTT)

1 evidence of -

2 MS SIMPSON: No.

3 MR SMITH: We put it with the statement.

4 MR ABBOTT: I want to ask a couple of questions on
5 it.

6 COMSR: Why should he not -

7 MR ABBOTT: I'm sorry?

8 COMSR: What would be the significance of it.

9 MR ABBOTT: Because I want to point to some - well,
10 I want to ask him whether or not he has read it. I want
11 to point to some aspects of it.

12 A. I did attend such a proofing by the Crown Solicitor's
13 office, yes, and I think those are the dates.

14 XXN

15 Q. Have you read the 'Summary of proofing of Dr Neale
16 Draper', this document. It went in with your statement,
17 I don't know whether you've read it.

18 A. I have recently read it.

19 Q. With a view to seeing whether it accords with what you
20 told the Crown Law officer who was proofing you in
21 relation to the Chapman's Federal Court action.

22 COMSR: Are we going to be traversing -

23 MR ABBOTT: He didn't take part in it, as I
24 understand it, it was just a proofing session where he
25 recounted to the Crown Law Department what were his
26 recollection of events.

27 XXN

28 Q. That's so.

29 A. I'm - I believe that's the case. I'm not certain in
30 detail as to what the purpose of the proofing was,
31 except that there were matters that the Crown
32 Solicitor's office wished to review with respect to our
33 department's involvement in the work, and I was required
34 to attend these sessions for that purpose.

35 Q. One such aspect of the proofing session was the events
36 of 15 April 1994, the whole day, not just the meeting
37 with Armitage, but the meeting afterwards when you were
38 cornered or spoken to by men and then women.

- 1 A. I believe that was canvassed in that document from
2 memory.
- 3 Q. In relation to 15 April 1994, you made some notes of
4 that, of the events of that day, didn't you.
- 5 A. I think I may have, yes. I think that's referred to. I
6 don't have that document in front of me, but I think
7 that that -
- 8 Q. We don't have it either. Where are your notes of 15
9 April 1994.
- 10 A. I will take a look at this. I think the answer to that
11 -
- 12 Q. We're looking for your notes that you made on or shortly
13 after 15 April 1994 which you subsequently got out to
14 take to the Crown Solicitor's office. Where are those
15 notes.
- 16 A. I'm seeking to refresh my memory. I only have my own
17 statement with me, I don't have the proofing document
18 before me. I want to make sure that I know what you're
19 referring to.
- 20 EXHIBIT 233A HANDED TO WITNESS
- 21 A. I'm looking for the notes reference you're referring to,
22 but I haven't found it yet, so that I can be sure just
23 what you're referring to.
- 24 Q. I thought you agreed with me that you had notes of your
25 meeting of 15 April 1994.
- 26 MR STEELE: Perhaps Mr Abbott can direct Dr Draper's
27 attention to that part of the statement.
- 28 MR ABBOTT: He just said it in evidence.
29 XXN
- 30 Q. 15 April 1994 is a very important date in your evidence,
31 isn't it.
- 32 A. Yes, it is.
- 33 Q. You've agreed you made some notes of that. I want to
34 know where your notes are.
- 35 A. I want to know with reference - what notes you're
36 talking about from that day, that very long day.
- 37 Q. Any time, any aspect of that day, where are your notes
38 of it, or such an aspect.

- 1 A. I do not have in my possession any notes.
2 Q. What happened to them.
3 A. From that day?
4 Q. What happened to them.
5 A. There may have been a note from memory - I still haven't
6 found the reference because you won't tell me where
7 you're referring to.
8 Q. I will tell you what I'm referring to. Do you want to
9 know what I'm referring to. When I got you to agree
10 that you made notes, I was referring to your field
11 notebook for 28 July 1994 where there is a reference to
12 getting out the notes for going to see the Crown Law.
13 CONTINUED

1 A. Could I perhaps see that page of the document so I know
2 exactly what you are referring to, so that we don't have
3 a misunderstanding over the question?

4 MR SMITH: Exhibit 237.

5 MR ABBOTT: Can we have a look at the field
6 notebook.

7 XXN

8 Q. The field book entry for 28 July 1994, p.131, there is a
9 reference Marg Johns, Marnie Polson, Crown Law, re
10 Hindmarsh Island, do you see that.

11 A. I have misunderstood what you are asking about. If I
12 had known it was this, I could have answered you
13 accurately in the first place. These are documents that
14 Crown Law presumes to exist in the department, that they
15 have asked me to go away and find and bring back to the
16 next session.

17 Q. Exactly.

18 A. With respect to that, no record - this is not my notes.
19 We are after the record of the -

20 Q. Of the April statement.

21 A. Of that meeting. I did not have such a record in my
22 files. I could not find one in the standard
23 departmental file. Thinking it might be part of the
24 ministerial file, I referred the matter to my CEO. It
25 is my understanding that we could not, on that occasion
26 at least, produce, from the department's possession, a
27 record of that meeting to Crown Law, and I cannot be
28 absolutely certain of this, but I think that we referred
29 them to the Minister's office, believing that, whatever
30 record of the meeting there was, was held there.

31 Q. At the Minister's office.

32 A. The Minister's office. That's my recollection of that
33 matter.

34 COMSR: We must adjourn now.

35 MR SMITH: Can we resume at 10 rather than 9.30?

36 If I could tender this before you leave the bench. This
37 is the statement of Dr Deane Fergie. This has just
38 arrived. That will enable me then, as it is tendered,

1 to hand it out to counsel.

2 COMSR: It is to be handed out to counsel only,
3 as to undertakings as of confidentiality. I don't know
4 its contents.

5 EXHIBIT 241 Statement of Witness of Dr Deane Fergie
6 tendered by Mr Smith. Admitted.

7 COMSR: We will be commencing with Dr Fergie's
8 evidence in the morning.

9 MR SMITH: Yes. The program is Dr Fergie tomorrow,
10 and then I think the statements of the men are due to
11 come.

12 COMSR: Are the statements from the men
13 available?

14 MR KENNY: No, they are not. Early this afternoon
15 is the first suggestion I had had that they would be
16 called on Monday or Tuesday. I had understood that we
17 were going to have Dr Fergie for probably, on the
18 current rate, for a number of days. There was no
19 indication to me otherwise. Then there was Steve
20 Hemming, who is yet to be completed. I understood he
21 was coming back next week. And Dr Draper.

22 I understood that would clear out the week. I have
23 not given my clients any warning that they will be
24 needed on Monday. I have only just spoken to them. One
25 is in Mount Gambier. There probably would be only two
26 that would be available at that time.

27 COMSR: That would be sufficient.

28 MR SMITH: That would be fine.

29 MR KENNY: I haven't spoken with them to confirm
30 that they will be here. I have been able to contact
31 one, and that's all at this stage, and it is Tom
32 Trevorrow. If we were given some notice that they were
33 likely to be needed on Monday, we could have arranged
34 it. I point out George Trevorrow runs Camp Coorong and
35 they need some warning. George Trevorrow is
36 unfortunately not well with a serious back problem.

37 COMSR: He is giving evidence, is he?

38 MR KENNY: George Trevorrow, certainly.

- 1 COMSR: I was just thinking it probably would be
2 the best thing if he came on first in the morning if he
3 has a bad back problem.
- 4 MR KENNY: I don't think he will be here. He won't
5 be here. I understand he may have been seeing a
6 specialist today, but I am not certain of the details of
7 that.
- 8 COMSR: Perhaps we can sort this out tomorrow
9 morning.
- 10 MR MEYER: Just to clarify tomorrow, starting at
11 10, finishing at?
- 12 MR SMITH: 3.30.
- 13 ADJOURNED 5.06 P.M. TO SATURDAY, 28 OCTOBER 1995 AT 10 A.M.

1 COMSR STEVENS

2

3

4 HINDMARSH ISLAND BRIDGE ROYAL COMMISSION

5

6

7 SATURDAY, 28 OCTOBER 1995

8

9

10 RESUMING 10.10 A.M.

11 MR SMITH: The one witness for today is Dr Deane
12 Fergie.

13 MR SMITH CALLS

14 DEANE JOANNE FERGIE AFFIRMED

15 MS PYKE: Just before we get underway, there is
16 something that I just perhaps require you to make a
17 ruling or a direction on.

18 As is abundantly clear from all that has been said,
19 Dr Fergie was employed by Mr Tim Wooley, an employee of
20 ALRM, to prepare her report. Mr Tim Wooley has given
21 evidence and is represented by counsel in these
22 proceedings, Mr D'Arcy Stratford. Mr Stratford is not
23 here. We rang him last night at about 9 o'clock.

24 Suddenly, I don't know why, I had the thought that I
25 wondered whether he knew that Dr Fergie was giving
26 evidence, because, of course, we hadn't been
27 communicating with him and have been working quite
28 independently. And my instructor telephoned and I
29 understand that he was not aware that Dr Fergie was
30 giving evidence today. My instructor instructs me that
31 Mr Stratford wasn't aware that the sittings were being
32 held Saturday, nor that Dr Fergie was being called.

33 I am sure my instructing will correct me if I have
34 got that wrong.

35 COMSR: He wasn't aware we were sitting on
36 Saturday?

37 MS PYKE: So, I think, in that circumstance, I
38 would imagine that Mr Wooley's interests are certainly

1 impacted upon by Dr Fergie's evidence and statement.
2 And there are issues of perhaps confidentiality and
3 privilege that may need to be raised. I don't know. I
4 haven't spoken to Mr Stratford. It is not for me to
5 make those arguments.

6 I just want a ruling as to whether you intend to
7 proceed to hear Dr Fergie's evidence in the absence of
8 Mr Stratford having been notified in a matter that
9 clearly impacts upon his client.

10 COMSR: Yes, Mr Wooley will read the evidence
11 through. If there is a question of legal professional
12 privilege, then it would, of course, arise only in
13 circumstances where the information was given for the
14 purposes of and in anticipation of the proceedings.

15 I don't think that circumstance arises here.

16 MS PYKE: There are other issues, as well. Of
17 course, the report was prepared in relation to s.10
18 proceedings. Mr Wooley's clients are not just those
19 that are represented here by Mr Kenny. I mean, there is
20 a complexity of issues here and I just wanted to flag
21 this. We are here, but I would have thought that it is
22 the sort of thing that Mr Wooley and his counsel should
23 have the opportunity to be present to make arguments, as
24 they arise.

25 MR SMITH: I spoke to Mr Stratford last night and,
26 as seems to be common in this Commission, all sorts of
27 problems were flagged and none of them resolved. And
28 they were to be resolved by me, apparently. And he
29 raised questions of privilege with me and that sort of
30 thing, but said he wasn't going to be here today.

31 So, my suggestion is that we just go on - well, I
32 don't suggest it. We are going to proceed. And, to the
33 extent that Mr Stratford might have some arguments on
34 behalf of Mr Wooley, who might have some arguments on
35 behalf of ALRM as to perhaps privilege, but perhaps not,
36 they can come and make them, next week.

37 But I am conscious of the problems. I have spoken
38 to my learned friend, Ms Pyke, about them. And the

1 subpoenaed documents, for instance, you can receive and
2 mark for identification, at this stage, but we need to
3 go through them.

4 COMSR: Do they need to be -

5 MR SMITH: Identified and marked, yes, they do.

6 They will need to be.

7 So, if I could proceed?

8 COMSR: Right.

9 EXAMINATION BY MR SMITH

10 Q. I think you are a lecturer in anthropology at the
11 University of Adelaide, is that so.

12 A. That's so.

13 Q. I think you have provided this Commission with a
14 statement and supporting documents, which is Exhibit
15 241. And I will just show you that. Would you
16 acknowledge that to be the statement and supporting
17 documentation which you provided to this Commission.

18 A. Yes, it is.

19 COMSR: Are you tendering that?

20 MR SMITH: You have already marked it Exhibit 241.

21 COMSR: Are you tendering it as an exhibit now?

22 MR SMITH: You have already marked it.

23 COMSR: I know I have marked it for
24 identification.

25 MR SMITH: I think it was received fully as an
26 exhibit.

27 COMSR: Yes, Exhibit 241, isn't it?

28 MR SMITH: Yes.

29 XN

30 Q. Looking at Exhibit 5, now before you, which is the
31 report, I think, indeed, that is a report which you
32 provided to the ALRM, on or about 4 July 1994, in
33 connection with the claim of secret or women's knowledge
34 in connection with the Hindmarsh Island bridge matter,
35 is that right.

36 A. It is, minus two appendices.

37 Q. That was provided to the ALRM by yourself.

38 A. It was.

- 1 Q. I think you attend today before this Commission in
2 answer to a subpoena requiring both your evidence and
3 the production of books, papers, documents and records,
4 do you not.
5 A. That's the case.
- 6 Q. Looking at the copy of the subpoena produced to you,
7 that is the subpoena you answer by your attendance
8 today, is it not.
9 A. Yes, that is a copy of the subpoena.
- 10 EXHIBIT 242 Subpoena tendered by Mr Smith.
11 Admitted.
- 12 Q. I think you do produce to the Commission, do you not, in
13 answer to the subpoena, what I will call broadly
14 records, which includes notebooks, diaries, papers,
15 notes, correspondence and other material touching on or
16 dealing in any way with the anthropological significance
17 of Hindmarsh Island and its surrounding areas.
18 A. That's right.
- 19 Q. Looking at this bundle produced to you, by your
20 solicitor -
21 COMSR: Do you want that marked for
22 identification, do you?
23 MR SMITH: I think the bundle can be marked, but we
24 are going to go through it. So, how would you prefer it
25 done? I think it should be marked as one number and I
26 think there are a lot of documents.
- 27 COMSR: Some question may arise as to the
28 admissibility of some of these documents.
29 MR SMITH: Yes, I anticipate there will be some
30 arguments from somebody about privilege, etc.
31 COMSR: At this stage, it is simply a matter of
32 marking the bundle for identification.
33 MR SMITH: Bearing in mind there are only 26
34 letters in the alphabet, perhaps we could mark this,
35 would you happy with this, DJF 1 onward?
36 COMSR: Marked for identification would be 243
37 (1) on?
38 MR SMITH: Yes.

1 XN

2 Q. That bundle, which you now have underneath your right
3 hand, is what you have produced in answer to the
4 subpoena.

5 A. That's right.

6 Q. Could you perhaps, one by one, tell us what it is that
7 you are producing and give enough of a description of it
8 so that we can know precisely what period it covers,
9 etc.

10 A. Is it possible for me to have the slip of paper with the
11 contents?

12 MS PYKE: We have an index that we have written
13 all over. We have made some comments that we wouldn't
14 want distributed, only because it is my notes. We will
15 photocopy it, so that the witness can have it in the
16 witness box. We provided one to the Commission, but for
17 some reason it is either missing or -

18 MR SMITH: It might be handy if we just pause a
19 second and get that index so that we have all got a copy
20 of it as Dr Fergie goes through it.

21 MS PYKE: I can't photocopy it for everybody,
22 because it has got my handwritten notes. Certainly the
23 witness can have it and we can perhaps provide one on
24 Monday morning that is a clean copy. We did provide it
25 with the documents to the Commission. I don't know
26 whether it has gone missing.

27 MR SMITH: No, we will organise a clean copy now,
28 if we could just pause for a minute? That is the most
29 manageable way of doing it.

30 XN

31 Q. Perhaps I will come back to the subpoena and use the
32 time to go now to your statement. I want really to deal
33 with the structure of your statement, so that we can
34 follow it through. The statement, in fact, runs into
35 some, not including the attachments, some 87 pages, I
36 think, doesn't it.

37 A. I think mine's got 92.

38 Q. Yours has got 92.

- 1 A. Yes.
- 2 MR SMITH: P.88 is blank. I think everyone's is
3 blank, p.88.
- 4 MS PYKE: The bibliography starts at p.89. That
5 might be where the problem is.
- 6 COMSR: I have got p.88 and then the
7 bibliography.
- 8 MR SMITH: If we are to work through the statement,
9 Dr Fergie plainly must have the statement that we have
10 got.
- 11 COMSR: Or we have the statement that she has
12 got.
- 13 MR SMITH: Or we should have the statement that she
14 has got.
- 15 MS PYKE: I am explaining to counsel, if you look,
16 the bibliography goes up to the statement.
- 17 XN
- 18 Q. So, including the bibliography, the statement runs to 92
19 pages, doesn't it.
- 20 A. That's right.
- 21 Q. Looking at the statement, which is Exhibit 241, I think
22 the statement is structured as follows, is it not, pp.1
23 to 6 detail your present position, your qualifications,
24 your experience, both research and otherwise.
- 25 A. Yes.
- 26 Q. Then, at pp.7 to 14, you provide us with definitions of
27 some key terms that have been canvassed in the Inquiry.
- 28 A. That's right.
- 29 Q. You also make some comments on the qualifications of the
30 witnesses Clarke and Jones.
- 31 A. I do.
- 32 Q. And I think that is pp.15 and 16. Then, at pp.16 to 20,
33 you particularise your association with some of the key
34 people mentioned in the course of evidence in this
35 Inquiry, such as Doreen Kartinyeri, people from
36 Aboriginal Legal Rights Movement, etc.
- 37 A. That is so.
- 38 Q. That goes from pp.16 to 20. Then, from pp.20 to 22, you

- 1 detail some early involvement in the Hindmarsh Island
2 bridge dispute. That is, knowledge that your husband
3 had something to do with it, contact with Dr Lindy
4 Warrell, etc.
- 5 A. That's right.
- 6 Q. Then the bulk of your statement, from pp.22 to 49, where
7 you detail your actual involvement in the Hindmarsh
8 Island bridge affair, from the facilitation of the
9 meeting with Professor Saunders, on 19 June 1994,
10 through to the reporting to ALRM.
- 11 A. That's right.
- 12 Q. Then, pp.49 to 87, or p.92, including the bibliography,
13 are really your response to criticisms and your
14 arguments, in a sense, is that right.
- 15 A. That's right.
- 16 Q. Is it the case that, in the documents you produce to us
17 in answer to the subpoena, are not included any secret
18 appendices or copies thereof.
- 19 A. That's correct.
- 20 Q. Are there any copies thereof in existence, to your
21 knowledge.
- 22 A. I believe so.
- 23 Q. But not in your possession.
- 24 A. They are not in my possession.
- 25 Q. So that, when you originally completed your report, in
26 July of 1994, and dispatched the report to ALRM, for
27 their submission on to the Federal Minister, you
28 retained, at least, at that stage, a copy of the secret
29 appendices.
- 30 A. I did.
- 31 Q. But what is the position with them now.
- 32 A. When I first retained them, I organised with the
33 university for their storage in a bank vault through
34 Luminis with whom I did the consultancy. Luminis is the
35 university's consulting wing. I advised key women that
36 the material was being held in such a vault and that
37 they could ask for it, at any time. They did ask for it
38 and, in response to that request, I - what is the word -

- 1 withdrew the material from the bank vault and took it,
2 with the manager consulting of Luminis, to the offices
3 of the Aboriginal Legal Rights Movement, where I handed
4 it over.
- 5 COMSR
- 6 Q. You say 'key women', who are the key women.
- 7 A. The key women or woman at that particular time, the
8 person who conveyed the message to me was Doreen
9 Kartinyeri.
- 10 Q. So, Doreen Kartinyeri asked for the copy and you
11 understand that, or you sent it to Aboriginal Legal
12 Rights Movement.
- 13 A. No, I took it by hand.
- 14 Q. You took it by hand.
- 15 A. And I took with me the manager consulting with, the guy,
16 the manager of Luminis, as a witness, I guess.
- 17 XN
- 18 Q. Just coming back to the subpoena: you have not been able
19 to answer the subpoena fully, is that the position.
- 20 A. That's the position.
- 21 Q. Why is that.
- 22 A. Because -
- 23 OBJECTION Ms Pyke objects.
- 24 MS PYKE: That's not proper. The witness has
25 answered the subpoena. It might well be that certain
26 documents that counsel assisting might want are not
27 produced, but the subpoena is answered. It refers to
28 books, documents in her possession or control. And she
29 has produced all of those.
- 30 MR SMITH: I can rephrase that. I didn't mean to
31 put it that way.
- 32 CONTINUED

1 XN

2 Q. You have not been able to - you are not able to produce
3 all the records, diaries, papers, notes,
4 documents touching on or dealing in any way with
5 consultative advice provided by yourself or advice
6 provided to you, with regard to the anthropological
7 significance of Hindmarsh Island and its surrounding
8 area, have you.

9 A. I have handed all of those documents that were in my
10 possession.

11 Q. All those in your possession. However, they are, the
12 bundle of documents which you have at your right arm
13 there, are not all of the documents that fall under that
14 broad description are they.

15 A. But, I would never have all the documents that fall
16 under that description.

17 Q. Let's not fence about; some of the documentation that is
18 sought in the subpoena is not present in court, in your
19 possession now, is it.

20 A. Maybe I can help you out. What you really want to know
21 is where is all the stuff I produced in relation to this
22 consultancy and the answer is, I don't have it all and
23 I have handed some of it over to the Aboriginal Legal
24 Rights Movement.

25 Q. Have you got a list of what you handed over to the
26 Aboriginal Legal Rights Movement.

27 A. Not per se. I can tell what you I handed over to the
28 Aboriginal Legal Rights Movement. I handed over, on two
29 different occasions, firstly, the appendices two and
30 three to my report, and on another occasion I handed
31 over, in response to a formal request from the
32 Aboriginal Legal Rights Movement, I handed over my two
33 field notebooks that relate to this consultancy.

34 Q. Can you tell us when you handed over the secret
35 appendices, when was that.

36 A. Just a moment. I handed over the secret appendices
37 on 10 July 1995.

38 COMSR

- 1 Q. So I am clear, you have sent back all notes or records
2 that refer to the contents of these secret appendices.
- 3 A. Clearly I have some notes here, but the field notebooks,
4 which in this case look like this, I have also, in
5 response to a formal request from them, given them back.
- 6 MR MEYER: I understand the appendices went back on
7 the 10th of July.
- 8 MR SMITH: I am coming to that.
- 9 XN
- 10 Q. The field notebooks etc., were handed well - field
11 notebooks, what else. Was there anything else, apart
12 from the field notebooks, that you handed back to the
13 ALRM.
- 14 A. Not that I recall, no.
- 15 Q. Field notebooks, how many of them.
- 16 A. Two.
- 17 Q. They relate to the field notebooks related to what.
- 18 A. The consultancy that I was commissioned to do.
- 19 Q. In June.
- 20 A. In June 1994.
- 21 Q. Those were handed back when.
- 22 A. They were handed back on 11 August 1995.
- 23 Q. You were, at that stage, at least a potential witness in
24 this enquiry.
- 25 OBJECTION Ms Pyke objects.
- 26 MS PYKE: I object to that question at this stage.
27 I think there is a difficulty. We have produced
28 certain documents and records which this witness,
29 frankly, to properly answer a question from counsel
30 assisting, would need to refer to, indeed, would need to
31 be tendered. They are amongst documents that I think
32 it would be only proper, indeed, as I have already
33 indicated to counsel assisting, that Mr Wooley and his
34 counsel be here. It concerns certain communications
35 with Mr Wooley and ALRM. There is certain
36 correspondence that we would want to put in, but it
37 would have to be seen in context that relates to that
38 very issue.

- 1 MR SMITH: I will cover that.
- 2 COMSR: The question in itself, are you taking
3 objection?
- 4 MS PYKE: Yes. I say that, at that stage, there
5 had been a letter from this Commission, indicating it
6 wasn't the intention to summons.
- 7 COMSR: That is a different thing.
- 8 MR ABBOTT: I draw your attention to the fact that
9 prime facie this witness has committed a contempt of
10 your Commission and that she ought to be advised that
11 she need not answer the questions on the grounds that
12 they may tend to incriminate her.
- 13 MS PYKE: It has nothing to do with Mr Abbott. He
14 can cross-examine on this.
- 15 MR ABBOTT: If you haven't advised your client on
16 the basis that the answers may incriminate her, the
17 Commission is advised to do so.
- 18 COMSR: The answer to this question may not
19 involve any such thing.
- 20 MS PYKE: Putting it bluntly, if the Commission
21 would care to put it to this witness it will be out of
22 context. We're quite happy to answer questions in
23 relation to this. In context, if Mr Wooley were here
24 and represented there would be no difficulty or his
25 counsel were here, but it just seems to me, what is
26 about to happen is a rather misleading series of
27 questions.
- 28 COMSR: We're only taking them one at a time and
29 you are objecting to this question?
- 30 MS PYKE: It is unfair to this witness to answer
31 that. What's a potential witness? I suppose Adelaide
32 is a potential witness.
- 33 COMSR: A party who is asked to be legally
34 represented might be considered to be in that category.
- 35 MS PYKE: As this Commission well knows, we made
36 it clear from the very beginning of this proceeding,
37 that Dr Fergie would not be attending to give evidence
38 without a summons. We say it was made clear to us and

- 1 in correspondence from the Commission, that it wasn't
2 the intention to summons Dr Fergie. We say she was
3 never, at that time, a potential witness in these
4 proceedings.
- 5 MR ABBOTT: This is a nonsense.
- 6 MS PYKE: Mr Abbott can sit down.
- 7 MR ABBOTT: Ms Pyke cross-examined witnesses day
8 after day and she now claims that there is some
9 inconsistency whereby this witness were not to be a
10 potential witness.
- 11 MS PYKE: If Mr Abbott is going to be able to
12 interfere.
- 13 COMSR: We are not going to spend a long time on
14 this. I can see no objection to the witness answering
15 this particular question.
- 16 COMSR
- 17 Q. Can you answer the question.
- 18 A. I have forgotten it.
- 19 Q. Of course you have forgotten it by now.
- 20 XN
- 21 Q. I will ask, at that time, on 11 August, 1995, when you
22 handed over your two field notebooks to ALRM, you were a
23 potential witness before this Commission, were you not.
- 24 A. My understanding was that, that I would be available as
25 a witness if summonsed, but that I had actually been
26 informed that such a summons was not likely to be
27 forthcoming.
- 28 Q. So, you took the view then, did you, that you weren't a
29 potential witness in this enquiry.
- 30 A. I took the view that I was a potential witness if the
31 Commission summonsed me. That I would not appear unless
32 summonsed and that I wasn't subject to a summons at the
33 time.
- 34 Q. Can you tell me then; when you handed over your field
35 notes, that then, in the event that you were a witness
36 and I am talking about your position as at 11 August
37 1995, that if you weren't able to recover those field
38 notes, it would provide a problem for you giving

1 evidence.

