

1 COMSR STEVENS

2

3 HINDMARSH ISLAND BRIDGE ROYAL COMMISSION

4

5 MONDAY, 30 OCTOBER 1995

6

7 RESUMING 9.36 A.M.

8

9 WITNESS DEANE JOANNE FERGIE ENTERS WITNESS BOX

10

11 MR SMITH: The programme for today is to continue
12 with the examination of Dr Fergie and further
13 examination by other counsel to the extent that that can
14 be completed. Subject to how far we get with that,
15 there will then be further examination of the witness
16 Steve Hemming.

17 Mam, Mr Stratford is in attendance on the basis of
18 the matters raised by Miss Pyke on Saturday. We are
19 providing Mr Stratford with the documents that are the
20 subject of contention. I would have thought he will
21 need to get instructions, but he can speak for himself
22 about all of that and come back at a later time and
23 raise any matters of difficulty, if there are any, akin
24 to that foreshadowed by Miss Pyke.

25 MS PYKE: I understood that we were going to have
26 some argument this morning about whether Dr Fergie
27 should be compelled to answer questions along the lines
28 foreshadowed on Saturday about whether it is - the
29 questions along the lines of 'This is in the quoting of
30 something in the public media and is this in the secret
31 envelopes, or something like it, or not'. Certainly
32 before Dr Fergie proceeds any further with her evidence,
33 I wish to make my argument in that regard. I don't know
34 - and I would imagine that Mr Stratford might wish to be
35 heard on that topic also.

36 COMSR: Of course, there are three different
37 categories of evidence that we are dealing with with Dr
38 Fergie. They're the contents of the sealed envelope

1 which form the appendix to the report that was sent to
2 Mr Tickner and that is said to contain details of the
3 women's business. Then, there are the contents of the
4 sealed envelope which was delivered to me on Saturday
5 with the endorsement that it was to be read only by me
6 and which contains some criptic references but doesn't
7 reveal details of women's business. Then, there's the
8 category of information which has previously been made
9 public concerning the two issues of the resemblance of
10 the area at the Murray Mouth to female reproductive
11 organs and the public assertion that Hindmarsh Island is
12 a place where Ngarrindjeri women went to abort halfcast
13 children fathered by white whalers. They are the three
14 separate categories of confidential information that we
15 are concerned with.

16 WITNESS: I think so.

17 COMSR: It may be that there are different
18 considerations arising in respect of each of those Miss
19 Pyke.

20 MS PYKE: Certainly contents of the sealed
21 envelopes is one. As you, Madam Commissioner, put it,
22 certainly the words that we handed up on condition to be
23 read only by you in the Commission and, yes, the other
24 area of what is in the public arena. It seems to me
25 that there are two aspects of that third area. Those
26 matters will, presumably, speak for themselves and I
27 can't imagine that Dr Fergie could add anything other
28 than what she said in the public arena, whether that was
29 said or whether it wasn't. We are not able to say
30 whether Doreen Kartinyeri said anything. The
31 sub-heading of that is what counsel assisting was
32 endeavoured to do on Saturday; which was to ask whether
33 these bits of information, or any like them, were
34 contained within the secret envelopes.

35 COMSR: The secret envelopes - the one I got on
36 Saturday? I presume that it's no secret what it's
37 headed.

38 MS PYKE: We have only deleted a sentence.

- 1 Everyone else has a copy of what you have except the
2 deleted sentence, or sentences - I can't remember
3 whether it comprises two. The notes of methodology are
4 made available to everyone. There is only the sentence
5 or two that has been deleted.
- 6 COMSR: Perhaps if you clarify this so that I'm
7 clear. The sentence that has been deleted, that is the
8 sentence which was originally in the document?
- 9 WITNESS: Yes.
- 10 COMSR: What has been a sentence was taken out
11 and it has been restored exactly as it was previously.
- 12 MS PYKE: I think there is some confusion
13 happening here. You have a document which is Dr
14 Fergie's original notes on methodology for herself. In
15 that is the sentence or two that Dr Fergie says relates
16 to matters within the secret envelopes. Everyone else
17 here has exactly the same thing that you have except the
18 sentence deleted.
- 19 COMSR: I appreciate that. I'm trying to find
20 out what has been restored.
- 21 Q. So, you have put that in the variation that I have in
22 front of me exactly what you had in your notes on
23 methodology.
- 24 A. I take it that yours is the only copy, as I understand
25 it, that I kept. So we have photocopied it, deleted it
26 in a copy, I presume, and then - I didn't do this - but,
27 and photocopied it so that people actually have a copy
28 of that without that sentence in it. It's not restored.
29 Yours was as it was.
- 30 MS PYKE: You, Madam Commissioner, heard what the
31 witness has -
- 32 COMSR
- 33 Q. You didn't do the photocopying.
- 34 A. No.
- 35 Q. You didn't know who did.
- 36 A. I presume my solicitor did.
- 37 Q. So we know what is in this envelope and that, of course,
38 you don't -

- 1 A. Actually, sorry, I did white it out myself. I
2 apologise. No, I did white it out, I did, yes.
- 3 COMSR: We have got that one sorted out.
- 4 MS PYKE: So, the information is - and I'll state
5 it briefly - that we object to Dr Fergie giving any
6 direct evidence about what is contained in the secret
7 envelopes; by that, I mean saying anything at all about
8 what is in there. We object to Dr Fergie being called
9 upon to answer questions along the lines of 'This is in
10 the Advertiser on this particular day and is that
11 contained in the envelopes, or is something like that
12 contained in the envelopes'. We say that that is
13 frankly just a back door method of seeking from Dr
14 Fergie information about what is in the envelopes. Over
15 and above that, it would be in lieu of the - it would be
16 a distortion for Dr Fergie to be called upon to give
17 evidence in that effect in any event, because you, Madam
18 Commissioner, would not in any way be being told what is
19 in the envelopes. You might get, if Dr Fergie were
20 compelled to answer those questions to the extent which
21 she were able, you would have a very distorted picture
22 of what is actually contained in the envelope. You
23 would have an out-of-context answer that may need to be
24 put into context for in any way Dr Fergie to accurately
25 answer the questions. Over and above that, what use
26 could it be to you to be told that this phrase, or
27 something like it, is in the report, or that phrase is
28 not, or that word is in the report, or that word is not.
- 29 COMSR: I doubt if it could be put in that way.
- 30 MS PYKE: That is exactly what counsel assisting
31 was purporting to do on Saturday. There are two
32 elements to this: First, we say one relates to Dr
33 Fergie's own professional obligations as an
34 anthropologist; the second heading, of course, the
35 second element relates to what I might refer to as the
36 argument that has already been advanced on behalf of the
37 Commonwealth of Australia, the Griffiths-type argument.
38 We say that Dr Fergie received this information for a

1 particular purpose and that purpose was to prepare a
2 report for the Aboriginal Legal Rights Movement for the
3 particular purpose of being submitted to the Federal
4 Minister to enable him or to his reporter to enable the
5 Federal Minister to make an assessment of the
6 submissions and to form a view as to whether there
7 should be a declaration. The information was raised for
8 a very particular purpose. The information contained in
9 the envelopes was given to Dr Fergie on very strict
10 requirements as to its dissemination. Those
11 requirements were that it would be read by certain women
12 only.

13 COMSR: Given to the Minister on the basis that
14 it would be read by certain women.

15 MS PYKE: Women only. That it is not to be read
16 except by certain women only. The instructions Dr
17 Fergie had was or comprised 'certain women only' and
18 that would be primarily Cheryl Saunders.

19 COMSR: Perhaps we can find out from Dr Fergie.

20 Q. Did somebody give you some instructions concerning the
21 dissemination of the contents of the envelope.

22 A. Yes, they did.

23 Q. Who was that.

24 A. Doreen Kartinyeri when she was giving it to me. It was
25 also made clear in a general sense earlier, yes.

26 Q. When was it specified which particular persons could
27 read the contents.

28 A. It arose from the discussions with Professor Saunders
29 and the women at Goolwa whether, in fact - and these
30 were discussions of the mechanics of who might, how the
31 issue of confidentiality can be handled. So, in fact,
32 one of the suggestions was that that Professor Saunders
33 would endeavour to make the number of people who read it
34 as narrow as possible. So that I could - I was there,
35 and that Professor Saunders herself would document any
36 material in that way. This is when it was assumed that
37 she was the primary documentor of it, and would restrict
38 that knowledge herself and observe some high level of

1 confidentiality herself. It would be placed in an
2 envelope and said to be read by women only. She would
3 then send it to the Minister's office with the request
4 that, indeed, it was read by women only and that it
5 would be read as by as few women as possible in that
6 process. My discussions with Doreen Kartinyeri
7 effectively were along the same lines: that this was
8 being disclosed in the most minimal way possible, for it
9 to go properly between her through myself and Professor
10 Saunders to Mr Tickner and his nominee. My recollection
11 is that the name of Sue Keen was one that I heard during
12 the week that I was undertaking the report and that
13 there was an understanding that the Minister's advisor,
14 Sue Keen, would, in all possibilities, be the person
15 within the Minister's office that would read that
16 material.

17 Q. An understanding between whom.

18 A. Myself and Doreen Kartinyeri. My understanding is Mr
19 Tim Wooley and Professor Saunders.

20 Q. In fact, you actually typed out the report yourself.

21 A. Yes. My mother was actually there for part of it and,
22 in fact, Doreen over the phone started asking her to
23 type and my mother couldn't do it. And so, in fact,
24 apart from a sentence or two, I actually typed the
25 entirety. And the sentences my mother typed don't
26 appear in the appendices at all.

27 Q. You typed it and sealed it and sent it over to Professor
28 Saunders.

29 A. That's right.

30 Q. So, you read it, Professor Saunders presumably read it
31 and the Minister's secretary.

32 A. Yes. A person from my office actually proof-read it
33 with Doreen Kartinyeri's specific permission and -

34 Q. I take it that was a white woman.

35 A. Yes, it was.

36 Q. So, Doreen Kartinyeri didn't read it but -

37 A. No, I read it back to her several times in the process
38 of taking it. I read it back to her several times.

- 1 Q. So, it's to be read by as few women as possible in the
2 most minimal way possible.
- 3 A. Yes. I think what you would say my understanding was
4 that it was, in effect, a specific permission given for
5 each of those women, as it were, by Doreen Kartinyeri.
6 I certainly understood myself to have been given a
7 specific permission. I understood the person from our
8 office to be given the specific permission, and so on,
9 along the line.
- 10 MR MEYER: Your Honour's summary of the evidence I
11 would contest. That is not what the witness said. The
12 witness used the words 'endeavour to' and 'request' in
13 relation to -
- 14 MS PYKE: Madam Commissioner, you are asking some
15 questions. It's for you to clarify if you are not happy
16 with the answer given. With respect, it's not the
17 position of Mr Meyer to interfere at this juncture.
- 18 MR MEYER: If there is a lack of an understanding
19 and we are going to have an argument about it, we might
20 as well clear it up now. I point out that I
21 specifically wrote down the words that were used and
22 your Honour has put a summary. I will contest that
23 summary and we might as well know now.
- 24 COMSR: We will be able -
- 25 A. I am happy to clear that up. The discussion came up
26 with Professor Saunders and what she basically said, she
27 said to me to endeavour to maintain confidentiality with
28 regard to this and that we, in fact, don't want a lot of
29 people reading this. And those instructions, in fact,
30 would be, you know - any sensible person would recognise
31 that and they would endeavour to do as much as they
32 possibly can, but they don't control the universe.
- 33 MR MEYER: The witness has clarified my very point.
34 I appreciate that.
- 35 MS PYKE: If I could ask a few questions.
- 36 Q. Was it in the particular contents of the Minister's
37 consideration of the application for a declaration under
38 the Aboriginal and Torres Strait Islander Heritage Act.

1 A. Absolutely.

2 Q. Was there any authorisation whatsoever for the
3 information contained in the secret envelopes to be
4 disclosed out of those particular contents in any way.

5 OBJECTION Mr Meyer objects.

6 MR MEYER: The appropriate question would be 'Was
7 there any discussion about any disclosure'. That
8 assumes a discussion. The answer to that question has
9 got to be 'I don't know, because it wasn't discussed',
10 or, alternatively, 'There was a discussion and we had a
11 range of options about where it could be realised and
12 the end conclusion was this one'.

13 COMSR

14 Q. Well, was there a discussion.

15 A. There was.

16 COMSR: What was your question?

17 MS PYKE: Whether there was any.

18 Q. Was there any authority for the information contained in
19 the secret envelopes to be disclosed to any person
20 outside of the particular purpose for which the
21 envelopes were prepared.

22 A. No.

23 MS PYKE: There are several authorities to which I
24 wish to refer you to.

25 CONTINUED

1 Our argument, of course, relates to the issue
2 of confidentiality. The first run of our argument
3 is the issue of confidentiality to Dr Fergie or to
4 Dr Fergie's issue as an anthropologist. I refer you, in
5 the first instance, to the judgment of the Chief
6 Justice, on the 25th of August 1995, in relation to the
7 s.35 authority. In particular, to p.2 of that judgment.
8 At the foot of the page, he is talking about a s.35
9 authorization:

10 `The grant of an authorization does no more than remove
11 that special protection. The grant of the
12 authorization does not itself oblige ...
13 is my opinion that the grant of an authorization would
14 not remove that restriction or obligation. All that
15 authorisation does is remove the criminal sanction.'

16 The mere granting of an authority, pursuant to s.35,
17 does not, in any way, authorise Dr Fergie to give
18 evidence before this Commission of matters that are
19 confidential.

20 There are a number of other authorities to which I
21 wish to refer you on that topic. The first case is the
22 Aboriginal Sacred Sites Protection Authority and Maurice
23 and others, 65 ALR, p.247. That case considers a
24 whole variety of matters, but the section I wish to read
25 out to your Honour is at p.273. It says:

26 `This is not the place to attempt some definitive
27 assessment of the legal implications where
28 anthropologists ... purpose for which it is required to
29 be disclosed and any restriction imposed upon that
30 disclosure.'

31 I say to you Commissioner, in the matter at hand
32 here, the information, as I have put to you, was
33 disclosed for a particular purpose. I don't want to
34 reiterate what the witness has said, for a particular
35 set of circumstance, which was to enable the Federal
36 Minister to make an order for the protection of certain
37 Aboriginal sites. There were restrictions imposed
38 upon the disclosure of that information, and no

1 authority, whatsoever, to this witness, to give
2 information to this Commission.

3 In that regard, we, in the course of endeavouring to
4 assist this Commission, we caused certain
5 correspondences to be addressed to the Aboriginal Legal
6 Rights Movement requesting that women, the women indeed,
7 or requesting their consent to Dr Fergie giving evidence
8 in relation to confidential matters. We have pursued
9 that enquiry with the Aboriginal Legal Rights Movement
10 and they have advised us that the women do not consent
11 to Dr Fergie giving evidence. We have been provided
12 with the certain authorities signed by some of the women
13 namely, Edie Rigney, Magie Jacobs, Sarah Milera. They
14 are the only ones that have responded and they have
15 responded in the negative. Each of those persons
16 has signed an authority to this effect:

17 'I seek that Dr Fergie's field notes be held secure and
18 in confidence by ALRM ... her to reveal personal
19 recollections of information provided by me to her in
20 circumstances of trust and confidence and
21 subject to legal professional privilege.'

22 There are three elements there; trust, confidence
23 and legal professional privilege. In essence, there has
24 not been any waive of privilege or confidence by those
25 women. Doreen Kartinyeri has indicated that she, in
26 similar terms to that, in a direct conversation with Dr
27 Fergie - and Dr Fergie can give evidence of that - just
28 on this very weekend, we endeavoured to ascertain
29 whether she was prepared to waive any privilege. If
30 required Dr Fergie can just confirm that and her
31 position is she doesn't waive any confidence, doesn't
32 authorise Dr Fergie in any way to give evidence.

33 I refer you to two other cases, they are Smith and
34 Klein and French and the Department of Health 1990, 95
35 ALR, 87 at p.101 and 102. Castrol v Emtech, 1980, 33
36 ALR, p.31 at pp.45 to 47. I actually have for you, not
37 the photocopy of the full cases but, the pages to which
38 I refer. Unfortunately I haven't got it for the others.

1 Those cases, I suggest to you, set out quite clearly the
2 criteria for equitable obligations of confidentiality.
3 Basically, if I can summarize that, because it is in a
4 slightly different context, it is injunctive proceedings
5 but the principles are quite the same. Basically, there
6 must be information, in this instance Dr Fergie has
7 the information, must have the necessary quality of
8 confidentiality and is not, for example, common law or
9 public knowledge and the information must have been
10 received by Dr Fergie in circumstances such as to import
11 an obligation of confidence. There is actual
12 protectoral misuse of that information without the
13 consent of the informants.

14 COMSR: To find that the authorised information
15 would cause a detriment to the parties by communicating
16 it.

17 MS PYKE: You know that the so-called
18 proponent women have indicated very clearly that they
19 consider these proceedings - and I don't want to go
20 through the whole matter - to be offensive. They
21 consider these proceedings to be an enquiry into their
22 beliefs. They consider these proceedings to be a
23 breach, if I can put it that way, of their rights in
24 relation to very confidential information conveyed to
25 Professor Saunders for a particular purpose.

26 COMSR: You are now talking about the contents
27 of the secret sealed envelopes?

28 MS PYKE: Yes. That it is quite clear, I say to
29 you, that the information was given and it was given for
30 a particular and limited purpose and in those
31 circumstances, there is, I say to you, a very strict
32 obligation on the part of Dr Fergie, not to reveal the
33 information to this Commission.

34 As I say, the s.35 authorization does not permit Dr
35 Fergie to give that evidence. Over and above that, of
36 course, and this is an argument that perhaps that you
37 Commissioner are well aware of, that is the argument
38 that was made by Mr Gavin Griffiths which, of course,

1 we endorse. The information was given for the
2 particular purpose of the proceedings under the
3 Aboriginal and Torres Strait Islander Protection Act. I
4 don't want to reiterate what the Minister - the argument
5 that was made. I can say this, that, I have been
6 provided, by the Attorney General's Department, Mr Paul
7 Birmingham, with copies of letters of 10 October 1995
8 and 19 October 1995, to counsel assisting. It is the
9 understanding of Mr Birmingham that they were to be
10 brought to your attention and that, they deal with the
11 production of documents and, in particular, the Attorney
12 General's Department and Mr Birmingham have asked me to
13 draw, in particular, to your attention, the arguments
14 made at the opening -

15 OBJECTION Mr Meyer objects.

16 MR MEYER: Why can't Mr Birmingham come? If the
17 Minister is represented, he wants to make an argument,
18 he should come, it is as simple as that.

19 COMSR: I have been provided with copies of
20 those letters.

21 MS PYKE: In particular, para.5, of the letter of
22 19 October:

23 `Contrary to the view set out in the this letter and the
24 letter dated 10 October 1995, the Minister requests that
25 advance notice of that action be given so the Minister
26 can consider his position further.'

27 As I understand it from Mr Birmingham, apart from
28 our conversations with him arising out of events on
29 Saturday, he has not been given any notice that there
30 is -

31 COMSR: I think he has prefaced that by saying,
32 if I am considering acting contrary to it. I am not
33 considering anything at the moment I am listening to the
34 argument.

35 MS PYKE: That really, in summary, is our
36 argument. That, any information, that any evidence, as
37 to either what is in the envelopes or any evidence that
38 purports what is in the public arena and any enquiries

1 as to what is in the envelope, or not in the envelope,
2 is, we say, caught within the issue of confidentiality.
3 That, of course, relates to what is in your copy of the
4 unaltered methodology document.