2 A. Yes, I was aware of that.

3 Q. And you made no copies of your field notes.

4 A. I did not.

5 Q. And so, the position is now, that in respect of your
6 evidence touching upon June - your work done for the
7 ALRM in June '94 and thereabouts, you have not your
8 field notes to refresh your memory as to incidents etc.

9 A. That's true, except for a few pages which I had
10 photocopied before I handed the material over, which I
11 had photocopied for the purposes of my union at the
12 university, approaching the university about legal
13 representation at this Commission and those notes
14 relate, in particular, to the context under which I was
15 contracted to undertake this work.

16 Q. When you handed over your field notes, to the ALRM, I
17 take it you knew very well, at that time, that the ALRM
18 had an intractably opposed attitude to this Commission.

19 A. I did.

20 Q. Did you anticipate that there was every prospect that
21 you wouldn't be able to recover those field notes.

22 A. I did.

23 Q. In the event that you were summonsed.

24 A. I did.

25 Q. When you handed them over, on 11 August 1995, did you
26 obtain any undertaking from these people at the ALRM or
27 whoever, that in the event that you were to give
28 evidence, that you required them to be returned.

29 A. I did not.

30 Q. In fact, is that the case, you personally delivered
31 these two field notes to the officers of the ALRM in
32 King William Street.

33 A. I did.

34 Q. Not through your solicitors.

35 A. I was accompanied by my solicitor.

36 MR ABBOTT: Can we find out who she actually handed
37 them over to?

38 XN

- 1 Q. Could you answer Mr Abbott's question. Who did you give
2 them to.
- 3 A. A white women lawyer, whose name is -
- 4 Q. Joanna Richardson.
- 5 A. That's so.
- 6 Q. I hand to you an index. I think you recognise that as
7 an index of documents which you are now going to produce
8 to this Commission, is that right.
- 9 A. That's right.
- 10 Q. That is prepared by your solicitors in conjunction with
11 you, on your instructions.
- 12 A. I believe so.
- 13 Q. Looking at the index, the first item on the index is a
14 video, is it not, of the construction of the Goolwa
15 barrage.
- 16 A. That's so.
- 17 Q. You produce that.
- 18 A. I do.
- 19 MR SMITH: As these items come in could we mark
20 them for identification?
- 21 COMSR: They are marked for identification 243.
22 Are we going to go through all these and mark these at
23 this stage?
- 24 MR SMITH: We will mark them 243(1) (2) (3) etc.
25 They need to be identified. There are special problems
26 with some of them. We need to focus on them.
- 27 MFI 243(1) Video of construction of the Goolwa
28 barrage marked 243(1) for
29 identification.
- 30 Q. Video construction of the Goolwa barrage is MFI 243(1).
31 I take it that is just something you took on board in
32 the connection with the preparation of your report for
33 the 4th of July.
- 34 A. That's true.
- 35 Q. The next item is the field notebook, commencing 7
36 February 1995.
- 37 A. That's so.
- 38 MFI 243(2) Field notebook commencing 7 July 1995

- 1 marked 243(2) for identification.
- 2 MS PYKE: These are just being marked for
3 identification?
- 4 COMSR: Yes, they are only marked for
5 identification at this stage.
- 6 XN
- 7 Q. The field notebook - I don't want to go into the detail
8 of that - does the topic canvassed in that green field
9 notebook, commencing 7 February '95 - there are a number
10 of topics, I take it, are there.
- 11 A. That notebook relates to a consultancy, a one day
12 consultancy I undertook on that day in relation to a
13 question of whether or not the women, or the
14 Ngarrindjeri would approve of the laying of a Telecom
15 cable between the mainland and Hindmarsh Island.
- 16 Q. It is the case is it, that you attended down at Goolwa
17 during some form of consultancy, relating to the laying
18 of that coaxial cable across the river.
- 19 A. Yes.
- 20 Q. Did you take the view that the laying of that cable
21 across the river, was something that was the thrust of,
22 at least was something that you didn't advocate in your
23 report of 4 July, a linking of the mainland to the
24 island, by a coaxial cable.
- 25 A. I think the issue is quite a different one.
- 26 Q. Is it.
- 27 A. I think it is clearly a related issue, but the way in
28 which you put that question the answer is no.
- 29 Q. I will come back to that later. The next item, is copy
30 letter, Dr Fergie to Tim Wooley of 5 July 1995.
- 31 A. I don't seem to have that here. That is a letter.
- 32 Q. That is a letter, I take it, enclosing your report.
- 33 A. That's the case, but I can't find it. Sorry I have it
34 here.
- 35 MFI 243(3) Copy letter, Dr Fergie to Tim Wooley
36 dated 5.7.95 marked 243(3) for
37 identification.
- 38 MS PYKE: In the absence of Mr Wooley and his

1 counsel, I would ask that there be no details of
2 these. They can go in. They can be identified as
3 documents, but any information about the content, at
4 this stage, would be, I say, inappropriate and this is
5 merely their being marked for identification.

6 MR ABBOTT: I would like to respond to that as a
7 party interested in the documents. Mr Stratford was
8 given an opportunity to be here. For reasons known to
9 Mr Stratford and Mr Wooley he is not here. Ms Pyke is
10 seizing upon the absence of Mr Stratford and/or Mr
11 Wooley as a grounds for somehow resisting both now and
12 presumably later on, our inspection of these documents.
13 If there is to be any resistance it should come from
14 Mr Wooley and/or Mr Stratford and the fact that they
15 have absented themselves deliberately, inadvertently
16 or accidentally, should right their door and should not
17 be urged upon us by Ms Pyke as grounds for staying the
18 matter.

19 MS PYKE: I am not asking for it to be stayed. I
20 have no objection for the witness to say 'this is a
21 letter' but not to go into the contents of the letter.
22 They can be marked for identification and in due course,
23 if there needs to be argument about the particular
24 document, I say it is a backhanded way of trying to get
25 evidence of what is contained in the documents, at a
26 stage where they are merely being produced pursuant
27 to the subpoena.

28 COMSR: Can we go through the list and get them
29 marked at this stage?

30 MS PYKE: I have no difficulty with it being
31 marked.

32 COMSR: We will deal with the other issue after
33 that. Let's get them marked. We will get them produced
34 and marked, go through the list, otherwise we shall be
35 here the whole day.

36 XN

37 Q. You produce that copy from yourself to Tim Wooley.

38 A. I do.

D.J. FERGIE XN (MR SMITH)

- 1 Q. Do you have then a copy letter from Dr Fergie, to
2 myself, as counsel assisting, dated 24 July.
- 3 A. I do.
- 4 MR SMITH: I claim privilege for that.
- 5 MFI 243(4) Copy letter from Dr Fergie to Mr Smith,
6 as counsel assisting, dated 24.7.95
7 marked 243(4) for identification.
- 8 Q. Then, item number five, another letter from your
9 solicitors to my myself, dated 28 July, 1995.
- 10 A. I do.
- 11 Q. You produce that.
- 12 A. Yes.
- 13 MFI 243(5) Letter from Dr Fergie's solicitors to
14 Mr Smith, dated 28.7.95 marked 243(5)
15 for identification.
- 16 Q. Number six. It is a letter from your solicitors to ALRM
17 of 28 July 1995. That's six. Do you produce that.
- 18 A. No, sorry.
- 19 MS PYKE: I just want to say they actually were in
20 order when they went into counsel assisting yesterday.
21 They have got out of order somehow.
- 22 XN
- 23 A. I don't believe that letter is here.
- 24 MS PYKE: We have a copy if that will assist. I
25 can tell you those documents were handed back to me, I
26 haven't even opened the envelope. They were all there
27 yesterday.
- 28 MR SMITH: We will all fall on our swords at the
29 end of the bar table. Dr Fergie should take her time
30 and find the letter. There is no problem.
- 31 CONTINUED

D. FERGIE XN (MR SMITH)

1 XN

2 Q. I will give you that.

3 A. I will produce a copy.

4 Q. You say you produce a copy letter of the fax of counsel
5 assisting, Andrea Simpson. It is from you to - what one
6 have we just produced.

7 A. I think we better ask for it back.

8 Q. You have just produced a letter from your solicitors to
9 Aboriginal Legal Rights Movement dated 28 July 1995.

10 A. Yes.

11 MFI 234(6) Copy letter of Dr Fergie's solicitor
12 to ALRM dated 28 July 1995 marked
13 234(6) for identification.

14 Q. Next you produce a copy letter fax from counsel.
15 Assisting to your solicitor dated 28 July 1995.

16 A. Yes.

17 MFI 234(7) Copy letter fax from counsel assisting
18 Andrea Simpson to Dr Fergie's solicitor
19 dated 28 July 1995 marked 234(7) for
20 identification.

21 COMSR: I am wondering if there is some way we
22 can expedite this process?

23 MR SMITH: I would like to, but they are not in
24 order and there are some problems with some of them.

25 XN

26 Q. The next one is a copy letter from ALRM to your
27 solicitors dated 4 August 1995.

28 A. Yes, that's so.

29 Q. You produce that.

30 A. I do.

31 MFI 243(8) Copy letter from ALRM to Dr Fergie's
32 solicitor dated 4 August 1995 marked
33 243(8) for identification.

34 Q. The next item is receipt dated 11 August 1995.

35 A. Yes.

36 Q. Can you give us more detail so we can properly identify
37 that.

38 A. I can't read the handwriting.

D. FERGIE XN (MR SMITH)

1 Q. But you would know who it is from.

2 A. It is the receipt for the receipt of my field notebooks.

3 MR ABBOTT: Is it a receipt from ALRM?

4 MR SMITH: Received from Deane Fergie and Deej

5 Enzenyi, one brown envelope marked `confidential',

6 enclosing two field notebooks to be placed in secret

7 sacred vault at 1.15 p.m. on Friday, 11 August 1995.

8 XN

9 Q. Do you know who signed that.

10 A. I don't recognise that signature.

11 MFI 243(9) Receipt for one brown envelope marked

12 `confidential' enclosing two field

13 notebooks to be placed in secret sacred

14 vault dated 11 August 1995 marked 243(9)

15 for identification.

16 Q. Do you produce a copy of the ALRM restricted materials

17 register of 10 July 1995.

18 A. I do.

19 Q. Can you tell us, does that relate to the secret

20 envelopes.

21 A. The so called secret envelopes, it does.

22 MFI 243(10) Copy of ALRM restricted materials

23 register dated 10 July 1995 relating

24 to secret sacred envelopes marked

25 243(10) for identification.

26 Q. Then do you produce your diary for the period from 15

27 June 1994 to 5 July 1994.

28 A. Yes.

29 MFI 243(11) Copy of Dr Fergie's diary for period

30 15 June 1994 to 5 July 1994 inclusive

31 marked 243(11) for identification..

32 Q. The next item is copy field notebooks, June 1994. Do

33 you produce that.

34 A. I do, 6 pages.

35 MFI 243(12) Copy field notebooks for June 1994

36 marked 243(12) for identification.

37 Q. They are field notes from, shall I say, the crucial

38 period in June 1994.

D. FERGIE XN (MR SMITH)

- 1 A. That's so.
- 2 Q. How is it that you have retained those.
- 3 A. I retained those because - before I returned the field
4 notebooks in the period before the Attorney-General had
5 funded my legal representation in this commission, I had
6 approached the university, through my union at the
7 university, to have university assistance in the
8 obtaining of counsel, and had been asked by the lawyer -
9 well, the person at the union to, in fact, produce any
10 material that I had that related to the entering in of
11 that contract, and, in that context, I photocopied those
12 pages of my field notebook.
- 13 Q. So when you produced your original field notebooks to
14 the ALRM on 11 August 1995, you retained those 6 pages.
- 15 A. Yes, I actually forgot I had them.
- 16 Q. The next item is invoices Dr Fergie to ALRM, 7 July and
17 4 October 1994.
- 18 A. That's so.
- 19 Q. I take it, and I don't think my learned friend Ms Pyke
20 would mind me asking you this question, that's your
21 account, is it, for the report.
- 22 A. That's right. That's for the consultancy.
- 23 Q. Consultancy, I should say.
- 24 MFI 243(13) Invoices of Dr Fergie to ALRM for
25 consultancy work undertaken from 7 July
26 1994 to 4 October 1994 marked 243(13)
27 for identification.
- 28 Q. Then I think you produce a copy of the report of Vanessa
29 Edmonds of 1988.
- 30 A. September 1988, I do.
- 31 MFI 243(14) Copy of report of Vanessa Edmonds
32 dated September 1988 marked 243(14) for
33 identification.
- 34 Q. Then you produce the second Edmonds report which is in
35 1989, 1990, but it is undated, I think, isn't it.
- 36 A. That's right.
- 37 MFI 243(15) Copy of undated report of Vanessa
38 Edmonds marked 243(15) for identification.

D. FERGIE XN (MR SMITH)

- 1 Q. You produce, I think, a copy exercise book which you
2 describe in quotes 'Doreen'.
3 A. That's true.
4 Q. Do you have that.
5 A. I have that.
6 Q. Could you describe that a bit more fully for us. What
7 is that.
8 A. It's genealogical notes.
9 Q. Of Doreen Kartinyeri.
10 A. Yes, made by Doreen Kartinyeri which she made available
11 to me.
12 MR ABBOTT
13 Q. Is this the Rigney family stuff.
14 A. It is not.
15 XN
16 Q. That was provided to you by Doreen Kartinyeri, was it.
17 A. Yes, in the course of this consultancy.
18 Q. Is that her own genealogy, is it.
19 A. No, it's not.
20 MFI 243(16) Copy of exercise book of genealogical
21 notes made by Doreen Kartinyeri marked
22 243(16) for identification.
23 Q. We will come back to that. Then you produce an envelope
24 of receipts, I think, do you.
25 A. Yes.
26 Q. Could you give us a bit more detailed description of
27 that. What are these.
28 A. They're expenses incurred in the consultancy, car
29 rental, petrol.
30 COMSR
31 Q. For your -
32 A. They are the receipts for costs that I incurred in
33 undertaking - meal receipts.
34 XN
35 Q. You are talking of the June consultancy.
36 A. The June consultancy, yes, and the hotel receipt.

D. FERGIE XN (MR SMITH)

- 1 MFI 243(17) Bundle of receipts relating to Dr
2 Fergie's June consultancy marked 243(17)
3 For identification.
- 4 Q. You have 'envelope appendix 1' as the next item.
5 A. Yes.
6 Q. Is that an empty envelope.
7 A. I think it's the envelope that I kept the receipts in
8 originally.
9 Q. Would you tell us how that's marked, please.
10 A. It is marked 'appendix 1, confidential, to be read by
11 women only'. It is, in fact, the envelope that I
12 initially produced to hold appendices 2 and 3 which, at
13 that stage, was appendix 1.
14 Q. So this was an envelope which contained originally what,
15 exactly.
16 A. It contained nothing, I think, except these receipts
17 now. I produced it in order to hold the confidential
18 material, which later became appendix 2 and 3, but
19 which, at that stage, was called appendix 1. I changed
20 the order at the last minute, and I produced this
21 envelope with this sign in order to hold it.
22 Q. I beg your pardon.
23 A. In order to hold it when I produced it when the appendix
24 came out. It was my intention to put it in here but, as
25 it happened, I renumbered the appendix, this became
26 redundant, and I just kept the receipts in it.
27 Q. So that's actually an indication of what the envelopes
28 that most concern us look like, is that right.
29 A. Pretty much.
- 30 MFI 243(18) Envelope marked 'appendix 1' marked
31 243(18) for identification.
- 32 Q. The next item is 'note "report on wider area".' What is
33 that exactly.
34 A. I believe that it's a short note of a conversation I had
35 with Professor Cheryl Saunders.
36 MFI 243(19) Notes of conversation with Professor
37 Saunders on wider area marked 243(19)
38 For identification.

D. FERGIE XN (MR SMITH)

- 1 Q. I take it that's on 20 June, is it, or some other time.
2 Can you tell me.
- 3 A. I don't know. It may be something I've written after
4 I've had a discussion. The only reason that I think it
5 may relate to her is that it actually talks about
6 instrument of appointment, and the only context in
7 which -
- 8 Q. Is that dated, that document, at all.
- 9 A. It's not dated. It dates - yes, it is not dated.
10 That's not a date.
- 11 Q. The next item is a note in pencil. Do you produce that.
12 Have you got it.
- 13 A. Yes.
- 14 Q. Can you tell us what that is so we can have a fuller
15 description of it. What is it.
- 16 A. I believe this is a note - a very short note when I was
17 considering what the terms of the Act meant. It is a
18 note that I made in that context of considering the
19 significance to Aboriginal people in accordance with
20 Aboriginal tradition.
- 21 COMSR
- 22 Q. It is a note made by yourself.
- 23 A. It is a note made by me. But I don't believe it was
24 made - I was just looking at this, it is on the back of
25 a photocopy of a page of the report. It occurs to me
26 that this note was not taken in the context of that
27 consultancy, but taken after in fact.
- 28 XN
- 29 Q. It must have been some time after 4 July.
- 30 A. Yes.
- 31 MFI 243(20) Pencil note of Dr Fergie in context of
32 considering the significance to
33 Aboriginal people in accordance with
34 aboriginal tradition marked 243(20) for
35 identification.
- 36 Q. Item 21 is a phone message, note of 17 June 1994.
- 37 A. That's so.
- 38 Q. You produce that.

D. FERGIE XN (MR SMITH)

- 1 A. I produce that.
- 2 Q. Can you tell us, that's a note of a telephone
3 conversation with Tim Wooley, I think. Is that right.
- 4 A. Yes, it is a note that Tim Wooley had rung me at the
5 university -
- 6 MS PYKE: I don't object to it, but any detail of
7 content can be merely identified. Number 21.
- 8 MFI 243(21) Notes of telephone conversation with
9 Tim Wooley on 17 June 1994 marked
10 243(21) for identification.
- 11 MR SMITH: Some of this is artificial. Tim Wooley
12 has told us he had a conversation with Dr Fergie and
13 entered into a contract with her. How could he claim
14 privilege for that conversation which concerns that?
- 15 MR ABBOTT: Moreover, he never gave any indication
16 of wanting to claim privilege. They knew Dr Fergie
17 would be coming. For the months that Mr Wooley has been
18 represented by Mr Stratford, no privilege has been
19 claimed in respect of Dr Fergie's material.
- 20 COMSR: I have no indication at this stage.
- 21 MS PYKE: In the absence of Mr Stratford, I think
22 it is improper.
- 23 MR ABBOTT: He has absented himself this morning.
- 24 COMSR: I am not going to go into this at this
25 stage. I want to get all of these marked. We are just
26 flagging those ones where there might be some slight
27 possibility.
- 28 XN
- 29 Q. Item 22, I think, is a copy of an attendance record
30 relating to the meeting of 20 June at Goolwa, is it not.
- 31 A. That's so.
- 32 Q. With the names of 35 women. I haven't counted them, but
33 that's probably about right, isn't it.
- 34 A. I assume so.
- 35 MFI 243(22) Copy of an attendance record relating
36 to meeting of 20 June at Goolwa marked
37 243(22) for identification.

D. FERGIE XN (MR SMITH)

1 Q. The next document is recorded as `note "justice".' Can
2 you produce it and tell us what it is.

3 A. Yes. It is a note of notes that I took at a meeting of
4 the Ngarrindjeri Action Group that I went to on 27 June
5 1994.

6 COMSR: That sufficiently identifies it.

7 MR SMITH: Yes.

8 MFI 243(23) Dr Fergie's notes on meeting of
9 Ngarrindjeri Action Group attended on
10 27 June 1994 marked 243(23) for
11 identification.

12 XN

13 Q. On the back of that is the agenda for the Ngarrindjeri
14 Action Group meeting, is that right.

15 A. That's right.

16 Q. Or is that a separate document.

17 A. No, it is on the back of the agenda.

18 Q. So your notes are on the agenda of the meeting of the
19 Ngarrindjeri Action Group of 27 June 1994.

20 A. That's so.

21 Q. No.24 is copy letter of Vi Deuschle and Shirley Peasley
22 to the Prime Minister dated 26 June 1994. Do you
23 produce that.

24 A. I produce that.

25 MFI 243(24) Copy letter of Vi Deuschle and
26 Shirley Peasley to Prime Minister dated
27 26 June 1994 marked 243(24) for
28 identification.

29 Q. No.25 I think is that a note of Professor Saunders
30 herself, Cheryl Saunders.

31 A. It is not.

32 Q. Sorry.

33 A. I don't believe that it is.

34 Q. Whose handwriting is that, do you know.

35 A. I don't know whose handwriting it is.

36 Q. You have just described it as `note Cheryl Saunders'.

37 A. That's right.

D. FERGIE XN (MR SMITH)

- 1 Q. Can you give us some more detail about what that
2 document is.
- 3 A. It was given to me as a document of notes from the
4 meeting with Professor Cheryl Saunders on 20 June 1994.
- 5 Q. By whom.
- 6 A. Either Shirley Peasley or Vi Deuschle.
- 7 MFI 243(25) Notes of meeting with Professor
8 Saunders on 20 June 1994 marked 243(25)
9 for identification.
- 10 Q. The next document is `Note "Doreen's' something `refused
11 To go in'.
- 12 A. `GM'.
- 13 Q. Can you tell us what that is.
- 14 A. That means Doreen's grandmother refused to go in. This
15 is a note that I made in the preparation of my report.
16 Just notes of things I needed to think about and
17 remember.
- 18 Q. That note was compiled by you and it is in your
19 handwriting about when. Can you give us an approximate
20 date there.
- 21 A. I would have thought some - well, it is certainly in the
22 week of - in the week leading up to the submission of my
23 report. I suspect later in the week, Wednesday,
24 Thursday or Friday.
- 25 MFI 243(26) Note `Doreen's grandmother refused to
26 go in' compiled by Dr Fergie leading up
27 to submission of her report marked
28 243(26) for identification.
- 29 CONTINUED

- 1 Q. The Wednesday following the meeting.
2 A. It may have been, I can't date it. These are just a
3 bunch of notes that I kept.
4 Q. Then the next note you've got 'Note, Frank Tuckwell'.
5 Again that's in your handwriting, is it not.
6 A. Yes, this is a note of my notes of a conversation with
7 Frank Tuckwell. I rang him to ask him about the
8 barrages, and it's notes of that conversation.
9 MFI 243(27) Notes of a telephone conversation with
10 Frank Tuckwell marked 243(27) for
11 identification.
12 Q. The next note 'Injury and desecration', that's a note
13 with those words on the top, isn't it, 'Injury and
14 desecration'.
15 A. That's right. This is a note of my notes about the
16 meaning and relevance of parts of the act, the Federal
17 Act. It's a note to myself. There is a note that says
18 '5 pages'. There must be some more.
19 Q. There is some more, is there. See if you can find it.
20 I think we think there is probably only one page of
21 that, but see if you can find the other four.
22 A. I don't believe they are here.
23 Q. Don't work too hard at it because I don't think they are
24 there.
25 A. No.
26 COMSR
27 Q. Does that mean there is now only one page, whereas
28 previously it was five.
29 A. I think it's a typographical error in that each of these
30 seem to label them in terms of what is at the top of the
31 page.
32 XN
33 Q. We'll see what happened when we get to the end of the
34 bundle, perhaps.
35 A. There are some here that would have gone with it. There
36 is one here. Sorry, I'm mistaken, there is five pages,
37 and in that case they are my notes in the preparation of
38 my report on aspects of the act, the definition of the

D.J. FERGIE XN (MR SMITH)

- 1 act, and issues that I - it was just notes I made in
2 planning my report in considering the matter.
- 3 MFI 243(28) Notes made in preparation of Dr Fergie's
4 report on aspects of the Federal Act
5 marked 243(28) for identification.
- 6 Q. The next item is copy 'Third David Unaipon lecture of
7 1993'. Do you produce that.
- 8 A. Yes, I do.
- 9 MFI 243(29) Copy 'Third David Unaipon lecture of
10 1993' marked 243(29) for identification.
- 11 Q. Next note, 'Bridge site, confidential scrap paper'.
12 A. Yes.
- 13 MFI 243(30) Note 'Bridge site, confidential scrap
14 paper' marked 243(30) for
15 identification.
- 16 MS PYKE: Perhaps in relation to that if I may
17 just make a note; I know they are only being marked for
18 identification at the moment, but what is meant by
19 'confidential scrap paper' is that the note is written
20 on a piece of paper that has confidential information
21 relating to someone not at all connected with this
22 commission.
- 23 COMSR: And in so far as it has that material,
24 you're saying that that should be kept confidential?
- 25 MS PYKE: Yes. As I understand it, the note is
26 written on one side of it, and I just flag that if it
27 becomes necessary for that to be tendered in due course,
28 it might be that we can just photocopy the one side of
29 it and the other document can be tendered.
- 30 XN
- 31 Q. Then we have got note '7 p.m. Observatory Kindy'. Do
32 you produce that.
- 33 A. I produce that.
- 34 Q. Is it a personal note relating to -
35 A. That reference to the Observatory Kindy is a personal
36 note. There are notes on here that relate to the means
37 of delivering the report to Melbourne.
- 38 MFI 243(31) Note headed '7 p.m. Observatory Kindy'

- 1 marked 243(31) for identification.
- 2 Q. Then notes with `ALRM card' three pages.
- 3 A. They are notes about - basically because of the time
4 scales to get my report to Professor Cheryl Saunders in
5 time for her to consider it in the making of her report,
6 we had to air freight my report early in the morning,
7 and these are notes of the ALRM's account and fight
8 times out of Adelaide.
- 9 MFI 243(32) Notes with `ALRM card' three pages
10 marked 243(32) for identification.
- 11 Q. Then the next is `Note 6 today'.
- 12 A. Yes.
- 13 COMSR
- 14 Q. Is that produced.
- 15 A. Yes.
- 16 MFI 243(33) Document headed `Note 6 today' marked
17 243(33) for identification.
- 18 XN
- 19 Q. That note, there is just a few names splashed on it, Dr
20 Lindy Warrell, Sue Key. What has that got to do with.
- 21 A. May I have a look at that?
- 22 Q. Yes. That's just a copy.
- 23 A. This is a note that relates to Wendy Chapman ringing me.
- 24 Q. Wendy Chapman ringing - sorry.
- 25 A. Wendy Chapman rang me at my home on the day to say that
26 they had received a copy of the open part of my report,
27 and she was requesting that I give her permission to
28 read the confidential appendices, and that's my note on
29 there.
- 30 Q. Is that in July, then, of 1994 that we can place that,
31 or is it earlier.
- 32 A. Yes, it's in July. I may have notes somewhere else,
33 it's just a scrap of paper on my desk where I put the
34 time that she rang and what her phone number was.
- 35 MR MEYER: That would be Friday the 8th I think.
- 36 XN
- 37 Q. You produce something headed `Points of concern for
38 Ngarrindjeri and Ramindjeri women'. (NOT ANSWERED)

1 COMSR

2 Q. They are your notes, are they.

3 A. Yes, they are my notes (INDICATES).

4 XN

5 Q. That's a typewritten note, isn't it.

6 A. Yes. I haven't found this, I thought we were talking
7 about the previous one.

8 COMSR

9 Q. The previous one.

10 A. Yes, I'm sorry.

11 XN

12 Q. You're looking at a typewritten note headed 'Points of
13 concern for Ngarrindjeri and Ramindjeri women'. Whose
14 document is that.

15 A. It's a document that was given to me either by Vi
16 Deuschle or Shirley Piersley.

17 MFI 243(34) Note headed 'Points of concern for
18 Ngarrindjeri and Ramindjeri women'
19 marked 243(34) for identification.

20 Q. Was that given to you at some point in time before the
21 compilation of your report.

22 A. Yes, it was given to me on Monday.

23 Q. The 19th, the 20th.

24 A. No, sorry, the Monday after I was commissioned to write
25 the report, so that's -

26 MR MEYER: The 27th.

27 XN

28 Q. The Monday after you were commissioned.

29 A. Yes. I was commissioned on the Sunday, and it's the
30 next day, so that makes it - I believe it was the 27th.

31 Q. 27 June 1994.

32 A. That's right.

33 Q. The next document which you produce is headed 'Kumarangk
34 fact sheet'. Do you produce that. It looks a bit like
35 this (INDICATES). Got it.

36 A. Yes.

37 Q. 'Kumarangk fact sheet', that's dated with a handwritten
38 date underneath, 13 June 1994.

- 1 A. Yes, I was given a copy of that on 27 June.
2 Q. Who were you given that by, Daisy Rankine.
3 A. I'm not certain, most probably.
4 MFI 243(35) `Kumarangk fact sheet' dated 13 June
5 1994 marked 234(35) for identification.
6 Q. Note `Tim'.
7 A. Yes.
8 Q. Do you produce that. Again that's a note what, of a
9 conversation with Tim Wooley or something, is it.
10 A. It appears to be. It has some other notes there as
11 well, and there is some Post-Its on the top of it.
12 MFI 243(36) Note `Tim' with Post-It Notes stuck to
13 it marked 243(36) for identification.
14 Q. Again, that note, can you place that in point of time.
15 A. It's in the week of 27 June.
16 Q. It refers to Dr Draper's report.
17 A. Actually, no, it's most likely to be the previous week.
18 Q. More likely to be sometime in the week of 20 June, is
19 it.
20 A. That's right. That's my belief, I can't be certain.
21 Q. I think you produce a letter from yourself to Tim
22 Anderson, who is the Manager of Luminis at the
23 University of Adelaide, is that right.
24 A. He is Manager of Consultancy at Luminis.
25 MFI 243(37) Letter to Tim Anderson, Manager of
26 Consultancy at Luminis, from Dr Fergie
27 marked 243(37) for identification.
28 Q. Then you produce, I think, letter from Vi Deuschle to
29 yourself of 26 May 1994.
30 A. No, that's not a letter to me, it's a letter that Vi
31 gave me a copy of.
32 Q. Sorry, from Vi Deuschle, NAG Coördinator, dated 26 May
33 1994, to friends.
34 A. Yes. She gave me that at the meeting of the NAG meeting
35 that I was at.
36 MFI 243(38) Letter from Vi Deuschle, NAG
37 Coördinator, dated 26 May 1994 to
38 friends marked 243(38) for

- 1 identification.
- 2 Q. I think you produce a copy of the front sheet for the
3 confidential appendices two and three.
- 4 A. I do.
- 5 MFI 243(39) Copy of front sheet for the confidential
6 appendices two and three marked 243(39)
7 for identification.
- 8 A. I'm trying to find the next one.
- 9 Q. Have you found that one.
- 10 A. I haven't.
- 11 Q. We can probably give you a copy of that. You've
12 produced that, haven't you.
- 13 A. Yes, it's produced.
- 14 Q. That's 39, is it.
- 15 COMSR: Yes.
- 16 XN
- 17 Q. I think you produce a photocopy of nine pages of
18 petition.
- 19 A. That's what I was looking for and I haven't found it.
- 20 Q. It's an old document apparently.
- 21 A. This is it.
- 22 Q. Can you give us a better description of that. What is
23 that.
- 24 A. It's a petition to Sir Richard Graves, the Governor of
25 the Colony of South Australia from - it's dated - it
26 doesn't seem to have a date, but it's very old, and
27 relates to the mouth of the river.
- 28 MFI 243(40) Petition to Sir Richard Graves, Governor
29 of the Colony of South Australia
30 relating to the mouth of the river
31 marked 243(40) for identification.
- 32 Q. That was just some documentation you researched for your
33 report, was it.
- 34 A. It's a copy of documentation that my husband had in his
35 file about the Coorong at our home, related to
36 historical research he had done.
- 37 Q. Next item is a copy 'M. Robinson, historic highlights,
38 Encounter Bay and Goolwa'.

- 1 A. That's right.
- 2 Q. You produce that.
- 3 A. I produce that.
- 4 Q. That is some research literature again that assisted you
5 in your report, was it.
- 6 A. That's correct.
- 7 Q. Again, did you get that from your husband.
- 8 A. Yes.
- 9 MFI 243(41) Document `M. Robinson, historic
10 highlights, Encounter Bay and Goolwa'
11 marked 243(41) for identification.
- 12 Q. Then next is a photocopy commencing `The natives were
13 friendly'.
- 14 A. That's correct.
- 15 Q. Another piece of research data from your husband again
16 there.
- 17 A. That's correct.
- 18 Q. You produce that I take it.
- 19 A. I do.
- 20 MFI 243(42) Photocopy document commencing `The
21 natives were friendly' marked 243(42)
22 for identification.
- 23 Q. Then the next item, `Copy list of names of the natives',
24 11 pages.
- 25 A. That's right.
- 26 Q. What is that exactly.
- 27 A. It's just what it says, a list of Aboriginal people's
28 names, and it tells you whether they are male or female,
29 and tells you whether they are young or old, in
30 particular clans.
- 31 Q. Is that a modern document or an old document.
- 32 A. It's an old document.
- 33 Q. How does it relate to us.
- 34 A. It relates because it has the names of some people who,
35 it would appear, lived in Hindmarsh Island.
- 36 MFI 243(43) Document `Copy list of names of the
37 natives' marked 243(43) for
38 identification.

- 1 Q. Then the next document you produce, I think, is 'McLeay
2 and Cato', and I take it this is an article of some sort
3 entitled 'River's end' or part of a book, is it.
- 4 A. Yes.
- 5 Q. 'River's End: The Story of Goolwa and the Murray Mouth'.
6 A. That's correct.
- 7 Q. You have in your possession some pages of that book.
8 A. That's right.
- 9 MFI 243(44) Extract from McLeay and Cato 'River's
10 End: The Story of Goolwa and the Murray
11 Mouth' marked 243(44) for
12 identification.
- 13 Q. Again research material. Was that provided by your
14 husband.
- 15 A. Yes. He keeps a file of material relevant to particular
16 areas.
- 17 Q. I think the next item is again some notes on the
18 navigation of the River Murray, is that so, some sort of
19 publication by John Lewis.
- 20 A. That's correct.
- 21 Q. And some excerpts from that.
22 A. That's correct
- 23 MFI 243(45) Extracts from publication by John Lewis
24 'Navigation of the River Murray' marked
25 243(45) for identification.
- 26 Q. Again that is some research material that you got from
27 your husband.
- 28 A. That's correct.
- 29 Q. Then you have a copy glossary, eight pages.
30 A. That's correct. It appears to be in Norman Tindale's
31 handwriting.
- 32 MFI 243(46) Copy glossary, consisting of eight
33 pages, appearing to be in Norman
34 Tindale's handwriting marked 243(46) for
35 identification.
- 36 MR ABBOTT: I wonder if it's quicker, maybe, if you
37 get the rest of all the material from her husband, we
38 can confirm that and give it numbers rather than read it

- 1 out. It is non-contentious material.
2 XN
3 Q. I think we have nearly finished this area of the
4 subpoena anyway. That's so, isn't it.
5 A. We're nearly there.
6 Q. There is very little left of the research material you
7 obtained from your husband, isn't there.
8 A. That's right.
9 Q. The next item is a copy map.
10 A. This is actually not all material I got from my husband,
11 it is what I had retained in my own possession, what I
12 had kept.
13 Q. That map, I think, is Tindale's map.
14 A. Yes. That's his handwriting.
15 MFI 243(47) Copy of Tindale's map marked 243(47) for
16 identification.
17 Q. Exhibit 18E produced to you is a copy of the same map,
18 isn't it.
19 A. Yes. On one of the copies that I've just handed up,
20 there are some further notations in my husband's
21 handwriting.
22 Q. The next item is note `Cheryl's late today'. That's
23 Cheryl Saunders, is it, we're talking about.
24 A. That's Cheryl Saunders.
25 MFI 243(48) Note `Cheryl's late today' marked
26 243(48) for identification.
27 Q. Can you give us a bit more detail about that. What is
28 that exactly.
29 A. It has the facts of - Maxine, I understand, is Professor
30 Saunders' personal assistant.
31 Q. Is that a note on the back of the front cover of your
32 report.
33 A. Yes, it is, it's on the front cover of the first version
34 of my report. I don't know that that front cover in
35 this form was ever used anywhere.
36 Q. That front cover is dated 30 June 1949, isn't it.
37 A. That's right.
38 Q. It must have been one of the first strikes of your

1 report, was it.

2 A. That's right.

3 Q. Over the page, on the home stretch, 'Letter, Frank

4 Tuckwell to Dr Fergie' 27 June 1994.

5 A. That's so.

6 Q. Do you produce that.

7 A. I produce that.

8 MFI 243(49) Letter from Frank Tuckwell to Dr Fergie

9 dated 27 June 1994 marked 243(49) for

10 identification.

11 Q. You were getting a bit of help from Frank Tuckwell, were

12 you.

13 A. Yes. In response to my phone call to him about the

14 barrages, he sent me a package of material, and these

15 materials here are what came in that package.

16 CONTINUED

- 1 Q. Then the next item is 'Note Rumerindjeri & Yaraldi'.
2 A. That's right.
3 MFI 243(50) 'Note Rumerindjeri & Yaraldi' marked
4 243(50) for identification.
5 Q. Again, that is just a bit of research data, is it.
6 A. I presume. It is not self-evident to me what it is.
7 That is not from Mr Tuckwell, that piece of paper.
8 That is just a note that I have written.
9 Q. That is just a note you have written, what, out of 'A
10 World That Was', or something, was it.
11 A. No, I presume what I did, when I started to prepare
12 to think about the structure of my report, was, I made
13 a whole series of notes to myself about things I needed
14 to include or further consider and that is one of my
15 notes, I expect.
16 Q. The next four items, are they information provided to
17 you by Frank Tuckwell.
18 A. Yes.
19 Q. Barrage and water information.
20 A. Yes.
21 Q. About the river.
22 A. That's so.
23 Q. If you just produce those four items.
24 A. In fact, several of these - I mean, I can tell you
25 that this whole group of items here were provided to
26 me by Mr Tuckwell.
27 Q. On the index can you take us down to each one.
28 COMSR
29 Q. Produce them in sequence.
30 A. Okay, firstly, there is one called 'Barrages near the
31 mouth of the River Murray'.
32 MFI 243(51) Item 'Barrages near the mouth of the
33 River Murray' marked 243(51) for
34 identification.
35 XN
36 Q. The next one.
37 A. 'Controlling the River Murray in South Australia'.

1 COMSR

2 Q. Was that an E&WS Information Bulletin.

3 A. Yes, no.17, that's right.

4 MFI 243(52) E&WS Information Bulletin no.17

5 `Controlling the River Murray in South

6 Australia' marked 243(52) for

7 identification.

8 A. Then there is a pamphlet called `The Murray Darling

9 Basin Commission "The River Murray System".

10 MFI 243(53) Pamphlet `The Murray Darling Basin

11 Commission "The River Murray System"

12 marked 243(53) for identification.

13 A. Followed by an E&WS Information Bulletin revised June

14 1976.

15 MFI 243(54) E&WS Information Bulletin June 1976

16 marked 243(54) for identification.

17 XN

18 Q. That is the end of that little group of documents, is

19 it.

20 A. No, that's not so. Yes, there is a computer print out

21 saying `Site name Narnu Bay'.

22 MFI 243(55) Computer print out `Site name Narnu Bay'

23 marked 243(55) for identification.

24 Q. That didn't come from Frank Tuckwell, though, did it.

25 A. No.

26 COMSR

27 Q. What is the next one.

28 A. I think this is an archival print out.

29 XN

30 Q. Did that perhaps come from Doreen Kartinyeri.

31 A. No, I think this came from my husband's file.

32 Q. There is handwriting on the bottom of that `River

33 Murray' something.

34 A. Yes, I don't recognise that handwriting.

35 Q. There are two sheets, aren't there.

36 A. Yes.

37 Q. Computer print out sheets. They came you think from

38 your husband's file.

1 A. I believe so.

2 Q. If I suggested to you that that handwriting there was
3 Philip Clarke's, that wouldn't come as a surprise to
4 you.

5 A. It wouldn't come as a surprise to me. That would make
6 that - that would indicate to me that that certainly was
7 an archival print out.

8 COMSR

9 Q. The next one is `Copy document "Goolwa Barrages".

10 A. Yes.

11 MFI 243(56) Document `Goolwa Barrages' marked
12 243(56) for identification.

13 A. And the next one is -

14 Q. Copy of two photographs.

15 A. Yes, I think that is looking at this one (INDICATES) in
16 a different direction.

17 MFI 243(57) Copy two photographs `Goolwa Barrages'
18 marked 243(57) for identification.

19 XN

20 Q. The next is an article from the Victor Harbor Times of
21 1 April 1987.

22 A. Look, I'm sorry, we have made a mistake. This isn't
23 the photographs and I can't find the photographs.

24 COMSR

25 Q. Copy two photographs `Goolwa Barrages', is that what
26 you are looking for.

27 A. Yes, there are two photographs at the back of this
28 (INDICATES) and they are attached to an article called
29 `Sir Richard Peninsula'.

30 Q. They appear both to be together, the next two items.

31 A. Yes, and they also include - there is a group of four
32 things. One is a photograph, dated Wednesday, 11 May.
33 Apparently from the Victor Harbor Times. Then there
34 is a photograph of a truck driving across the Pelican
35 Point barrage. And then there is an article entitled
36 `Goolwa Resident Speaks Out on Peninsula Plan', from
37 the Victor Harbor Times, dated 1 April 1987.

- 1 MFI 243(58) Article 'Goolwa Resident Speaks Out on
2 Peninsula Plan' from Victor Harbour
3 Times, dated 1 April 1987, marked
4 243(58) for identification.
- 5 XN
- 6 Q. And then the pamphlet.
- 7 A. And then there is the 'Sir Richard Peninsula'
8 pamphlet.
- 9 MFI 243(59) 'Sir Richard Peninsula' pamphlet
10 marked 243(59) for identification.
- 11 Q. Then the next item is 'E.R. Lawrie "Construction of
12 Goolwa Barrage", have you got that.
- 13 A. Yes.
- 14 MFI 243(60) E.R. Lawrie 'Construction of Goolwa
15 Barrage' marked 243(60) for
16 identification.
- 17 Q. The next item is 'Historic Shipping on the River
18 Murray'. Is that a publication of some sort by
19 Kenderdine.
- 20 A. Yes, that's right.
- 21 Q. And you produce that.
- 22 A. I do.
- 23 MFI 243(61) 'Historic Shipping on the River Murray',
24 by S. Kenderdine, marked 243(61)
25 for identification.
- 26 Q. Then the next item is 'Draft "Signal Point Precinct
27 Conservation Study" (1987)'.
28 COMSR
- 29 Q. Have you managed that locate that.
- 30 A. No, I think that might be included in - but I'm not
31 sure -
- 32 Q. We will just have a look then.
- 33 A. About three ago there was one that had the Sir Richard
34 Peninsula pamphlet with the photographs on it, maybe. I
35 don't believe I have that document.
- 36 COMSR: We might get to it by way of a process
37 of elimination as we go through the others then.
- 38 MR SMITH: Perhaps we will leave that to take 62 if

- 1 we find it.
- 2 COMSR: Yes, I will just leave that. We may be
3 able to get another copy.
- 4 XN
- 5 Q. Then we go to `F. Tuckwell "Notes and Extracts re:
6 Goolwa - Hindmarsh Island Ferry".
- 7 A. Yes.
- 8 Q. Do you produce that.
- 9 A. I produce that.
- 10 MFI 243(63) `F. Tuckwell "Notes and Extract re:
11 Goolwa - Hindmarsh Island Ferry" marked
12 243(63) for identification.
- 13 Q. Then you produce I think `The River Murray Barrages at
14 Mundoo, at Boundary Creek, Ewe Island and Tauwitchere
15 Channels'.
- 16 A. Yes.
- 17 MFI 243(64) `The River Murray Barrages at Mundoo, at
18 Boundary Creek, Ewe Island and
19 Tauwitchere Channels' marked 243(64) for
20 identification.
- 21 COMSR: Perhaps Ms Pyke may have a copy of that
22 draft of the Signal Point Precinct Conservation Study.
- 23 XN
- 24 Q. Have you found that.
- 25 A. No.
- 26 MR SMITH: Have we got that?
- 27 MS PYKE: No, we handed over all of the originals.
- 28 MR SMITH: Perhaps we will leave 62 out?
- 29 MS PYKE: Perhaps we will undertake a search.
- 30 COMSR: What do we have now, a bundle of notes?
- 31 XN
- 32 Q. Now I think you produce a bundle of notes.
- 33 A. Yes.
- 34 Q. Which is the final item, is that right.
- 35 A. That's so.
- 36 Q. And included in that is a confidential note, which has
37 been handed directly to the Commissioner.
- 38 A. That's right.

1 COMSR

2 Q. Does that form - is this sealed envelope part of it.

3 MS PYKE: If I can explain? I don't know that
4 counsel assisting is perhaps quite -

5 MR SMITH: I think I am almost on top of it. I
6 will go as far as I can.

7 XN

8 Q. You now produce four pages, don't you.

9 A. No, three.

10 Q. Three pages. The second page, which is a p.38, the
11 material we have here has got a section blanked out.

12 A. That's so.

13 Q. The copy of that, which you have supplied to the
14 Commissioner by your solicitors, has that copy blanked
15 out, but it has some sort of covering, which the
16 Commissioner can see, is that right.

17 A. My understanding is the Commissioner has the original.

18 MS PYKE: Just to make it clear, what has happened
19 is that there are certain words on the page that relate
20 to matters that are not in the public arena and are
21 contained within the secret envelopes.

22 COMSR

23 Q. It is not purported to be a copy of what was in the
24 secret envelope.

25 A. This is actually the final - at the end of the account
26 from Doreen Kartinyeri I wrote notes on method, so that
27 the reader would know exactly the way in which that
28 account had been obtained and these are those notes.

29 Q. So, are these a copy of the notes, not a copy of the
30 contents of the envelope.

31 A. Yes, in so far as I understand it.

32 XN

33 Q. What is it that has been blanked out - and I don't want
34 the detail of it - but what is it that has been blanked
35 out.

36 A. What I have done is gone through and explained how - the
37 process by which Doreen Kartinyeri had given an account
38 to me and it was a process that took two days and on

- 1 separate contacts. And the process entailed her saying
2 stuff to me. I would type it. It was on the phone.
3 And I would read back what I had typed. She would say
4 `Yes, that's right.' And we would proceed. That was
5 over one day. And, on the next day, I read through to
6 her what was in the account so far. And she suggested
7 things that were missing from it. And that line relates
8 to those things from the account.
- 9 COMSR
- 10 Q. Just so that I am clear about this: you got your
11 instructions over the telephone, or whatever you like to
12 call them, and, as a consequence of that, you produced
13 the documents that went into the secret envelope.
- 14 A. That's right.
- 15 Q. But, before putting them in the secret envelopes, you
16 had not shown them to Dr Kartinyeri.
- 17 A. Yes, she was actually in Port Germein and then in her
18 daughter's home at Port Pearce, so that was actually
19 done over the telephone. And I then carefully
20 documented how we had arrived at that account. And we
21 had arrived at it by her talking to me, me typing
22 directly into my computer, me reading back to her what I
23 had typed in, her proceeding, me reading back what I had
24 just typed in and so on. So, it was a kind of a - it
25 wasn't done, you know, by in a single sweep. It was
26 done in a number of -
- 27 Q. Yes, I understand that, but what you put inside the
28 envelopes had not actually been seen and read personally
29 by Dr Kartinyeri.
- 30 A. At that point that I sent them away, that's true.
- 31 XN
- 32 Q. So this material which is blanked out on the copies we
33 have, or I have here in front of me, at least, on p.38,
34 is that in your report.
- 35 A. Yes.
- 36 Q. Is it in the confidential section of your report.
- 37 A. It is.
- 38 Q. Therefore, it is confidential in the sense that it is

- 1 the women's knowledge that is in the envelopes rather
2 than a general description of it which is in the body of
3 the report.
- 4 A. That's right.
- 5 Q. Therefore, you have blanked it out on these notes.
- 6 A. That's right.
- 7 COMSR
- 8 Q. Just so that I am clear about this then: I had
9 understood you to say earlier that it doesn't purport to
10 be a copy of what was in the envelopes.
- 11 A. Yes, it does. It's the - appendix 2 is an account.
12 And, at the end of that account, at the bottom of the
13 pages begins these notes on method. I actually took
14 these notes on method when I handed - I photocopied them
15 for myself when I handed the documents back so that I
16 would have an account of how I had taken it.
- 17 Q. So it is part of the notes on method, is that what you
18 are telling me.
- 19 A. That's right, which are in appendix 2.
- 20 XN
- 21 Q. Can I just make that clear: appendix 2, there are two
22 confidential appendices, aren't there. One of them is
23 your interpretation, am I right.
- 24 A. That's right.
- 25 Q. Of what is in the other confidential appendix.
- 26 A. That's so.
- 27 Q. Which is the raw detail, if you like, of the women's
28 business.
- 29 A. That's true.
- 30 Q. That is in appendix.
- 31 A. 2.
- 32 Q. Your characterisation of it, which is elaborated upon by
33 Professor Saunders, is in appendix 3.
- 34 A. Yes, I call it my analysis.
- 35 Q. Your analysis.
- 36 A. Or preliminary analysis.
- 37 Q. This material here, which is blanked out of the notes on
38 p.38, is what.