5 COMSR: You haven't quite addressed the issue
6 whether, if information loses its categorisation as
7 confidential.

8 MS PYKE: If this witness is asked, is told, 'this
9 information is in The Advertiser' the witness can say,
10 'Yes, you showed me that, that is all right.' The next
11 step is to say, or is to make an enquiry, which counsel
12 assisting endeavoured to do on Saturday, 'Is that in the
13 secret envelopes?' We say that it is quite
14 inappropriate for this witness to be called upon to
15 give any evidence about the content of the secret
16 envelope by the back door, by making those - by being
17 required to answer those questions. It is for two
18 reasons; one, we say, to speak about that is in breach
19 of the confidence. The other thing that we say is, how
20 possibly, can that be an of assistance to you, to have
21 what, in the end result, will be a very distorted
22 picture of the content of the envelopes. This witness
23 will not be able to answer properly, questions of that
24 nature. She won't be able to answer them in context.
25 She won't be, because she cannot speak about what is in
26 the envelopes. To put to her 'Is this in the envelope?'
27 can be of no assistance to you, because you haven't got
28 it in context. You don't know what else is in the
29 envelope. It will lead to a very distorted picture of
30 what is in the envelope. I say it is a very unfair way
31 to question this witness, when she cannot give any
32 evidence about context, about weight, about its
33 overall picture and what is in the envelopes. We
34 very much take issue with that method of questioning.

35 Over and above that, we say, it is calling upon this
36 witness to do exactly what the Gavin Garrith argument
37 suggests. It is in a back door way requiring her to
38 give evidence about what is in the envelope.

- 1 COMSR: Putting something inside a sealed
2 envelope isn't, in itself, any part of Aboriginal
3 tradition, is it? It is a method of preserving
4 something which is confidential.
- 5 MS PYKE: It is an indication of the very
6 confidential nature of the information.
- 7 COMSR: I agree with that. Certainly it is the
8 method of preserving the confidentiality.
- 9 MS PYKE: There are a number of cases and you are
10 aware of some of the authorities to do with land claims.
11 It is a very well known and accepted way for information
12 to be conveyed in a confidential way.
- 13 COMSR: I don't doubt that it is a well known
14 way, but, you don't assert that, in itself, it is any
15 part of Aboriginal tradition, to place something inside
16 a sealed envelope?
- 17 MS PYKE: Dr Fergie can perhaps answer that.
- 18 COMSR: I am just trying to see what we are
19 faced with here. What is Aboriginal tradition of the
20 contents, what is inside?
- 21 MS PYKE: Dr Fergie will say the contents are
22 secret women's knowledge, which it is contrary to
23 Aboriginal tradition to disclose. There has been a very
24 limited authority for the dissemination of that
25 information issue.
- 26 COMSR: I appreciate all of that. I am just
27 trying to take a few steps to see where we are going.
28 It is what is inside the envelopes that has to be
29 protected from disclosure.
- 30 MS PYKE: And the information that was delivered
31 orally.
- 32 COMSR: That is the object of achieving it,
33 putting it in an envelope.
- 34 MS PYKE: The oral information is just as
35 confidential as what is in the envelopes.
- 36 COMSR: I appreciate that. I am just trying to
37 take a few steps here, one at a time. It is the
38 contents to which the confidentiality attaches. You

1 say, as I understand it, that notwithstanding that part
2 of it may have been disclosed by others, that would not
3 relieve Dr Fergie from her obligations to maintain
4 confidentiality.

5 MS PYKE: You are making an assumption that part
6 of it has been disclosed by others and that's what I say
7 the difficulty is. This witness can't answer questions
8 like that without making a disclosure about what has
9 been told to her in confidence. You are assuming, for
10 the purposes of what you are just putting to me, that
11 there has been disclosure about what is in the envelopes
12 in the public arena. Now, frankly, that may or may not
13 be the case. Dr Fergie can't answer that without
14 disclosing what has been told to her in confidence that
15 is contained within the envelopes.

16 COMSR: Assuming there is evidence, of some sort
17 to that effect, you are saying that, notwithstanding
18 that there may have already been a disclosure or part of
19 it, it does not relieve Dr Fergie from her obligations
20 to maintain some confidentiality.

21 MS PYKE: As evidence has been given here, what an
22 Aboriginal person or informant, themselves, makes a
23 decision to disclose, is for them to determine. That is
24 quite clear from the evidence of all of the
25 anthropologists here. It is a question of ownership of
26 information. That does not in any way authorise Dr
27 Fergie to disclose information given to her in
28 confidence. If Dr Kartinyeri, or anyone else, chooses
29 to release a part, or a snippet, or a hint, or a topic,
30 that is for them. It is not for Dr Fergie and it will
31 be most improper and a breach of her fundamental
32 professional obligations, for her to disclose that
33 information.

34 CONTINUED

1 Particularly in this set of circumstances where it has
2 been used for purposes quite different to the
3 circumstances in which it was given to Dr Fergie and in
4 particular circumstances where there has been a clear
5 requirement by the informants that it be kept
6 confidential and that Dr Fergie not give evidence. You,
7 in due course, can look at what has been said in the
8 public media and weigh it up. It may or may not form a
9 part of what is in the envelopes, but it is not proper
10 for assumptions to be made. And it is certainly not
11 proper for Dr Fergie to answer questions in that regard.
12 That really covers it, I think. And the same
13 argument covers, of course, what we have shown to you.
14 That was really - that was done on a very limited basis.
15 In essence, to show our bona fides. And the production
16 of our documents and the deletion of material, that has
17 been done to authenticate, if I can put it that way,
18 that we have provided a copy with a certain sentence
19 deleted.
20 I'm not sure that I can say, at this stage, anything
21 further on the topic, but just reiterate that we object
22 to any evidence that in any way touches by the front
23 door or the back door any disclosure of any nature of
24 what is in the secret envelopes, including any
25 conversation that led to the formulation of the secret
26 envelopes.

27 COMSR: I can take it then that I have had no
28 such information disclosed to me.

29 MS PYKE: Bar what is in that envelope that we
30 handed up for you to read alone.

31 COMSR: I gather from the witness's evidence
32 that that is scarcely in the nature of a disclosure,
33 unless I have misunderstood that.

34 MS PYKE: You have misunderstood. Those words
35 that have been deleted relate directly to matters in the
36 secret envelopes. And they are not to be disclosed.
37 And I think, other than that, that one or two answers to
38 counsel assisting, as we embarked upon this argument,

1 were clearly in breach of, we say, confidentiality. But
2 that's when the argument arose and that's what we take
3 absolute exception to. Trying to get through the back
4 door what couldn't be got through the front door.

5 We seek from you, before this witness's evidence
6 continues, a ruling - otherwise I will be jumping up
7 and.

8 Down all the time - as to the extent to which this
9 witness will be compelled to give evidence along the
10 lines of what -

11 COMSR: There seem to be two or three people who
12 have asked to be heard on this issue, Ms Pyke, but the
13 basis on which you are claiming that the witness should
14 not be compelled to answer you have set out now, I take
15 it, in full.

16 MS PYKE: Yes.

17 MR SMITH: Perhaps I would ask Ms Pyke to address
18 one matter that I am sure will be vigorously put to you
19 by Mr Abbott, because he sort of flagged that on
20 Saturday.

21 As to the conveyance of the women's business as Dr
22 Fergie says was done by Doreen Kartinyeri to the women
23 at Graham's Castle, I think on 1 June. Ms Pyke, at
24 pp.1113, or thereabouts - and I think some of this
25 material is in pink pages - cross-examined Dorothy
26 Wilson about what was said by Doreen Kartinyeri in the
27 presence of Dr Fergie. I am sure there will be serious
28 problems about this.

29 Yes, 'I am putting my instructions', at p.1114,
30 about the conversation. And alluding to female body
31 parts and the like, as I understand it. I think, if Ms
32 Pyke is allowed to do that to Dorothy Wilson and no-one
33 is allowed to chase that matter up with Dr Fergie,
34 that is going to create problems.

35 MS PYKE: I would have thought it created no
36 problems. As I understood the - always understood the
37 laws of evidence that you can put something in
38 cross-examination and, if you lead no evidence yourself,

1 the version of the witness stands. There is no
2 requirement to give evidence.

3 I might say that was at a time when it had been
4 indicated to us that Dr Fergie would not be summonsed.
5 And I just simply say this, that it can just be left
6 standing. If there is no evidence called by Dr Fergie
7 on the matter, clearly the evidence of Mrs Wilson
8 stands.

9 MR SMITH: So, Ms Pyke is allowed to ventilate a
10 version of the conveyance of the secret women's
11 business, perhaps in cross-examination, but her own
12 witness can't be compelled to talk about it when she is
13 in the witness box?

14 MS PYKE: I was invited, you might recall, if you
15 look at that, invited to put my instructions in
16 circumstances where Dr Fergie was not going to be
17 summonsed. And it relates only to, frankly, several
18 questions. There is no requirement to call. At that
19 stage, I say it was quite clear that Dr Fergie wasn't
20 going to be given evidence. You will well-remember that
21 the intimation given both by you, Madam Commissioner,
22 and certainly to us by counsel assisting was that there
23 would not be a summons issued.

24 COMSR: Yes, it was only later when virtually
25 all the professional witnesses were insisting on
26 summonses and it seemed, in the circumstances, that it
27 being the usual thing to do and obviously for their own
28 protection that they have summonses, that it was decided
29 for that category of witnesses that summonses would be
30 issued, if required.

31 MS PYKE: Yes, so that was not in any way
32 purporting to waive the issue of confidentiality for Dr
33 Fergie. And we say, if there is no evidence to the
34 contrary, you are quite at liberty to accept what Mrs
35 Wilson said to you. It is only a couple of very short
36 lines that deal with that.

37 COMSR: I have no doubt I will be hearing
38 submissions on that point, Ms Pyke.

1 Is there anyone else who wishes to make submissions
2 in this matter?

3 MS FREEMAN: I just say, in the absence of Mr Abbott,
4 he indicated on Saturday that, if you are minded to
5 agree with Ms Pyke's submissions, he would like to be
6 heard on this. He is not available until Wednesday,
7 though.

8 MR MEYER: Is the question of privilege going to be
9 addressed by Ms Pyke, as well, or is that going to be
10 left until another time, because she hasn't touched on
11 that issue. We have got all these documents that aren't
12 being produced, because Ms Pyke says there is privilege.
13 And I don't know whether she is going to address some
14 argument on that.

15 MS PYKE: I didn't hear what Mr Meyer said then.

16 COMSR: The question of legal professional
17 privilege is not an issue, I think.

18 MS PYKE: I haven't raised that. I am simply
19 saying as to the professional obligations quite clearly
20 of this witness. Legal professional privilege will no
21 doubt be a matter that Mr Stratford will address himself
22 to. We are talking about other elements. The issue of
23 confidentiality, the particular purpose, the authorities
24 which I have referred to you. And, of course, we adopt
25 the argument of Mr Gavan Griffiths.

26 COMSR: Confidentiality issues, of course, have
27 been at the heart of most of the proceedings.

28 MS PYKE: Might I say you have acceded to other
29 witness's requests, including members of the press.

30 COMSR: I haven't refused anything yet.

31 MS PYKE: No, I am just saying to you and I
32 perhaps just remind you that members of the press
33 haven't been called on to name their sources. Dr Neale
34 Draper has not been called on to disclose information
35 from the men given to him in the circumstances of
36 confidentiality and nor, in this particular context, was
37 the witness Clara Campbell asked by or required in any
38 way to disclose information of a confidential nature.

- 1 You have been quite consistent and we simply wish -
2 COMSR: Ask that it continue?
3 MS PYKE: Ask that it continue.
4 COMSR: That is what you are putting to me, yes.
5 MR STRATFORD: Might I be heard?
6 COMSR: Yes, Mr Stratford, certainly.
7 MR STRATFORD: Of course, I wasn't here on Saturday.
8 COMSR: No.
9 MR STRATFORD: So, I am not entirely familiar with what
10 happened. But I was -
11 COMSR: A bundle of documents was marked for
12 identification, including some correspondence from Mr
13 Wooley to the witness.
14 MR STRATFORD: Yes, it looks like a substantial bundle
15 of documents.
16 COMSR: Yes, but I think there is very little of
17 it that perhaps you will be concerned with, Mr
18 Stratford.
19 MR STRATFORD: Of course, I would need to take some
20 instructions on those documents, which creates a little
21 bit of a problem to me, because I would need to speak to
22 Mr Wooley about them, after I have read them. But might
23 I just say a couple of things in relation to the matters
24 that have been put to you?
25 I have looked at the problem in relation to two
26 aspects. First of all, the Graham's Castle meeting and,
27 secondly, the preparation of Dr Fergie's report.
28 It seems to me that, in so far as the Graham's
29 Castle meeting is concerned, there is no issue of legal
30 professional privilege. It seems to me that Dr Fergie
31 wasn't there as Mr Wooley's agent. She was there to
32 facilitate this meeting between a number of women and
33 Professor Saunders.
34 So, I don't suggest that was an occasion when
35 privilege would be involved. And it seems to me that
36 the problems that you will have to grapple with there
37 are those problems of confidentiality and the problems
38 in relation to the intercede question.

1 The second aspect, it seems to me, is what was
2 generated after that meeting, because it is my
3 understanding that it was after that meeting that Dr
4 Fergie was commissioned to prepare her report. So, it
5 seems to me that, if Dr Fergie learned any additional
6 information after the Graham's Castle meeting, she did
7 so at the request of Mr Wooley and as his agent. So, it
8 is in that area that the issue of legal professional
9 privilege would arise.

10 Now, of course, it is the legal professional
11 privilege, not of the men that Mr Wooley acted for, but
12 only those few women who he acted for. And, as I
13 stressed before, when I was speaking about legal
14 professional privilege, in their absence, it seems to me
15 that Mr Wooley has an obligation to claim privilege on
16 their behalf.

17 COMSR: Can he claim privilege?

18 MR STRATFORD: I think the authorities are quite clear
19 that, in the absence of the clients, that it is an
20 obligation on the solicitor to claim privilege on their
21 behalf. So, you see, in relation to Mr Tilmouth, I
22 don't have that problem, because his clients are
23 represented and, if they claim it or waive it, that is a
24 matter for them. But, because they are not here, that's
25 the only standing that I have, or Mr Wooley has to claim
26 the privilege. If they were represented, then he
27 wouldn't have anything to say on the topic.

28 COMSR: So, you are claiming legal professional
29 privilege in respect of information thereafter. But, to
30 the extent that the cloak of confidentiality has been
31 removed, what do you say then?

32 MR STRATFORD: I think that it is only - there are two
33 issues. One is, it is only additional information that
34 might have been brought to light by Dr Fergie after the
35 Graham's Castle meeting, it seems to me. That is the
36 first issue. And the second issue is that I would then
37 need to take some instructions from Mr Wooley on that
38 information, whatever it might be, which I understand is

1 the information disclosed in these notes that have been
2 handed to me.

3 COMSR: It appears then that we are in no
4 position to go ahead, at this stage, as far as you are
5 concerned either?

6 MR STRATFORD: No, I spoke to Mr Wooley at his home
7 this morning and told him that I would come down today
8 to explain his position to you. He is available today
9 for me to take instructions from him. I understand from
10 Ms Simpson that, although there is a large volume of
11 documents that have been handed to me, there are only a
12 few of those documents that I need to get instructions
13 on.

14 COMSR: Yes, that's right, I think so.

15 MR STRATFORD: So, I don't see it has being a difficult
16 task for me. It is just a matter of me locating the
17 documents, taking instructions, and then it seems to me
18 that, if that has already been disclosed, there is not
19 going to be much point in my claim the privilege on
20 behalf of these former clients. If it is information
21 that hasn't been disclosed, then I think, to be
22 consistent with my earlier submissions and to be
23 consistent with Mr Wooley's obligations, I should
24 formally make the claim. But, until I have seen the
25 documents, I can't really do that.

26 COMSR: You are not in a position to do so.

27 MR STRATFORD: No.

28 MS PYKE: Before anyone else is heard, I just want
29 to provide this information to the Commission:
30 I referred to Dr Kartinyeri. In fact, I have now
31 located what ALRM forwarded to us. As I say, this is in
32 the context of we wrote and asked whether the women
33 would waive confidentiality.

34 COMSR: I gather you are saying that they are
35 not prepared to.

36 MS PYKE: Yes. And, in fact, Dr Kartinyeri wrote
37 via her solicitors S.J. McKinnon & Associates through
38 the Aboriginal Legal Rights Movement specifically

- 1 saying:
2 `She does not waive any ... due to the extreme
3 sensitivity of the information.'
4 And I am happy to hand up that letter and, indeed,
5 the copies of the other communications that I referred
6 to.
- 7 MR SMITH: But Dr Kartinyeri waives privilege for
8 Ray Martin, but not for this Commission.
- 9 MS PYKE: That is a facile comment and I call upon
10 counsel assisting to withdraw that. I mean, it is just
11 - there are assumptions in that.
- 12 COMSR: Yes.
- 13 MS PYKE: And I must say it is becoming a little
14 bit obvious that it is quite a partisan approach by
15 counsel assisting. There is not even any evidence
16 before this Commission that what Dr Kartinyeri has said
17 is in the envelopes. It is an outrageous thing for
18 counsel assisting to say.
- 19 COMSR: Does anyone else wish to be heard on
20 this issue?
- 21 MR TILMOUTH: Just in case my silence is seen to be
22 indicating consent -
- 23 COMSR: No, I wouldn't take it that way, Mr
24 Tilmouth.
- 25 MR TILMOUTH: No, I realise it is a difficult issue,
26 but I join fully with Ms Pyke and, if that could be
27 recorded?
- 28 COMSR: Yes.
- 29 MR TILMOUTH: Could I remind you that part of the
30 Commission, of course, is to - these are my words -
31 respect the integrity -
- 32 COMSR: The confidentiality of information which
33 for any reason is -
- 34 MR TILMOUTH: That's right. And also the s.10
35 process, the Commonwealth process. And I just remind
36 you of the terms of the Commission, which do limit you
37 in those respects.
- 38 COMSR: The most difficult issue that has

1 confronted the Commission during the whole of the
2 Commission has been confidentiality. It has raised its
3 head in various forms through the whole of the
4 Commission.

5 MR TILMOUTH: Ms Pyke's submission that there is an
6 assumption that it covers the area of the secret
7 envelopes is a very big assumption, indeed.

8 COMSR: It carries the assumption that what is
9 in the public arena is in the envelopes.

10 MR TILMOUTH: That's right. And, as Ms Pyke rightly
11 points out, there is no evidence of that.

12 MR MEYER: I have a couple of things I wish to
13 say.

14 As I understand it, those who wish to support Ms
15 Pyke's argument have completed what they want to put
16 and I will try to be brief.

17 The starting point is the case that my friend
18 referred to, which is Maurice. And I have not brought
19 a copy of it down with me. The early point in Maurice
20 is the argument that, if there are going to be claims
21 made by Aboriginal persons, then there has to be some
22 necessary disclosure to an objective authority, so that
23 the claims made can be tested. It seems to be a fairly
24 fundamental sort of proposition. And so what the court
25 did, in that instance, was to try and establish a
26 system whereby there would be some level of disclosure,
27 whilst maintaining an appropriate and proper respect
28 for secrecy and matters of that nature. And so various
29 orders were made in the Maurice matter for a limited
30 dispersal of information. And what the judge said was
31 that, if someone wants to make use of the system, then
32 you have to accept that there is going to have to be
33 some sort of disclosure. And everybody in the
34 community has to do, that. Whatever the type of matter
35 involved. If you wish to make use of the law, then
36 there are occasions when you have to make some
37 disclosures that you otherwise mightn't like to have to
38 make.

1 What is needed and what is obviously fundamentally
2 crucial in relation to this type of matter is the fixing
3 of some proper rules, but to be able to be in a position
4 to come along and say 'This is what I believe, and this
5 is what I wish to put, I am not actually going to tell
6 you about it because if I did it will disclose it, you
7 will just have to take me at face value' is totally
8 abhorrent to the way that our system actually operates.

9 In my submission, it just undermines the whole
10 method by which any proper system of law can operate.
11 In essence, what it amounts to is that while one section
12 of the community must obey the rules of law, another
13 section of the community is allowed to flout it, and
14 flout it at their will, by refusing in any way to
15 co-operate to then achieve the purpose of not disclosing
16 any information.

17 COMSR: Of course, there are particular
18 provisions to protect the confidentiality of Aboriginal
19 traditions, are there not?