1 A. These three pages are three pages that are inside, which
2 are normally part of appendix 2, which were not, as I
3 understood it, confidential in and of themselves. They
4 just happened to be there. Except that, when I had
5 taken them, I hadn't actually noticed that it had three
6 matters that do relate to the consents of confidential
7 information. And that is what is blanked out in
8 everybody's copy, bar the one which the Commissioner
9 has, which is the original, my original copy, which is
10 undoctored.

11 COMSR

12 Q. That doesn't purport to be the whole of it.

13 A. By no means.

14 XN

15 Q. Do we take it from that that what the Commissioner has
16 up there and no-one else has is some part of the women's
17 business, which is in the confidential appendix 2, is
18 it.

19 A. What the Commissioner has is exactly what you have,
20 which are notes on method which were found at the end of
21 appendix 2, but she does not have blanked out about a
22 line and a bit, which specify some topics which Doreen
23 Kartinyeri, when I read back to her on the second
24 morning what we had done before, said that we needed to
25 put in when we revised - when we basically finished the
26 work that afternoon. And it identifies those topics.

27 COMSR

28 Q. Just so that I am clear about this: and those topics are
29 what would come under the heading of either women's
30 knowledge, or women's business.

31 A. Yes, they are glosses for - I mean, they are just like
32 labels. She said look, we have got to remember, you
33 know, we haven't put in stuff about the tables and the
34 chairs. They are not the details of the table and the
35 chairs, it is -

36 MR ABBOTT: I ask that the material be inspected by
37 you and that, if it is merely a label, for example, if
38 the line and a bit says that Doreen Kartinyeri suggested

- 1 we should put in material about fertility or conception
2 or birth, then it could never be material that we
3 shouldn't see. If it is we should put in material about
4 X and X is a secret word, then I can understand it, but
5 we ought to get to the bottom of this. Find out
6 whether.
7 The labels are themselves secret, or whether they are
8 just designations of areas that Doreen was suggesting
9 should go in.
- 10 WITNESS: I believe that this material is material
11 that would normally be subject to s.35 and that is not
12 already in the public arena. And -
- 13 MS PYKE: Truly, who is running this Commission?
14 Mr Abbott or counsel assisting and you, Commissioner?
15 We have interjections time and time again. The witness
16 is answering questions from counsel assisting and it has
17 got nothing to do, frankly, with Mr Abbott.
- 18 MR ABBOTT: It has got a lot to do with me. I won't
19 respond. It has got a lot to do with me. I am acting
20 for a number of ladies who are vitally concerned.
- 21 COMSR: I understand that, Mr Abbott. At this
22 time, I am just trying to get these documents marked and
23 some appreciation of what is in them. The question of
24 what we might do with them will come at a stage later.
- 25 MR SMITH: All right, perhaps can we just mark
26 this? I do want to ask a couple more questions about
27 them.
28 Those notes then are 65, are they?
- 29 COMSR: Yes.
- 30 MR SMITH: Perhaps each page might be marked
31 separately A, B and C?
- 32 WITNESS: They actually have page numbers on them,
33 37, 38, 39.
- 34 MR SMITH: Perhaps, because you have got a
35 different one than us, we should mark yours, as well,
36 shouldn't we? It is 65.
- 37 COMSR: It is 65 and this can be 65A.
- 38 MR SMITH: Yes, and then these three pages which

- 1 have the blanked-out version on one of them can be 65B.
2 MFI 243(65) Notes on method marked 243(65) for
3 identification.
4 MFI 243(65A) Original in envelope marked 243(65A) for
5 identification.
6 MFI 243(65B) Blanked-out version marked 243(65B) for
7 identification.
8 MR MEYER: Do I understand that Ms Simpson hasn't
9 got a copy of the one that you have got, either?
10 COMSR: Yes, we have not got to the stage of
11 discussing who may or may not see it.
12 MR MEYER: We haven't got as far as pink, blue or
13 white evidence yet?
14 COMSR: No, at this stage, we are simply making
15 a list of the numbers of the matters or the documents
16 which have been produced by the witness.
17 CONTINUED

1 XN

2 Q. Before I leave the document that the Commissioner's got,
3 the topic that is canvassed in the blanked out version
4 of 65B, is that canvassed in the body of your report.

5 That is, is that label included in the body of your
6 report, as opposed to the secret appendices.

7 A. Can you ask me the question again?

8 Q. If we were to see what the Commissioner has in
9 front of you, marked for identification 65A, that is
10 blocked out in our copies here, marked for
11 identification 65B, would we find that, the phrases,
12 or whatever the Commissioner has before her, in the
13 body of your report, as opposed to the appendices
14 to your report.

15 A. You would find the words, some of those words would
16 appear in my report.

17 Q. In the body of your report.

18 A. Yes.

19 Q. So, it is a label, is it, referring to some part of the
20 women's -

21 A. They were basically phrases that were kind of memory.

22 Q. Descriptive of the women's business in the secret
23 appendices no.2, is it.

24 A. Which referred to aspects of it.

25 COMSR

26 Q. This is separate women's business, as distinct from
27 separate men's business.

28 A. This is issues that women did not want disclosed to men.

29 In other words, it was part of the material that Doreen
30 asked to be included in the broader discussion of them
31 in the secret envelopes, in the secret appendices.

32 Q. It is one aspect of what appears in the secret
33 envelopes.

34 A. It points to it. It doesn't - it points to it I guess.

35 Q. It is an indication of some of the material that is in
36 the sealed envelope.

37 A. It might indicate to some people, that's true.

38 Q. It might indicate it.

- 1 MR MEYER: It is a bit like the game Cluedo.
2 COMSR
3 Q. It may not indicate it to me, for instance.
4 A. It may not, it may not, but -
5 MS PYKE: We have got no objection to you looking
6 at what is in that envelope.
7 COMSR: I appreciate that, but I want to know is
8 what it is I am looking at.
9 MS PYKE: It just so happens to be this is an area
10 that we take inordinately seriously.
11 COMSR: I am trying to determine what it is
12 precisely that I am looking at.
13 MR MEYER: Ms Pyke's comments cause me some concern
14 because it suggests to me that she knows what is in the
15 envelope, otherwise she can't say whether it is going to
16 be helpful or not. If she knows, if we have a female
17 barrister -
18 MS PYKE: Let me stop Mr Meyer right there. I
19 know nothing. Indeed, I think, if we want some evidence
20 about what is in the secret envelopes Mr Abbott can
21 hop into the witness box and tell us what he knows.
22 MR MEYER: Let's stop being flippant about this. My
23 question is a serious one. I understood Ms Pyke to be
24 suggesting that you could gain information by reading
25 the evidence. She can't know that unless she knows what
26 is in the envelopes.
27 COMSR: Unless she has been told.
28 MR MEYER: That's the same thing as knowing.
29 COMSR: I don't mean told what the content is,
30 but told what the effect is Mr Meyer.
31 MR MEYER: Is this the position? No-one at the bar
32 table knows what's in the envelopes, only the witness
33 and you don't know yet, is that the situation?
34 COMSR: No. I have opened the envelope because
35 I was invited to.
36 MR MEYER: You do know, is that where we are at?
37 COMSR: Yes.
38 MR SMITH: I agree with my learned friend Ms Pyke,

- 1 all we will do is mark these items for identification.
2 I would like to release as much of this material to
3 counsel as possible.
- 4 COMSR: Perhaps we can take this a step further.
- 5 MR SMITH: Take it step by step. Is Ms Pyke
6 claiming - perhaps Ms Pyke might make it clear to you.
- 7 COMSR: Perhaps I can ask the witness.
- 8 COMSR
- 9 Q. The material that I have read here simply gives an
10 indication of what is in the sealed envelope.
- 11 A. The topics canvassed.
- 12 Q. The topics canvassed.
- 13 A. Yes.
- 14 Q. It does not go into the actual detail.
- 15 A. That's right.
- 16 Q. What is in the sealed secret envelopes is for women
17 only. It cannot be disclosed to men.
- 18 A. That's right.
- 19 Q. It has been disclosed to a number of women.
- 20 A. Not in its entirety.
- 21 Q. I understand that you certainly have read it.
- 22 A. Yes.
- 23 Q. Has Professor Saunders.
- 24 A. Professor Saunders, I assume, has read it.
- 25 Q. Anne Mullin and Sue Key.
- 26 A. I can't answer for them but, Professor Saunders'
27 assistant is Anne Mullin. Sue Key is the Minister's
28 female advisor.
- 29 Q. I just want to make sure if I am going to be asked for a
30 ruling on any of this, what the situation is. But, what
31 they have read is the actual full document.
- 32 A. I would expect.
- 33 Q. Is there some sort of embargo on the category of women
34 to whom that information can be revealed.
- 35 A. It seems to me that there is material in the secret
36 envelopes which Doreen Kartinyeri, for one, would not
37 want revealed to anything bar the tightest - well to
38 people for whom she gave approval to that.

- 1 Q. It can be revealed to those women that Dr Kartinyeri
2 designates as being able to view, is that the situation.
3 A. It seems to me that that is so.
- 4 Q. Well, that is the contents of the envelope which I don't
5 have access of course.
6 A. Of course.
- 7 Q. What is the status of the information here which
8 indicates what is in the envelopes.
9 A. They just give some indication of the topics in there,
10 which are not known in the public arena and which I -
11 Q. What is your understanding.
12 A. My understanding is, if that, if they became known, that
13 Doreen would regard that as a breach of confidentiality
14 on my part.
- 15 Q. Even though this doesn't do more than just indicate, in
16 broad terms, a portion of what is in the sealed
17 envelopes, you regard yourself bound by Dr Kartinyeri's
18 embargo.
19 A. Yes, I do, yes, I do.
- 20 MR SMITH: As I understand Ms Pyke's information -
21 perhaps she will make it clear to us - I would like the
22 Commission to release as much of this material that has
23 been subpoenaed to counsel at the bar table as soon as
24 possible and as early as possible. Perhaps Ms Pyke
25 might make it clear to you, whether she claims that none
26 of this should be released at all, pending Mr
27 Stratford's attendance before us and submission. Is
28 that the position?
- 29 MS PYKE: I will flag to you the items that I say
30 should not be released pending Mr Stratford being
31 present.
- 32 COMSR: If he doesn't care to attend what is the
33 situation?
- 34 MS PYKE: I think, presumably, Mr Stratford will
35 need to be apprised of what documents have been
36 produced.
- 37 COMSR: You point out the ones that you think.
38 MS PYKE: These are the ones that I believe he

- 1 would probably have an interest in. I am merely
2 suggesting that Mr Stratford should be given the
3 opportunity to be heard upon the documents that relate
4 to his client and I would have thought that was the
5 proper way to go about it.
- 6 COMSR: I understand you mean another
7 opportunity?
- 8 MS PYKE: I understood from Mr Stratford he didn't
9 know this was happening today. Mr Stratford can come
10 and explain that himself. That is what he told my
11 instructing solicitor, he didn't know we were
12 sitting today, nor did he know this examination was
13 going to be led.
- 14 MR SMITH: I spoke with him last night and I
15 understand Mr Abbott spoke with him yesterday. He is
16 just not coming today. He said he had other commitments
17 and that is it.
- 18 MR ABBOTT: If Mr Stratford is to turn up and object
19 it will have to be, I suggest, at a time when it is
20 convenient to us and not to him.
- 21 MR SMITH: Dr Fergie was always a witness, not
22 always -
- 23 MS PYKE: Let's make it Monday morning.
- 24 COMSR: Can you just point out what you think -
25 Can people address me direct rather than one another?
- 26 MS PYKE: I will be more than happy to do that.
27 Item no.2 - these are the ones I say shouldn't be
28 distributed at this stage. Item no.2, the Telecom field
29 notebook. Item no.3. item no.6, item no.8, item no.9,
30 item no.10, item no.11, item no.12, item no.13, item
31 no.21. For a different reason item no.30, which is the
32 confidential bit of scrap paper. I ask that only the
33 relevant side of that be photocopied. Item no.32.
- 34 MR MEYER: 30 can be just fixed, it has nothing to
35 do with this issue of privilege.
- 36 MS PYKE: We were talking about what can and can't
37 be distributed. I mark that as I am going through it.
38 Item no.36 and clearly we don't, for different reasons,

1 want distributed what is in the envelope that we have
2 handed to you.

3 COMSR: That is not so much a matter of
4 privilege I suppose, but, in any event, yes.

5 MS PYKE: We're happy to discuss those, as it is
6 not issues pertaining to us but to Mr Wooley that need
7 to be addressed.

8 COMSR: I haven't had a look at any of that
9 material to see even if it is protected by privilege.
10 It is a matter of or document to which privilege
11 attaches in any event. I mean, even if privilege
12 attaches to this type of document, whether in the
13 particular instance it is one of the documents for
14 which privilege can be claimed.

15 MS PYKE: All I am asking is it not be
16 distributed to other people. It is in the custody of
17 the court. It has been marked for identification. It
18 just simply, I think, requires Mr Stratford to consider
19 the position and Mr Wooley.

20 COMSR: I don't know that he hasn't.

21 MR SMITH: I think we can proceed today. Perhaps,
22 if counsel might indicate whether that is, at least for
23 today, whether - we don't want to have detailed argument
24 about this today. I propose handing out copies of the
25 balance of that material to everybody.

26 COMSR: I will have to have a look at the rest
27 Of it.

28 MR SMITH: Perhaps preserve the right of argument.
29 I would contend there is no privilege attaching to this
30 material.

31 COMSR: If there is, of course, the person whom
32 the privilege attaches will have to claim it.

33 MR SMITH: It is not Mr Wooley, is it either, who
34 would be claiming the privilege?

35 MS PYKE: There might be any number of reasons. I
36 just think it is not proper for us to debate what Mr
37 Stratford may or may not think is in his client's
38 interests. I think we are on dangerous territory.

- 1 MR SMITH: I can get on with some evidence in any
2 event.
3 XN
- 4 Q. Dr Fergie, I really want to take you to the events
5 leading up to June 1994. You have a copy of your
6 statement in front of you, don't you.
- 7 A. I do.
- 8 Q. At p.20 of your statement, we come to a heading 'My
9 awareness of the Hindmarsh Island or the Hindmarsh
10 Island bridge issue prior to Friday 17 June 1994.' As
11 at that date, that is, 17 June 1994, in connection with
12 the Hindmarsh Island bridge problem, did you have any
13 contact with Doreen Kartinyeri.
- 14 A. No.
- 15 Q. You have heard the evidence of Franchesca Alberts from
16 the museum.
- 17 A. Yes, I wasn't here for it, but I read it.
- 18 Q. You know about it. She suggests that, Doreen was to
19 meet her, by arrangement of Steve Hemming, to provide
20 some information to her. You know she said that, but
21 that that meeting on 19 May was cancelled, on the basis
22 that Doreen was recording this information with you.
23 That's is what was said.
- 24 A. Yes, that's what was said.
- 25 Q. Is that the position.
- 26 A. That is not the position.
- 27 Q. Were any approaches made to you, in May of 1994, at all,
28 in connection with recording information or speaking
29 with Doreen Kartinyeri about the Hindmarsh Island
30 bridge.
- 31 A. No. I am aware that my husband talked to Doreen and he
32 mentioned that she may talk to me, but Doreen herself
33 did not and I did nothing in response to that. It was a
34 comment, it was offhand.
- 35 Q. Were you contacted by Steve Hemming, for instance, in
36 about May of 1994.
- 37 A. Not that I am aware of.
- 38 Q. In connection with the speaking with Doreen.

- 1 A. For any reason.
- 2 Q. So, you know, by reason of speaking to your husband,
3 that some contact between him and Doreen had occurred,
4 in connection with this matter.
- 5 A. Yes, I know that he had conversations with Doreen about
6 this matter.
- 7 Q. What was it about, a request for you to record some
8 information for him, was it.
- 9 A. No, I think you have to ask him. He said to me that he
10 had talked to Doreen about these matters. I was kind of
11 vaguely aware, as I say in my statement, that things
12 were going on at some stage and I can't even place when
13 it was. Rod said that he had met Doreen. I have a
14 vague memory, he said, sitting outside the pool outside
15 the museum. He said there were women's issues. Rod
16 made some kind of comment. I didn't even think about it
17 at the time, that, you know, 'she might get in contact
18 with you.' He didn't say, that I recall, that she was
19 going to or anything like that, he just mentioned that
20 Doreen was concerned about these things and -
- 21 Q. That she might get in touch with you.
- 22 A. I don't even know that it was that specific frankly.
- 23 Q. Is this about May of 1994.
- 24 A. I don't really know when it was. It was certainly at a
25 point when I was vaguely aware of the Hindmarsh Island
26 bridge issue, but I hadn't taken particular notice of
27 it. It may. I mean, it is likely it was around April
28 or May.
- 29 Q. Can I take to you p.20 of your statement. You had some
30 contact or, at least, your husband did, but I want to
31 get some more detail from you about this, with Dr
32 Lindy Warrell.
- 33 A. Yes.
- 34 Q. In the lead up to 17 June 1994.
- 35 A. That's right.
- 36 Q. It was in connection, was it, with your husband Rod
37 Lucas, suggesting to the developers, that they
38 retain a female anthropologist.

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- 1 A. As I understand it.
- 2 Q. That's what he conveyed to you.
- 3 A. Yes.
- 4 Q. He told you that he'd recommended that to the Chapmans.
- 5 A. He told me that the Chapmans had rung him about the
6 issues, and that he had told them that he was a man and
7 clearly, as there were women's issues, he clearly
8 couldn't deal with the matter, and they would need to
9 get a woman anthropologist.
- 10 Q. Did he tell you that he recommended you and/or Lindy
11 Warrell.
- 12 A. That's what he told me.
- 13 Q. Was it about this time, and we are now talking about May
14 - it must be about May of 1994, mustn't it.
- 15 A. You can deduce that, I think.
- 16 Q. I think it was about this time that Dr Lindy Warrell
17 visited you, is that right.
- 18 A. Yes.
- 19 Q. At your home.
- 20 A. At our home.
- 21 Q. You make the point at p.21, on more than one occasion.
- 22 A. I believe so.
- 23 Q. Can you tell us what she said about the Hindmarsh Island
24 matter when she visited you.
- 25 A. I can't recall the situations in great detail, because
26 it was going on at the same time as she was concerned
27 about another matter in relation to a consultancy that
28 she had undertaken in relation to the BHP Iron Triangle
29 matter. I'm not even quite sure what it was, but she
30 was concerned about something that had transpired from
31 that matter, which had to do with another friend of mine
32 who is an anthropologist interstate. So I should - I'm
33 framing this by saying that I actually was quite
34 consciously trying not to get particularly involved in
35 the matter. She came to our home at some stage and said
36 that she had been approached by the Chapmans to
37 undertake a consultancy in this matter and she was
38 trying to decide whether it was a good thing or not to do.

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- 1 Q. Did she convey to you that to take a consultancy from
2 the Chapmans might cause her some problems with later
3 consultancies from Aboriginal communities. Is that her
4 position.
- 5 A. Yes, I don't know if I'd put it quite that way. I think
6 it was very clear by that stage that Aboriginal people
7 were opposed to this development. So I presume it may
8 be - may have actually been after the protests, and,
9 yes, she was worried. She had been a colleague of mine
10 at the university, and her contract had come to an end.
11 She was going to be now dependent on consultancy work
12 for her income and she was, I guess, quite concerned
13 that, before she had built up a kind of consulting
14 reputation amongst Aboriginal people, that would, you
15 know, take her through this period that people may, in
16 fact, be upset by her doing that.
- 17 Q. Anyway, she got down, on one of these occasions, to the
18 stage of speaking with you and your husband about the
19 consultancy and anthropology consultancy concerning the
20 Hindmarsh Island Bridge, did she not.
- 21 A. She did.
- 22 Q. Tell us what was said about that.
- 23 A. I don't recall the exact words. I think Rod and I, in
24 response - I don't know even which of us said it, but
25 suggested to her that it might be possible for her to
26 undertake this work, not directly for the Chapmans, but
27 that it be Federally funded, and da da da, and she might
28 pursue those options. And I don't know what she did
29 after that in relation to it.
- 30 Q. You made a suggestion, or your husband made a suggestion
31 that she contact Doreen Kartinyeri, did you not.
- 32 A. Yes.
- 33 Q. I take it you were aware, at least at that stage, that
34 Doreen Kartinyeri was involved then in the Hindmarsh
35 Island -
- 36 A. Yes, I believe I was. Doreen Kartinyeri is clearly - it
37 may also have been simply that Doreen Kartinyeri would
38 be some person that she would have to deal with in her

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1 work with the museum. So I don't know that what you are
2 asking necessarily follows, but I - that's quite
3 probable.

4 Q. At p.22, about point 3, you say 'I remember that either
5 Rod or I suggested to Lindy that she contact Doreen
6 Kartinyeri directly and ask her if she was prepared to
7 work with her on the matter.'

8 A. Yes. That might have either been in relation to her
9 position as - in the family history unit, or in her
10 position in relation to the protest. I don't know.

11 Q. It just gives the impression, doesn't it, that Doreen
12 Kartinyeri somehow or other had the carriage of the
13 Aboriginal protest on Hindmarsh Island.

14 A. I think that's reading too much into the statement.

15 Q. Is it.

16 A. I certainly had no idea - I mean, at that time I
17 actually, apart from seeing Doreen on the television in
18 one of the protests, had no idea whether she was a
19 leading light or just one of the troops in the matter.

20 Q. Was anything else that was said between you and Lindy
21 Warrell in connection with this proposed consultancy.

22 A. No. I think what we had was a discussion about the
23 process and consequence at this stage of her career of
24 doing things and, you know, I remember thinking that the
25 best way to do - instead of sitting in our kitchen
26 talking to us, was actually to approach Aboriginal
27 people and see if they were quite willing for that to
28 happen, because they might have found it perfectly
29 acceptable.

30 COMSR

31 Q. Quite willing for what to happen.

32 A. For somebody to work for the developers. I think it is,
33 within anthropology it is always - it is a delicate
34 issue about, in a sense, how you are placed. Some
35 people find no problem in that. It is just a difficult
36 thing. I think it was clearly going to be a contentious
37 matter. And this was the beginning of Lindy's
38 consultancy career, and I think she was very sensitive

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- 1 to the possibility that she would in fact, instead of,
2 you know, gaining out of this consultancy, that it might
3 basically do her a disservice in the long term, and she
4 was discussing those matters with us.
- 5 XN
- 6 Q. You made an assumption, as portrayed at p.22 of your
7 statement, that Doreen Kartinyeri was somehow prominent
8 in this dispute.
- 9 A. No, I had no idea she was prominent at that time. I
10 mean, I knew she was involved and I had seen her on the
11 telly, but I had no idea that she - in the sense as I
12 know now - is really one of the key people. I certainly
13 had no sense of that at the time. I just knew she was
14 there.
- 15 Q. Can I take you to your direct involvement then in the
16 matter. That's 17 June, isn't it.
- 17 A. Yes.
- 18 Q. On 17 June you were approached by Tim Wooley of the ALRM
19 to do the consultancy. That's right, isn't it.
- 20 A. That's right.
- 21 Q. As your statement sets out at p.23, the message from Tim
22 Wooley was received by you at about 1.30 p.m. on Friday,
23 17 June.
- 24 A. I received a slip of paper in my pigeon hole saying that
25 Tim had rung, that's right.
- 26 Q. So this is the first incident which led to your
27 involvement, is it.
- 28 A. That's the case.
- 29 Q. You returned the call, I take it.
- 30 A. I returned the call later that day. About 4 p.m. I
31 think.
- 32 Q. And Tim Wooley then conveyed to you what your brief was,
33 as it were. Is that right.
- 34 A. Yes. He asked me if I was interested in the
35 consultancy.
- 36 Q. And you were.
- 37 A. Yes, I had - I was - yes, I was interested. I was
38 concerned at the time - when he rang me up, he asked me

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- 1 if I was prepared to be a facilitator, and I was quite
2 concerned that it was ambiguous what that meant, and I
3 had some concerns that that might turn into a report,
4 which, at the time, he assured me that it wouldn't.
- 5 Q. Why were you concerned about that.
- 6 A. Because I thought it was a very tight time schedule.
- 7 Q. So he had provided you with some information about the
8 parameters of -
- 9 A. Yes. He told me that the women were meeting at Graham's
10 Castle over the weekend, that they would meet with
11 Professor Saunders on the Monday, that what they were
12 hoping I would do was something - if necessary, perhaps
13 go down before those meetings on the Sunday and just
14 talk to the women in case they had any concerns, to be
15 available at the meetings in case any kind of
16 anthropological advice was necessary, to be available
17 possibly, you know, for a day or two the next week. But
18 at the time that I took on the job it was a very short
19 term - you know, two or three day piece of work of
20 basically being available in case somebody with my
21 expertise was needed.
- 22 Q. You made a number of inquiries of your luminis, for
23 instance, and you canvassed a number of things, that I
24 don't want to go into, in your statement.
- 25 A. Certainly.
- 26 Q. You made an effort - and I am at p.25 of your statement
27 - to contact Professor Saunders in order to make some
28 positive arrangements, I think. Is that right.
- 29 A. That's the case.
- 30 Q. You canvass there the fact that Professor Saunders was
31 expecting someone who was expert on the Ngarrindjeri
32 people.
- 33 A. Yes.
- 34 Q. Is that right.
- 35 A. Yes, that requires some explication. What happened was
36 I rang her and got on to her secretary, who I explained
37 who I was to, and I said I was ringing to make
38 arrangements to meet with Professor Saunders on Monday,

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1 and she put me through to Professor Saunders, and I said
2 did she know who I was, and she said yes, she did. And
3 Professor Saunders, you know, basically made it clear
4 that her understanding was that whoever was doing the
5 report would follow in her tracks rather than be there
6 at the same time as her, which part of the conversation
7 made me say 'My understanding is that this isn't work to
8 do a report. This is work to in fact' - 'to be a
9 facilitator' and I used the word that Tim had used to me
10 - Tim Wooley had used to me, and she said that her
11 understanding - I said that I had been asked to
12 basically be around for a couple of days in case I was
13 needed, and that my understanding was that I had
14 absolutely not been engaged to do a report. She said
15 that her understanding was that there would be an
16 anthropologist to do a full blown report, and that she
17 was very unhappy about what had been organised. I was,
18 at that point, very unhappy myself, and she asked me to
19 ring Tim Wooley back -

20 Q. Sorry to interrupt. Before -

21 A. She presumed that I was engaged because I was a
22 Ngarrindjeri expert, and I said that no, I wasn't a
23 Ngarrindjeri expert. I presumed that I had been engaged
24 on the basis that I was an expert in the general area of
25 the consultancy, and that I knew some of the women
26 involved, most particularly Doreen Kartinyeri.

27 Q. Although, your statement, at the bottom of p.25 again,
28 focuses on Doreen Kartinyeri alone, doesn't it. 'I had
29 expertise in the general issues and knew and had worked
30 with Doreen Kartinyeri.'

31 A. Yes. Who, by that stage, Tim Wooley had identified to
32 me, with Sarah Milera, as one of the key women. I
33 didn't know Sarah at that point. I'd never met Sarah at
34 that point.

35 Q. So Professor Saunders wasn't happy with that
36 arrangement, is that the position.

37 A. That's exactly the position, and when I heard what she

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- 1 had - what her expectations were, I was not happy with
2 either. So she suggested -
- 3 Q. Because, I suppose, it involved you in giving a report,
4 didn't it. Her expectation was that there be a report,
5 an exhaustive report.
- 6 A. That's exactly right, and I hadn't offered my services
7 to do that at all. I think the other thing to be
8 remembered, as I was at the end of my sabbatical, I was
9 actually trying to finish a book at the time, so a two
10 or three day consultancy was much more thinkable to me
11 than anything more. So -
- 12 Q. Is 'facilitator' something that -
- 13 A. It is not a word that would normally be used, which is
14 why, I guess, I tried to understand what was being asked
15 by that term.
- 16 Q. Is that the sort of work you were doing in Marree before
17 this, was it.
- 18 A. No, in Marree I was doing an ethnography.
- 19 COMSR
- 20 Q. What did you understand a facilitator to be.
- 21 A. I didn't understand it to be anything, but when I pushed
22 Tim, he said that basically they needed somebody to be
23 there, you know, to give advice, to stop simple mistakes
24 being made, because the reporter wasn't - didn't have
25 anthropological experience. I don't know if it was in
26 that first conversation, but at some stage in my
27 discussions with Tim, he indicated that there had been
28 some problem, I think at the crocodile farm case, with
29 the reporter not being as careful with confidential
30 information as Aboriginal people might have expected.
31 So he was kind of - he was trying to suggest to me, I
32 think, that it was a sort of safety net position in case
33 the reporter found something that she didn't feel able
34 to - in case I could offer any advice on those kind of
35 matters, I think. I mean, clearly I thought it was a
36 very ambiguous term, and Tim and I had conversations
37 later where I basically said that I had some clear

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1 misgivings about, you know, doing something that was so
2 unclearly defined.

3 XN

4 Q. Anyway, you rang Tim Wooley up and sorted it out. Is
5 that right.

6 A. Yes, we spoke on the phone, yes.

7 Q. What was agreed then that your brief should be.

8 A. In the end, he had obviously had a conversation with
9 Professor Saunders, and they had sorted it out, I think.
10 Tim basically said to me that Professor Saunders, in
11 effect, had agreed that it would do a disservice to the
12 women if they didn't have that resource available and
13 that, on that basis, would we kind of try it out. I had
14 misgivings at that point as well, that it wasn't clear
15 to me that the Aboriginal women themselves wanted me to
16 be there either, and I expressed that concern to him and
17 said I would really need to know, not only that
18 Professor Saunders is happy for me to be there, but also
19 that the Aboriginal women themselves are happy.

20 Q. He assured you they were.

21 A. Yes, and he said that he would get them - get some of
22 them to ring me.

23 Q. In any event, as you set out at the bottom of p.26, Tim
24 Wooley said he would get some of the women to contact
25 you.

26 A. Yes.

27 Q. And that you and he agreed that you would just see how
28 it went, as it were.

29 A. That's right. I basically said, you know, that I was
30 prepared to go down on that day, but we would need to
31 reassess it at the end.

32 Q. Is it correct that at that stage you hadn't read, for
33 instance, the Berndts work.

34 A. I'd seen the Berndts work, but no, I hadn't read it at
35 that point.

36 Q. So you got a copy of that, I take it, did you.

37 A. Yes, I didn't get it at that point. My husband has a
38 copy, and his copy was actually with Steve Palyga, as I

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- 1 understand it. When I was asked to write a report we
2 actually bought another copy from Mary Martins very
3 rapidly, because I clearly needed it very urgently. In
4 the week of the facilitation I actually went to the Barr
5 Smith Library and read it in the reserve collection
6 where there was a copy.
- 7 Q. Did you have the assistance of any anthropological
8 reports.
- 9 A. Yes. I had available to me my husband's file of sort of
10 raw data, I guess you would say, from the PRO and from
11 the museum. We also have a copy in our home of the
12 Jenkin book and the Berndt and Berndt 'From black to
13 white in South Australia'. We also had 'Survival in our
14 own land'. We actually have a library in our study
15 which had some of the relevant works in it.
- 16 Q. And you had -
- 17 A. We also had Faye Gale's PhD thesis, for example, things
18 like that in our library.
- 19 Q. Looking at Exhibit 15, the report of your husband, Rod
20 Lucas, you had this report.
- 21 A. I did.
- 22 Q. And you digested that.
- 23 A. I did.
- 24 COMSR
- 25 Q. What was your purpose in collecting all this material
26 and perusing it.
- 27 A. At that point?
- 28 Q. Yes.
- 29 A. At the point I was - on the Friday evening I hadn't
30 actually read these things. When Tim and I were
31 discussing, you know, how the consultancy would be
32 handled, as events transpired, it was agreed that I
33 would go down on a Sunday, and that I would actually do
34 half a day's reading as part of the consultancy to kind
35 of familiarise myself, to the extent that I could in
36 that short period of time, with Ngarrindjeri issues,
37 just in case those sort of things arose.

1 XN

2 Q. I suppose you took on board, for instance, that your
3 husband had asserted in his conclusions, that - I will
4 give you the exact - there is no extant mythology which
5 specifies mythological sites on Hindmarsh Island.

6 A. Yes, I certainly took that on board, but there wouldn't
7 have been - I mean clearly his work was based on
8 documentary sources and discussions with men. If he had
9 known that this material existed, he wouldn't have
10 written that, and certainly if these women - I mean the
11 fact that the women were presenting themselves was a
12 suggestion that otherwise was the case.

13 Q. Your husband had, in fact, at this stage, reported on
14 women's issues, hadn't he, in the course of the
15 consultancy, the Sellicks Beach matter for instance.

16 A. He may have. Yes, he did.

17 Q. It wasn't as if it was a verboten issue for him.

18 A. No, not at all. I understand that he sought to see
19 Doreen Kartinyeri in the course of that consultancy, and
20 I understand from both of them that she was ill on the
21 day that he was to see her.

22 Q. So on Saturday 18 June you actually commenced your work,
23 as it were, didn't you, by speaking to some of the
24 women.

25 A. I did.

26 Q. You spoke to Sarah Milera and Doreen Kartinyeri.

27 A. On the phone.

28 Q. The topics you spoke about on that occasion.

29 A. Basically that I wanted some assurances that they wanted
30 me to be there, and I think we simply made arrangements
31 for meeting when they assured me that that was the case.

32 Q. Did you speak in any detail about the significance of
33 the island or the problems down there.

34 A. Not that I recall.

35 Q. You also spoke, you record, on the 18th, that is
36 Saturday 18 June 1994, with Shirley Piersley and Vi
37 Deutschle.

38 A. I don't know if it was `and' or `or'; I don't know which

- 1 one of them that I spoke to, but I spoke to them about
2 arrangements of where the women were staying. I think I
3 also, on that day, rang the manager of Graham's Castle
4 to find out if it was appropriat to be accommodated
5 there.
- 6 Q. Were you given to understand that Shirley Piersley
7 and/or Vi Deuschle were actually making the
8 arrangements.
- 9 A. I was aware that they were making some of the
10 arrangements, yes.
- 11 Q. I take it that these ladies were, at this point in time,
12 strangers to you.
- 13 A. Absolutely. I think that's why I have no idea which of
14 them I was talking about.
- 15 Q. So at that point in time the only person had you had
16 previous contact with was Doreen Kartinyeri.
- 17 A. That's so.
- 18 Q. So during that day, you organised yourself for the trip,
19 that is the Saturday, and you headed off down there on
20 the Sunday.
- 21 A. That's right.
- 22 Q. You'd made arrangements, I think, not to stay at
23 Graham's Castle, but at the motel in Goolwa.
- 24 A. That's so.
- 25 Q. Can I take you to your first encounter, or first meeting
26 I should say, with the women. You were actually trying
27 to find your way to the Mouth House, weren't you.
- 28 A. I was.
- 29 Q. On the morning of Sunday 19 June.
- 30 A. Well, I think it was about midday, of course.
- 31 Q. Is it the case that you were about to put your car on
32 the ferry.
- 33 A. No, I wasn't. I'd gone over to Hindmarsh Island trying
34 to find them. I knew that they were at this place
35 called the Mouth House, because I think the manager at
36 Graham's Castle had told me so. He had no better idea
37 than I, except that it was on Hindmarsh Island, and I
38 imagined that it was some obvious feature, so I thought

1 I could drive around and see it. He also mentioned that
2 they were in a large cavalcade, that there were a large
3 number of cars and buses, and that if I saw them, I
4 wouldn't have any doubt about who they were. I
5 basically went over there, and I basically came off the
6 ferry, turned left down the first major looking sort of
7 road that was there, travelled around, came to some sort
8 of a settlement looking for a big cavalcade of cars,
9 which I didn't come across - I actually asked somebody
10 watering their lawn, I think, if they knew where the
11 Mouth House was, and at that point realised that this
12 wasn't going to be any easy matter. At some stage I
13 think Sarah Milera had said to me that one of the ferry
14 drivers usually knew where they were, so I determined to
15 go back, in fact, to ask the ferry driver if he knew
16 either where they were or where the Mouth House was.

17 Q. So I think when you arrived down at the ferry, you
18 actually met the women, they drove up to the ferry.

19 A. Well, when I arrived, what happened is that the ferry
20 must have been over the other side, or in the middle, or
21 something like that, and so I just parked where you park
22 lining up for it, and I presume when the ferry came
23 across, a vehicle drove off which was full of Aboriginal
24 people, so I kind of flagged them down and jumped out
25 and went over and said that I was here to go to these
26 meetings, did they know where the Mouth House was, and
27 they didn't know either, but just as we were having this
28 conversation, which it turned out was a conversation
29 with Amelia Campbell, the women came to the ferry verge
30 from the other direction, and Doreen Kartinyeri yelled
31 out to me and told me to turn around, so I raced back,
32 got in my car - actually I was already facing towards
33 the ferry - and then she got out of whatever vehicle she
34 was in, I heard her yell but I don't know what vehicle
35 she was in, came and hopped into the car and said
36 `Quick, we're going to this meeting'.

37 Q. She got into your car, did she.

38 A. She did.

- 1 Q. You went to Rocky Marshall's house, didn't you, in
2 Goolwa.
- 3 A. Yes, I take it that that was the house we went to. I
4 understand that that was his house.
- 5 Q. At the house, there was some meeting scheduled, is that
6 what you were given to understand.
- 7 A. Yes. I was given to understand - when Doreen got in the
8 car, she told me about a letter to the editor that had
9 been published in The Advertiser that morning - actually
10 I had seen it myself - and said that they were going off
11 to tell this bloke off for having done that, and that
12 there was a meeting there, and that's where we were
13 going.
- 14 Q. Now at this point in time, when you got there to Rocky
15 Marshall's house, you met Sara Milera for the first
16 time, is that right.
- 17 A. That's right.
- 18 Q. Who introduced you.
- 19 A. Doreen, I think.
- 20 Q. You've said, is that right, p.29, about .5, 'On the
21 driveway going down, Doreen introduced me to Sarah', is
22 that right.
- 23 A. Yes, because we were walking together, yes.
- 24 Q. So that is your first meeting with Sarah.
- 25 A. Yes.
- 26 Q. What happened at the house.
- 27 A. Well, there was a meeting going on in the house.
- 28 Q. Inside the house.
- 29 A. No, the house - and I don't know if my recollection is
30 correct, but my recollection is that the house is one of
31 those houses built on stilts that the underpart has been
32 enclosed - I call it an 'understory' in my statement -
33 and that was at the rear of the house. I've got no -
34 maybe there was a two storey part at the front, I don't
35 know. At the rear of the house there was this enclosed
36 two storey area in which a meeting was going on, and
37 that's where we met.
- 38 Q. Did you formally meet any of the other women at this

- 1 stage.
- 2 A. I may have been introduced to Shirley and Vi at that
3 point, but I don't recall.
- 4 Q. Did Sarah introduce you to her Auntie Connie.
- 5 A. That happened inside the meeting.
- 6 Q. What were the terms of that introduction.
- 7 A. She basically said 'This is my Auntie Connie. She is
8 down here from the Riverland', and that Sarah regarded
9 her as her elder, and she was the one that she would
10 follow.
- 11 Q. Now I think at the house, if I just go to that, you've
12 made the point that Shirley Piersley made a speech on
13 the theme of reconciliation, is that right.
- 14 A. That's true. Can I just go back to the question you
15 asked me about Auntie Connie? That introduction
16 happened in the context of the general - basically they
17 went around the room and everyone had to introduce
18 themselves.
- 19 Q. To you.
- 20 A. No, to the meeting.
- 21 Q. To one another.
- 22 A. To one another, it was one of those kinds of -
- 23 Q. Rocky Marshall was present here was he.
- 24 A. He was.
- 25 Q. Apart from yourself, were there other white people
26 there.
- 27 A. Yes. I mean by the time I walked down the driveway,
28 there were a lot of Aboriginal people inside, but it
29 seemed to me that it was probable that, in fact, they,
30 like I, had just arrived, and it had been mostly white
31 people in there beforehand.
- 32 Q. Do you know or not whether these people were, for
33 instance, members of the Friends of Goolwa and
34 Kumarangk, conservation people and the like.
- 35 A. I didn't know that at the time, but I understand that
36 the meeting was a Friends of Kumarangk meeting.
- 37 Q. Did anyone appear to be in charge of this meeting,
38 chairing it for instance.

- 1 A. No doubt somebody was, just -
- 2 Q. I just want to know whether it was the Friends of Goolwa
3 and Kumarangk who were running this gathering.
- 4 A. It was clearly their meeting because I think what
5 happened is that, yes, Rocky was standing at the end
6 with a number of other people, and in fact after the
7 introduction session or before it, I'm not sure which,
8 either Shirley or Vi - because I didn't know which was
9 which at that point, I think it was probably Shirley -
10 made sort of a speech, and basically I think sort of
11 outlined why the women had come.
- 12 Q. Was the first thing that happened at the meeting the
13 'haranguing', as you call it, of Rocky Marshall by
14 Doreen Kartinyeri.
- 15 A. Well, we'd had these introductions, I think there was a
16 speech, I don't know whether it came before or after,
17 and then yes, as far as I recall, Doreen harangued
18 Rocky.
- 19 Q. You used the word 'harangue'. Was it as bad as that,
20 was it.
- 21 A. It struck me, as somebody who is used to working with
22 Aboriginal people, that it was a kind of a ritualised
23 admonishment, that Doreen was shaming him for having
24 done something that he shouldn't have done - well, it
25 had many of those hallmarks, maybe I should have said it
26 looked to me like a ritual shaming. That's what it
27 looked to me like.
- 28 Q. It was suggested in this commission that it was a
29 pantomime.
- 30 A. I don't think it was a pantomime, it depends how you
31 understand the rituals of shaming. I can see how that
32 might appear that way. I think Aboriginal people feel
33 an obligation, in a sense, when certain kinds of
34 conventions have been dealt with badly, to make an
35 appropriate cultural response which is to, in fact, draw
36 people's attention to the fact that this was a failure
37 to act appropriately to Aboriginal custom, and that
38 people had to be held to task for that. The fact that

- 1 Rocky was a white man it seemed to me was in some
2 respects incidental. It did strike me at the time that
3 it was handled as an Aboriginal woman might to an
4 Aboriginal child that didn't know the rules and had
5 broken them.
- 6 Q. In fact, just to pick up on that earlier question I
7 asked you, it was suggested by the journalist, Colin
8 James, to the commission, that Sarah Milera herself had
9 characterised this as a pantomime. Did you find that.
10 Do you find that odd, that an Aboriginal lady - if
11 that's so, of course -
- 12 A. Well, I can only account for my impressions of it, and
13 my impressions were that, in a sense, it had that kind
14 of, that very cultural aspect of shaming somebody for
15 breaking a cultural convention.
- 16 Q. You've made the point in your statement that the union
17 man, David Thomason, was there, and he spoke.
- 18 A. Yes. I didn't know who he was at the time, but he's got
19 such a distinctive voice. He said he was from the
20 union, so I can only conclude that that's what it was.
- 21 Q. Amelia Campbell told us a few days ago that she was
22 effectively excluded from this gathering of women, and
23 that her exclusion commenced at this meeting at Rocky
24 Marshall's. You witnessed some events relating to that,
25 didn't you.
- 26 A. I did.
- 27 Q. Can you tell us what you remember about that.
- 28 A. Yes. I mean it was a very, it's hard to put in order
29 what happened, but at some stage Amelia, in a very
30 agitated state, basically, started accusing the other
31 women of excluding her.
- 32 Q. So at the stage you picked up on this incident, Amelia
33 had already been told, had she, or you gathered -
- 34 A. Not at all. I think - I mean my post-hoc interpretation
35 of what had happened is that clearly some women were, in
36 fact, brought to Graham's Castle in vehicles, the
37 funding of which was supplied, and were accommodated as
38 part of the meeting by, I presume, the funds that the

1 ALRM held for this purpose, and Amelia was not one of
2 them, and I knew that from when I first arrived, when
3 she first arrived, when we first met at the ferry. She
4 was actually in a car being driven by some
5 non-Aboriginal person, I would say he was probably
6 Chinese, who said that he brought Amelia down, so I
7 suppose I already had a clue that Amelia wasn't being
8 funded. I mean, to be honest, it kind of came in the
9 meeting to me, as I presumed to many people, sort of
10 like a bolt out of blue when Amelia got very upset, and
11 she was clearly complaining that she wasn't one of the
12 favoured people who had been funded to come.

13 Q. In the light of all that's happened since, and in
14 particular the criticisms of your report based on not
15 consulting widely enough, did that give you some
16 concern, that at the beginning of the deliberations, if
17 you like, there was the exclusion of an Aboriginal lady.

18 A. Yes. I think 'exclusion' is ambiguous.

19 MS PYKE: With respect, before the witness
20 answers, I think that's got to be taken in context,
21 because as Dr Fergie sets out in the statement, there
22 were clearly invitations.

23 COMSR: She can answer the question.

24 MS PYKE: I'm just saying, what counsel assisting
25 is putting is just simply not right, nor in accordance
26 with what Dr Fergie has said in her statement.

27 MR ABBOTT: Come on.

28 MS PYKE: Mr Abbott can be as derisory as he
29 likes.

30 COMSR: I think the witness was attempting to
31 answer that and seemed to be -

32 MR ABBOTT: Coping pretty well.

33 COMSR: - able to cope with the question quite
34 well.

35 COMSR

36 Q. You have the statement in front of you, don't you.

37 A. Yes, I have.

1 XN

2 Q. You can refer to your statement at any juncture of my
3 questioning.

4 A. I think the point is that this was a long process that
5 Amelia started being very agitated. Frankly this is not
6 an unusual thing with Aboriginal people. People are
7 very able and do, you know, make their beefs known, and
8 Amelia was clearly doing so. She was clearly very, very
9 upset that she, in a sense, hadn't been in the situation
10 of being paid for. My recollection is that people said
11 that that was no reason why she couldn't come, but the
12 situation escalated, in fact, and in fact the fact that
13 she could come was reiterated again by a number of
14 people but, in the end, what happened is that Amelia,
15 from where she was sitting, more or less kind of
16 opposite me on the wall, and Doreen were having, you
17 know, an exchange of very, very heated words, I think
18 I've described them as screaming at each other, and I
19 think that's not very far from the truth, and at this
20 stage Amelia said 'Well, I'm going to tell them, I'm
21 going to tell them', and Doreen got really agitated and
22 she just went berserk, screaming, and walked off down
23 the driveway, and everybody was kind of - this had been
24 going on and everybody was very kind of stressed. The
25 white people clearly had never seen such a thing happen
26 before. I've seen similar things happen before, but a
27 lot of people in that room hadn't seen things like this
28 happen before, and Doreen had torn off down the
29 driveway. Nobody seemed to know what to do. Amelia was
30 incredibly upset, and she kept going on, and I don't
31 know if this is the exact words, but my recollection is
32 that she was saying 'You women on high', or something to
33 that effect, which I took to mean, 'You privileged women
34 who always get funded to come to these things'. Doreen
35 was down in the front yard somewhere, you know, being
36 very agitated and having a cigarette. I noticed that
37 people moved over towards Amelia. I went out to look to
38 see where Doreen was, people were around her as well,

1 and then somebody - this is my recollection, I could
2 have the chronology somewhat out of kilter, it was very
3 dramatic - somebody said 'Let's have', 'I think this is
4 the moment to have tea', and so people started getting
5 cups of tea and coffee and bickies while there is this
6 incredible commotion going on. My feeling was 'What we
7 have here is a situation with a whole lot of people who
8 had never seen anything like this before'. These were
9 good sort of middle-class-values people confronting a
10 kind of Aboriginal politics that they were unfamiliar
11 with, and it happens in a way that -
12 CONTINUED

1 Q. Sorry to interrupt you, but my question really was, did
2 that, the act of excluding Amelia - which did happen,
3 didn't it.

4 A. No, I don't believe she was excluded. I think what
5 happened is that Doreen said 'Amelia, if you are going
6 to act like this, I don't want you there.' And other
7 people were saying to Amelia 'You have got every right
8 to be there.' And people were saying 'Amelia is a
9 Ngarrindjeri woman. She has got a right to speak.' It
10 was very clear Doreen didn't want her to be there, but
11 it was similarly clear that the Aboriginal people were
12 saying to her 'You have got a right to be there.' And,
13 indeed, Sarah Milera, in my presence, said as much to
14 Amelia. And my recollection is that Sarah talking to
15 Amelia was the last exchange that Amelia had with that -
16 anybody in that group of Aboriginal women.

17 Q. You have said in your statement that 'Amelia yelled to
18 Doreen "I'm going to tell you. I'm going to tell you."

19 A. 'I'm going to tell them.'

20 Q. 'I'm going to tell them. I'm going to tell them.' And you
21 have included there 'I assumed she meant the secret.'

22 A. That's how I read the statement, understood it, at the
23 time.

24 Q. But can I get back to my question: I will ask you
25 something about that. Did that, however, the fact that
26 Amelia wished to be there and wanted to be accepted and
27 wanted some input - and was, in fact, not involved in
28 the end, was she.

29 A. No, she wasn't formally invited. I think it is a really
30 crucial distinction to distinguish between whether she
31 was invited to, in a sense, stay at Graham's Castle, or
32 whether she was not invited. I mean, she wasn't
33 invited. She hadn't been one of the women who, you
34 know, were in the vehicles and so on. But I think that
35 was very clear and I understood it. As I left, in fact,
36 I was curious the next day to see if Amelia would be
37 there and I wouldn't have been at all surprised had she
38 been there.

1 COMSR

2 Q. Does that mean that she wasn't there the next day.

3 A. She wasn't there the next day, but, in fact, on the
4 basis of this exchange that afternoon, I wouldn't have
5 been surprised at all if she had been there, if she
6 decided that she would go to the meeting, in any case.
7 She herself clearly decided not to. But I wouldn't have
8 - I mean -

9 OBJECTION Mr Abbott objects.

10 MR ABBOTT: She can't speak for Amelia and we have
11 had Amelia to say the opposite, on her oath.

12 XN

13 Q. But, in any event, did that give you any concern,
14 bearing in mind the later criticisms that have been
15 offered.

16 A. Certainly it did and certainly I explored the issue in
17 some detail.

18 Q. You didn't, however, speak with Amelia after, after 19
19 and 20 June.

20 A. I didn't. I actually had no idea how to contact Amelia
21 Campbell.

22 Q. You made the point, and it is in your statement, that
23 Amelia started to complain about 'women on high',
24 H-I-G-H.