20 MR MEYER: Absolutely. That is why I started with
21 the Maurice argument, because nothing I say is to be
22 taken as saying I don't have the greatest level of
23 respect for the necessary maintenance of appropriate
24 traditions, secrets and things of that nature. The law
25 must respect everybody in this community.

26 What Maurice was attempting to do was to set up a
27 framework and system whereby respect is given, but also
28 complies with the requirements for some objective
29 testing. I mean, we have all got to live together in
30 one small community. My friend, Mr Smith, made a remark
31 about the Ray Martin show, which apparently offended Ms
32 Pyke, because the next note that I made in relation to
33 this argument is 'The actions of Doreen Kartinyeri'.
34 She goes and talks to the press and she discloses
35 information, but then refuses to come and talk to the
36 Royal Commission, and won't permit Deane Fergie to talk
37 to the Royal Commission, i.e. chooses where she will and
38 won't disclose information, and then denies you any

1 rights. I submit that is, again, just flouting what is
2 the fundamental basis upon which we can operate.

3 In relation to the waiver of confidence, clearly
4 there has been a waiver, and to refuse to answer
5 questions is ludicrous. If, in fact, there is a
6 recognition that if confidence is waived the matter can
7 be discussed, then necessarily relevant questions have
8 to be answered.

9 I have tried to create an example which I have done
10 as neutrally as I possibly can. You have an envelope
11 which contains information which we will say is
12 confidential and secret, and let us say that the
13 confidential and secret information in the envelope is
14 the statement 'roses are red'. There has been some
15 disclosure in the press, and somebody says 'What's in
16 the secret envelope is that carnations are pink'. You
17 can put to the witness 'Is it accurate to say that
18 what's in the envelope is that carnations are pink?'
19 Answering that question does not disclose what's in the
20 envelope.

21 The suggestion is that answering any question about
22 what might be in the envelope discloses what's in the
23 envelope. My example is drawn to demonstrate that's a
24 ludicrous proposition, because to say that carnations
25 are pink doesn't give any indication at all of what's in
26 the envelope. What might be in the envelope is that the
27 sea is blue.

28 The next proposition is that what's in the envelope
29 is 'roses are pink'. If that's the proposition, the
30 public information says that the secret envelope
31 contains a statement 'roses are pink' rather than 'roses
32 are red', there has been a waiver of confidence, at
33 least in relation to the subject matter, and the witness
34 can now be at ease because of that recognised waiver of
35 confidence in saying 'Yes, the contents of the secret
36 envelope refers to roses, beyond that I am not going to
37 give you any further information because I am stuck with
38 the provisions of confidentiality'. But to refuse to

1 answer the question at all is, in my submission, to deny
2 what is or may be in the public arena.

3 Ms Pyke has said that if the witness is required to
4 answer questions, it may create a distorted picture and
5 that's unfair. In my submission, that's not her
6 client's problem, if it is a problem at all. The
7 fairness or unfairness of that situation, if it even
8 exists, can be very easily remedied, firstly, by
9 authorising Dr Fergie to disclose the information; or
10 secondly, by coming and giving evidence.

11 It doesn't come well from somebody to complain that
12 somebody isn't fair whilst refusing to participate at
13 all. If, in fact, a distorted position is created, it
14 is created only by the actions of those who refuse to
15 co-operate and not by anybody else. The argument of
16 legal professional privilege hasn't been completed yet,
17 so when Mr Stratford has got some instructions we can
18 address ourselves to that.

19 I am sure you have already read Maurice, so I invite
20 you to re-read Maurice, and to ascertain that in fact
21 the underlining thrust of that judgment is a creation of
22 a system for disclosure rather than a denial of
23 disclosure. They are the matters I want to put.

24 COMSR: Clearly, we are not going to resolve
25 this issue this morning while people still wish to put
26 further submissions on it. I can only suggest that for
27 the time being we deal with other aspects of the
28 evidence so that we can complete the witness's evidence
29 as far as we can go. It may be that we can't get too
30 far and that we will have to proceed with the next
31 witness.

32 MR SMITH: Despite Ms Pyke's perceptions about the
33 attitude the commission takes, we will respect this
34 demand for confidentiality by this witness. I would
35 only suggest that, whilst respecting the right to refuse
36 to divulge for the time being, I will still go to those
37 topics and perhaps occasionally ask questions about it
38 rather than artificially just drop a topic altogether.

1 Would you be happy with that?

2 MS PYKE: Could I be heard on that?

3 COMSR: The witness will simply refuse at this
4 stage.

5 MS PYKE: I think that's totally unfair and it
6 puts this witness under inordinate pressure to look at
7 each and every question. I call upon counsel assisting
8 not to deal with any topic that relates to the envelopes
9 or anything to do with them, be it allegedly in the
10 public arena or not, until you have made a ruling. If
11 counsel assisting is not prepared to comply with what I
12 suggest is a fairly simple request in that regard, I
13 want to -

14 COMSR: We will wait and see.

15 MS PYKE: No, I want a ruling on this, because
16 this witness is in the witness box and it is putting her
17 under inordinate pressure, and I am going to have to sit
18 here and jump up and down for as long as it takes. I
19 would seek a commitment from counsel assisting that he
20 will not ask any questions on the areas about which we
21 have just made substantial submissions. If he is not
22 prepared to do that, I want a short adjournment so I can
23 take some instructions from my client, which may well be
24 that we are not getting back into the witness box until
25 you make a ruling. It is most unfair to this witness
26 and quite inappropriate.

27 MR SMITH: All I propose is this - and this is not
28 going to create difficulties - where it comes to, for
29 instance, the 19 June occasion where Doreen Kartinyeri
30 conveyed to the women, in the presence of Dr Fergie,
31 some aspect of the women's business, if we can identify
32 that. I will not then ask a question about what she
33 said. I am only suggesting that I be able to go up to
34 the stage of identifying the occasion. Does Ms Pyke
35 have any problem with that?

36 MS PYKE: If it is simply left at that, with the
37 witness perhaps to indicate -

- 1 COMSR: The witness has already gone a bit
2 further than that in any case.
- 3 MS PYKE: Over my objections at the time, can I
4 say.
- 5 COMSR: Can we just get on with it?
- 6 MS PYKE: I am wanting to make sure this process
7 is fair to the witness, and that comes before getting on
8 with it, to put it bluntly.
- 9 EXAMINATION BY MR SMITH CONTINUING
- 10 Q. I think we have reached the stage where the women
11 elected Doreen as their spokesperson on Monday the 20th,
12 is that right.
- 13 A. That's right.
- 14 Q. And then the gathering broke up, I take it, and
15 Professor Saunders went on her way back to Adelaide
16 presumably. Is that the position.
- 17 A. Yes. At the end of the meeting, Professor Saunders, as
18 I recall, organised to meet with Doreen Kartinyeri on
19 the Wednesday. I recall that Ann Mullins gave me her
20 card. I actually took down, because they appeared to be
21 running the meeting, Shirley Peasley's and Vi Deuschle's
22 names and addresses in my notebook, and Doreen indicated
23 to me that she would like to see me before she talked to
24 Doreen on the Wednesday.
- 25 Q. Before she spoke to Professor Saunders.
- 26 A. Pardon me.
- 27 Q. I take it from that then, that, in your presence at
28 least, there was no conveyance of the women's business
29 to Professor Saunders or her assistant Ann Mullins.
- 30 A. That's right.
- 31 Q. So that, in all the contact with the women that you saw
32 Professor Saunders having and which you witnessed, so
33 far as you could tell at least, none of that information
34 was conveyed.
- 35 A. That's correct.
- 36 Q. Can I just go back and identify the occasions where you
37 had this concept of women's knowledge conveyed to you -
38 at least conveyed in your presence. There was that one

- 1 occasion at Graham's Castle where Doreen Kartinyeri
2 addressed the women in your presence.
- 3 A. That's so.
- 4 Q. And that's it, is it. That's the one occasion, or the
5 only occasion on this weekend.
- 6 A. That's so.
- 7 Q. And no other women, other than Doreen Kartinyeri,
8 conveyed any such information to you on this weekend.
9 I'm talking now secret or sacred women's knowledge.
- 10 A. I'm not able to answer that with any certainty, but I
11 think that that's the case.
- 12 Q. You left and went back to Adelaide. Did you then -
- 13 A. No, I stayed overnight at Goolwa and travelled back to
14 Adelaide later the next day.
- 15 Q. So you stayed over on the Monday evening, the 20th.
- 16 A. I did.
- 17 Q. As your report shows, Exhibit 5, on Wednesday, 22 June
18 you met with Doreen Kartinyeri at the museum cafe at 11
19 o'clock.
- 20 A. That's so.
- 21 Q. Was that your next, as it were, contact with anybody in
22 relation to this matter, as and from the 20th.
- 23 A. So far as I recall.
- 24 Q. What were the topics of conversation as discussed
25 between you and Doreen Kartinyeri at the museum cafe on
26 Wednesday, the 22nd.
- 27 A. The first issue we discussed was what were Doreen's
28 views about the incident with Amelia Campbell at Rocky
29 Marshall's home, and I asked her for an explanation of
30 what she thought had been going on there. In that
31 context, I also took down in my notebook a genealogy of
32 Amelia Campbell -
- 33 Q. Can I interrupt you there. Why was this discussed
34 between the two of you.
- 35 A. I thought that incident was quite significant in terms
36 of what went on at that meeting.
- 37 Q. Your brief at this stage was simply to facilitate the
38 contact between Professor Saunders and the women.

- 1 A. Certainly, yes.
- 2 Q. Bearing that in mind -
- 3 A. It occurred to me that it was possible - quite, indeed,
4 probable - that Professor Saunders might well ask me
5 about the Rocky Marshall letter, that it might well be a
6 context for conversation between she and I that this
7 incident had taken place at Rocky Marshall's home, and I
8 was just trying to appraise myself of, in a sense, what
9 was the politics of that circumstance, and I thought
10 that it was clearly important to address Doreen on that
11 matter.
- 12 Q. This is touching upon the general topic of the
13 representativeness, as you describe it, of the Graham's
14 Castle meetings.
- 15 A. I don't know if I had that specifically in mind at the
16 time. I'm sure it would have been in my mind as an
17 issue certainly at the time.
- 18 Q. Were you troubled by the representativeness of the
19 gathering in Graham's Castle.
- 20 A. I wasn't troubled by it, but clearly it was issue that -
21 it was an issue.
- 22 Q. So you discussed the exclusion, or whatever it was, of
23 Amelia Campbell.
- 24 A. I certainly don't see it as an exclusion. I think it
25 was an incredibly ambiguous ending to that meeting, and
26 I saw it as such. Because of Doreen's final comments to
27 Amelia - being at variance to those of other women -
28 said to Amelia afterwards, I merely wanted an
29 explanation from her, I suppose, about - you know, that
30 clearly she felt very deeply as she was leaving. I
31 could see some of the context for that, but I really
32 wanted to get a sense of who Amelia was, why that might
33 have taken place, and so on.
- 34 Q. So that was Amelia Campbell. What other topic was
35 discussed.
- 36 A. We also talked quite a lot more about the issue of
37 disclosure and the way in which Doreen had found that a
38 - you know, the whole issue very painful to resolve

- 1 within herself and then to bring it to that meeting at
2 Graham's Castle. My recollection is that Doreen
3 canvassed, in some more detail, things that I'd heard
4 before about how difficult that decision was for her and
5 so on.
- 6 Q. Can I interrupt you there. You also discussed, I think,
7 the history of cultural disempowerment to which
8 Ngarrindjeri people have been subject.
- 9 A. That's correct.
- 10 Q. Was this part of your brief to facilitate the contact
11 between Doreen Kartinyeri and Professor Saunders.
- 12 A. My recollection is it is a topic that Doreen herself
13 brought up. I engaged in a conversation with her on it.
- 14 Q. Did you take that view yourself that there had been a
15 history of cultural disempowerment suffered by
16 Ngarrindjeri people.
- 17 A. Are you asking me in respect of that particular
18 conversation or in a general sense?
- 19 Q. In a general sense.
- 20 A. In a general sense I would say that that is true and
21 well documented.
- 22 Q. Despite the fact that at the stage of this meeting you
23 wouldn't proclaim yourself as an expert on the
24 Ngarrindjeri culture, would you.
- 25 A. No, I wouldn't.
- 26 Q. How would you know then that they were disempowered,
27 these people.
- 28 A. Because I'm well familiar with the literature on
29 Aboriginal people in this State.
- 30 Q. You were applying your general feelings about the
31 Aboriginal condition in Australia, were you.
- 32 A. Certainly, and I don't believe that I was actually
33 putting that position to Doreen. I think I was
34 listening to what Doreen was telling me. I mean, in
35 that sense, she was giving some particularity to a
36 general phenomenon in South Australia - in fact, an
37 Australia-wide phenomena.

- 1 Q. Then I think you moved, as your report shows, to her
2 office in the museum's Aboriginal families history unit.
- 3 A. That's correct.
- 4 Q. What happened there.
- 5 A. Doreen brought out some work that - well, some stuff I
6 presume she was considering giving to Professor
7 Saunders, and she showed me. It is only a presumption
8 that she was planning to show those to Professor
9 Saunders, but they included a notebook in which she had
10 been working on trying to make links between people who
11 had been recorded to be living in the Hindmarsh Island
12 area and living Ngarrindjeri descendants. That work was
13 unfinished. She actually voiced some regret that she
14 hadn't finished that at the time and she, as I recall,
15 showed me some old maps.
- 16 CONTINUED

1 And we had a discussion about those and she said she
2 might like to give them to Professor Saunders. I don't
3 know if she asked me or whether I offered, but the
4 upshot was that I took that material to my office in the
5 university and photocopied them for her and a copy for
6 myself, and I took them then back to the family history
7 unit at the South Australian Museum and gave them back
8 to Doreen and retained the copy that she said I could
9 have. As I was leaving the room, it was very close to
10 when Professor Saunders was expected and she actually
11 was walking in as I was walking out and we acknowledged
12 each other.

13 Q. Can I ask you at this stage whether you had made a
14 decision to really do more than facilitate the meeting,
15 but actually help the women present their case.

16 A. Not at all.

17 Q. To Professor Saunders.

18 A. Not at all.

19 Q. How would you then have defined your role as
20 facilitator.

21 A. Yes, I agree that was very ambiguous. Basically, the
22 position I had taken, it was that I would basically hold
23 myself in readiness to give advice if any specific
24 advice was asked. I did, in fact, do that to a point.
25 I went to the University library and started, in fact,
26 reading and taking notes on Berndt & Berndt. Basically,
27 what I was trying to do is place myself in the position
28 that if some general issues were asked, I would be in a
29 position to either answer them or know how to find out
30 an answer.

31 Q. So, the meeting with Doreen in the Museum cafe, you took
32 the view that that was at least a part of the
33 facilitation process.

34 A. It was in the sense that Doreen asked me to come. When
35 she asked me, I had no particular idea what she wanted
36 to talk about, or whether it was anything more than a
37 cup of coffee to settle her nerves. I had no particular
38 view what was the object of that meeting.

1 COMSR

2 Q. By that stage, as you understood it, your role to
3 facilitate the meeting was over.

4 A. No. Well, I don't believe that I facilitated the
5 meeting in any particular way. What I understood my
6 role to be was a kind of a safety-net role. I was there
7 to give advice or to make any - you know, to basically
8 to respond to requests from either the women or from
9 Professor Saunders for some kind of anthropological
10 clarification. Yes, I mean, I didn't see - I saw this
11 as a passive role in a sense, but one that I would
12 prepare myself for in the sense that I could in that
13 small piece of time - which was very scant, frankly.
14 Yes, so I saw myself as a kind of passive safety net for
15 - and if Doreen had asked me any questions vis-a-vis
16 anything at that meeting that we had in the coffee shop,
17 I would have answered her. Similarly, if Professor
18 Saunders had asked me what was my anthropological
19 understanding of, for example, the word 'custodian', I
20 would have answered her. That was the kind of - that
21 was my - I thought that was very akin to what I was
22 asked, but I had a kind of - that is how I was
23 interpreting the situation, that I was there as a kind
24 of a fall-back recourse of somebody with some
25 anthropological understanding so I could talk about
26 those terms, or I could, in fact, if necessary, run away
27 and do the specific research if that was required as
28 well.

29 XN

30 Q. You understood that Doreen Kartinyeri and Sarah Milera
31 spoke then with Professor Saunders on Friday, 24 June.

32 A. Hang on, we are moving from Wednesday into Friday?

33 Q. Yes. Have we finished with Wednesday.

34 A. Yes, as far as - yes, as far as my -

35 Q. You told us about the maps and the records that you
36 photocopied, et cetera.

37 A. Yes. The other point to make is that I actually went
38 and did some work on this matter after that which was to

- 1 go - and because our copy of the Berndt & Berndt volume
2 was with the Chapmans, as it happened, I went to the
3 Barr Smith and basically read through matters there and
4 took some notes.
- 5 Q. Why did you do that.
- 6 A. There is - sorry, there's another thing that happened on
7 that day which is that - I'm sorry, I'd forgotten this.
8 I believe it was at the end of the meeting at Graham's
9 Castle. Professor Saunders had indicated to me that she
10 thought it would be a good idea if she and I got
11 together and talked about things, and she had actually
12 invited me to join she and Ann Mullin for dinner at the
13 Hilton that evening. I agreed to that.
- 14 Q. The evening of the -
- 15 A. The evening after she had spoken to Doreen. That is in
16 my diary. I could clarify when she had -
- 17 Q. Have a look at your diary, that is MFI 11 of Exhibit
18 243. Looking at the diary produced.
- 19 A. Yes, that's right. We had made an arrangement that I
20 would meet them for dinner at the Hilton at 7.30 on that
21 evening.
- 22 Q. The evening of when.
- 23 A. The 22nd of June.
- 24 Q. So that on the Wednesday evening, 22 June, you dined
25 with Professor Saunders and Ann Mullin.
- 26 A. I did not.
- 27 Q. You didn't. We had made an arrangement in the evening.
28 And I would say that it was around about 7 o'clock, I
29 was dressed and about to leave the house, when the phone
30 rang and it was Professor Saunders saying that she had
31 some communication with the Chapmans who had expressed -
32 these aren't her words - but some level of displeasure
33 that I had been engaged in this way and that in that
34 context she didn't believe that it was proper for us to
35 have dinner together. I don't know if these are the
36 words she used. I have got a sense of the notion of
37 'administrative fairness' being a part of that
38 discussion. And so, in fact, we cancelled dinner. We

- 1 did have - we had a conversation on the phone. I
2 actually have no real clear memory of its details.
- 3 Q. That was arranged for the Wednesday evening, the 22nd,
4 and cancelled in those circumstances.
- 5 A. Yes, that's right.
- 6 Q. Your diary then for that day also records 'Got CS going
7 through Museum'. What is that.
- 8 A. I'm sure Cheryl Saunders was going through the Museum.
9 It was my recollection that this is the day that
10 Professor Saunders was organising to meet with Doreen
11 Kartinyeri.
- 12 Q. Then 'PM, Berndt & Berndt in library'.
- 13 A. That is - yes, that refers to me reading Berndt & Berndt
14 in the library. I didn't meet them there.
- 15 Q. 'Tim Wooley 10.30 to 12.30'.
- 16 A. Yes.
- 17 Q. What does that mean.
- 18 A. I don't recall. I presume that it may mean - I don't,
19 truly don't remember. It may mean we had a conversation
20 in that period. Maybe we met.
- 21 Q. That's a -
- 22 A. I can't actually see that that is possible because -
- 23 Q. That's a two hour conference in the diary.
- 24 A. In fact, it couldn't have taken place because I remember
25 I was at the Museum at 11 and after Doreen and I were
26 meeting and I went straight over and photocopied flat
27 out and came and got back in time for - this is only a
28 recollection. My sense was that Professor Saunders and
29 Ann Mullin were meeting with Doreen at perhaps one or
30 two. So, clearly, if such meeting could have taken
31 place, I don't recall what it refers to.
- 32 Q. Did any such meeting take place.
- 33 A. I don't know that I could answer that definitively. I
34 certainly don't recall such a meeting.
- 35 Q. See, at the end of that diary entry, you have 'full
36 day'.
- 37 A. Yes.
- 38 Q. Does that mean that it was a day, a full day, which you

- 1 were going to charge to the ALRM.
- 2 A. That's right.
- 3 Q. So, presumably if we look at the times of all the things
4 that happened on that day, you perhaps might have had a
5 conference for at least some period with Tim Wooley.
- 6 A. I might have. I can't actually say whether I would have
7 done it. No, I can't recall actually. I certainly
8 recall being in the library and taking notes. It is
9 highly unlikely, given the arrangement that my husband
10 and I have for collecting our child from the child care,
11 it is highly unlikely that I left the university. In
12 fact, it would be much clearer that I didn't leave the
13 university than I did actually.
- 14 Q. There's a note of a phone call with Cheryl Saunders too
15 there.
- 16 A. Yes.
- 17 Q. 7 to 8.53 is it.
- 18 A. I presume that is what that means.
- 19 Q. That's nearly two hours on the telephone to Professor
20 Saunders.
- 21 A. Yes. It's a long phone call if that is, indeed, what
22 the time was.
- 23 Q. You might as well have gone and had dinner with her.
- 24 A. I suppose that could be argued. I mean, I shouldn't
25 respond to such a question really. I mean, certainly
26 Professor Saunders and I, you know, talked - about what
27 I don't know on this occasion. We certainly talked over
28 the course of the next week or so about matters about
29 transmission, about the protection of confidentiality
30 and the like.
- 31 Q. While you have got your diary at your fingertips, see
32 the next day Thursday, 23rd.
- 33 A. Yes.
- 34 Q. We have you, if your diary is any indication, speaking
35 with Neale Draper.
- 36 A. Yes.
- 37 Q. Tim Wooley again.
- 38 A. That's right, if it was again. But, yes, certainly.