25 A. Yes, I don't know if that's the exact term, but it is
26 the one that keeps coming back into my mind when I think
27 about it.

28 Q. Are you familiar with Aboriginal English.

29 A. Sure.

30 Q. Could I suggest to you that that is Aboriginal English
31 for on hire, H-I-R-E.

32 A. It might be. I think what it does refer to is women
33 who, in effect, are - I see what you are getting at.
34 No, I think it - my clear understanding was that it was
35 about the women who had been paid to go. And she made
36 that very clear. It was about women who were paid - not
37 paid to go in the sense of being paid a salary, but for
38 whom - who went at no cost to themselves I guess.

- 1 Q. Whose expenses were covered.
2 A. Whose expenses were covered, thanks.
3 COMSR
4 Q. Just so that I am clear: at that time, did you have any
5 idea of the manner in which the women had been selected,
6 those who were - whose expenses had been paid.
7 A. No, I had no idea.
8 XN
9 Q. I take you then away from, as it were, Rocky Marshall's
10 house. You went away from Rocky Marshall's house in
11 company with Sarah Milera, is that right.
12 A. I did, yes.
13 Q. She came in your vehicle.
14 A. She did.
15 Q. You went to Hindmarsh Island, I think, didn't you.
16 A. We did.
17 Q. I am at p.33 now of your statement. You mention here in
18 your statement 'diary notes'. Do you actually have at
19 your disposal now diary notes, have you.
20 A. They are in the bundle.
21 Q. They are in one of these bundles, MFI 243. Do you have
22 your diary there.
23 A. I have them - no, I have got the notes with me.
24 MR SMITH: Is there any problem with those?
25 MS PYKE: Only to the extent to which they might
26 refer to ALRM, or any conversations.
27 COMSR
28 Q. What are these diary notes of.
29 A. This is just out of my diary.
30 Q. These are your own diary notes, are they.
31 A. Yes, I have a Filofax. These are pages out of a Filofax
32 and they are just those things -
33 MR SMITH: No sensible argument for privilege could
34 attach to this bundle of records.
35 MS PYKE: We actually haven't been given a copy
36 back, may I say. I am not critical of them not being
37 distributed to others. I would have thought it was our
38 document.

- 1 MR SMITH: I ask that you allow the witness to
2 refresh her memory from those and I be allowed to
3 distribute copies to my learned friends at the bar
4 table. No submission could be made that any of this
5 material could possibly be a matter of privilege.
- 6 MS PYKE: If counsel assisting would perhaps just
7 permit me to have a look at them? I mean, there are
8 certainly references to Mr Tim Wooley.
- 9 COMSR: Mere reference to someone can't make it
10 privileged.
- 11 MS PYKE: No.
- 12 MR MEYER: Beyond that, neither a pleasant nor an
13 unpleasant reference can make it privileged.
- 14 MS PYKE: For example, there are things which
15 should be suppressed like everything else. I mean,
16 there are personal notes in these diaries. There are
17 telephone numbers of people and -
- 18 COMSR: I don't know that that is going to be
19 elicited in the evidence.
- 20 MR SMITH: We are not going to paste them up on the
21 wall.
- 22 MR ABBOTT: We have all given undertakings.
- 23 MS PYKE: I don't need counsel assisting to tell
24 me that. It allays all my fears about the document.
25 No, looking at it, I can't see that there is
26 anything, in particular, that -
- 27 XN
- 28 Q. When you need to, you can refer to your notes. How long
29 did you spend with Sarah - you went to the Mouth House,
30 didn't you.
- 31 A. Yes, we did.
- 32 Q. With Sarah.
- 33 A. Yes, we did.
- 34 Q. How long did you spend with her there.
- 35 A. My notes suggest between about 4 and 7.30.
- 36 Q. You have been present in the hearing room when evidence
37 has been given about aerial maps and all that sort of
38 thing in the Mouth House. And is that your recollection

- 1 of the -
2 A. Yes, there was an aerial photograph sitting above the
3 table.
4 Q. And another one on the other side of the room.
5 A. Yes, I have got a vague memory of it. I didn't -
6 Q. You were with Sarah Milera for three and a half hours, I
7 think, is that right.
8 A. Yes, something like that, yes.
9 Q. You make the point in your statement that she spoke
10 elliptically.
11 A. Yes.
12 Q. What did you mean by that.
13 A. Sarah speaks elliptically.
14 COMSR
15 Q. Does that mean she doesn't come right out and straight
16 to the point.
17 A. No, she is a woman who has a particular style of
18 speaking, I suppose. Some people go straight to the
19 point and other people -
20 Q. Never get there.
21 A. Yes, but they also speak around a point in order to get
22 it - do you know what I mean? They - Sarah's - Sarah
23 speaks elliptically in - about most things that - in
24 fact, what she is on about is not always
25 straightforwardly clear to you. And certainly to me, it
26 wasn't always straightforwardly clear to me in that
27 conversation.
28 COMSR: I suppose we will be taking the luncheon
29 break?
30 MR SMITH: Yes, do you take the normal break?
31 COMSR: I thought we would resume at 2.
32 ADJOURNED 1 P.M.

- 1 RESUMING 2.03 P.M.
2 XN
3 Q. We are at the Mouth House with Sarah. You were telling
4 us about your three and a half hour conversation with
5 Sarah, at p.33.
6 A. Okay.
7 Q. The gist of the conversation, I take it, you have set
8 out there, at p.33.
9 A. Yes, I think it is set out here, and there is some
10 mention of it in my report, in so far as I can recall
11 it.
12 Q. Sarah showed you, as you make a point of it, her
13 genealogy and told you that she was a descendant of King
14 Peter.
15 A. Yes.
16 Q. Did you investigate that, or did you accept that.
17 A. I don't know that I had the role of an investigator, at
18 that time.
19 Q. But, at any stage.
20 A. No, I didn't.
21 Q. She also had at least photocopies of pages from the
22 Berndt book there.
23 A. She did.
24 Q. Did she have the volume, the Berndt volume, as well.
25 A. Yes.
26 Q. Did she betray to you, or say words to you, I should
27 say, to the effect that she was really learning about
28 her culture.
29 A. No, she didn't say that.
30 Q. And reading about it from the Berndt book.
31 A. No, she didn't say that.
32 Q. Did anything she say to you, in the course of your
33 contact with her, in connection with this whole matter,
34 indicate that that was the process that Sarah was going
35 through.
36 A. Which process?
37 Q. The process of learning about her culture.
38 A. In so far as anybody is constantly learning about their

- 1 culture, so was Sarah.
- 2 Q. What do you mean by that. Perhaps I can tell you,
3 before you answer, the thrust of my question is that -
4 it is really that Sarah was one of your informants, was
5 she.
- 6 A. She was.
- 7 Q. My question really is, was she informing you from her
8 appreciation of her culture as just recently learnt, as
9 opposed to a knowledge of her culture that reaches back
10 in time.
- 11 A. I think I deal with that in my report.
- 12 Q. Yes.
- 13 A. And the way to answer that is that there are dimensions
14 to Sarah's understanding of her culture. Some of which
15 has to do with recent events and occurrence as to her -
16 much of which has to do with her socialisation as a
17 human being. And I make that distinction in my report -
18 well, I don't make that distinction, but I point that
19 out in my report, in fact.
- 20 Q. It has much to do with recognising the fact that for,
21 say, in Sarah's case, that all of her life is spent in,
22 if you like, the missionary culture of the Ngarrindjeri
23 people. Do you agree with that.
- 24 A. No, I wouldn't agree with those terms of framing the
25 question.
- 26 Q. How would you frame it.
- 27 A. I would say she has been a Ngarrindjeri person all her
28 life.
- 29 Q. But, of course, the fact that she has lived her life in
30 a mission culture to start with and then outside that in
31 the European culture.
- 32 A. Is a Ngarrindjeri experience of life.
- 33 Q. But I want to know if you can identify for us, in as lay
34 language as possible, the extent to which Sarah was
35 relying on what she learnt from the Berndt and Berndt
36 book, as opposed to recounting, if you like, her culture
37 from her experience as handed down.
- 38 A. Sarah was recounting - the majority of what Sarah said

- 1 to me was an account of her experiences as a
2 Ngarrindjeri woman from her own life experience. She
3 used at times other material to bolster that, but it was
4 from her personal experience.
- 5 Q. I think you went back to Graham's Castle, eventually,
6 did you not.
- 7 A. I did.
- 8 Q. Can I ask you at least whether in that conversation with
9 Sarah at the Mouth House she recounted any secret
10 women's knowledge to you.
- 11 A. I don't know the answer to that question, since, at the
12 time, I didn't know what to measure that against. And
13 so -
- 14 Q. You know now, though, don't you.
- 15 A. Yes, but it is a question of how you recall things and
16 store them in your mind, I suppose. So, my answer is
17 that I can't answer that definitively, I suppose.
- 18 CONTINUED

1 COMSR

2 Q. Looking back, are you able to isolate any.

3 A. No. What I can remember is that she told me a great
4 deal about herself and she was having - she was very
5 concerned about how, in a sense, to be an Ngarrindjeri
6 person in the context of Ngarrindjeri lore kind of
7 way and she had dilemmas about that. In order to talk
8 about that she talked about an understanding herself as
9 a Ngarrindjeri person. She may have said things that I
10 subsequently were to learn, you know, about it in
11 another context as well, but I can't definitively recall
12 or not. In part, it is talking about my memory process,
13 about how I would be thinking about or what she was
14 talking to me about at the time. I am not trying to be
15 evasive.

16 Q. You just can't remember anything.

17 A. Yes.

18 XN

19 Q. Is that right, you just don't remember whether any of
20 the content of the conversation you had with Sarah, was
21 the women's business, as you came to know it.

22 A. That's right.

23 Q. Did you make notes, at some stage, in relation to the
24 conversation you had at the Mouth House.

25 A. No, I didn't.

26 Q. What was the purpose of going back there in the first
27 place.

28 A. Basically, she had asked me. She said that she wanted
29 to talk to me about the relationship, how would she deal
30 with Ngarrindjeri lore and western lore. She phrased it
31 not in those terms, I think she called it how to deal
32 with two lores. And my recollection is that she said
33 that to me on the telephone on the Saturday, before I
34 went down there. She kind of flagged to me that she
35 wanted to talk about those kind of issues to me, with
36 me, and that's what I understood to be the purpose. I
37 mean, when I went, that's what she said. When I went
38 with her I didn't really know what she might want to

1 talk about.

2 Q. It has been said and I don't think any disrespect was
3 meant by it, that Sarah, in her life time, has been
4 given to fantasies. Now, has that been said to you, in
5 connection with this matter.

6 A. No. But, what I would say is that, there is, in this
7 culture, as in many cultures, traditions of people, in
8 effect, having the capacity to see things other people
9 don't have the capacity to see. Sarah sees herself as
10 one of those people. She spoke to me of that.

11 Q. But, there are, I mean, fantasies in the sense of
12 recounting to people things that are manifestly unreal
13 of her own life experiences, so that is what I mean by
14 the word 'fantasy.' I won't give you chapter and verse,
15 but that is what has been said of Sarah.

16 A. I wouldn't say that. I have no basis for saying
17 anything about that.

18 Q. Where you say, that she spoke elliptically, you weren't
19 alluding to that sort of thing.

20 A. No, I was referring to what I have said. That, in fact,
21 that Sarah sees herself as somebody with the capacity to
22 see beyond the things that most people see and I see
23 that as that is something that is not - that has a place
24 in Ngarrindjeri tradition.

25 Q. She said to you that she had taught Ngarrindjeri lore at
26 the university.

27 A. Yes.

28 Q. Is that a fact.

29 A. Well, yes, I think it must be. Because the secretary
30 of the Centre for Environmental Law, whose offices are
31 below ours in the university, one day the secretary of
32 that department or centre I think it is, in fact said,
33 that she knew Sarah and that Sarah had come in. So it
34 may well be that is, that Sarah had given a talk at the
35 Environmental Law Centre indeed.

36 Q. I am just wondering whether Sarah Milera gave you the
37 impression that she was somehow a lecturer in a
38 university.

- 1 A. Not at all.
- 2 Q. Your statement seems to read that way, doesn't it.
- 3 A. Well, I am sorry if it does.
- 4 Q. `She said she had taught Ngarrindjeri lore at the
5 university.'
- 6 A. Yes, I think that's what she said.
- 7 Q. But your understanding was that perhaps she had, at
8 least, just given a talk of some sort at the university.
- 9 A. I guess the question - the issue here is how each of us
10 understands the word `taught' and in terms of my
11 understanding of the word `taught', what Sarah said she
12 did and the way I have expressed it there are in accord.
- 13 Q. You didn't go back to Graham's Castle that day, at
14 least, did you.
- 15 A. Yes, I did.
- 16 Q. Did you. You dropped Sarah off there.
- 17 A. Then I went back to the hotel to put my child to bed,
18 and I was asked to come back afterwards. There were
19 meetings later, if you look on p.34.
- 20 Q. Have I lost a day there have I. You arrived Sunday -
21 that's right. Sunday. We're still on Sunday the 19th,
22 aren't we.
- 23 A. Yes, I think. I presume that's the date.
- 24 Q. So, Sunday evening you went back to Graham's Castle and
25 you stayed at Graham's Castle, according to p.34 of your
26 statement, between 8.30 and about 10.30.
- 27 A. Yes. If I could have my diary notes back if that is all
28 right. They are just a loose bit with a clip on them.
- 29 Q. When you got to Graham's Castle, did you go straight to
30 the big room upstairs.
- 31 A. That's my recollection, but I wouldn't like to be held
32 absolutely to that.
- 33 Q. When you arrived there, into the big room, Doreen
34 Kartinyeri was present, wasn't she.
- 35 A. Yes. I can't actually remember how I got into the room.
36 It may be that she came in with me, but certainly she
37 introduced me.
- 38 Q. How many other people were there.

- 1 A. The room was pretty full, so I would have thought, as I
2 came in, there were perhaps maybe four people outside.
3 There was a number of children outside and a few adults,
4 but my feeling is there, that most of the women
5 certainly were inside.
- 6 COMSR
- 7 Q. Before we go on - I notice that you have mentioned some
8 matters which are now in the public arena, whatever
9 might have been the situation as at that time. Are you
10 suggesting, for any reason, we need to go into a
11 confidential session in respect of those matters.
- 12 A. No, I will tell you when I think we are coming to it if
13 that's okay. I think so far we are all right.
- 14 XN
- 15 Q. Looking at your report of 4 July, Exhibit 5. In
16 appendix 1, you set out a list of people under the
17 heading, 'Ngarrindjeri women involved in discussions on
18 the 19th June, leading up to the consultations with
19 Professor Saunders at Graham's Castle.'
- 20 A. That's right.
- 21 Q. That list of, is it 34 names or 35 names.
- 22 A. 35 on my count.
- 23 Q. They were the people who were present when you walked
24 into the upper room here at about 8.30 on the Sunday
25 evening.
- 26 A. I clearly don't know. I took their names from the
27 attendance record and it is my assumption they were the
28 same people.
- 29 Q. Looking at MFI 243(22), could you look at that.
30 That is, we're at the 19th of June here now, aren't we,
31 being Sunday.
- 32 A. Yes.
- 33 Q. Monday being the 20th. This is an attendance record of
34 Ngarrindjeri women at the meeting, but it is headed the
35 20th. Can we take it these are the ladies who were
36 present on this evening of the 19th.
- 37 A. Well, clearly, you know, I am not in any position to
38 confirm that. I have clearly assumed it as you have put

1 it to me.

2 Q. Tell us what happened Dr Fergie. You went into the room
3 and I think Doreen introduced you first of all, didn't
4 she.

5 A. That's right. And she, as I recall, said that she knew
6 me from working at the museum. Somebody made some
7 comment about, you know, 'What the hell was an
8 anthropologist doing here, we don't need them.' And
9 made some comment that, you know, anthropologists ripped
10 Aboriginal people off. And Doreen said something in
11 my defence to the effect that, she thought that I was
12 not that kind of an anthropologist, or something to
13 that effect. And then she went on to say that, she
14 thought that it was important that they have somebody
15 like me there, in case the case were to go to court,
16 because they would need somebody with pieces of paper
17 with letters after their name.

18 Q. I think you responded that you weren't there to make a
19 report.

20 A. Yes, that's right actually, yes, yes, I did. And I said
21 that - that's right, because Doreen talked about court
22 which is the first time I had heard any suggestion that
23 this matter might go to court. I was rather anxious to
24 point out that, I didn't see myself in such a place.

25 Q. Did Doreen appear to be in charge of this gathering, did
26 she.

27 A. No, she didn't, no. My impression and it is only an
28 impression, I was at a real disadvantage at these
29 meetings in a sense that, you know, basically, Doreen
30 was the only person who I really knew, and Sarah I had
31 just recently met and basically, I was in on the back
32 foot trying to learn people's names as we went, and my
33 feeling, by the end of the weekend, was that my sense
34 was that, Vi Deuschle and Shirley Piersley were in
35 charge of the meeting. I don't know whether that was
36 clear at that time, but certainly by the time of the
37 end of the meeting that weekend that was the impression
38 I had.

- 1 Q. In any event, at this stage, Doreen, as it were, had the
2 floor, did she.
- 3 A. No, I don't think. I think what happened was, because I
4 think my arrival caused some, you know, comment, and I
5 think, you know, maybe Doreen stood up and I don't know
6 if she was already on her feet walking with me, but
7 basically said, you know, who I was.
- 8 Q. Tell us what happened then. There was this conversation
9 about anthropologists and court and pieces of paper.
- 10 A. Yes.
- 11 Q. You went and sat in the back corner of the room I think,
12 is that right.
- 13 A. I did.
- 14 Q. Then what happened.
- 15 A. Then Doreen said that she was going to tell them what
16 she knew about the significance of Hindmarsh Island.
- 17 Q. Was she standing, as it were, in front of the ladies.
- 18 A. Yes. The room - if we just think of the room like this,
19 Doreen was kind of - I was over in that corner there.
20 Doreen was kind of in this position here. So if we call
21 this the back wall. I don't know if it was on a stand
22 or on the wall itself, but there was a topographical
23 map there.
- 24 Q. A bit like Exhibit 80 here on the wall behind us.
- 25 A. Frankly, I don't think it was the same as that one.
- 26 Q. But, a bit like it.
- 27 A. Possibly, it wasn't an aerial photograph.
- 28 Q. It wasn't an aerial photograph. Tell us, it was a map
29 of what then.
- 30 A. It was a map of that very lower part of the Murray,
31 including Hindmarsh Island.
- 32 Q. So, Doreen said that she was going to tell them what she
33 knew about the significance of Hindmarsh Island and she
34 was standing next to a topographical map of
35 Hindmarsh Island and the River Murray.
- 36 A. Yes and she had with her - I can't remember in what form
37 it was, but I remember how I recognised it. There is a
38 postcard, that I have seen in the museum, of a body

1 smoking platform and she had some kind of a copy of
2 that. I don't know if it was a photocopy or a life size
3 one. I know that I remember 'Oh yes, I know what that
4 is' and she talked about that. And she also had a very
5 small like, a polaroid photograph of an aerial map.

6 Q. Of what.

7 A. Of that lower part of the Murray, including Hindmarsh
8 Island.

9 Q. In particular, the Murray Mouth.

10 A. And in particular the Murray Mouth.

11 Q. So, she was standing in front of the topographical
12 map. She produced a postcard with a smoking platform
13 shown on it.

14 A. Yes.

15 Q. And she also had and produced to the gathering, a
16 photograph of the Murray Mouth area.

17 A. She did.

18 Q. At the same time she was speaking to the gathering was
19 she.

20 A. She was.

21 Q. Did she, at this time, then articulate the significance
22 of Hindmarsh Island.

23 A. She gave an account of the significance of Hindmarsh
24 Island.

25 Q. The account she gave, did that traverse the details of,
26 apart from just generally alluding to the women's
27 business, that is the subject of this enquiry.

28 A. Can you rephrase that question?

29 Q. Perhaps I could do it more brutally and just say to you,
30 what did she say.

31 OBJECTION Ms Pyke objects.

32 MS PYKE: I object on two basis. We're in open
33 session. Presumably Mr Smith is not inviting the
34 witness to comment about what might have been said in
35 an open session and the second element of course is,
36 this witness should or should not be called upon to
37 disclose information conveyed by Dr Kartinyeri in
38 relation to women's business.

- 1 COMSR: I think the witness has indicated she is
2 going to keep very much in her mind any difficulties
3 that arise as far as divulging any information that is
4 contrary to s.35.
- 5 COMSR
- 6 Q. I don't know what, of course, your answer was going to
7 be, but were you about to volunteer anything which, in
8 your opinion, was in contravention.
- 9 A. No, I think the most I would say is that, Doreen drew
10 some correspondence between the area of the Lower Murray
11 and body parts. That's about as far as I am prepared to
12 go.
- 13 XN
- 14 Q. Can I ask you whether what she conveyed to the meeting,
15 was more than what is already in the public - more than
16 what is already in the public domain.
- 17 COMSR: Certain things are in the public domain.
- 18 XN
- 19 A. I have some difficulty with that because they already
20 contradict in the public domain.
- 21 COMSR: Things that Doreen Kartinyeri have
22 herself put in the public domain.
- 23 XN
- 24 Q. You are prepared to go so far as to say, in this
25 conversation Doreen Kartinyeri attributed various
26 areas of the landscapes, the photograph, the postcard
27 with the characteristics of the female body.
- 28 A. No, I am not prepared to go that far.
- 29 Q. Do you take exception to the use of the word `female'
30 do you.
- 31 A. I think it is reasonable to say that she drew a
32 relationship between the shape of the typography and a
33 human body.
- 34 COMSR: I am not quite certain as to what Dr
35 Kartinyeri herself has had to say to this topic. That
36 is, what are we looking at now Mr Smith?
- 37 MR SMITH: I am just looking at what is out in the
38 public medium about the topic. I will come back to

1 that.

2 COMSR: If the witness feels that there is a
3 problem going any further.

4 XN

5 Q. Can I ask you, at this juncture in the meeting, can you
6 at least say that what Doreen Kartinyeri conveyed to the
7 gathering is, if you like, was the secret women's
8 knowledge.

9 CONTINUED

1 A. In part.

2 Q. And was, in part at least, what found its way into the
3 secret appendices.

4 A. Yes.

5 COMSR

6 Q. Can you assist me to this extent, since that time, has
7 some of that material been publicly disclosed and
8 discussed on television and on the radio and in the
9 newspaper.

10 A. Certainly some references to it have, but in terms of -

11 Q. I am not asking you to say what the detail was, nor to
12 tell me anything that has not been disclosed, but are
13 you able to say that some, at least, of that has been
14 made public on television and in the newspapers.

15 A. I think it would be fair to say that fragments of it
16 have.

17 XN

18 Q. I show you Exhibit 67 in this inquiry, and, in
19 particular, an article in the 'Who Magazine' of 17 July
20 1995, which includes an interview with Doreen
21 Kartinyeri. You are familiar with that article, I take
22 it.

23 A. Yes, I've read it.

24 Q. Can I take you into the article a little way.

25 A. Yes.

26 Q. There is a marked section on p.27. You see there that
27 section of the article.

28 A. Yes.

29 Q. Can you tell us, by reference to that section of the
30 article, whether that was the subject of the discussion
31 to the meeting.

32 A. I think that's insufficiently sort of - insufficiently
33 precise formulation for me to answer that question.

34 Q. What I want to know is, on the basis that this is well
35 and truly in the public arena, did Dr Kartinyeri say to
36 the gathering there at Graham's Castle on Sunday
37 evening, 19 June, by reference to the topographical map,
38 the photograph, that Hindmarsh Island was sacred

1 `because the whole waters around there represent the
2 womb and all that' or something to that effect.

3 A. She didn't say that.

4 Q. Did she say words to the effect that the map, referring
5 to the map of Hindmarsh Island and its area, mirror the
6 shape of the female reproductive system, or words to
7 that effect.

8 A. I don't think that's for me to say actually.

9 MS PYKE: It seems to me that what is happening
10 here is this witness is being asked, in the indirect
11 way, what was said at the meeting. There are arguments
12 that we would wish to make about the extent to which
13 this witness should be called upon to provide to this
14 commission evidence that was provided to her in an
15 aspect of confidentiality. This clearly is impinging on
16 that area.