1 Q. Something with an arrow coming down from Tim Wooley.

2 A. `Connie to stay' and -

3 Q. What does that mean.

4 A. I can only surmise that, my surmising that Tim was
5 suggesting that they might get Connie Roberts to stay.
6 They might try to get her to stay in Adelaide herself to
7 talk to Professor Saunders.

8 Q. The phone call with Neale Draper, for instance, that was
9 just to, what, bring you up to speed on his views about
10 the matter.

11 A. It's not clear to me if that phone call took place. It
12 was intended to take place, certainly. I certainly
13 talked to Dr Draper over the course of this time.
14 Whether that was actually the day, I, you know, can't be
15 certain. Certainly it was - I would say that there is a
16 very strong indication that it was absolutely my
17 intention to ring him. I would imagine that I, that
18 this does mean that I talked to Tim Wooley. I wouldn't
19 have had Neale Draper's phone number otherwise.

20 COMSR

21 Q. In any event, your role hasn't changed at any stage.

22 A. That's right.

23 XN

24 Q. Again, these things that you have detailed here with the
25 help of your diary are all things you took to be part of
26 your role as facilitator.

27 A. Yes.

28 Q. Your role hadn't changed at that stage.

29 A. It was - what a `facilitator' meant was unfolding as we
30 went along in a sense. I had, as I said the other day,
31 I had a strong sense of what - and I was working with
32 the ambiguity at the beginning of the consultation. It
33 was an unfolding role and I did see it as a safety net
34 kind of way.

35 Q. Digesting, for instance, the Edmonds' report and the
36 Draper report and that sort of thing, can you explain to
37 the Commission how that helped you in this role of
38 facilitating contact between Professor Saunders and the

- 1 Ngarrindjeri ladies.
- 2 A. I didn't see my role just as facilitating their contact.
- 3 In fact, I didn't see that as my role at all. I saw
- 4 that as Mr Wooley's role to organise the interaction
- 5 between them. What I saw my role as was to offer expert
- 6 advice of a general sense; and clearly that meant as a
- 7 responsible professional that I appraise myself of
- 8 anything that, you know, might have been relevant so
- 9 that I had a basis for responding to that.
- 10 Q. Your role as facilitator included proffering expert
- 11 advice.
- 12 A. In fact, if I was asked - it occurred to me that, I
- 13 mean, clearly if I had been asked, I would have
- 14 responded in that capacity.
- 15 Q. Expert advice on Ngarrindjeri culture and the status of
- 16 the Hindmarsh Island in that context.
- 17 A. This is a hypothetical question, of course. But if I
- 18 had been asked something that I could answer from the
- 19 basis of my knowledge that I had at that time, I
- 20 certainly would have done so. If I had been asked for
- 21 something I felt I was not able to answer, you know,
- 22 that kind of a way, I would have - I mean, one thing I
- 23 certainly have is very good research skills and I could
- 24 have -in part, that was part of the role of reading
- 25 these reports is to see what was around so that, you
- 26 know, if I needed to respond I could.
- 27 Q. I take it you would have expressed some reservation, at
- 28 that juncture at least, in some areas of expert advice
- 29 about Hindmarsh Island and its significance.
- 30 A. Certainly.
- 31 Q. Indeed, you were still, as it were, swatting up the
- 32 Berndts' work, weren't you.
- 33 OBJECTION Miss Pyke objects.
- 34 MS PYKE: It seems to me we are getting into the
- 35 hypothetical. If counsel assisting wants to put any
- 36 particular question as to whether she felt competent to
- 37 answer that.
- 38 COMSR: The witness made it clear that she was

1 never asked, so the occasion never arose for her to
2 answer.

3 OBJECTION UPHELD

4 MR SMITH: This is really, we are at p.386, the
5 statement. These matters are not canvassed at p.38 of
6 the statement, they are canvassed at p.37 of the report
7 in Exhibit 5. They are not dealt with - there is no
8 significance in that. They're elaborated upon in Dr
9 Fergie's report.

10 MS PYKE: When we provided this statement to
11 counsel assisting -

12 MR SMITH: I'm not criticising my learned friend.
13 You don't have to explain.

14 MS PYKE: I would like to explain to the Madam
15 Commissioner. There was a gap in the chronology that we
16 submitted that we would try and fill in, if I can put it
17 that way.

18 COMSR: I don't know that I need a minute by
19 minute account of what occurred.

20 MS PYKE: Dr Fergie has been, as I understand it,
21 working on a filling of that gap. I haven't had a
22 chance of asking her this morning how far she's gone
23 with that. We accept there is a week that is not
24 covered. I do that by way of explanation.

25 COMSR: Thank you Miss Pyke.

26 Q. In any event, at some stage your role, as you understood
27 it, changed, did it.

28 A. Yes, absolutely.

29 MR SMITH: There is an important topic before that
30 which is in the second to last paragraph on p.7 of the
31 report.

32 XN

33 Q. Looking at your report produced. Looking at p.7 of your
34 report - and I'm going to go back to your statement in a
35 moment when we have finished. You have got your diary
36 in front of you. You see 'Wednesday 22nd'.

37 A. Yes.

38 Q. You have got at the very top of your page there is

1 `township 6 kilometres long'.

2 A. Yes.

3 Q. What is that about.

4 A. If you actually put the 20 June together with 22 June -
5 I noticed this this morning myself when looking through
6 those, that that is a reference to the Neale Draper's
7 report. That is written on the entry for 20 June but,
8 in fact, wasn't written on that date. When Tim Wooley
9 rang me on 17 June, he was actually telling me about the
10 meetings at Graham's Castle on the 20th and I obviously
11 turned the page of my diary over and started writing
12 them there, which is why I have written notes which are
13 of the Monday on the note paper of the previous page and
14 the Sunday. And my suggestion is that there is a kind
15 of tangential note coming out of - if you go halfway
16 down the entry for 20 June, in the space for 20 June,
17 let me say those, `To meet Professor Cheryl Saunders'
18 and you see in that the line comes out and that goes up
19 to a small note `Get traditional owners for reading
20 report in writing', and then there is a line coming out
21 from `get', which goes to a time and `Neale's'
22 apostrophe S report - I suggest that that refers to
23 Neale Draper - and a line going up to `Township 6
24 kilometres long' which, I suggest, is some reference to
25 that.

26 CONTINUED

1 Q. As you understood it, Doreen Kartinyeri and Sarah Milera
2 spoke to Professor Saunders on Friday 24 June, Sarah in
3 Goolwa and Doreen in Adelaide.

4 A. That's my understanding.

5 Q. I am at p.76 of your report here. Doreen Kartinyeri had
6 left Adelaide, you make the point, the previous night,
7 and you drove to Kadina to bring her back to Adelaide.

8 A. That's right.

9 Q. I take it you drove to Kadina.

10 A. On Friday, sort of middle of the day. And I did that at
11 Mr Wooley's request. Or, at least, we had a telephone
12 conversation in which it was agreed that I would do
13 that. I don't recall who suggested that I be the one
14 who go and pick her up.

15 COMSR

16 Q. In any event, you did it.

17 A. In any event I did it and it must have been about lunch
18 time, because I bought a fairly ghastly take-away on
19 Main North Road in a drive-thru take-away place for
20 lunch. I presume I left Adelaide around lunch time.

21 XN

22 Q. By yourself you did that.

23 A. I did.

24 Q. `During the two hour drive' you say in your report,
25 `During the two hour drive we had an in depth discussion
26 of her understanding of her culture and heritage and of
27 the women's secret knowledge as outlined in appendix 2.'

28 A. That's correct.

29 Q. I am not wanting you to give us any detail of that,
30 but, the women's secret knowledge, as contained in
31 appendix 2, is that which was conveyed to you in the
32 motor car, was it, on the way to or on the way from -
33 back to Adelaide from Kadina.

34 A. No, it was talked about in the car during that journey
35 and an account was actually, I guess, created by me
36 typing the next week, but, at that time Doreen spoke in
37 some depth about that knowledge.

38 Q. That knowledge that she conveyed to you, in that two

- 1 hour journey from Kadina to Adelaide, is that right.
- 2 A. Yes, if that's how long it took.
- 3 Q. That's what you say 'During the two hour drive we had an
4 in depth discussion.' Was that an elaboration or the
5 same as, that which was conveyed to the meeting of
6 ladies at Graham's Castle, on the 19th of June.
- 7 OBJECTION Ms Pyke objects.
- 8 MS PYKE: That is one of the issues you are going
9 to determine, to the extent that this witness will be
10 asked what was said at Graham's Castle.
- 11 COMSR: There is no suggestion in that as to
12 content, only - see, we don't know what was said, only
13 whether the same was said. I don't think that
14 infringes.
- 15 MS PYKE: There are two elements to this, one is,
16 a comment on what Doreen said confidentially in the
17 car, as to whether it relates to what was said at the
18 meeting. They are both areas of which I have invited
19 you to make a ruling as to whether this witness is to
20 give evidence.
- 21 COMSR: No-one is asking about any content.
- 22 MS PYKE: I realize that, but it touches on and
23 I would ask this witness not be called upon to answer
24 any questions pertaining to anything in relation to
25 confidentiality until you have made a ruling.
- 26 COMSR: This doesn't relate to confidentiality.
- 27 MS PYKE: He is asking for a comment about whether
28 one conversation related to another. For the witness to
29 answer that she has got to give consideration in
30 answering -
- 31 COMSR: She can say 'yes' or 'no'.
32 I think that is being a little over sensitive. I mean,
33 if it were taken a step further perhaps, but, to take it
34 this far surely can't disclose anything as to content.
- 35 MS PYKE: I made my objection. I ask you to rule
36 on it.
- 37 COMSR: I don't think this discloses anything as
38 to content or is in danger of breaching any

1 confidentiality at all.

2 XN

3 Q. Is what was conveyed to you in the motor car in the two
4 hour journey, back from Kadina, on Friday 24 June, by
5 Doreen Kartinyeri, the same women's secret knowledge as
6 was conveyed to the gathering of women, in your
7 presence at Graham's Castle on the 19th of June. I
8 don't want to know what it is, I want to know whether it
9 is the same.

10 A. I don't feel I can answer that question.

11 COMSR

12 Q. What is the problem with that.

13 A. I think it is a way of - actually, he is asking me if
14 it is the same and whether in effect -

15 Q. The same or an elaboration. No-one is asking you to
16 disclose the content of either conversation. You are
17 just being asked whether it is the same or something
18 more or different, but you don't have to tell me
19 anything about what was in either of those
20 conversations.

21 A. What is worrying me is that, there will be an imputation
22 as to; we know what was said in the Graham's Castle.

23 Q. You are saying you don't know what was said in Graham's
24 Castle, is that what you are saying.

25 A. No, I am not saying that, unless that is what the
26 counsel assisting is -

27 Q. I think you said that you were present and heard
28 something and I don't want to know what, at Graham's
29 Castle.

30 A. That's right.

31 Q. You spoke to Doreen Kartinyeri in the car, she told you
32 something. I don't want to know what it was. The
33 question is, is that the same.

34 A. My difficulty is, we have one version of what happened
35 in that Graham's Castle meeting. I am just - I mean, I
36 am not a lawyer, I am not be able to give it and I am
37 just moving from - I don't know if there is a reasonable
38 summise, from what Ms Pyke said about it, if I don't

1 give evidence on that the evidence of Dorothy Wilson
2 will stand.

3 Q. You don't have to worry about that.

4 A. If hers is taken to stand, as to what was said in that
5 context and I say this, that what was said in that
6 context was part of what was said here, then in a
7 sense, it seems to me I am telling you something of what
8 was said in the car.

9 MS PYKE: I just repeat my objection. Until you
10 have made a ruling it is very difficult for this
11 witness to try and answer these sorts of questions.

12 MR SMITH: It only points out the difficulty of
13 making a ruling in advance. There is nothing sinister.
14 I want to identify the occasions when this witness was
15 provided with the secret women's knowledge.

16 MS PYKE: What the witness is saying is, you have
17 heard a version of what went on at Graham's Castle, I am
18 not able to give my version.

19 COMSR: She doesn't have to worry about what
20 somebody else said.

21 MS PYKE: The question was 'What you were told by
22 Doreen, is that the same as what was said at Graham's
23 Castle?' You have a version at the moment with which
24 this witness does not necessarily agree and she has not
25 given her evidence about what was said at Graham's
26 Castle. So, that is exactly the witness's dilemma. She
27 can't properly answer that at the moment and I think it
28 is just putting this witness in an invidious position.
29 If this line of questioning is to continue, I would ask
30 for a short adjournment so I can take proper
31 instructions from my client about her position. This is
32 a most unfair way to have this witness give her
33 evidence and if these issues are just skirted around
34 completely I have no difficulty. If we are going to get
35 into this sort of debate I want to take instructions
36 from my client about whether she is prepared to
37 continue to give evidence under these circumstances,
38 until have you made a ruling. It is most inappropriate

1 and most unfair to the witness.

2 COMSR: I don't propose to make a ruling on the
3 issue without hearing other submissions.

4 MS PYKE: I just want all these issues to be
5 skirted around. Assuming at some stage you are going to
6 make a ruling, it is not necessary to take this line of
7 questioning at the moment. That is what I take
8 exception to.

9 MR SMITH: Ms Pyke is being rather contemptuous
10 with this debate in front of the witness, inviting
11 this witness now just to disobey the subpoena, to not
12 answer questions. It is quite intolerable. This is
13 a perfectly innocuous question. It is an important
14 question that you need to have an answer to. And there
15 is no hidden implication in it, as far as the Commission
16 is concerned. I want to know whether my question is, on
17 behalf of you mam, is it the case, that what was
18 conveyed in the meeting at Graham's Castle on 19 June,
19 much the same or different from, or a part of, or
20 whatever, of what was conveyed in the car, on the way
21 back from Kadina.

22 COMSR: I can't see any problem with that.

23 MR SMITH: I am not wanting the witness to betray
24 any confidences or disclose the content of the secret
25 women's knowledge. I just want to know whether we are
26 talking about the same topic.

27 MS PYKE: The witness has already answered she
28 finds it difficult to answer the question.

29 XN

30 A. I am prepared to say that, what was said in the meeting
31 at Graham's Castle, was said to be secret women's
32 knowledge on the one hand and I am prepared to say, at
33 the same time, that what was said to me by Doreen, in a
34 great deal of detail, was said to be secret women's
35 knowledge.

36 Q. What was said in Graham's Castle, on the 19th, at least,
37 is part of what was contained in secret appendix 2.

38 OBJECTION Ms Pyke objects.

- 1 MS PYKE: That goes to the nub of what I addressed
2 you on this morning. That this witness shouldn't be
3 asked about anything of what was said, as to whether it
4 is in the appendices.
- 5 MR SMITH: I don't want to know what was said is in
6 the appendix, I want to know what the topic is contained
7 in the secret appendix.
- 8 MS PYKE: I am objecting to that. I objected
9 this morning and I made an argument on this witness not
10 being asked.
- 11 COMSR: I know you did.
- 12 MS PYKE: I must insist that we have a ruling
13 before this witness's evidence continues. She is going
14 to be compromised. I am going to be on my feet every
15 other minute. It is becoming totally inappropriate.
- 16 MR SMITH: I will go on to another topic.
- 17 COMSR: It seems to me you are being unduly
18 sensitive. If counsel is prepared to go on to another
19 topic -
- 20 MS PYKE: I can't say any more.
- 21 MR SMITH: There is a ruling, as I understand it,
22 that I can pursue this question. You have made a
23 ruling. My learned friend is sort of almost abusing
24 you for not making a ruling. You have made a ruling
25 have you not?
- 26 COMSR: I made a ruling on the previous one. We
27 have got this far, that we had agreed that questions
28 could be asked which did not disclose the content of
29 any -
- 30 MS PYKE: To ask this witness if what was said at
31 Graham's Castle is part of the secret envelopes must
32 unto itself give an indication of what is in the
33 envelopes. If there is subsequently evidence by this
34 Witness or anyone else, as what was said at Graham's
35 Castle, it has to be. We have already heard evidence
36 from Mrs Wilson. It is an impossible position to put
37 this witness into.
- 38 COMSR: You are saying by inference?

- 1 MS PYKE: If Mr Smith says if what is said at
2 Graham's Castle is in the envelopes, if this witness
3 says `Yes' it just flies in the face of what I submitted
4 this morning.
- 5 COMSR: You are saying that it could amount to a
6 disclosure by this witness?
- 7 MS PYKE: Clearly.
- 8 MR SMITH: It wouldn't be a disclosure by this
9 witness. This witness is now jumping into the arena
10 of drawing threads of evidence together and trying to
11 work out whether someone at the bar table could do that
12 and make a submission about it. It is quite
13 inappropriate. The question is either acceptable or
14 not.
- 15 COMSR: I am not suggesting abandon it, but
16 defer it.
- 17 MR SMITH: I am not abandoning it. I want to get
18 on with it.
- 19 XN
- 20 Q. Can I ask you at least then, is this occasion, of giving
21 of information to you, by Dr Kartinyeri, that
22 is in the two hour car journey from Kadina to Adelaide,
23 is this focal point, if you like, of the secret women's
24 knowledge, as contained in appendix two, in other words,
25 your report appears to rely on this occasion as the
26 prime occasion when information was conveyed to you, as
27 to the women's secret knowledge.
- 28 A. My report relies on the contents of appendix 2, but, a
29 discussion, a fullsome discussion that led up to that
30 disclosure was had in the car driving back from Kadina.
- 31 COMSR
- 32 Q. I understand there wasn't a two hour discussion
33 initially.
- 34 A. That's the case.
- 35 Q. I take it to some extent there must have been an
36 amplification of what was said.
- 37 A. This was a very detailed discussion, yes.
- 38 XN

- 1 Q. So, that journey is from Kadina back to Adelaide, you
2 alone with Dr Kartinyeri in the motor vehicle and, she
3 then, as you understood it, met with Professor Saunders.
4 A. That's the case.
- 5 Q. You and your husband, according to your report, then
6 drove her back to Port Germein or - Port Germein.
7 A. No, Port Germein.
- 8 Q. That evening.
9 A. That's the case.
- 10 Q. On that return trip your report makes it clear, that
11 further cultural matters were discussed with you in the
12 motor car but nothing, of course, to do with women's
13 secret knowledge.
14 A. That's the case.
- 15 Q. Because of the presence of your husband, I take it.
16 A. Indeed.
- 17 Q. So that is Friday 24 June. Dr Fergie, you have already
18 said that you found your role in this rather ambiguous.
19 A. Yes.
- 20 Q. I mean, because you hadn't, at this stage, been briefed
21 to provide a report, had you.
22 A. Not at all.
- 23 Q. So that, the conversation about secret women's
24 knowledge, in the motor car en route from Kadina down to
25 Adelaide was really, what, just something that occurred
26 by way of conversation between you and Doreen.
27 A. Yes. I presume that Doreen was - she was going to
28 Adelaide to talk to Professor Saunders about this stuff.
29 She may well have - I don't know what was in her mind.
30 I presume what she was doing was talking through the
31 issues with, you know, I was driving.
- 32 COMSR
- 33 Q. You didn't consider you were exactly taking instructions
34 or anything like that, from her, to prepare any sort of
35 report.
36 A. Absolutely, not, no. My expectation was that, she would
37 see Professor Saunders and in all likelihood that was
38 the end of my work on this matter.