17 COMSR: But when the cloak of confidentiality
18 has been put aside by the person whose confidence is
19 being relied on, does that place it in a -

20 MS PYKE: It has not been put aside for this
21 witness. It is this witness's professional obligations
22 that I am concerned about, not what Ms Kartinyeri might
23 herself have chosen to do. I make it quite clear that
24 the position of Dr Fergie is that she doesn't believe it
25 is appropriate for her to give information about
26 confidential information that she received, or give
27 evidence about confidential information which she
28 received in the course of her inquiry. Clearly, the
29 specific detail of what went on at Graham's Castle is
30 part of that. We have endeavoured to -

31 COMSR: I don't think that she is being asked to
32 give the specific detail.

33 MS PYKE: It is the back-door way. `Did Dr
34 Kartinyeri say this' is the same thing, I suggest, of
35 asking the witness `What did Dr Kartinyeri say'. It has
36 been put to her. It is my submission that it is not
37 appropriate for Dr Fergie to be called upon to give
38 evidence, even albeit indirectly, about confidential

- 1 matters disclosed to her in the course of her
2 consultancy.
- 3 If that is something that you have difficulty with,
4 I would wish to argue it at quite some length. And I
5 also think it is something that, again, Mr Wooley should
6 be present at, through his counsel, Mr Stratford. I am
7 happy to argue it on Monday morning, or Tuesday or
8 Wednesday, or whenever. But there are clear elements
9 here that I think need to be addressed. They have been
10 averted to, might I say, by the Chief Justice in his -
- 11 MR SMITH: I am going to go on anyway.
- 12 COMSR: If we are going to have argument on
13 this, we will have it on Monday morning.
- 14 MR ABBOTT: No, now, because I submit that this
15 attitude -
- 16 COMSR: Why now?
- 17 MR ABBOTT: Is absolutely outrageous and ignores my
18 client's, Dorrie Wilson's, evidence about what happened,
19 in respect of which Ms Pyke did not object.
- 20 MS PYKE: Because Dorothy Wilson -
- 21 MR ABBOTT: I am addressing her Honour.
- 22 MS PYKE: I thought I was standing and addressing
23 actually.
- 24 MR ABBOTT: I want to say something.
- 25 COMSR: First of all, let us complete what Ms
26 Pyke has to say.
- 27 MS PYKE: I am concerned only with Dr Fergie. If
28 Dorothy Wilson wants to come and give evidence about
29 what she observed, that's for her.
- 30 COMSR: She has.
- 31 MS PYKE: I am talking about this witness giving
32 evidence in relation to matters that were disclosed
33 confidentially in terms of her consultancy. That is
34 quite a separate issue. I am more than happy to argue
35 the point, but I think it is appropriate that the point
36 be argued when Mr Stratford is able to be here, given
37 that Mr Wooley's clients, as you are well aware, for the
38 purposes of that meeting, certainly include some of the

1 women, and I think it is inappropriate to hear an
2 argument about issues of confidentiality in the absence
3 of Mr Stratford.

4 MR ABBOTT: I would like to make one point. P.734
5 of the transcript is where Dorrie Wilson was led
6 in-chief. I remind you that this was the subject of a
7 suppression order and was heard in private out of
8 deference to claims that this was secret women's
9 business. So I wasn't present during the entirety of
10 it, but, of course, I was party to Dorrie Wilson's
11 instructions and I can assume what was said by reference
12 to page -

13 COMSR: If it is still in private we are not
14 going to discuss it.

15 MR ABBOTT: I am not going to allude to it. I am
16 not going to say in public what was said in private. I
17 can read out the part of p.734, which is in the public
18 domain, to save time. Dorrie Wilson gave evidence `And
19 Doreen also had a map, and the map looked like it was
20 the same map, the aerial map that was in the shack where
21 Doreen - she told us the same thing that she told us
22 other women. She also then went on to tell them about
23 the map and pointing to the map.' And what she said
24 about the map has been suppressed in the transcript.
25 But I tell you that I would expect it would have been
26 what's on p.38 of her statement which I am, of course,
27 party to, being her counsel, but which has also been
28 suppressed from the public domain, and I will not read
29 it out, but that's in some detail.

30 My client, Dorrie Wilson, was cross-examined by Ms
31 Pyke on this topic, and the evidence was received
32 without objection from Ms Pyke. I mean, the corollary
33 of her argument will be that I can't ask this witness
34 any questions and elicit from this witness that what my
35 client said was correct. That will be the corollary of
36 an order that will permit Dr Fergie to remain silent on
37 what happened on this evening with these women.

38 MS PYKE: Firstly, I -

- 1 COMSR: If this is going to be argued -
2 MS PYKE: I think it needs to be argued properly
3 and I am more than happy to do that, but I think it is
4 appropriate that Mr Wooley's counsel be present when
5 that is argued. It clearly pertains to some of Mr
6 Wooley's clients.
7 COMSR: It doesn't pertain to his clients. I
8 don't know if you are suggesting that there is legal
9 professional privilege involved here.
10 MS PYKE: I have got a list of matters that I
11 would want to put to you. I am sure there are plenty of
12 things that we can go on with this afternoon that don't
13 incorporate this -
14 COMSR: There is no doubt we will not get
15 through the whole of this statement this afternoon.
16 MS PYKE: I am simply flagging to you I have no
17 difficulty with whatever evidence Mr Abbott's clients
18 lead for themselves. My difficulty is the extent to
19 which it is sought to lead from this witness evidence,
20 if it is before you in another way so be it.
21 I am simply flagging that the issue, as we see it,
22 is this witness being called upon to give evidence in
23 breach of the confidentiality of her contract of
24 employment in the absence, I might say, of any authority
25 by any of the women, in particular, Doreen Kartinyeri,
26 authorising her to give evidence about clearly
27 confidential matters.
28 If any other women at the meeting want to turn up
29 here and give their evidence - there were 35 women
30 present. If 35 women want to turn up and give their
31 evidence, I have no difficulty with that. My difficulty
32 rests with the professional obligations of Dr Fergie.
33 MR SMITH: I can go on.
34 COMSR: What is the situation on Monday as far
35 as you are concerned?
36 MR ABBOTT: I will not be here, but if you are
37 minded to accede to Ms Pyke, I would want to be heard.

- 1 On the other hand, if you were against her I wouldn't
2 want to be heard.
- 3 COMSR: I will indicate then I will hear your
4 argument at 9.30 on Monday.
- 5 XN
- 6 Q. This discussion that took place in relation to the
7 topographical map, the postcard and the photograph of
8 the Murray Mouth area, did any of the other women
9 present have any input into this, or was it solely a
10 situation of Doreen Kartinyeri addressing the gathered
11 throng of women on these matters.
- 12 A. My recollection is that people commented. I don't think
13 you would call it a discussion by any means, but people
14 made comment.
- 15 COMSR
- 16 Q. I am still not quite clear about that. Dr Kartinyeri
17 told them about women's business, for want of a better
18 expression, is that the situation.
- 19 A. Doreen told them - yes, Doreen told them some stuff and
20 people -
- 21 Q. Made comments.
- 22 A. Yes, people responded with asides and things like that.
23 In other words, it wasn't like a speech. It was a kind
24 of - just like now, that -
- 25 Q. They asked questions.
- 26 A. Yes, people responded, you know, in an informal way. I
27 suppose the answer was it wasn't a formal speech and
28 people did make comment in the context in which Doreen
29 was talking to them.
- 30 XN
- 31 Q. Can you describe the situation that was in existence at
32 this stage. Were people seated around the room and
33 Doreen in a standing position talking to them. Was that
34 the situation.
- 35 A. Yes, but at some stage, in the context, other people
36 stood up as well and were moving around, and people were
37 passing the - I call it a photograph, it wasn't strictly
38 speaking a photograph at all - the smoking platform

- 1 postcard and the photograph was going around. People
2 were standing up and moving. So people were moving
3 around at some stage in this context.
- 4 Q. The photograph that was being passed around was the
5 photograph of the burial platform, was it.
- 6 A. No. There were two items being passed around. One was
7 a postcard of the burial platform, and the other was a -
8 I think, but it may not have been, a polaroid, a small
9 photograph of an aerial photograph.
- 10 Q. Of the Murray Mouth area.
- 11 A. That's right.
- 12 Q. That got to you, I suppose, as it got passed around the
13 room, did it.
- 14 A. Yes, it did. I think very late in the piece. I think
15 it went the other way basically.
- 16 Q. How long did this discussion go on for, the discussion
17 that was alluding to the topographical map and the
18 postcard and the photograph.
- 19 A. It's really hard to estimate. I would be only guessing.
20 Maybe half an hour. That's a sort of very crude guess.
- 21 Q. Your statement about point 3 of p.35 asserts that the
22 next topic of discussion was whether or not that
23 information should be disclosed to Professor Saunders
24 and also Mr Tickner, the Federal Minister. Is that
25 right.
- 26 A. I'm not sure if it was in chronological order the next
27 item for discussion, but certainly I think, in
28 recollection, that it came after, yes.
- 29 Q. Did Doreen Kartinyeri offer some advice to the gathering
30 about the question of disclosure to these two persons.
- 31 A. Yes. I mean, Doreen was very clearly the person who was
32 arguing that the information should be disclosed. It
33 seemed to me - my sense of the discussion was that
34 people were trying to really figure out whether - which
35 was the worst evil, telling or not telling. Doreen said
36 things like, you know, she thought that the odd people,
37 if they were here, would feel about it as she felt about
38 it. Clearly other people disagreed and thought that - I

- 1 guess the argument, in a sense, was that it ought not go
2 out of the Ngarrindjeri people, in a sense. Doreen at
3 this stage, I think, and certainly later, said things
4 like 'I was told not to tell a man, but I was never told
5 not to tell a white woman'. So she was - you know, it
6 is a debate about really what were people - how people
7 understood their responsibilities, and Doreen had a
8 particular perspective that she freely gave.
- 9 Q. Would you feel the same inhibition as you have expressed
10 a few moments ago, to disclosing the conversation about
11 the topographical map, the postcard and the photograph
12 to the hearing if there were women only present.
- 13 A. Yes.
- 14 Q. You would feel the same inhibition, would you.
- 15 A. Yes. Maybe I should explain myself. It seems to me
16 that the way in which the commission has interpreted the
17 issue of disclosure is, once something is in the public
18 domain, it is in the public domain. Whereas my
19 understanding is subtly different. It is that, in a
20 sense, the right to hear something is quite different
21 from the right to say it. And I don't believe, in this
22 circumstance, I have the right to say it.
- 23 CONTINUED

- 1 Q. Except just dealing with the topic of divulgence, it's
2 clear that when your report went off with the ALRM
3 submission to Canberra, it was envisaged that the
4 women's business as contained in the confidential
5 appendices would be disclosed to women.
- 6 A. It was.
- 7 Q. Why do you have any objection, then, to disclose that
8 material to women here.
- 9 A. Because that's a decision that Aboriginal women must
10 make, not me.
- 11 COMSR
- 12 Q. Just see if I can follow that. I suppose some
13 Aboriginal women might think one way, and some might
14 think another way.
- 15 A. Yes.
- 16 Q. For some they would feel free to disclose, and others
17 would feel that it must be kept secret.
- 18 A. Yes, I think that's true.
- 19 Q. And are each of them right.
- 20 A. Each of them has the right to have a position, I think.
21 I don't think there is a right or wrong position.
- 22 Q. So you wouldn't criticise either for having the point of
23 that they have.
- 24 A. No. I think it's their point of view and it's their
25 point of view to hold. It's not for me, in a sense, to
26 do that.
- 27 Q. I suppose that if information has been disclosed to me
28 by a Ngarrindjeri woman because she feels that she has
29 the right to do so, to that extent I know it, and I've
30 come by it, one would say, in the appropriate manner.
- 31 A. Yes, although some other people would - you can get -
- 32 Q. I understand, two points of view.
- 33 A. It seems to me that you will have debates in Aboriginal
34 societies, as in many societies, about who has the right
35 to speak. I think you need to make a distinction, one
36 needs to make a distinction between the right to hear
37 and then the right to pass on. Now I'm aware in this
38 circumstance that some people would say that people who

1 have spoken spoke out of turn. That's for them to say,
2 I suppose is my answer, yes. I mean that's an
3 alternative debate that would happen in most cultures,
4 was somebody speaking out of turn to have said what they
5 said.

6 Q. I've heard other anthropologists, the effect of what
7 they said is this; that once something has been
8 disclosed so that virtually everyone knows that, to say
9 that it is a secret is to ignore the situation.

10 A. Yes. I'm not necessarily saying it's a secret or not,
11 what I'm saying is that it's not - I don't see it as my
12 right to actually declare it one way or the other, or to
13 actually say it. If somebody said to me 'I want you to
14 hold this in confidence', until they tell me otherwise,
15 that to me is my obligation.

16 XN

17 Q. So you wouldn't necessarily confine this to just this
18 situation, that is confidences reposed in you by
19 Aboriginal people, you would say that if I conveyed
20 something to you confidentially, you would feel
21 reluctant to disclose it in an enquiry such as this. Is
22 your position as general as that.

23 A. No, I think it's complicated by Australian law in a
24 sense, and you and I both - I mean I'd like to think
25 about that, but my initial response is that you and I
26 are subject to a particular kind of law that we come
27 before equally, in a sense. I don't want to be bound by
28 that.

29 COMSR

30 Q. I'm just wondering if there is a professional confidence
31 that you're talking about.

32 A. I think - I mean I certainly see it as so.

33 Q. So if, during the course of your work as an
34 anthropologist, somebody tells you something that is a
35 confidence, well you feel that as a professional you
36 should keep that confidence.

37 A. I certainly should endeavour to. I think most people
38 would understand that you can never absolutely guarantee

- 1 confidentiality, but that you have a commitment to it.
2 That's certainly how I see it.
3 XN
4 Q. I think in the context of this discussion about
5 divulgence to Professor Saunders about the divulgence to
6 the Federal Minister, Mr Tickner, Doreen also mentioned
7 the bridge, didn't she.
8 A. She did.
9 Q. What did she say.
10 A. In the context of talking about, you know, that she
11 thought, faced with this circumstance, that the old
12 people would act as she was proposing that the women
13 act, that they would also try to stop the bridge, she
14 said 'We have got to try and stop this bridge'. It was
15 in the context of that kind of cultural dilemma about,
16 you know, which is the worst evil. She saw the worst
17 evil, in a sense, of what would be the consequences of
18 the building of that bridge in cultural terms.
19 Q. Was any conclusion reached about the disclosure of this
20 information to either Professor Saunders when she came
21 the next day, or the Federal minister.
22 A. No, not that I could see.
23 Q. Well, how did the evening end.
24 A. Yes, I've tried to think how we all left. The
25 discussion actually had another dimension, which was
26 about who could speak about the matter, you know, who
27 had the right, in a sense, not to speak, but to have a
28 say of sway, I suppose, in this matter. I don't
29 remember how we actually stopped. Maybe people
30 suggested we get coffee and come back the next morning.
31 I can't remember how it was concluded. What I do
32 remember is that as I was leaving, people had started
33 singing, they were singing hymns accompanied by a
34 guitar.
35 Q. Were elderly people in this group. Can you tell us how
36 many elderly women were there from your observations.
37 A. Several.
38 Q. Two or three.

- 1 A. Or four or five, something like that.
- 2 Q. But the great majority of that group of 35 women were
3 relatively young women, weren't they, and I mean by that
4 women in their, you know, 30s, 40s and even younger.
- 5 A. The sense I had was a meeting of mature women, I
6 suppose. I noticed - and one of the reasons I took note
7 of the woman I think is Teresa, is not just that her
8 name was mentioned, but in a sense she and a small group
9 of women around her seemed to me to be what I consider
10 young women, and they in fact drew attention to that
11 fact, and asked in effect what role should they have.
12 My sense wasn't that it was a meeting of young people,
13 it was a meeting of fully adult -
- 14 Q. You could hardly describe it as a meeting of elders,
15 could you, women elders of the Ngarrindjeri people.
- 16 A. It was clearly a meeting that had elders in it, and
17 people who were acting like elders, and in fact the
18 reason that you could tell that they were acting like
19 elders, was the way in which other people were acting
20 towards them.
- 21 Q. So there was no, as you make clear at p.36, resolution
22 of the question of whether or not the information could
23 be conveyed, and the meeting broke up at about 10.30.
24 That's right, isn't it.
- 25 A. That's what I assume was the time from my diary note.
- 26 Q. Can I take you, then, to 20 June, the Monday. You make
27 the point in your statement that you spent the Monday
28 morning reading.
- 29 A. That's right.
- 30 Q. That's right.
- 31 A. Yes.
- 32 Q. So you read your husband's file of research material.
- 33 A. Yes. I probably had other stuff with me, but certainly
34 I read those, yes.
- 35 Q. Did you have the Berndt book at this stage.
- 36 A. No, I didn't. I think the Chapmans had it.
- 37 Q. The Chapmans had your copy.
- 38 A. Yes, I think so.

- 1 Q. At that stage.
2 A. Certainly. As I understand it.
3 Q. So you went to Graham's Castle about noon on that day,
4 that's correct.
5 A. Yes.
6 Q. When you got there, did you go into any form of meeting,
7 or what happened.
8 A. Yes. I arrived, I think, pretty much straight on noon,
9 which is the time that it had been agreed with Professor
10 Saunders that I should arrive and, when I got there,
11 there was a small group of people on the stairs which
12 included some men. I wasn't sure what to do. I said to
13 them 'Do you think I should go in or not', and they said
14 'Go on', so I did. When I got into the room -
15 Q. The two men, you know now who they are, I think, don't
16 you.
17 A. I could deduce who they probably were, but I couldn't
18 say that I know now who they were. It's just that I
19 recognised them at the time as being men.
20 Q. But you recognise now who they are.
21 A. I could say that - no, indeed I don't. I can simply say
22 that it was probably George Trevorrow and Doug Milera
23 because they were men who were later there, but I
24 couldn't say with any certainty that that's who it was
25 that I went past by any means.
26 Q. So you went into the meeting room, I think.
27 A. Yes.
28 Q. And Professor Saunders and Anne Mullin were there,
29 weren't they.
30 A. They were.
31 Q. You make the point at p.37.2 of your statement they had
32 what appeared to be maps with them.
33 A. That's right.
34 Q. And there were women, the same group of women that were
35 in the meeting the night before, sitting around them, is
36 that right.
37 A. In so far as I could tell, yes.
38 Q. You joined the gathering, as it were.

- 1 A. Yes. I just went in and sort of sat at the closest
2 available chair by the door.
- 3 Q. What was happening then. What then happened.
- 4 A. Well, they were still talking. I don't have any clear
5 recollection of what the topic was at the time, but it
6 wasn't very long after that that they decided to break
7 up for lunch anyway.
- 8 Q. Can you tell me, in relation to what they were talking
9 about, whether or not it was obvious to you that they
10 were disclosing the women's business to Professor
11 Saunders and Anne Mullin.
- 12 A. It wasn't obvious to me that they were.
- 13 Q. It wasn't obvious.
- 14 A. No.
- 15 Q. So the talk was of other topics, was it.
- 16 A. I don't know, I can't recall. I really truly don't
17 remember what they were talking about as I went in. It
18 didn't seem particularly important.
- 19 Q. If it was the women's business being canvassed that was
20 canvassed on the previous evening, you would surely
21 remember that, wouldn't you.
- 22 A. Yes, I would.
- 23 Q. If the women were disclosing that.
- 24 A. Yes, and I don't believe they were disclosing that when
25 I went in the room.
- 26 Q. What was the talk about, then, between the group and
27 Professor Saunders and Anne Mullin.
- 28 A. I can't remember. I've actually tried to remember of
29 late what on earth they were talking about in that short
30 period then. I simply can't recall.
- 31 Q. How long did this persist for, this gathering.
- 32 A. I don't think very long. I suspect, you know, it could
33 have been within five minutes that it broke up for
34 people to go down and have lunch, it may have been a bit
35 longer. I have some difficulty, in a sense,
36 distinguishing in my memory between, you know, what were
37 they talking about then as opposed to what they were
38 talking about later, and I can't pinpoint anything that

1 I would place at that time.

2 COMSR

3 Q. Did you make any note.

4 A. No, and I understood that I shouldn't take notes, that

5 I'd had that understanding since the night before.

6 XXN

7 Q. So you didn't have your field notebook with you, or

8 anything like that.

9 A. I certainly had it with me, but I certainly didn't take

10 it out.

11 Q. You then went down to lunch with this gathering of

12 women.

13 A. Well, I didn't go down straight away, because I was

14 actually very aware that Professor Saunders had

15 expressed to me that what she was interested in and why

16 she was worried about an anthropologist being around at

17 the same time as her was she was very concerned that she

18 basically have face to face relations with these women

19 that were unmediated by anyone else, and form her own

20 opinions on what was being put to her, so I was very

21 reluctant in any way to kind of inhibit that, so

22 initially I didn't go down at all, I hung around the

23 meeting room, and what I remember is that there was a

24 number of kids in there, in fact I spoke to one child

25 who was drawing a picture at some stage, and I hung

26 around upstairs for quite a good time, maybe even half

27 an hour, while they went down. Somebody obviously

28 realised that I hadn't come down. I don't remember who

29 came and got me, but somebody basically told me to come

30 down and have lunch, and I went downstairs to eat lunch.

31 Most people had pretty much finished eating by the time

32 I went down.

33 Q. You shared lunch with other people.

34 A. Yes. I think they were pretty - they were at the sort

35 of stage of cups of tea, and I had a plate of cold meat

36 and salad.

37 Q. You were on a table with how many people.

38 A. I think about between four and six women, I would say.

- 1 The women that I was sitting with were certainly not
2 young women, I can remember thinking that. I don't
3 remember where they came from - in my memory I know now
4 that that's what we talked about - it certainly wasn't
5 Adelaide, and we just talked about, you know, how they
6 got here and stuff like that.
- 7 Q. So you didn't, as it were, talk business.
- 8 A. No. I was very conscious that the whole position about
9 facilitating was very ambiguous, and I was trying to, in
10 a sense, manage being there without in any way, you
11 know, compromising Professor Saunders' position. She
12 had made it very clear that she wanted to have a very
13 straightforward relationship with people.
- 14 Q. The meeting resumed upstairs immediately after lunch, I
15 think, didn't it.
- 16 A. Yes, I think so, yes.
- 17 Q. You say that you entered into some discussions with
18 George Trevorrow and Doug Milera.
- 19 A. Not I. My recollection is, and I'm not absolutely
20 confident of this, but my recollection is that we went
21 upstairs back into that meeting room, and they talked
22 about the work that they had been doing with Neale
23 Draper, and the archaeological work, and that was a kind
24 of preparation for a tour of the island that we then
25 went on to make.
- 26 Q. So you went on tour with the group.
- 27 A. Yes.
- 28 Q. You had your own motor vehicle there, didn't you.
- 29 A. I did.
- 30 Q. A hire car.
- 31 A. Yes.
- 32 Q. So you drove from Graham's Castle to the island via the
33 ferry, of course.
- 34 A. That's right.
- 35 Q. Who went with you.
- 36 A. Professor Saunders went with me, Anne Mullin went with
37 me, and Sarah Milera went with me.
- 38 Q. The rest of the women, did they come on this tour.

- 1 A. Yes.
- 2 Q. What, via bus or -
- 3 A. In a variety of buses and cars.
- 4 Q. So did this happen immediately after lunch.
- 5 A. No, it happened, as I recall, after George and Doug gave
- 6 us a kind of run down in the meeting room.
- 7 Q. Can you tell us of this tour, then.
- 8 A. Sure.
- 9 Q. Where did you go, what did you do, who did you speak to.
- 10 A. Initially we drove to Amelia Park and parked, and
- 11 everybody got out, and we walked along the grassy area
- 12 there to a kind of little knoll, just a little rise
- 13 where the men - everybody kind of gathered around, and
- 14 the men started to describe that we were actually on a
- 15 midden. They pointed out the - they put some sort of a
- 16 barricade up, it had presumably been a road before then,
- 17 and there had been a barricade put up, and they
- 18 mentioned that that barricade was now there to protect
- 19 the site, and they told us, you know, the extent of the
- 20 site and showed people stuff from the midden. They were
- 21 basically, in a sense, giving people a sense of the
- 22 archaeology of the area and what an archaeologist might
- 23 look at, what would be significant there. My
- 24 recollection is that at some stage they pointed people
- 25 across the river and mentioned some things that they
- 26 described as limestone cups on the other side. In a
- 27 sense, they were taking pains to talk about the extent
- 28 of this long midden, as I think they described it, long
- 29 camp site, I think.
- 30 Q. This was the one that stretched back to the road on to
- 31 the ferry, is that right. From the knoll on the top, it
- 32 followed the park down to the ferry, did it.
- 33 A. I think we might actually be at a s.35 possibility here.
- 34 You think it's in the public domain? That goes for a
- 35 great distance along the edge there.
- 36 Q. And down to the ferry, Brooking Street ferry.
- 37 A. Yes. I don't know if they actually clarified with us
- 38 whether the site we were on was part of that or not.