1 XN

2 Q. In the end it proved fortuitous that this information
3 had been provided to you, bearing in mind the change of
4 your brief.

5 A. Absolutely.

6 COMSR

7 Q. So I am clear, had you been able to foresee that your
8 brief was to be changed and at that stage, of course,
9 you didn't know, would you have conducted that
10 discussion in any different way. I mean, would you
11 have asked questions, taken notes.

12 A. I don't believe that Doreen would have allowed me to
13 take notes anyway, in terms of that conversation at that
14 time. She may have. I mean, I couldn't have done so
15 since I was driving. I might have asked her
16 differently. It is just very hard to say. I mean she
17 was - she gave a very elaborate and rather, you know,
18 what seemed to me at the time to be a quite compelling
19 rendition, I suppose, and elaboration.

20 XN

21 Q. I am back to p.38 of your statement. On Sunday 26 June
22 your brief was changed.

23 A. That's right.

24 Q. And you were asked by Tim Wooley, if you would write a
25 report to be part of the ALRM representation to
26 Professor Saunders.

27 A. That's so.

28 Q. As you make clear in your statement, you were most
29 concerned about the tight time frame for the preparation
30 of that report which was Friday, 1 July.

31 A. That's right.

32 Q. I suppose you realized, at that stage, that the ALRM
33 representation to Professor Saunders was, in effect, a
34 representation that had at its core the stoppage of the
35 construction of the bridge. You knew that, didn't you.

36 A. Yes.

37 Q. That's what this was all about, wasn't it.

38 A. Well I knew that it was a representation to the Minister

1 under the Aboriginal & Torres Strait Protection Heritage
2 Act.

3 Q. For a declaration.

4 A. For a declaration.

5 Q. Preventing the construction of the bridge.

6 A. That's right.

7 Q. Did it cross your mind, at any stage, that by being
8 involved thus far, that there was some difficulties for
9 you in providing such a report, or did you just take the
10 view, well, I am employed as an independent expert, I am
11 going to provide the report as I see fit.

12 A. Well, I did certainly see myself as an independent
13 expert, there is no question about that. I think by
14 this stage, it is clear that I had formed a preliminary
15 view, that this was a case with some merit and although
16 I thought, you know, there was a lot of problems, in the
17 sense that there was a very narrow time scale, the women
18 had dispersed and so on, I took the view, I suppose,
19 that the women had a case. I thought, that that
20 merited examination and assessment, and that, at that
21 moment there was really only one person who could do it
22 and that was me and that was because, basically, it had
23 to do with women's issues.

24 CONTINUED

- 1 There is no prominent woman anthropologist who is an
2 expert on Ngarrindjeri culture. Even had there been,
3 she hadn't been there for the critical discussions and
4 that basically I undertook to assess it as well as I
5 could.
- 6 Q. Really you had, didn't you, what was - to use the
7 vernacular - a whole new ball game for you, wasn't it.
- 8 A. That's true. Although quite clearly the events of the
9 previous weeks had given me particular insights. It was
10 impossible for me to divorce my anthropological skills
11 watching that meeting, for example, and my reflections
12 upon it. I was being an anthropologist when I was there
13 in my role as facilitator.
- 14 Q. But what I am asking you to grapple with, if you could,
15 is you had been engaged by the ALRM, which was embarked
16 upon, if you like, a submission to Professor Saunders to
17 stop the bridge.
- 18 A. I understood my role to be to undertake an
19 anthropological assessment of that claim.
- 20 Q. No, I am talking about right at this point, at the time
21 your brief changed.
- 22 A. Yes.
- 23 Q. At the time your brief changed, you had had many -
24 several days of involvement with, if you like, people
25 who were strenuously advocating the prohibition to the
26 construction of the bridge.
- 27 A. What I had seen was a vigorous cultural debate about
28 whether or not material should be disclosed in order to
29 have that effect.
- 30 Q. On 26 June you then, despite the stringent time frame
31 allowed to you, you set about preparing the report, or
32 doing the research or whatever for the report, Exhibit
33 5.
- 34 A. I set about it basically trying to undertake as much
35 research towards an assessment as it was possible for me
36 to do.
- 37 Q. You had an extended interview with Sarah Milera.
- 38 A. I did.

- 1 Q. You tell us in a flat off the Henley Beach Road.
2 A. That's correct.
3 Q. You make the point in your statement, at p.38, that you
4 noted in your notebook her beliefs about the
5 significance of Hindmarsh Island, etc.
6 A. Yes.
7 Q. And in her tradition and of the threats she perceived to
8 the tradition by the building of the bridge.
9 A. That's so.
10 Q. Can you tell us whether any information conveyed by
11 Sarah Milera to you was secret women's knowledge.
12 A. Some of it was.
13 Q. Some of it was.
14 A. It was presented that way to me.
15 Q. Did it coincide with the secret women's knowledge as
16 conveyed to you by Doreen Kartinyeri in the motor car in
17 the Kadina trip.
18 OBJECTION Ms Pyke objects.
19 MS PYKE: Again, I stand to raise my objection to
20 this line of questioning. I think truly if counsel
21 assisting are going to persist in this line of
22 questioning, this witness is just going to be more and
23 more compromised. It is an abuse of the witness, given
24 the submissions I have made this morning about the
25 extent of this witness's confidentiality, that there is
26 the matter of s.10, the Gavan Griffiths argument.
27 If this witness is going to be asked to comment upon
28 what was said -
29 COMSR: No, she is not being asked to comment on
30 what was said.
31 MR SMITH: What is the basis of the objection to
32 this?
33 MS PYKE: Sarah Milera is one of the persons, as I
34 have told you, who has indicated that she doesn't wish
35 this witness to disclose to the Commission any
36 information that was imparted on a confidentiality note.
37 COMSR: So, we won't ask that.
38 MS PYKE: I am saying these are back door ways of

- 1 trying to ascertain from the witness -
2 COMSR: No, it isn't.
3 MS PYKE: Would you hear me out and make a ruling
4 on it and I will then ask for a short adjournment
5 to take -
6 COMSR: To what end?
7 MS PYKE: Firstly, to give the witness a break.
8 She has been in the witness box since 9.30 this morning.
9 I would have thought that an 11.30 break - it is now 20
10 to 12 - wouldn't be untoward.
11 COMSR
12 Q. Is there anything in that question which will disclose
13 in any way that you can see -
14 MS PYKE: Or potentially disclose.
15 COMSR
16 Q. Or potentially disclose any information.
17 A. Actually, I need the question again to answer that.
18 MR SMITH: I will ask it again then.
19 XN
20 Q. I asked you whether the information as conveyed to you
21 by Sarah in the flat on Henley Beach Road on Sunday, 26
22 June coincided, that is, the secret women's knowledge
23 context of that information, coincided with the
24 information provided to you by Doreen Kartinyeri in the
25 motor car in the two hour journey on Friday, 24 June,
26 from Kadina.
27 A. I wouldn't use the word 'coincided', but it had
28 reference to similar matters.
29 Q. I take it this interview is the subject of notes in your
30 notebook, which you gave to the ALRM.
31 A. That's the case.
32 Q. The next occasion, on Sunday, 26 June, can I take you to
33 your report, on p.7, for a moment.
34 A. Yes.
35 Q. You say 'On Sunday, 26 June, I was asked to prepare this
36 report. In order to do so, I spoke to a number of
37 people by phone or in person. Worthy of note are four
38 interviews.'

- 1 A. That's the case.
- 2 Q. You interviewed Sarah Milera in person in Adelaide.
- 3 A. I did.
- 4 Q. Vi Deuschle and Shirley Peasley you spoke to.
- 5 A. I spoke to them the next day.
- 6 Q. The next day.
- 7 A. That's right, in the morning.
- 8 Q. Person-to-person.
- 9 A. Yes, I met them at Konanda.
- 10 Q. You actually, as you have make clear in your statement
- 11 at the bottom of p.38, sat in on a meeting of the
- 12 Ngarrindjeri Action Group.
- 13 A. Yes, maybe I need to take in some more detail about what
- 14 I - I think there are issues to do - there is an issue
- 15 that I discussed with Sarah that is worth bringing up
- 16 here. And that is, in fact, again I asked Sarah, as I
- 17 had asked Doreen, what was her understanding of what had
- 18 happened at the Rocky Marshall meeting. On the Monday,
- 19 27 June, when I met with Shirley Peasley and Vi Deuschle
- 20 at Konanda, I again canvassed that question with them
- 21 and I asked them what they thought was going on. And I
- 22 also asked them and, indeed, I may have asked Sarah, as
- 23 well. Meanwhile, I had identified - and I don't recall
- 24 how I had done this, but - whether it was discussing
- 25 with my husband, or just from my own knowledge - that
- 26 some prominent women that I would have expected to have
- 27 been present at the meetings weren't. And they included
- 28 Jean Rankine, who I certainly would have known about
- 29 from my own knowledge of Ngarrindjeri people. But I had
- 30 also noted and, in fact, pursued with people during the
- 31 course of that week, the absence of Val Power and Muriel
- 32 Van Der Byl, who I understood to be prominent
- 33 Ngarrindjeri women who were absent from that meeting.
- 34 So, I had a series of questions that I was asking myself
- 35 and then addressing it other people about why those
- 36 people were absent and what was the significance of
- 37 their absence in terms of the representativeness of the
- 38 Graham's Castle meeting. When I spoke to Shirley

1 Peasley and Vi DDeuschle - and I presume that I did so,
2 because they were some of the few Ngarrindjeri women
3 whose telephone numbers I had, because I had taken their
4 numbers at the end of the Graham's Castle meeting. I
5 spoke to them on the Monday morning and I addressed
6 those questions to them. And in that context I believe
7 they - yes, certainly while I was there, they noted that
8 there was a meeting of the Ngarrindjeri Action Group
9 that evening. At that point I didn't even know about
10 the existence of such a group. And they invited me to
11 it. And that meeting was later that evening.

12 Q. The questions that seem to be creating so much
13 excitement this morning are really questions to you
14 about who your informants to this secret women's
15 knowledge were.

16 A. I am quite happy to say who.

17 Q. Perhaps you might cut across it all by just telling us:
18 Doreen Kartinyeri, obviously.

19 A. Doreen Kartinyeri was my key informant on those matters.

20 Q. And the information which she conveyed to you about this
21 secret women's knowledge at least commenced its
22 conveyance to you in the meeting at Graham's Castle on
23 19 June.

24 OBJECTION Ms Pyke objects.

25 MS PYKE: I thought we had dealt with this.

26 COMSR: It is only when it started. It has got
27 nothing to do with content. The witness has already
28 given the evidence.

29 MS PYKE: I thought going back quite some
30 questions we talked about the possibility that this
31 would potentially be a disclosure of what would be in
32 the women's envelopes.

33 COMSR: No, it is simply when she first heard
34 something, not the nature of it. When she first heard
35 something about women's business.

36 MS PYKE: Yes, and you tell me how there won't
37 potentially be some prospect of revealing what is in the
38 women's envelopes.

- 1 COMSR: But the witness has already covered this
2 ground.
3 XN
4 Q. So, Doreen Kartinyeri is one of your informants.
5 A. Doreen Kartinyeri is clearly, as I say, my key informant
6 on this matter.
7 Q. Key informant.
8 A. Yes.
9 Q. Who else of the Ngarrindjeri women are informants.
10 A. Other women spoke about it, spoke about those matters.
11 And they include Sarah Milera and Vi Deuschle and
12 Shirley Peasley, but I wouldn't see them as informants
13 per se about that secret knowledge, but commentators
14 about it, I suppose. I didn't recognise them as people
15 who had had that information or claimed to have had that
16 information from earlier years and to have had that
17 transmitted to them by preceding generations.
18 Q. Of your informants - and by 'informants' I mean people
19 who were custodians of the information and had it
20 transmitted to them by their forebears - who -
21 A. The most obvious informant is Doreen Kartinyeri.
22 Q. Doreen Kartinyeri.
23 A. Yes.
24 Q. The only informant, bearing in mind that criteria.
25 A. She is not the only informant. She is clearly the most
26 detailed informant.
27 Q. Putting aside the commentators on the information, who
28 else was an informant in any way.
29 A. Connie Roberts, Edith Rigney, Maggie Jacobs.
30 Q. Connie Roberts, for instance, when did she convey to you
31 information about secret women's knowledge.
32 A. In so far as any of those women's conveyed to me
33 information on that matter, it was done so in the
34 meetings at Graham's Castle.
35 Q. Via Doreen Kartinyeri.
36 A. No.
37 Q. Separately.
38 A. Yes.

1 Q. So, Connie Roberts conveyed some information to you at
2 Graham's Castle about secret women's knowledge, didn't
3 she.

4 A. I couldn't - I don't want to be misleading about this.

5 I am not saying they were key informants. What I am
6 saying is they said things at that meeting that I heard.

7 Q. As an anthropologist or an ethnographer or whatever, I
8 want you, if you can tell the Commission -

9 A. Doreen Kartinyeri is clearly my key informant, yes.

10 Q. The other ladies you have named, Connie Roberts, Edith
11 Rigney, Maggie Jacobs.

12 A. Yes.

13 Q. Who were informants in some sense.

14 A. Yes.

15 Q. Were they.

16 A. As everybody at those meetings were informants in some
17 sense.

18 Q. But can we just confine ourselves to these parameters:
19 Informants in the sense of having the knowledge passed
20 to them by their forebears.

21 A. The women I have named I understand to have that
22 knowledge from their forebears and they were informants
23 to me in these meetings.

24 Q. We know Doreen Kartinyeri as a custodian told us where,
25 or has told the world, as it were, where the information
26 came from. She told you the same, did she. That is,
27 who her forebears were.

28 OBJECTION Ms Pyke objects.

29 MS PYKE: Perhaps Mr Smith can put specifically
30 the question, rather than leave the witness to guess
31 about what she has told the world?

32 MR SMITH: All right, yes, I will start again.

33 QUESTION REPHRASED

34 XN

35 Q. Doreen Kartinyeri is an informant to you and she
36 provided to you, or at least she provided you with her
37 sources for that information, did she not.

38 A. That's so.

- 1 Q. Connie Roberts: what about her.
2 A. Was at that meeting and I understand that she - she
3 didn't tell me, at the time, who her sources were. I
4 have learnt that since. And she was an informant of
5 mine at that meeting.
6 Q. Who have you learnt that from.
7 A. She and her daughter.
8 Q. Did you speak personally with Connie Roberts.
9 A. I have spoken personally with Connie Roberts. I had not
10 - she did not convey that, who were those people at that
11 meeting, that I recall.
12 Q. The secret women's knowledge as conveyed from Connie
13 Roberts was conveyed secondhand to you, was it.
14 OBJECTION Ms Pyke objects.
15 MS PYKE: That is not what the witness just said
16 at all.
17 MR SMITH: I am asking her to explain what she
18 said.
19 MS PYKE: No, you are putting what she didn't say.
20 You said secret women's knowledge. You said the
21 informant wasn't conveying that.
22 COMSR: She can answer that.
23 MS PYKE: I am here in the interests of my client.
24 If there is a misleading question, I am entitled to
25 object.
26 XN
27 Q. Do you understand my question. Connie Roberts: you -
28 call her an informant.
29 A. I do.
30 Q. And you call her an informant as to secret women's
31 knowledge, is that right.
32 A. I do.
33 Q. On what basis. And can I perhaps be more particular
34 about that. Did she personally say something to you
35 that conveyed that.
36 A. No.
37 Q. Who spoke to you that conveyed that to you.
38 A. Doreen Kartinyeri was certainly someone who did and

1 somebody else at the meeting did. I don't know who they
2 were.

3 Q. Edith Rigney.

4 A. The same.

5 Q. So, no direct contact with you, in the sense of
6 conveying to you, as an informant, secret women's
7 knowledge.

8 A. I actually think that it is possible I had a
9 conversation - that Edie was one of the people that I
10 had a conversation with specifically at those meetings,
11 but I can't recall with absolute certainty that that is
12 the case.

13 Q. So, Connie Roberts, Edith Rigney, Margaret - Maggie
14 Jacobs.

15 A. Yes, I think that it is also possible that I had a
16 direct conversation with her and I can only infer that
17 the basis of that inference is my clear knowledge when I
18 saw the circle in which she led the prayer of the
19 significance of the fact that she was leading that
20 prayer. And I knew that - her to be a custodian, at
21 that moment.

22 Q. In terms of direct contact, direct information from
23 person-to-person, Doreen Kartinyeri is your informant.

24 A. Doreen Kartinyeri is clearly my key informant.

25 Q. Your further enquiries leading to the report are set
26 out, I think - and I don't say exhaustively - at pp.7
27 and 8 of the report itself.

28 A. Yes, I might amplify them somewhat.

29 Q. As amplified later.

30 A. Certainly I know that on Tuesday, the 28th that I rang,
31 that's the day that I rang Jean Rankine to enquire of
32 her about her absence from the meeting at Graham's
33 Castle. And I also asked her about her response to the
34 - to my account of the incident at Rocky Marshall's home
35 and she gave me a response to that. She also - I
36 enquired very directly about the representativeness of
37 the group and Jean effectively dictated a response on
38 that score that she gave me permission to use in my

- 1 report.
- 2 Q. Can I take you to p.45 of your statement then.
- 3 A. Yes.
- 4 Q. You discuss there, in the middle of p.45, your concerns
- 5 about the absence of Amelia Campbell, don't you.
- 6 A. Yes.
- 7 Q. And you also move to making an assertion about your
- 8 concern about the absences of some of the other
- 9 prominent Ngarrindjeri women.
- 10 A. That's so.
- 11 CONTINUED

- 1 Q. You then focus on Jean Rankine.
2 A. That's so.
3 Q. At the bottom of p.45 you say that in the following days
4 - and I think that you mean the days following the
5 change of your brief, I take it.
6 A. Yes.
7 Q. You sought to contact other Ngarrindjeri women to
8 inquire about the representativeness of the meeting at
9 Graham's Castle.
10 A. That's so.
11 Q. You mention Val Power, Muriel Van Der Byl, Jean Rankine.
12 Did you contact any other persons concerning whether or
13 not the group that you were relying on were truly
14 representative of Ngarrindjeri women.
15 A. My concern was not that they were truly representative.
16 I think that's actually an impossible task to satisfy.
17 The question I was addressing myself to was: was there
18 being a significant boycott? In other words, was there
19 some meaning to be attributed to some people's absences
20 which might have affected how I assessed what was being
21 said.
22 COMSR
23 Q. Did you determine whether or not this was a public
24 meeting, as it were - I mean for Ngarrindjeri women - or
25 whether it was a meeting to which certain persons were
26 invited.
27 A. Yes, it had become very clear, in fact, in the
28 discussions with Amelia Campbell and the response to
29 that incident, that some people had been funded - I
30 think my understanding was that invitations had gone out
31 to the main groups of Ngarrindjeri women saying, you
32 know 'We need people to come to this meeting', and a
33 certain number had been funded so that their transport
34 had been paid for and their accommodation had been paid
35 for. But my understanding was that other Ngarrindjeri
36 women who wanted to come could certainly have come. It
37 was a question of whether they would be, in a sense -

- 1 whether that attendance would be at their cost or
2 provided by the funds available.
- 3 Q. Provided they knew that the meeting was being held.
- 4 A. That's the case, yes. And Jean Rankine gave me some
5 indication that people had known that this meeting was
6 going on, and she said very directly - she named people,
7 and she said 'These are my representatives. These are
8 elders - I regard these women as elders, they're Raukkan
9 people who, in a sense, were representing us'. I think
10 I should find the exact words. On p.9 of my report I
11 said, and in fact she dictated this to me 'Jean stated
12 her opinion that the Goolwa meeting of Ngarrindjeri
13 women on 20th June was a representative group of
14 Ngarrindjeri women and that Grace Sumner and Sheila
15 Goldsmith' and I put in square brackets '(who attended
16 the meeting) are members of their' and I put in brackets
17 '(i.e. Raukkan) women's committee. "They do speak for
18 me" this is a quote from her "because I respect them as
19 elders" Jean said.'
- 20 XN
- 21 Q. Do you know whether or not the women who went to that
22 meeting knew in advance what the meeting was about.
- 23 A. No, I don't.
- 24 Q. Do you know on what basis these women that went to the
25 meeting were, in effect, invited. That is, do you know
26 any details about that.
- 27 A. No. No, I don't.
- 28 Q. When relying, as you have, for your prime informant on
29 Doreen Kartinyeri, did you give some consideration to
30 perhaps investigating her sources of this secret women's
31 knowledge.
- 32 A. No, I didn't. I actually didn't understand any of them
33 to be alive.
- 34 Q. One of them was alive.
- 35 A. Yes, but I didn't know that.
- 36 Q. Did you make an inquiry about it.
- 37 A. I didn't.