D.J. FERGIE XN (MR SMITH)

1 What I clearly had a sense of was that there was an
2 expansive site. Whether this was even it I'm not clear.
3 Whilst we were there, I noticed that the women were
4 talking with Professor Saunders, and people made
5 comments like, you know, about desecration, basically,
6 about the disturbance of sites, and I recall somebody
7 making a comment that, you know, 'You white people don't
8 like people going through your cemeteries', or 'You
9 wouldn't like it if somebody destroyed one of your
10 cathedrals', so people were also talking about the
11 significance of those sites in that context, and they
12 were addressing it to Professor Saunders.
13 CONTINUED

- 1 Q. Were you keeping a low profile, as it were, at this
2 stage.
- 3 A. Yes, I was.
- 4 Q. Were you gathering data in anyway on these ladies that
5 you were in company with as to where they came from.
- 6 A. No.
- 7 Q. What views they had about their culture.
- 8 A. I was clearly watching very carefully in terms of
9 understanding, trying to have a sense of what I
10 understood to be happening. I was, in a sense, I
11 suppose, throughout this time watching people's
12 demeanour, the people's attachment to things that they
13 were saying, but I certainly didn't see myself - and I
14 didn't see it as appropriate in any way that I do any of
15 those kinds of investigations. And most particularly in
16 the context of Professor Saunders. I mean, my
17 understanding was that the person that was actually
18 doing the investigation, at this moment, was her and
19 that I was - I was the safety net. I think the word
20 'safety net' was used to me by Mr Wooley. And that,
21 yes, that I - that it was proper that I sort of keep in
22 the background, but at the same time keep alert to what
23 was going on and that's what I was doing.
- 24 Q. I suppose, if had you known that your brief was to be to
25 report, you might have taken a bit more of a vigorous
26 hand in what was happening, or at least participated
27 more vigorously to gather information.
- 28 A. Absolutely.
- 29 Q. Indeed, in the area of whether this group was truly
30 representative of Ngarrindjeri women.
- 31 A. Yes, although, I mean, I think you are going to find
32 that, short of a census, that is always a problem. What
33 you have to - I mean, there is no point in going on, but
34 I think there is an implication in what you are saying
35 that somehow you can get a representative Ngarrindjeri
36 group in some absolute sense. And I simply don't
37 believe that that is the case. That is not to say that
38 I would have been in a different circumstance and

1 handled this situation differently had that been my
2 brief, at the time.

3 Q. What else did you do then. I know you elaborate upon it
4 in your report.

5 A. Yes.

6 Q. But I would like you to tell us. So, you have had a
7 look around Amelia Park, as it were.

8 A. Yes.

9 Q. What happens then.

10 A. Then everybody gets back in the vehicles and we get on
11 the ferry. And we get off the ferry and the cars pull
12 over to the left when we get off the ferry. And then
13 there was a commotion, basically. And somebody came
14 over to my vehicle and said 'That was Wendy Chapman.'
15 And I went 'Oh, gosh. Where?' Because I had no idea
16 what Wendy Chapman looked like, at the time. And then
17 somebody else came over and said that - I can't remember
18 the exact words. The intention was - my understanding
19 was that we were moving from Amelia Park to look at some
20 sites at the marina. And somebody came over and
21 basically said something to the effect that the Chapmans
22 didn't want us to go into the marina. And the people
23 who were outside of the vehicles were getting somewhat
24 agitated. Professor Saunders said to me - asked me
25 under the South Australian Act what were people's
26 rights. And then she -

27 Q. What Act was she addressing you to.

28 A. She just - I think what she was - she was really trying
29 to assess how she should react in this situation,
30 because there was a bit of a - it could have got quite
31 embarrassing, I think. And I think she was aware of
32 that. I think she was aware that it was very important
33 that she in no way, in a sense, compromised her position
34 in relation to this. And there had been a
35 straightforward understanding that we would go to the
36 marina. Suddenly it seemed as if it was - you know,
37 that we didn't have permission. And she was, I think,
38 just weighing up in her mind how to respond, at the

1 time. In the event she got out of the vehicle and went
2 over to what I think everybody in our car thought was
3 the Chapmans' car, but, as it turned out, it wasn't, at
4 all. And she came back saying, you know, that was
5 terribly embarrassing. That is was just somebody off
6 the street going about their business, getting off the
7 ferry. But she came back to the car and said 'Look, we
8 are not going anywhere but on public roads. We will go
9 only on public roads.' And so she told the men and
10 there was lots of rumblings. People were, you know,
11 people were sort of walking around outside. And I think
12 they were a bit unhappy about that. But she was very
13 strong and said, you know, that it was not appropriate
14 to do anything but that. So we set off then and she
15 told the men that she only wanted to go where we could
16 get to on public roads. And then we went to two
17 different place. And I am not sure in what order, but
18 we went - we turned down a side street. And my
19 impression and recall is that it was an unsealed road.
20 And we started driving down that unsealed road, sort of
21 came over and then went down aways. And then we parked
22 and people got out. And the men started talking about a
23 padlock, which I didn't understand, at all. I don't
24 know what it means. I assume that maybe there was a
25 gate across the road, or where they wanted to go to was
26 behind a gate that was locked. In any event, Professor
27 Saunders reiterated again that we weren't to go anywhere
28 that wasn't on a public road. I did notice, at that
29 stage, that, whilst a lot of people got of the vehicles,
30 one busload of people didn't get out, at all. And then
31 everybody got back in the cars and we drove back on to
32 the main road again, turning right. And I think, before
33 then, or after it, we drove down aways along the main
34 road and stopped again. And then the men pointed out -
35 pointed back towards the marina. And talked about sites
36 on - in the marina area from that distance, sort of
37 saying 'Over there.' We seemed to be quite some
38 distance and I wasn't quite clear where they were

1 pointing to myself.

2 Q. Then.

3 A. Then we got back into the vehicles again and we drove to
4 the Murray Mouth area. And we - there is a sort of a
5 parking lot area and people parked in the parking lot.
6 And some up the street a bit. And then people started
7 walking up to the lookout. You sort of walk up an old
8 dune, I think. And, as we were walking up, people were
9 making a number of comments. Young women were sort of -
10 were talking about the feelings that they had in this
11 area. Doreen quoted that verse, the verse `To all the
12 mothers that were, to all the mothers - ', that `all the
13 mothers' verse to me. And she - we went to the top and
14 she made, looking out, a comment, and she started
15 crying. And -

16 Q. We are at the Murray Mouth here now, are we.

17 A. Yes.

18 Q. Near - you know, Ann Lucas's shack.

19 A. Yes.

20 Q. The Mouth House.

21 A. Yes, it is. And the cars parked at the lookout that is
22 right adjacent to that. I didn't recognise it - that to
23 be so, at the time.

24 Q. I shouldn't say on the Murray Mouth. It is on Hindmarsh
25 Island, looking across here (INDICATES), into the Murray
26 Mouth, isn't it, from the scenic lookout.

27 A. That's right.

28 Q. You are all gathered there.

29 A. Yes.

30 Q. What was Doreen doing, could you tell us again.

31 A. Everybody walked up, people were walking in small groups
32 and it was a very, you know, women had their arms around
33 each other. It was a very - a moment of some
34 commensality, I suppose, if you were to find a word.
35 And I can remember either Theresa or one of the young
36 women with her saying something to the effect that she
37 had always had a feeling about Hindmarsh Island and now
38 she understood why. Those kind of comments.

1 Q. Who said that.

2 A. There was a young woman. The women who - in fact, the
3 young woman who in a way in the Graham's Castle meetings
4 made the - led the discussion about what was the role of
5 younger women in this decision making process.

6 Q. Was that Theresa Lindsay.

7 A. I assume so, but that's by putting together the name I
8 heard her called and which I - I mean, she is one of the
9 few people who I remembered their name, well, in terms
10 of what they were saying in that meeting. And we went
11 up to the top. And then people started making their way
12 down to the beach itself. And, in fact, some people - a
13 number of women just started grouping around a hummock
14 and I was taking - asked me to take photographs of them.
15 And, in the end, women formed into a large circle and
16 they asked Professor Saunders and Ann Mullins to join
17 them in the circle. I actually stood on the outside of
18 the circle and took photographs of the circle. People
19 would pass me their cameras. I had a number of, I don't
20 know, four or five lots of photographs, I suppose. And
21 then Mrs Maggie Jacobs prayed and the form of her
22 prayer, in fact, was very striking to me. In the first
23 place, it had the style of a kind of an evangelical
24 prayer. But I thought what was particularly significant
25 about what she was saying was that she started with a
26 sort of a phrase where she said that Jesus was Lord of
27 us all, but that he had given this country to
28 Ngarrindjeri people to look after. And I remember
29 thinking that it was a very beautiful way of talking
30 about the relationship between Ngarrindjeri people's
31 understanding of their responsibilities to the landscape
32 and their Christianity. I thought it was a very
33 eloquent articulation of that relationship. And it was
34 quite striking to me, at the time. People also sang
35 hymns after that.

36 Q. You mentioned earlier that - I perhaps skated over that
37 - Doreen had said - had uttered this poem and cried.

38 A. Yes.

- 1 Q. Is that the poem that occurs on the front cover of your
2 report.
- 3 A. Yes, she said that in a variety of different forms over
4 the next several days, in fact, with different grammars.
- 5 Q. Whose poem is that, whose composition, is it, do you
6 know that.
- 7 A. Doreen told me that it was what the old people used to
8 say when anything in the landscape was being changed, so
9 that if - she said - she actually drew a relationship
10 between that verse and people digging fence posts when
11 they were, you know, in the early period of colonialism,
12 for example.
- 13 Q. So, you had reached the stage where everybody gathered
14 around in a circle and sang a hymn.
- 15 A. Several I said, several hymns.
- 16 Q. Then.
- 17 A. And then basically people made their way back up the
18 beach again back to the lookout. And then I noticed
19 that, when we were actually sitting on the - sort of at
20 the fence of the Mouth House, what I now know as the
21 Mouth House. I don't know that at the time that we were
22 there I actually realised it was the house I had been in
23 the day before, actually. And we all got back in the
24 vehicles and we started driving back towards Graham's
25 Castle. The intention was to go back to Graham's
26 Castle. So we got in the vehicles. On the way, at some
27 stage, on that trip and I think going back, Professor
28 Saunders said to me, she took out the Federal Act. And
29 she said 'I am going to give you a lesson in law.' And
30 she went to the Act and started talking to me about the
31 definitions of critical terms in the Act. You know,
32 aboriginal tradition and significance. And she talked
33 about the waters and so on. And I think, in relation to
34 that, although it may be in a different part of the
35 journey, she actually referred to the part of the Act
36 which allows for the mediation of disputes like this
37 one. And she said to Sarah, who was in my vehicle, she
38 asked her very directly did Sarah think that mediation

1 was a possibility in this circumstance. And Sarah -
2 Sarah's response was that she thought things had gone
3 too far for mediation now. That - one of the things
4 Sarah talks about often is reconciliation and she
5 prefaced her remarks in those kinds of ways, but she
6 went on say she thought things had gone too far for
7 mediation to be a possibility any more. That once it
8 might have been, but now it wasn't. And then we went
9 back to Graham's Castle.

10 Q. And what happened back at Graham's Castle.

11 A. When we got back to Graham's Castle, there was a
12 continuation of the - not a continuation, a meeting
13 reconvened of the women, with Professor Saunders. And
14 my recollection is that the - a big part of that meeting
15 was a discussion of the mechanics of how confidentiality
16 of secret information might be maintained in the
17 reporting process that Professor Saunders was engaged
18 in. There was, in fact, at that meeting some discussion
19 of the possibility of putting things in secret envelopes
20 for women's eyes only.

21 CONTINUED

- 1 Professor Saunders made the comment that, she would
2 certainly do her best to preserve the confidentiality
3 of anything that was given her, but that, people needed
4 to realize that once something left her hands that she
5 no longer had control over it. And, yes, those kind of
6 matters were discussed and then -
- 7 Q. Can I ask you, after the tour of the island, you
8 returned to Graham's Castle. Did Professor Saunders and
9 Anne Mullins return with you.
- 10 A. Sorry, yes, they - this is the meeting I am talking
11 about, which was the women plus myself, plus Professor
12 Saunders and Anne Mullins.
- 13 Q. And are we talking about the late afternoon or are
14 we in the evening now.
- 15 A. I would presume that it was pretty late afternoon.
- 16 Q. Professor Saunders, Anne Mullins and all the women were
17 gathered again, did they.
- 18 A. Yes.
- 19 Q. In the meeting room again.
- 20 A. In the meeting room.
- 21 Q. What happened there.
- 22 A. Okay, my sense is, in fact, this is, I think, the first
23 time that, in my recollection, I have a strong sense of
24 either Shirley or Vi, basically running the meeting.
25 And, my recollection is that, there was this quite
26 extended discussion about the mechanics of who Professor
27 Saunders reports to, how that might happen. How it was
28 very clear that, Professor Saunders wasn't going to get
29 a divulgence, at that point I think and there was, I
30 think, from my recollection -
- 31 Q. There was a discussion, what, in front of Professor
32 Saunders as to whether or not this information would be
33 divulged to her.
- 34 A. Yes.
- 35 Q. It had been divulged to you, hadn't it.
- 36 A. Well, yes, in part.
- 37 Q. So, the meeting wasn't, at that time, wasn't happy to
38 divulge it to Professor Saunders.

- 1 A. It hadn't resolved to. I had been there for a
2 discussion that led up to the point of asking the
3 question, could it be divulged and that hadn't been
4 resolved and at this meeting it was going to be resolved
5 and it was resolved. And, after the discussion of the
6 mechanics, I presume, my sense of what happened - in
7 exactly what order is very hazy now. There was more
8 discussion about whether the term should be divulged
9 and in the end a vote was taken.
- 10 Q. This is in the presence of Professor Saunders.
11 A. Yes.
- 12 Q. And Anne Mullins. What was the vote then.
13 A. The vote was that Doreen Kartinyeri should be, should
14 divulge the material to Professor Saunders. My
15 recollection is that, before the vote we got to the
16 point that, it wasn't going to be today, and that, it
17 would be outside of the context of the meeting. But I
18 am not absolutely certain of that. But certainly the
19 meeting decided that, Doreen could divulge it and the
20 vote - because I had seen such contention the previous
21 night, I was actually very careful to watch around the
22 room to see what happened, and who voted. And, in
23 particular, I was very careful to watch how Mrs Connie
24 Roberts voted, because she had been almost, in her
25 silence, the clear contrary, she had held the contrary
26 position to Doreen Kartinyeri in the earlier meetings.
27 And, people were -
- 28 OBJECTION Mr Abbott objects.
29 MR ABBOTT: If she wants to say uninterrupted
30 silence as being a contrary opinion -
31 COMSR
- 32 Q. I understood that was sense of what you were saying.
33 A. Yes. But, also, I also observed, I was very careful
34 to observe how people were responding, so that there
35 were points in the earlier discussion, where it was very
36 clear to me that, people were looking to Mrs Roberts to
37 respond and Mrs Roberts wasn't. So, for example, there
38 was a point at which, just to give you an example, Sarah

1 said, 'Auntie Connie's my elder, I follow her, I will do
2 what she does' and looked at Mrs Roberts, and Mrs
3 Roberts sat - I don't know how to describe it - very
4 solidly, without responding. So, what I had observed
5 was a very clear way in which the meeting was very
6 frequently looking to Mrs Roberts, for a response, for a
7 lead. And quite frequently she said nothing in that
8 context. My experience is that, that such silences
9 are incredibly meaningful in Aboriginal discourse
10 and that, indeed, in her silence Mrs Roberts was
11 very much embodying a position. The other sense that I
12 have in reconstruction is that, the person who was
13 actually running the counterargument was probably her
14 daughter Rhonda. But, I can't be certain of that. But,
15 certainly, I was watching Mrs Roberts quite often and
16 there was a way in which the meeting and the people in
17 the meeting would turn to look at her waiting for a
18 response and she simply didn't do it and I think those
19 silences and that intransigence was very eloquent
20 at the time, in terms of what she, you know, her
21 position was.

22 MR SMITH: I just wanted to make sure if we are
23 going to have some submissions on Monday.

24 MS PYKE: Perhaps on that topic, could we make
25 that Tuesday morning. It is just that, if you are about
26 to address the submissions in relation to Dr
27 Fergie's professional confidential issues - if that
28 could be Tuesday, rather than Monday. Primarily
29 because, one of the issues is that, I think that, Mr
30 Wooley should be represented by Mr Stratford who clearly
31 might have a submission.

32 COMSR: Mr Stratford has been advised of it.

33 MS PYKE: He hasn't been advised there is going to
34 be an argument on Monday morning and I know from what he
35 said to my instructor, that he is in the country this
36 weekend and I think, rather than fall into the
37 difficulty again, I am sure it doesn't matter whether we
38 have the submissions on the Monday morning or Tuesday

- 1 morning.
- 2 MR SMITH: I think Mr Abbott will want them on
3 Wednesday.
- 4 MS PYKE: I am happy to have them on Wednesday.
5 Monday will present a difficulty.
- 6 COMSR: Dr Fergie might not be too happy about
7 it stretching out forever either.
- 8 MS PYKE: As I understood it, this witness isn't
9 going to be in the witness box again until later in the
10 week.
- 11 MR SMITH: We will just continue on Monday with
12 this witness.
- 13 MS PYKE: That is quite contrary to what I had
14 been led to believe, there would be some witnesses
15 interposed.
- 16 MR SMITH: Is that a problem for you?
17 We will just continue with as much as we can with the
18 existing witnesses.
- 19 COMSR: In any event, there is no reason why you
20 can't address your argument to me if Mr Wooley has
21 indicated that they don't wish to be heard, there is no
22 problem.
- 23 COMSR
- 24 Q. But, I just want to clarify the situation in
25 respect of what you say your position is Dr Fergie, so
26 that I will know the basis on which this is
27 being argued. I will just get you to look at this page
28 of the evidence which is p.734. It starts at the top.
29 I am not asking you whether that happened, but, would
30 you deny that that happened.
- 31 A. I think Mrs Wilson's account is - I think her
32 recollection of some things is different from mine.
- 33 Q. I am not concerned as to detail, but just as to topic.
- 34 A. Can you ask me again what you asked me?
- 35 Q. Would you deny that those were the topics.
- 36 A. I just don't think I can comment, that's the problem I
37 think.
- 38 Q. I take it are you not denying it in that case or you

1 would have told me. Your position is this as I
2 understand it that, notwithstanding that something may
3 or may not now be known to a large part of the
4 population, male and female, that you feel that you
5 would be disclosing something confidential if you were
6 to give evidence concerning that.

7 A. Yes. I think, it is effectively not for me to say and
8 it is not for me to decide. If those women would say
9 that I could do that I certainly would do it.

10 COMSR: I am just trying to get the basis on
11 which we are going to be addressing this issue.

12 MS PYKE: Let me make it clear. At this stage I
13 am simply talking about the Graham's Castle meeting,
14 because there are various other arguments that may well
15 be flagged at various other stages of evidence as they
16 arise. There are other quite separate issues. I mean,
17 the Graham's Castle is a meeting at which obviously
18 other people are present, but there are other more
19 particular conversations of that confidential nature and
20 I think it would only be appropriate to deal with those
21 as they were reached. By that I mean, I think a rolled
22 up submission is not going to be appropriate to the
23 circumstances, because there are various conversations
24 that relate to various issues.

25 COMSR: If it is going to be the same point
26 taken each time.

27 MS PYKE: It may be the same point, but it is
28 going to be in relation to quite separate conversations
29 and sets of facts. For example, conversations with
30 Doreen Kartinyeri particularly relating to as the
31 witness has given evidence, telephone calls as the
32 secret envelopes are constructed, are being typed up.
33 Now, that's quite separate. I would want to address
34 that. If there is any suggestion now, correct me if
35 I am wrong, my understanding throughout this Commission
36 has been that the witness won't be required to give
37 evidence about what is in the envelopes or, indeed,
38 conversations that relate to that. Perhaps I can ask

- 1 you, because it might be something that we needn't at
2 that large part waste our time on. Is it the situation,
3 that the witness is going to be required to give
4 evidence about (a) what is in the envelopes, or (b) the
5 conversations which led to the formulation, which is in
6 the envelopes?
- 7 COMSR: I can't say that she won't be asked.
- 8 MS PYKE: I understand that.
- 9 COMSR: Whether or not she can refuse to answer
10 on the basis of anything that might be contained in any
11 statutory provision, I suppose is something that you
12 will address me on.
- 13 MS PYKE: That's what I am getting at. There is a
14 complexity of situations here. I am not proposing on
15 Monday morning to make a submission which covers all the
16 complexities of the situations, because I just don't
17 think that is appropriate. But I mean, as I say, I
18 really am calling upon this Commission to indicate now,
19 because it will facilitate our position as to whether
20 there is going to be a compulsion for Dr Fergie to give
21 evidence about what is in the envelopes.
- 22 COMSR: That will depend, to a large extent, I
23 would think.
- 24 MS PYKE: I think this Commission is well apprised
25 of what the issue is.
- 26 COMSR: I am apprised of what the issue is. It
27 depends how this eventuates during the course of the
28 evidence.
- 29 CONTINUED

1 I haven't compelled anyone at this stage to give any
2 information where it appears to me that there is some
3 provision of an Act which makes that disclosure - I am
4 thinking now of the Racial Discrimination Act - whether
5 there is a provision of that Act that makes disclosure
6 non-compellable, as it were.

7 MS PYKE: There has been evidence, for example,
8 given by Dr Neale Draper of things said to him of a
9 confidential nature where he has not been required to
10 give answers. I am looking for some indication, putting
11 it bluntly, as we need to have some idea what's going on
12 here.

13 COMSR: I haven't forced anyone to disclose, up
14 to date, on a number of issues. I don't like to say in
15 advance of the situation arising, but I would not force
16 anyone to disclose in open court or open hearing,
17 anything that's contrary to the provisions of any Act to
18 do so. I have already been given a certain amount of
19 material which I haven't anticipated getting, so I just
20 don't know how much more there is. I am in this awkward
21 position. There are some things which appear to be in
22 the public arena. There are some things which are not
23 in the public arena.

24 MS PYKE: The secret envelopes, so called, are not
25 in the public arena. That's clear.

26 COMSR: That is right. Insofar as things are
27 not in the public arena, I consider that -

28 MR ABBOTT: We have evidence from Dorrie Wilson as
29 to what Doreen said about the contents of them.

30 MS PYKE: Doreen didn't draft the secret
31 envelopes. I think that's a quantum leap.

32 MR ABBOTT: Ms Pyke's client says they were compiled
33 as a result of discussions with Dr Kartinyeri.

34 MS PYKE: I am looking for some indication, as the
35 Premier indicated, when this commission got underway,
36 there would not be a requirement to disclose the
37 contents of the secret envelopes, whether that is still

1 the position of you, Commissioner, or whether there has
2 been some change.

3 COMSR: There are some things which are in the
4 public arena. The witness may be required to give some
5 information concerning things in the public arena. As
6 for things that are not in the public arena, that, to
7 me, appears to be in a different situation, and that's
8 why I am having difficulty giving you a direct answer.
9 It appears to me that the witness may well be
10 required to say whether or not something that's already
11 been disclosed and is public knowledge forms any part of
12 the material, because that's what the argument you are
13 going to address to me is going to be about, as I
14 understand it.

15 MS PYKE: I just want to understand what the
16 parameters are, because if that's all that's been
17 suggested, I will take some further instructions from my
18 client. If all that's envisaged is that something is
19 put to her, 'This is in the newspaper, was that said?'
20 that's quite a different thing from then going on and
21 expanding upon what was said.

22 COMSR: We may not have a difficulty then in
23 that case.

24 MS PYKE: I just want to understand what the
25 parameters are. If it is just simply a matter of a
26 statement being put, I need to take instructions from my
27 client. You have to accept - and there is an abundance
28 of authority on professional obligation -

29 COMSR: There are a number of issues here, of
30 course. As I understand what the witness has had to
31 say, the embargo upon disclosure is that it can only be
32 disclosed to women. It hasn't been explained to me as
33 yet.

34 MS PYKE: That is a separate issue completely, and
35 that's not to be seen - to be known in a particular
36 context, which is the Federal Minister's inquiry. That
37 is really where I think I alert you fully that we may
38 find ourselves elsewhere.

D.J. FERGIE XN (MR SMITH)

- 1 COMSR: That may be the case. I understood the
2 witness say that she heard Dr Kartinyeri say that this
3 information can only be disclosed to women in the
4 context of one of the meetings.
- 5 MS PYKE: That was in the context of the
6 Minister's inquiry.
- 7 COMSR: Maybe it was. I haven't any explanation
8 from the witness as yet. It is not entirely clear to me
9 what the situation is, but insofar as there are matters
10 which have been publicly disclosed, to me that's a
11 separate issue from that which have not been disclosed
12 at all.
- 13 MS PYKE: Very well. Now that I understand that's
14 all that is really envisaged at the moment -
- 15 MR SMITH: Can I just indicate. I think we are
16 nearing the end of the evidence in this commission. I
17 just flag to counsel that we are just going to sit on as
18 much as possible. If people are going to absent
19 themselves and go off and do other things, then the
20 witnesses are still going to be called and we will have
21 to jiggle around the rights of examination, et cetera.
22 I have in mind continuing with Dr Fergie on Monday,
23 and those who are here will be asked to examine Dr
24 Fergie. Those who aren't, as much as possible, the
25 commission will accommodate them, and that's Mr Abbott
26 for the moment. But I indicate that I have accommodated
27 everybody at the bar table from time to time.
- 28 MR MEYER: I have got a problem Tuesday and I have
29 indicated that to my friends on the bar table. I am
30 stuck with going to Sydney. It has been a longstanding
31 engagement.
- 32 MR SMITH: Mr Hemming is to be completed, and Dr
33 Fergie. We are waiting for a bulletin from Mr Kenny
34 about when the men's statements might be forthcoming,
35 and when they may be available to give the evidence they
36 have indicated they are going to give.
- 37 COMSR: They will be available during the course
38 of the week?

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D.J. FERGIE XN (MR SMITH)

- 1 MR KENNY: I hope so, but they will certainly be
- 2 available. They will certainly be giving evidence.
- 3 There is no doubt about that.
- 4 ADJOURNED 3.46 P.M. TO MONDAY, 30 OCTOBER 1995 AT 9.30 A.M.