- 1 Q. That was the daughter of Pinkie Mack, wasn't it. You
2 now know that she was alive at the time.
- 3 A. I certainly know now that she was alive at the time.
- 4 Q. As far as ensuring the representativeness of the group,
5 did you, for instance consider talking with the
6 anthropology department or division of the South
7 Australian Museum.
- 8 A. Certainly, and I made a note to ring Philip Clarke in
9 the notes that I've actually handed up, I was pleased to
10 see. So, yes, it certainly was my intention. It is my
11 belief that I actually tried to ring Philip before I
12 rang Jean, in fact, because I was anxious to talk to him
13 in case there was something delicate that I needed to
14 know. And my recollection is that I did try and ring
15 Philip and that I didn't get any response. I don't know
16 if it is an explanation, but I know that the
17 anthropology division's telephone numbers changed
18 between when I worked there and more recently. I don't
19 know if that's the reason that I was unable to get onto
20 Philip, but I certainly, as I recollect, tried to
21 contact him, and I certainly had every intention of
22 doing so, and I think that intention is in fact
23 indicated in one of those scraps of paper, where I
24 basically made jottings of who I thought - you know, to
25 make some priority in trying to contact.
- 26 COMSR
- 27 Q. I suppose your difficulty at that time was that you
28 weren't entirely clear what it is you were supposed to
29 be doing in your role as facilitator.
- 30 A. I think by this stage we're talking about now -
- 31 Q. We are talking about at the stage by which you had been
32 asked to provide a report.
- 33 A. Yes.
- 34 Q. At that stage, had you worked out what the limits of
35 that report were to be.
- 36 A. I'd actually looked carefully at the Act. I mean, what
37 was very clear was that I couldn't do what one normally
38 sets out to do in the time, and it was a question of

1 could I do what was necessary in terms of the Act in the
2 time. And one of those things is that it has a
3 significance to a group of Aboriginal people, to put it
4 as a lay person's term, so in that sense I thought I had
5 an obligation to inquire on these matters.

6 Q. What, the particular significance of the women's
7 business.

8 A. Yes, and I wanted to assure myself that, in a sense,
9 there wasn't a meaningful boycott going on. You will
10 recall I said in evidence I saw some significance in Mrs
11 Connie Roberts' silences, and silences are very
12 significant in Aboriginal culture. People, in fact, can
13 make a point by not coming to something, and so I was
14 concerned that something like that might have been going
15 on. I clearly had not, you know, anything like enough
16 time to travel around to all the communities in South
17 Australia. So I was simply trying to get some early
18 confirmation that there weren't significant silences, I
19 suppose. That is what I was trying - looking to, and
20 Jean Rankine was one that I was particularly concerned
21 about, because I knew that she was a very prominent
22 Aboriginal woman, and I was worried. I mean, if I was
23 worried about anybody's non-attendance, it was actually
24 Jean Rankine's non-attendance that I was alert to and
25 quite concerned about, and I certainly sought to satisfy
26 myself on that matter.

27 XN

28 Q. I suppose the other aspect of the matter which you then
29 had to turn your mind to was the existing literature.

30 A. That's true.

31 Q. You had your husband to draw on for that, of course,
32 didn't you.

33 A. I had his report, yes, and I could talk to him, yes.

34 And we had a number of - we are lucky, we had a number
35 of those sources in our own library at home in our study
36 and in our libraries at work.

37 Q. Whatever relationship might then have existed between
38 you and Philip Clarke or in fact exists now, Philip

- 1 Clarke would have been, would he not, a good source of
2 consultation.
- 3 A. No question, and it was my intention to - I think there
4 is clear indication in my notes that I recall being
5 anxious to talk to Philip and, yes, clearly.
- 6 Q. You were aware that he had just completed his thesis.
- 7 A. I don't know that I was aware he had finished it
8 actually, but I knew that he was working on it.
- 9 Q. In this area.
- 10 A. Not in June, in the sense of -
- 11 MS PYKE: What area: every topic, women's
12 business, Ngarrindjeri people? That could mean
13 anything, with respect.
- 14 MR SMITH: The Lower River Murray.
15 XN
- 16 Q. You knew his thesis was touching upon the Ngarrindjeri
17 people of the Lower River Murray.
- 18 A. I knew that. I didn't know what was the topic of his
19 thesis in any detail. I heard one seminar paper from
20 Philip on his thesis, but clearly I knew that the Lower
21 Murray was his main area of interest.
- 22 Q. To be fair, I will hand to you Exhibit 243, your notes,
23 document number 28, which might be a note that makes
24 mention of Philip Clarke which will help you with that
25 earlier evidence that you gave. You are now looking at,
26 I think, some rough notes of yours, are you not.
- 27 A. Yes.
- 28 Q. The page headed `Barrages'.
- 29 A. The one I was looking at was `Significance of
30 tradition'.
- 31 Q. Go back to the earlier page, I think there is a mention
32 of Philip Clarke there.
- 33 A. Yes.
- 34 Q. I am just showing you the notes where you mention him in
35 case it just supports your assertion that you attempted
36 to contact him.
- 37 A. Well, I think what this demonstrates is that I was

- 1 clearly - it was my intention to do so. I believe that
2 I did try.
- 3 Q. Can we go back, these are a bundle of notes headed
4 `Injury and desecration', are they. Do they start
5 `Injury and desecration'.
- 6 A. No, my lot start `Barrages'.
- 7 Q. What are they. Can you tell us how they came into being
8 in the context of preparing your report.
- 9 A. I don't remember when they came into being. They were
10 basically jottings I started to do in terms of trying to
11 consider what I needed to think about in terms of the
12 Act and my report. I assume, in that case, that they
13 would have started coming into being towards the end of
14 that week.
- 15 COMSR
- 16 Q. How many days did you actually have to do your research,
17 get your report done.
- 18 A. I was actually asked at 9 o'clock on the Sunday, and the
19 initial - the earliest understanding I have of when it
20 was needing to be leaving Adelaide was something like 6
21 p.m. on the next Friday. So I was really working flat
22 out.
- 23 Q. Pressed a bit.
- 24 A. Yes.
- 25 XN
- 26 Q. Would you agree with your husband then - perhaps this is
27 a difficult topic - he concluded in his report in 1990
28 that there was no extant mythology which specifies
29 mythological sites on Hindmarsh Island.
- 30 A. I would agree that's his conclusion.
- 31 Q. However, the literature that you had an opportunity to
32 peruse and digest did not allude, shall I say, to
33 women's business as conveyed to you by your informants.
- 34 A. Not directly.
- 35 Q. So do you accept that you -
- 36 A. But I would actually say that it seems to me that there
37 is a deal of corroborating evidence there.
- 38 Q. In terms of omission of detail of the culture.

- 1 A. I don't understand what you are putting to me.
- 2 Q. Do you say there is some positive evidence in the
3 literature that there is secret sacred women's knowledge
4 attaching to Hindmarsh Island in some way - and I am
5 meaning some reference to it in the literature.
- 6 A. No. What I am saying is that there are important
7 dimensions of the literature which suggest that what was
8 suggested to me can truly be understood as an Aboriginal
9 tradition.
- 10 Q. Do you take the view that your report, insofar as it
11 asserts the existence of secret women's knowledge on
12 Hindmarsh Island, is a - I won't say departure from the
13 literature, but a very significant new interpretation of
14 the culture attaching to Hindmarsh Island.
- 15 A. No, I wouldn't agree with that.
- 16 Q. Really.
- 17 A. No.
- 18 Q. So you take serious issue with Philip Jones and Philip
19 Clarke in that sense.
- 20 A. Absolutely.
- 21 Q. Do you agree that the Berndts do not allude in their
22 work to any such culture, to any such mythology in a
23 direct way.
- 24 A. If you are answering - if you are asking me about
25 mythology in a direct way, the answer is no. If you are
26 asking me about something else, about the Berndts, my
27 answer would be different.
- 28 Q. It has been suggested in this commission that your
29 findings are a significant anthropological discovery.
30 Do you agree with that.
- 31 A. Yes.
- 32 Q. Do you agree that you really did not have enough time
33 and did not do enough research to justify that.
- 34 A. No.
- 35 Q. So you would stand by this significant anthropological
36 discovery now, would you.
- 37 A. I would. Not without some consideration, I must add. I

- 1 mean, I think I should have - like, I have sat very
2 carefully -
- 3 Q. Have you, since your report, reconsidered your report.
- 4 A. Of course. Of course, in the context that we are in,
5 I've thought about whether my judgment was a fair one or
6 not. Certainly I have. Absolutely.
- 7 Q. I take it then that you take issue with the thrust of
8 Professor Tonkinson's foreword to the Berndt and Berndt
9 publication, do you.
- 10 A. No, I don't think -
- 11 MS PYKE: Perhaps my friend can put a particular
12 aspect of it. That is a very general question and it
13 has certain implications.
- 14 COMSR: The witness can tell us that.
- 15 XN
- 16 Q. Yes.
- 17 A. I think I have dealt with this at some enormous length
18 in my statement. If you would like to lead me through
19 that, I would be happy to.
- 20 Q. What do you say then about Professor Tonkinson's
21 foreword to the Berndt and Berndt work.
- 22 A. Could you please be explicit about which bit you are
23 referring to?
- 24 Q. On the basis that it is the case, isn't it, that he
25 asserts that this was not a society like some of the
26 societies in the north of Australia, where secret
27 sacredness was a feature of the culture.
- 28 A. I do not take issue with Professor Tonkinson on his
29 representation of Ngarrindjeri culture as specific, and
30 I have never suggested that Ngarrindjeri culture in this
31 respect is like any other, like Western Desert or
32 anywhere else in the north of Australia.
- 33 Q. Or that this is similar to the work done on the Tiwi
34 people.
- 35 A. I'm not in a position to answer that question.
- 36 Q. What, because you don't know about the Tiwi people.
- 37 A. I certainly know about the Tiwi people, and I think I
38 would have to consider that in some detail. I don't see

- 1 how that is pertinent to the question you are asking me.
- 2 Q. There is a comparison made, I think, even by Professor
3 Tonkinson, isn't there -
- 4 A. Yes.
- 5 Q. With the Tiwi people.
- 6 A. Yes, and I am aware -
- 7 Q. Is that a direct comparison.
- 8 A. I know it is a comparison that a number of people hold.
- 9 Q. Do you hold that.
- 10 A. I think it is quite reasonable to say that there are
11 some parallels between Tiwi culture and Ngarrindjeri,
12 but I think, you know, I wouldn't push that further than
13 that.
- 14 COMSR.
- 15 Q. I just want to be clear in my mind that I understand
16 what you were doing in your report that you sent off to
17 the Minister. Were you purporting to do any more than
18 try and gain an appreciation, as it was conveyed to you,
19 of the cultural effects that might flow from the
20 building of the bridge.
- 21 A. I think I was, in fact, not so conscious of whether or
22 not, in a sense, the information that was conveyed to me
23 was - in a sense made sense in Ngarrindjeri - in other
24 words - I mean, I would certainly never use the words -
25 but anthropologists are well acquainted with the facts
26 that people can put things over you. So I was, in a
27 sense, testing what I was being told about what I could
28 garner from the literature, and I didn't believe that
29 that was the case.
- 30 Q. You said that Doreen Kartinyeri was your informant and
31 she was telling you what the Ngarrindjeri women would
32 feel would be the consequences of the building of the
33 bridge, and that you were trying to comply with the
34 terms of the Act and convey that information.
- 35 CONTINUED

- 1 A. Yes. I was trying - in a sense, I understood my task as
2 assessing whether this was a significant area under
3 Aboriginal tradition, according to Aboriginal tradition.
4 So, yes, that is the case, and what -
- 5 Q. What you were told you considered to be as significant.
6 A. I did.
- 7 Q. But you didn't, you weren't purporting to do what might
8 be called an anthropological study in your report.
9 A. It was an assessment. It was an anthropologist's
10 assessment of that, what I was told as an Aboriginal
11 tradition and an assessment of whether, in a sense, it
12 could be understood that way in terms of the, you know,
13 within the limits of this Act.
- 14 XN
- 15 Q. About the Berndts work and in particular Professor
16 Tomkinson's foreword, looking at the book in front of
17 you and looking at the foreword and at Roman no.29 and
18 the second last paragraph there, could you cast your eye
19 over that. Have you got it there where it says: `With
20 these issues in mind, I return to the Yaraldi's case'.
21 A. That's right.
22 Q. Would you read that paragraph to yourself.
23 A. Yes.
24 Q. Have you read that.
25 A. Yes, I have.
- 26 Q. Can I just ask you, at the beginning of that paragraph,
27 Catherine Berndt, there is a reference to Catherine
28 Berndt, and Professor Tonkinson suggests there of
29 Catherine Berndt there, that publication notes: `That
30 gender-based differences in the sense of inclusion and
31 exclusion in the region would be minimal'.
32 A. That's correct.
33 Q. Do you agree with that.
34 A. I do.
35 Q. Would you describe this women's business, as you
36 declared it to exist in respect of Hindmarsh Island, is
37 minimal.
38 A. No.

- 1 Q. It's capable, you say, of - at least in the context of a
2 bridge going up - destroying the Ngarrindjeri culture;
3 isn't it.
- 4 A. That's not quite what I've said, but yes.
- 5 Q. Why do you say that that's not quite what you have said.
6 That is categorically in your report.
- 7 A. Certainly.
- 8 Q. How can that live with this assertion that gender-based
9 differences, et cetera, are minimal.
- 10 A. The question is gender-based differences, and
11 exclusivity is the fundamental pivot of this culture's
12 religious affairs and I would agree it is probable they
13 are not. The point is that it does - the record
14 suggests that there are other domains which maybe both
15 secret and also referring to sacred issues which also
16 may refer to gender issues. And my answer is quite
17 categorically, yes. And it is that domain of
18 Ngarrindjeri life which, in my view, this knowledge
19 refers. So, it's the word 'minimal' doesn't suggest
20 that the knowledge that I was told is minimal or
21 peripheral in any sense, or unimportant or
22 insignificant, it's about the way in which culture and
23 this culture's religious life is conceptualised.
24 Perhaps what this Royal Commission is looking at is the
25 word 'secret sacred women's business' which, in other
26 cultural contexts, is understood as an organising
27 feature of those cultures that has been asked and is
28 suggested that I have to infer that. Here, I never
29 inferred that. What I said is that whilst I'm not
30 proposing that this is a fundamental organising feature
31 of this religious life, what I suggest is that this is a
32 culture with specialist domains of knowledge, one of
33 which, at least, refers to specialised women's knowledge
34 and a knowledge to which I have - of which I have been
35 appraised and which, in my view, belongs to that domain.
36 To ask me whether I agree with this conclusion in this
37 respect is in no way to step down from my position in
38 that matter. I have not proposed that this knowledge

- 1 in any way pivots on there being a secret sacred
2 exclusive division of knowledge in this culture a la
3 western desert or central desert, or anywhere else in
4 Australia. There is not - my contention is that there
5 is nowhere in my report that says that that is not what
6 I've suggested.
- 7 Q. Your report is laced with phrases such as `secret
8 knowledge of women'.
- 9 A. Yes.
- 10 Q. `Sacred knowledge of women'.
- 11 A. That's so.
- 12 Q. `Secret sacred knowledge', isn't it.
- 13 A. But nowhere do I propose that that in a sense proposes a
14 model for that culture which is like any other. However
15 else can an anthropologist refer to things which are
16 secret and relate to a specific gender and are sacred by
17 using such terms, or with the use of those terms in no
18 way purports to buy me into that, into a model of
19 culture which is suggested by these witnesses and is
20 being suggested by you now.
- 21 COMSR
- 22 Q. I'm not sure I follow the distinction.
- 23 A. What happened here is that we have started this and my
24 recollection is -
- 25 Q. Can we put this in simpler terms so that I can see that
26 I'm following what you are putting to me here.
- 27 A. Certainly.
- 28 Q. You say that the use of those terms doesn't imply what.
- 29 A. What's happened is a phrase is being taken as a gloss
30 for a model of culture. For example, if you use this
31 phrase, you are talking about a Volkswagen. You know
32 `Volkswagen' means `a bug'. All right, let's suppose
33 that anybody who uses the word `Volkswagen' - actually,
34 that's not the best example. Perhaps if I use `sedan
35 car' as meaning `Volkswagen'. Now, if you use the word
36 `sedan', it is being proposed that if I use the word
37 `sedan' and `car' in my report at all, that if at any
38 time that I use them together that means Volkswagen as a

1 class of car. I have never proposed to be purporting
2 that Ngarrindjeri culture is the model that is being put
3 around, as it were, and I have never used the term
4 `secret sacred women's business' - which is a term like
5 `bug' which is often used to refer to, `bug' is a better
6 word and it might refer to a Volkswagen or might refer
7 to one of the jellybean cars that Mazda puts out.
8 What's happening is that I'm trying to be captured as if
9 I propose a model of this culture of religious life,
10 which I never proposed, and trying to capture me by the
11 - perhaps if I use the word `secret' and `sacred', that
12 that amounts to a label that has been used. Whereas, in
13 the anthropological literature, most particularly in the
14 desert cultures, secret sacred women's business is a
15 fundamental division of that culture between exclusive
16 domains of religious life which are exclusively women's
17 domains and which are exclusively men. I have not
18 proposed that I have used the word `secret' and used the
19 word `sacred' - I have used the word `knowledge'. I
20 haven't in any sense by the use of those words in any
21 way proposed that they should be read as a model for a
22 Volkswagen car, or for secret sacred women's business a
23 la western desert.

24 Q. I'm concerned with the issue of women's business. I
25 suppose the secrets come into it because of it being
26 sealed or secret, because -

27 A. It's secret because the women asked me to keep it
28 secret.

29 Q. But you understand that it isn't necessarily secret from
30 the other women, Ngarrindjeri women.

31 A. It's my understanding that, in fact, this cultural
32 knowledge is more restricted than simply women and that
33 only some women did know and that, in fact, the core of
34 those people who did know were midwives.

35 Q. You call it `secret'. I'm trying to avoid the very
36 vice that your discussion -

37 A. If I had known what was to come, I would have called it
38 `restricted knowledge that related to sacred matters'.

1 Q. `Restricted knowledge relating to sacred matters'. Your
2 objection is that because you used one term here and
3 another term there, that has all been put together to
4 give a particular label.

5 A. Yes. Maybe if we take the Volkswagen. If I used the
6 `volks' and I used the `volks' here and `wagon' here and
7 if I used the `volks' there and the `wagon' there and if
8 you said here is a `volks' and here is a `wagon', then
9 it must mean that is a Volkswagen, I haven't proposed
10 that at all. And it means to me that you would be, you
11 know, I think something is being read into my report
12 that is not there and I'm not proposing a model of
13 Ngarrindjeri culture which is within the literature
14 which is clearly a domain which I suggest this knowledge
15 relates to. I suggest that the knowledge is secret and
16 it is sacred, but it's not a Volkswagen.

17 Q. It's not secret sacred women's business.

18 A. A la western desert or central desert. The real problem
19 is that when that term has been used in this Commission,
20 it's brought with it a model of what that must mean.
21 I'm telling you absolutely that is not what I mean and
22 not what I meant.

23 XN

24 Q. Can I get you to turn to p.20 of your report. I am
25 trying to get an idea of how significant this
26 anthropological discovery is that you accept you have
27 made. See at the top of p.20, you provide an idea in
28 your report of what impact the bridge is going to have;
29 don't you.

30 A. Yes.

31 Q. You say `On the one hand, there is a belief that
32 Hindmarsh and Mundoo Islands and the water around them
33 are at the heart of Ngarrindjeri traditions about human
34 and cosmological reproduction'.

35 A. Yes.

36 Q. `Women believe that if Hindmarsh Island were linked to
37 the mainland in a way that a bridge would link it, the
38 essential function of the island and their tradition and

- 1 the waters around it in cosmological regeneration would
2 cease'.
- 3 A. Yes.
- 4 Q. That is a Volkswagen, I suggest to you.
- 5 A. That is not is a Volkswagen. That is a significant
6 tradition. That is a tradition of great significance.
7 That is not a Volkswagen.
- 8 Q. It's a tradition.
- 9 A. Where is the word -
- 10 Q. `If breached would'.
- 11 A. It doesn't in any point here say this is secret sacred
12 women's business. And its pivot's predicated on an
13 exclusive tradition of Ngarrindjeri culture. Doesn't at
14 any point say that. What I'm here proposing is that
15 this is a cultural tradition of utmost significant that
16 it's not known by everybody. In some respects, that is
17 an argument or an indication precisely of the
18 fundamental pivotal nature of that knowledge that does
19 not propose and it does not require that it pivots from
20 an exclusive domain of women's business and men's
21 business in this culture; a la western desert and
22 central desert.
- 23 Q. But in your report, by picking that description of the
24 women's knowledge out of many descriptions, that
25 generally conveys to the reader a most significant
26 aspect of this people's culture.
- 27 A. It does absolutely.
- 28 COMSR
- 29 Q. That is what you were intending to convey.
- 30 A. That is exactly.
- 31 XN
- 32 Q. You are saying by the repeated use of those phrases
33 `secret women's knowledge' `sacred knowledge of women' -
34 and I could give you all the references if you like -
35 that it's a matter within the domain of women.
- 36 A. Some women, yes.
- 37 Q. Some women.
- 38 A. Yes.

- 1 Q. Well, what is the point you are making then to her
2 Honour about what you haven't been trying to convey.
- 3 A. I've not been trying to convey this as a culture which
4 religious life is predicated on, an exclusive division
5 between men's business and women's business of the sort
6 which is present in the central and western deserts and
7 which is a culture with a deep religious life. That is
8 not predicated on such a division, but, in fact, has -
9 although that is not a - say there is no secret sacred
10 stuff there, in fact, the Berndts demonstrate and
11 document one small account of men's secret sacred
12 business. I feel it - because it seems to me that the
13 whole of this Commission has been proposing that I have
14 been saying something that I haven't and that this is
15 such a model of culture being conveyed in my report and
16 I don't believe it is.
- 17 COMSR
- 18 Q. Of course, I am trying to grasp -
- 19 A. Let's imagine that in the western desert and central
20 desert cultures you have, in fact, a religious life
21 where there is a fundamental division between the things
22 that women can do.
- 23 Q. Is this all public domain.
- 24 A. Yes. And men's stuff, and they're very exclusive and
25 there is also an area where women and men co-operate and
26 men and women may be involved in each other's rituals.
27 But that is a really fundamental dichotomy and in my
28 statement I have tried to distinguish that by saying
29 that is a dichotomy and religious rite, in a sense
30 organised, it is a central organising feature. By
31 contrast, it is my view that the religious life of
32 Ngarrindjeri people has some stuff that has to do with
33 women and some to do with men. And, in fact, what is
34 very interesting about it anthropologically is that it
35 has domains of specialisation. It has domains of a
36 specialisation in respect of what we referred to as
37 'putari' as Aboriginal doctors, specialist people in the
38 appropriation of the dead; a number of domains of

1 specialisation. If you start to conceive of a culture's
2 religious life like that, you start to give it a shape
3 that is entirely different from one that is presented;
4 and that is the dichotomy. What you get is the domains
5 of women's business, to use the colloquial terms, and
6 the men's business and you have areas of specialisation.
7 One of those is the domain of the putari. We know from
8 the literature and the Berndts that there were male and
9 female putari and that the practices and knowledges that
10 female putari concern themselves with were, in a general
11 sense, gynaecological and obstetric practices. We know
12 from the literature that putaris were involved in the
13 Ngarrindjeri culture - from the Berndts - were involved
14 not with the positive healthful aspects, but what we
15 might ethnocentrically describe as negative things; not
16 with life but with death in this culture. And that so
17 we actually know that within this specialist domain is a
18 division of labour between men and women. But it's not
19 the pivotal dichotomy that you get with the western
20 desert. That is a dichotomy that exists. It's a
21 division that exists in the Ngarrindjeri where there is
22 a domain of women's problems and women's knowledge which
23 relates to those issues. I suggest that the material
24 that I have is most probably from the domain of the
25 putari of midwifery and it has an esoteric knowledge
26 base. If the Berndts missed anything, it was the
27 elaboration of that; that is, a model of the shape or
28 the way the religious life is organised from that which
29 has been labelled by a Volkswagen - secret sacred
30 women's business - in a la western desert, a la central
31 desert. At no point - by the use of the words either
32 'secret' or 'sacred', there is a dilemma for the
33 anthropologist where if there is something on the one
34 hand that is secret and if your understanding is that it
35 relates to sacred matters, how do you, in fact, discuss
36 them without, in fact, you know - you have to say that
37 they are both secret and sacred when secret sacred
38 women's business is used. Whereas in this country, that

1 is often used with a hyphen; that is secret-sacred. I
2 used the word `secret' and the word `sacred' and I used
3 the words `women's knowledge', `secret sacred women's
4 business' at various points in my report, but at no
5 point if you put them together, nowhere have I meant to
6 convey a model of culture whose central organising
7 feature is a dichotomy of exclusive male and exclusive
8 female religious beliefs. I tried in my statement to
9 make that point at some length.

10 XN

11 Q. When you took the brief to supply the report, I take it
12 you would accept, would you, that it's an important, if
13 you like, starting place for an expert reporter, such as
14 yourself, to appreciate, to get a full appreciation of
15 the situation in which the report is sought.

16 A. Could you be more specific?

17 Q. Yes, I will be more specific. Did you, for instance,
18 were you aware of the fact that the Aboriginal protest
19 to the construction of the bridge had a considerable
20 history behind it.

21 A. No, I wasn't.

22 Q. Were you aware of the fact that the construction of the
23 bridge had been proposed since the late '80s in a public
24 way.

25 A. No. In fact, I had several conversations with my
26 husband on this issue because he was concerned, in fact,
27 that he had done the original consultancy for the
28 Chapmans. And, in fact, we did have conversations and
29 he, in fact - his understanding was that he hadn't been
30 asked to do that consultancy about the building of a
31 bridge, but, in fact, had be asked to do a consultancy
32 for the extension of the marina. We had quite a few
33 discussions about when the issue of the bridge had
34 arisen because had he provided his report in 1990 and he
35 wasn't aware of the bridge and, therefore, I wasn't
36 aware of the bridge either.

- 1 So, the answer to that I think, in a sense, is no.
2 XN
- 3 Q. You say your husband was not aware that there was a
4 proposal for the construction of a bridge to Hindmarsh
5 Island from the Goolwa mainland in 1990.
- 6 A. That's so. We actually looked at the brief of his thing
7 when we actually - when this was all mooted. Rod went
8 back to his report to see if it was in any way conveyed
9 in his brief and we couldn't find it. I understand he
10 went back to the letters he exchanged with the Chapmans,
11 to find if there was any reference and he told me he
12 couldn't find it.
- 13 Q. Do you mean to draw a distinction there, between what
14 his brief encompassed and what was public knowledge.
- 15 A. It may have been public knowledge, but we didn't know
16 about it.
- 17 Q. No, but, you say he didn't know about the proposal for
18 a bridge.
- 19 COMSR: I don't think the witness can say that.
- 20 MR SMITH: The witness has embarked on answering
21 the question on that basis.
- 22 XN
- 23 A. I think you probably need to know we're not South
24 Australians, so stuff that maybe a large number of
25 South Australians would take in, just, we just don't
26 take note of and we certainly hadn't, neither of us had,
27 as I can, to the best of my knowledge, had any sense
28 that - in fact, frankly, I had no idea where Hindmarsh
29 Island was.
- 30 Q. Did you realize that there was intense opposition to the
31 bridge at this time, did you realize it, from
32 conservation groups.
- 33 A. All I had taken note of, what I tried to say in my
34 statement is, I had taken note that, I had seen Doreen
35 just briefly, in a televised, you know, some television
36 presentation of a protest, so, I don't know that I had
37 any sense of the history of it before then. So, my
38 sense of how big or little it was really, you know - I

- 1 mean, that's the point at which I started taking note.
- 2 Q. Did you know, for instance, that the Lower Murray
3 Aboriginal Heritage Committee had, in March of 1994,
4 threatened a Mabo claim in respect of Hindmarsh Island.
- 5 A. No, I don't believe I did.
- 6 COMSR
- 7 Q. I take it, from what you are saying, it really wasn't a
8 matter of extreme interest to you.
- 9 A. No, it wasn't, no. I mean, yes, I was just focussed
10 on completely different things.
- 11 XN
- 12 Q. Did you know, for instance, that some of the occasions
13 or, at least, one of the occasions where Aboriginal
14 protesters gathered, at Graham's Castle for instance, a
15 luncheon was put on by the Friends of Goolwa and
16 Kumarangk for the Aboriginal people.
- 17 A. I didn't.
- 18 Q. You didn't know that. Did you know, at least, Dr
19 Fergie, that the bridge was scheduled to go ahead in,
20 well, for instance, in October of 1993, and, in part, an
21 Aboriginal protest had stopped that.
- 22 A. No, I did not. At least I don't recall that I did.
- 23 Q. Did you know, for instance, that the bridge was again
24 scheduled to commence, or construction work to commence,
25 in respect of it in May.
- 26 A. No.
- 27 Q. Of 1994 and the Aboriginal protest, amongst other
28 things, secured the stoppage of it.
- 29 OBJECTION Ms Pykes objects.
- 30 MS PYKE: I just wonder what the relevance of this
31 is?
- 32 MR SMITH: It will all be unfolded in a moment.
- 33 MS PYKE: Perhaps then we can get to it.
- 34 COMSR: I think the witness has indicated that
35 she really wasn't all that interested in the matters
36 concerning the bridge at this stage.
- 37 MR SMITH: Can I pursue this? I can indicate to
38 you it has a point.

1 XN

2 Q. Did you know that the bridge construction was
3 getting - was about to get under way and was stopped
4 again in May, in part, because of Aboriginal protests.

5 A. I certainly recollect the Minister authorising and the
6 kafuffle and I remember this is going to cause, you
7 know -

8 Q. Did you know that the Lower Murray Aboriginal Heritage
9 Committee, was at the focus of the protests, from
10 October 1993 and onward.

11 A. No, I didn't.

12 Q. Did you know that the Ngarrindjeri action group, were in
13 support of the protests.

14 A. At what point?

15 Q. Well, at least by early 1994.

16 A. No, I don't believe so. I don't think I knew they
17 existed.

18 Q. Did you realize that, in the course of your
19 investigations, that there were joint meetings, between
20 Aboriginal protesters and, in particular, the Lower
21 Murray Aboriginal Heritage Committee and the Friends of
22 Goolwa and Kumarangk who were impracticably opposed to
23 the bridge.

24 A. I would have - I would have noticed on the television
25 that there were white people as well.

26 Q. As an academic and as an expert reporter, you would
27 appreciate that these politically confronting issues, if
28 you accept, assume that the proposition is as I am
29 putting to you, they have a habit of, shall I say,
30 distorting the truth, or provide -

31 OBJECTION Ms Pyke objects.

32 MS PYKE: What does my friend mean by that? Who
33 is distorting the truth? They have a habit of
34 distorting whose truth?

35 XN

36 Q. Dr Fergie, do you take the view, that those things have
37 to be taken into account, by a person such as you
38 reporting in this context.

- 1 A. Clearly in a broader context you would take that into
2 account. I think the point is, I had a very narrow time
3 scale. My brief was, in effect, to answer the questions
4 set by the Act. What I had to ask myself was, whether,
5 in my judgment, this was an Aboriginal tradition, and
6 this was an area of significance according to Aboriginal
7 tradition.
- 8 COMSR
- 9 Q. Is that on the information as conveyed to you.
- 10 A. Yes, that's right. And I guess, I mean, I don't know
11 where Mr Smith is going but, it seems to me that, in
12 matters such as this, you don't expect all Ngarrindjeri
13 people, for example, to know what the question is about.
14 It seems to me, one of the questions you have to address
15 yourself is, in a sense, your trust of the person from
16 whom you are getting that information.
- 17 XN
- 18 Q. My suggestion merely is this, confrontational issues,
19 such as existed down at Hindmarsh Island at the time you
20 were reporting, are capable of, at least, of distorting,
21 if you like, the information you get. That's the point
22 of my question. Would you recognise that.
- 23 A. What I would say is that, there are social contexts for
24 all human action. There are social contexts for all
25 human knowledge. The question is, does that then make
26 them authentic or unauthentic?
- 27 Q. All I am asking you is -
- 28 A. Your question is you are addressing me, it is not a
29 question, it seems to me, that I can answer.
- 30 COMSR
- 31 Q. Are they matters that you would concern yourself with
32 when you were preparing it.
- 33 A. Normally I am very interested in issues of the politics
34 of knowledge and so on. My normal interests are not
35 what was being addressed here in that sense. I had a
36 very short period of time to do as good an assessment
37 as I possibly could, under the terms of an Act and I
38 sought do so. That precluded me following a whole lot

1 of things that I might otherwise have liked to have done
2 and indeed, might in the future like to do in relation
3 to this case.

4 Q. I gather, from what you put, it is, you think, the
5 criticism of your report is bounded on some wrong
6 assumptions, as to the ambit of the report.

7 A. The ambit of the report and what, in fact, I am talking
8 about in the report, there has been a fundamental
9 misunderstanding, a misinterpretation of particular
10 words in my report and what the association that they're
11 purported to make between a model of culture which at no
12 point I am proposing Ngarrindjeri have. So I think
13 also, the other dimension of the critique - so people
14 have assumed that I am doing, you know, the kind of
15 consultancy that you would do, for example, for a land
16 claim or that I might do in a normal ethnographic
17 context. I didn't see myself - it wasn't possible to do
18 such a study. And, it was only possible - the Act only
19 permits, in a sense, the Act delineates what is possible
20 here, the tardiness of my appointment delineated that
21 further. That is what I am really trying to say. That
22 a large number of critiques have to do with; A. a
23 misunderstanding of what I was saying, and B. what is
24 required, what kind of assessment is the minimum
25 required for this Act.

26 XN

27 Q. That is all by-the-by in a sense, because you say your
28 assessment is quite correct, don't you.

29 A. What I have said - no. What I would say is, I have
30 watched, that I have continued my research since this
31 process was begun. That I have watched the course of
32 this Commission with, you know, a high level of
33 attention. That I have heard the critiques of my
34 report, that I don't - I haven't heard anything yet
35 which, in fact, leads me to the conclusion and I have
36 been quite open to it, that my initial judgment was
37 incorrect. I think that we have seen a whole series
38 of other difficult meanings of the Ngarrindjeri culture

1 come forward here, but having thought about them in some
2 detail I don't believe that they give me cause to say -
3 and I would say if I felt it - that I was wrong. I am
4 quite happy to say that I wrote a report under
5 incredible constraints. That I did it in an incredible
6 time scale. That what I was able to assess was limited.

7 Q. You don't accept any deficiencies in your report.

8 A. Yes, I do.

9 Q. What deficiencies do you recognise.

10 A. I think I haven't made as clear - I haven't made the
11 links between my assessment and my recommendations as
12 clearly as I would like to have.

13 COMSR: Are we likely to get through Dr
14 Fergie's evidence before lunch time?

15 MR SMITH: I will take Dr Fergie through the other
16 parts of your report in summary and then I think I will
17 finish my examination. I think Ms Pyke ought to be
18 given - I don't want to cover ground that Ms Pyke will;
19 the critique of Dr Fergie's report. I will let Ms
20 Pyke step Dr Fergie through that area, rather than me do
21 that.

22 MS PYKE: I missed that. Can you just tell me
23 what is proposed?

24 MR SMITH: I am concluding my examination as
25 quickly as possible.

26 COMSR: The time scale within which we might
27 be -

28 XN

29 Q. I take you to p.49 of your report - your statement,
30 p.49. I don't intend to take you into in it in detail.
31 But, you there address a number of thrusts of criticism
32 that have come out of the evidence thus far. That's
33 what you are doing, isn't it.

34 A. Yes.

35 Q. For instance, you address there at p.49, the criticism
36 that your report was not comprehensive enough. Then, on
37 p.51, the criticism, that you relied, essentially, on a
38 single informant.

1 A. Yes.

2 Q. I take it from what you said earlier that, essentially,
3 you did, in part at least, rely on one prime informant

4 A. Absolutely.

5 Q. But, you make the point, that there is support elsewhere
6 for your position. Is that what you are do there.

7 A. Yes and I think there is a difference between what I
8 would have liked to have done and what I was able to do
9 and whether what I was able to do I believed was
10 sufficient and I did for the purpose that I was writing
11 my report.

12 Q. You there deal with the representativeness of the group
13 again. You have heard the evidence of the dissident
14 ladies in this Commission.

15 A. I have.

16 Q. Did that give you any concern, bearing in mind that you
17 have expressed confidence that you were dealing with a
18 representative group.

19 A. What I would say is that, the group that I dealt with,
20 in a sense, was a group that was certainly, on the one
21 hand, presented to me as representative. And what was
22 also very clear is that, they represented a group of
23 Ngarrindjeri people, as it were, who stood for them.
24 For example, Jean Rankine, for example, Muriel Van Der
25 Byl, we could go through. In other words that, in a
26 sense, those women were not simply 35 women talking on
27 their own account, but they are women who, in a sense,
28 had other women standing behind them. Now, whether we
29 had the diversity in - it is clear that we did not have
30 at that meeting, the diversity of opinion, which may or
31 may not, at that moment, have existed amongst the
32 Ngarrindjeri community. Certainly we did not have a
33 group that represents what we now know to be the
34 diversity of that opinion on this matter. I accept
35 that.

36 Q. What if you had heard then -

37 COMSR: I don't know if the witness had
38 finished.

1 XN

2 Q. Can I interrupt you on that topic and you can give the
3 balance of that answer afterwards. If you had heard,
4 say, in June, as you were preparing your report, from
5 people like Bertha Gollan, Dulcie Wilson, to the extent
6 that they had given evidence here, would that have
7 affected your views.

8 A. There is no doubt I would have had to consider it,
9 absolutely no doubt at all. The point, that I would
10 have had to come to and, you know, this is a
11 hypothetical and I don't know how I would answer it,
12 but, the point I would have had to have come to is, did
13 one set of women's lack of knowledge - and I was
14 surrounded, in fact, by women who hadn't known until
15 June 1994, was that of itself a confirmation.

16 Q. In fact 30 of them.

17 A. I think what Mr Smith doesn't understand is that, in a
18 sense, knowledge in Aboriginal culture, isn't a colony
19 of knowledge. There is a good lot of literature, in
20 understanding the knowledge and understanding the
21 literature of knowledge as an economy of knowledge. So
22 that, whereas in our culture and there is a really
23 interesting recent argument that has just come out in
24 the latest version of the Royal Anthhropological Society
25 of Great Britain's newsletter which in fact talks about
26 the management of knowledge and the way in which, in
27 our culture, there is a presumption that knowledge is
28 generally known and that it is a kind of a
29 egalitarian view of knowledge. There are other
30 cultures, and Aboriginal cultures would be one of these
31 where, in a sense, it is antilogous knowledge, to have
32 value must be restricted and is restricted and the
33 point for Elders is, in a sense, to maintain, as it
34 were, the high value of that knowledge by keeping it
35 very restricted. And yet, in a sense, unless you
36 transmit it you don't get that value. So, there is a
37 recognition that you have a small number of people, who
38 hold and have the right to speak knowledge that they

1 have the right to transmit it. That they transmit it.
2 It is like surgeons in, you know, to become - we all
3 know that - well maybe just speaking metaphorically
4 that, specialists in the medical profession in Australia
5 don't let everybody in because, it is in their interests
6 to maintain - it is not a very good point, but, there
7 are contexts in which maintaining a restriction around
8 knowledge and a depthness pays. Aboriginal culture is
9 the same. It pays, in fact, to maintain a restricted
10 number of people with knowledge. If Mr Smith wants to
11 imply that, the fact that lots of people don't know
12 that restrictive knowledge, means that it cannot exist,
13 it doesn't follow in any logic at all in this culture.
14 So, the problem I would have had is, not these people
15 don't know, therefore this cannot be, but, might these
16 people be likely to know. And, from the evidence that I
17 have heard, these are not people who would be likely to
18 have known, the most likely women to have known, with
19 all respect to them, and, with all respect to, I think,
20 the sincerity of their beliefs, I don't think what we
21 are seeing here is people with malicious intent. What
22 we're seeing in this Royal Commission is people who
23 genuinely hold the positions they have and women who are
24 genuinely hurt. But, I think, from a great deal those
25 women have said, they have not, in a sense, been in a
26 position and be likely to have that knowledge
27 transmitted. Because the other thing that comes through
28 in the literature very strongly, is that, in a sense,
29 the people who have received this specialist's knowledge
30 have indicated some and been recognised as having a
31 special interest and it seems to me, one of the very
32 particular special interests and being in the right
33 place at the right time and having that knowledge
34 transmitted to them. Whilst some of the women - we have
35 seen the dissident women, have been in what might appear
36 to be the right place at the right time, it seems to me
37 that, sorry, who have had the interest, what I think
38 they haven't had is been in the right place at the

1 right time. We have a series of combinations. I am
2 just saying, I have listened very carefully to those
3 women and it seems to me that, you know, it is a very
4 sad thing they don't know, but I don't think it is in
5 in any logical sense, just confirms the fact
6 that a small number of women in a restricted - what is a
7 specialist domain, who had that knowledge fundamentally,
8 in a sense, that related to a specialist amount of
9 practice and knowledge, transmitted to them.
10 CONTINUED

1 Q. What then is the importance of ensuring you have got a
2 representative group.

3 A. As I said before, it is a question of whether there was
4 a significant boycott, in effect. And what would have
5 suggested to me that I was dealing with a fabrication
6 was that, in some respect or another, that people were
7 significantly boycotting this meeting. And I got no
8 suggestion of that.

9 Q. But that would have been an academic consideration,
10 given your explanation of the way that - in theory, you
11 could have had one informant, couldn't you. What was
12 the importance of having support for that one informant.

13 A. Because, in terms of understanding tradition under the
14 Act, the Act, in fact, implies that you have to
15 understand that - I haven't got the Act with me, but
16 this is my layperson's thing. That it had to be
17 significant to a group of Aboriginal people. Okay. So,
18 under the Act -

19 Q. Where did that come from.

20 A. It is the -
21 COMSR

22 Q. Would you like access to a copy.

23 A. Yes.
24 XN

25 Q. To be a tradition, it -
26 COMSR

27 Q. Which Act are you referring to.

28 A. The Federal one.

29 Q. Looking at the folder, now before you, it is towards the
30 back. But I take it it was your understanding of what
31 was in the Act that you are referring to.

32 A. Yes, look, I have to say immediately I am no lawyer.
33 So, this is an anthropological understanding of that
34 Act.

35 XN

36 Q. It is p.2 of the Act, the definition of Aboriginal
37 tradition.

38 A. Yes, and it says `Observations, customs and beliefs of

1 Aboriginals generally or of a particular community or
2 group of Aboriginal people.' And I wanted to see, in
3 effect, whether this was a belief of a group of people.
4 And that made it - it meant that it was not entirely
5 inconsistent that, in a sense, the tradition was held,
6 as it were, by a single informant, but accepted and
7 believed in by a broader group, it seemed to me in my
8 view was of relevance to my understanding of the Act and
9 what was my job.

10 XN

11 Q. Can I suggest to you that that has the capacity of
12 creating a problem, doesn't it. If you have got an
13 informant supported by 34 people, on the one hand, and
14 another group of 15 or 20 women who say that's a lot of
15 nonsense.

16 A. No, it is no problem at all.

17 Q. Isn't it.

18 A. In fact, we will progressively see more and more of this
19 as native title goes on. That, in a sense, you have
20 differential knowledge about different matters coming
21 from very particular positions in a kinship structure
22 and a political structure who have an entirely different
23 understanding of things. It is very well-documented in
24 the literature that has emerged, particularly in the
25 context of native title. There have been a number of
26 applications under the Aboriginal & Torres Strait
27 Islander studies on this very matter about, as it were,
28 conflicting perspectives on the same sort of thing by
29 Aboriginal groups. But I don't see this as being out of
30 the ordinary and this is actually precisely an
31 expectable thing. It is an incredibly sad thing that it
32 has got to this forum, but it is not unprecedented in
33 the literature or in anthropological terms.

34 Q. This is a dissident group of the same people, isn't it.

35 A. That's correct. Absolutely the same.

36 ADJOURNED 1 P.M.

1 RESUMING 2.15 P.M.

2 Q. I am at p.51 of your statement and the topic of
3 representativeness. You made the point about Doreen
4 Kartinyeri.

5 A. I am just finding it.

6 Q. Could you tell the Commissioner why Doreen Kartinyeri is
7 in any better position from a genealogy point of view
8 than, say, some of the dissident ladies in terms of
9 receiving this secret women's knowledge.

10 A. I haven't proposed that she is.

11 Q. No, but you have made the point to us, haven't you, that
12 Doreen Kartinyeri has had this information conveyed to
13 her by her forebears and she names them. My question to
14 you is, given what you know about custodians of such
15 information, is there any structure that indicates why
16 someone should be chosen. Why is it that some of these
17 other women -

18 A. Yes, I think what is very clear from the literature is
19 that, in a sense, it is the indication of interest and
20 appreciation that is the critical matter. If you look
21 at Berndt and Berndt and you look at, for example,
22 Albert Karloan who, in fact, talks about how it was that
23 he came to, in fact, learn stuff about being a putari
24 from his father. Clearly there was a genealogy
25 relationship between he and his father. At the same
26 time, Berndt and Berndt make quite clear that he had
27 demonstrated an interest in these matters. That his
28 father had noted that interest and then asked him
29 whether he wanted to learn more and that Albert Karloan
30 responded affirmatively. So, that is one of a number of
31 examples in Berndt and Berndt and the literature
32 generally. Wherein, in effect - and it wouldn't hold
33 for all knowledge, but in relation to this knowledge,
34 this kind of knowledge, there is no proposition that it
35 is based on genealogical - that one qualifies to learn
36 it because of genealogical links per se. But, in fact,
37 much more crucial is a demonstration of active interest
38 in learning that knowledge and learning - and if you

1 also note the Berndts talk about this kind of knowledge
2 as an apprenticeship. So that, in fact, you actually
3 sit down and in a focused way are taught by somebody who
4 is already an adept in these things. And, in a sense,
5 that is a - it is that adept's point of view that is
6 critical, rather than necessarily a genealogical
7 relationship.

8 COMSR

9 Q. Do you learn that, then, by process of accumulation, or
10 is it all given to you at the one -

11 A. No, you would learn it as a process of accumulation,
12 there is no doubt.

13 Q. So, your knowledge grows the more skilled and
14 experienced you become.

15 A. Yes, and what I would suggest is, what I would suspect
16 is that, in fact, more is revealed to you as, in a
17 sense, you demonstrate your capacity to learn more, to
18 make more sense. In other words, you may be told
19 information, but it may not be sensible to you in the
20 first hearing and it is a question of, in fact,
21 demonstrating that you have, in a sense, mastered the
22 premises, that you would actually have more unfolded to
23 you, yes, I think that would be the case.

24 XN

25 Q. Do you take the view from your investigations into this
26 question of tradition that this has recently evolved, or
27 do you date this back to a long-held belief by these
28 women.

29 A. I don't date it. What I can clearly say is that these
30 women say that they actually got it from ascending
31 generations. That they understand it, in a sense, as
32 something that has come to them from before. So, I
33 don't think it would be possible ever except in quite
34 peculiar historical circumstances where the beginnings
35 of something happened by chance to be documented to be
36 able to do that. What you can do is to explore whether
37 or not your informants understand it to be so. And
38 whilst the Act in this circumstance didn't require there

1 be any antiquity, what I would say is that my
2 informants, in a sense, understood it to be something
3 that had been handed down through the generations. And
4 Doreen could name those antecedents of her - you know,
5 her grandparental generation who had given that
6 information to her. So dating isn't a task I would
7 undertake, unless it was possible from some very
8 peculiar historical circumstances to do it. The
9 critical thing anthropologically is not the dating of
10 that, but the understanding that people have of it
11 coming from before.

12 Q. Do you say no antiquity is necessarily required.

13 A. By the Act.

14 Q. Which Act.

15 A. The Federal Act.

16 Q. You don't say inherent in the word tradition is some
17 antiquity.

18 A. I think there are several ways you can understand that
19 word and in a strict definition by the Act I don't think
20 the Act does demand the demonstration of antiquity. I
21 think an everyday understanding of that word would have
22 a sense of it being handed down by generations. And, in
23 my view, it is at that level, that age. That that
24 information had come from preceding generations.

25 Q. Going to p.54 of your statement, the heading there is
26 `Why has there been no observation of practices of the
27 observance of taboos on Hindmarsh Island?' What are you
28 saying there exactly. Could you explain that to us.

29 A. Yes, I am responding to a critique basically. What I am
30 saying there is that there are at least two if not three
31 aspects to my response to that. The first is that the
32 Hindmarsh Island area, as in fact Dr Clarke has said in
33 his own thesis, is an area where there is a gap in the
34 literature in the period immediately after contact. So,
35 what we don't have at any level is much record of what
36 was happening in that area, at that time, on the one
37 hand. On the other hand, what I am also saying is that,
38 even where people maintain contact with a place - and

1 Raukkan is an example - there is a suggestion in the
2 literature, in fact, in Faye Gale's thesis, that the
3 area that Raukkan is built on is built on a ceremonial
4 site. Now, the witnesses, the proponent women who came
5 forward in this Commission, so as far as I could tell,
6 were unaware -

7 Q. The dissident women, you mean.

8 A. Yes, the women who have appeared before the Commission
9 didn't appear to have any knowledge that there was
10 anything in particular about that site. So, in a sense,
11 their responses to that demonstrate that in any case,
12 even if people have a continuous association with a
13 place as people have in terms of Raukkan, and there
14 appears to have been some kind of significance to that
15 site before contact, that they are not aware of it in
16 the end anyway. So, what I am really saying is it is an
17 issue to be considered, but it seems to me it is not a
18 definitive critique. That we also are aware from their
19 evidence, it seems to me, that people were not
20 apparently going back and forward to Hindmarsh Island,
21 so that, in a sense, the tradition of a taboo would be
22 recalled. And in any case it seems to me that the
23 logical connection between the significance of a site
24 and the assumption that it is going to have a taboo
25 associated with it is actually - has no necessity.
26 There is no logical reason why a site shouldn't have
27 significance in knowledge, but necessarily have taboos
28 in practice. So, I think we don't know if there were
29 specific taboos in relation to this specific knowledge.
30 But, at the same time - on the one hand, at the same
31 time, it seems to me that even were there to have been
32 such taboos, the experience of - in the Lower Murray
33 would suggest that the maintenance of those taboos and
34 the memory of those taboos might not have continued.
35 That doesn't in and of itself negate the transmission of
36 the knowledge. The knowledge about the significance of
37 an area. I think - let me expand. It seems to me that
38 there has been a set of assumptions in that brought to

- 1 bear in this case. One of them is that a significant
2 area is a sacred site in the classic way in which that
3 term has been used most particularly in the Northern
4 Territory. I don't see that that follows and in part
5 this question, it seems to me, the issue of taboos and
6 taboos in practice actually has origins in an assumption
7 that the significance of this area is like a sacred site
8 in the Northern Territory. In a sense, it is the same
9 kind of false assumption like the assumption that I have
10 been saying secret sacred women's business is like that
11 found in the western desert, for example.
- 12 Q. At p.55 onward you deal with the other criticism. You
13 head it up 'If it is not in the literature it must be a
14 hoax.'
- 15 A. Yes.
- 16 Q. But, in fact, what has been suggested by the evidence in
17 this Commission is that, is it not, there is no support
18 in the literature for the notion of sacred women's
19 business on Hindmarsh Island. Do you accept that that
20 is the thrust of the evidence from, say, Philip Clarke
21 and Philip Jones.
- 22 A. Do I accept that he is right, or do I accept that is
23 what he is expressing?
- 24 Q. That that is the thrust of his evidence.
- 25 A. Yes, I accept that is the thrust of his evidence.
- 26 Q. You argue from pp.55 onward that in the argued senses
27 the literature does leave room for that.
- 28 A. It seems to me that - I think I conclude by saying that
29 the material that I gathered has the capacity to
30 elaborate themes that are already in the literature. I
31 see it as resonance with a whole - I think it is about -
32 really the issue is how you read the literature and what
33 you read into it. And it seems to me that if in a sense
34 - you know, it may well be that if, in fact, people had
35 had the kind of information they had they would have
36 read the literature slightly differently. And clearly I
37 am reading it slightly differently with that as my
38 background. And it seems to me that there is a very

1 good case to be made that what was told to me is
2 well-supported within the literature, although not
3 directly replicated. So, there are good grounds within
4 the literature for suggesting that.

5 COMSR

6 Q. Are you saying there are inferences that can be drawn
7 from what appears in the literature.

8 A. Absolutely. And that, in a sense, you can build an
9 argument that, in effect, says here is the space in
10 which such knowledge would exist and here are other
11 occasions that support what has been proposed. And, for
12 me, there is a very clear case to be made with the
13 literature in that way.

14 CONTINUED

- 1 Q. Is it a clear case for the existence of women's
2 business, for want of a better phrase, or is it a clear
3 case for the existence of women's business in relation
4 to the Goolwa, Murray Mouth, Hindmarsh Island area.
- 5 A. Both, I think. What was told to me actually has - is
6 clearly, in a sense, given context by the literature.
7 The literature actually acknowledges what we might
8 colloquially call women's business, which is ceremonial
9 and knowledge practices that have to do with women and
10 that women do. That's clearly already in the
11 literature. That's not in issue.
- 12 Q. But is that knowledge restricted to women only.
- 13 A. In respect of the sort of matters that a female putari
14 is possibly concerned with, that's the female doctor,
15 that's clear. There are issues that relate specifically
16 to women.
- 17 Q. Do we know enough about female putari to know whether
18 you serve a lengthy apprenticeship, as it were, or was
19 it -
- 20 A. No, we don't know enough. I think the inference is that
21 people serve a significant apprenticeship, at the very
22 least. I mean, the indications we have are not about
23 female putari but about putari in general. I think it
24 is not insignificant that we don't have details about
25 female putari in the same way as we do about male.
- 26 XN
- 27 Q. This significant aspect of Ngarrindjeri culture, that
28 you agree you've identified in your report, can you
29 explain why at least the fact of it hasn't been
30 communicated to previous chroniclers of this culture.
- 31 A. It depends how you understand Betty Fisher's tapes, I
32 suppose.
- 33 Q. We don't know. How do you understand Betty Fisher's
34 tapes.
- 35 A. I think there are some dimensions to Betty Fisher's
36 re-telling of how she suggests Rebecca Wilson told her
37 that have remarkable resonance with my experience of
38 Doreen Kartinyeri telling me. I think that, insofar as

- 1 Betty elaborated what was told to her and the
2 literature, I am eager to read her notes.
- 3 Q. Yes, we are too. I am sure the next inquiry that comes
4 to pass will be interested in that too. Put Betty
5 Fisher's notes aside for a moment. Could you explain
6 why such a significant aspect of Ngarrindjeri culture
7 has not even in fact been acknowledged in the previous
8 literature.
- 9 A. Okay, I think - yes, this comes back to the thrust:
10 It's not in the literature, can it be a hoax - must it
11 be a hoax?
- 12 Q. Forget about being a hoax for a minute. That is a bit
13 emotive, isn't it.
- 14 A. Okay.
- 15 Q. My question is purely - I want you to give an academic's
16 answer just to that question.
- 17 A. What I said in my statement is we actually have to say
18 to ourselves: under what conditions would people
19 disclose information that they understand to be
20 restricted? Under what conditions? My view is that,
21 whilst there is quite a large literature in this area,
22 it is not a literature of a kind, and it is not
23 undertaken in a way and by people who are of the kind to
24 whom such would be disclosed. Now, that is not - with
25 one big exception, and that's Catherine Berndt, because
26 it seems to me that Catherine Berndt might well have
27 been somebody that that material would have been
28 disclosed to. I don't believe Alison Harvey, on an
29 afternoon under a tree with Pinkie Mack, is in any way
30 the kind of context in which people would - with all
31 respect to Alison Harvey - disclose highly restricted
32 information. I don't believe that that's a context in
33 which that would happen. I certainly don't believe
34 George Taplin would either have been appraised, or if he
35 had been, even have a sense of the significance of the
36 kind of sense of the stuff we are talking about.
- 37 Q. What places you in a better position, for instance, than
38 Catherine Berndt, and Alison Harvey for that matter.

- 1 A. I think these things are actually, you know, kind of
2 idiosyncratic, but I would say there are two crucial
3 things that are different between me and Catherine
4 Berndt and Alison Harvey. The one is that I am not in
5 my 20s and I'm not childless, on the one hand, but I
6 think, as importantly, if not more importantly, I have a
7 longstanding relationship of trust with the key
8 informant who, in a sense - one of the reasons I think
9 we have had lots of discussion in this commission about
10 what's ethnography - and I'm sorry to go over that
11 ground again - but I think one of the reasons - what
12 ethnography is, in a generally understood sense of that
13 word, is long term intensive living in the culture. And
14 the reason that it's so important is because the field
15 worker develops with the people they work with a level
16 of trust, and a level of - in an assessment of each
17 other, and they also have another dimension to their
18 bow, which is that an ethnographer, over time, is able
19 to see what people don't say. The point I actually want
20 to focus on here is the issue of trust, and the one
21 thing I had going into this that others haven't had, is
22 a relationship of trust and, most particularly, trust
23 built out of somebody else's experience of my dealings
24 with confidential material. In other words, Doreen
25 Kartinyeri had a sense of how I dealt with confidential
26 material based on discussions we had had about how I
27 would deal with those matters in relation to my Lake
28 Eyre Basin material, and I think that that's quite a
29 significant fact. I suspect, and I've said it in a
30 variety of contexts, I do not believe, if Doreen
31 Kartinyeri had not had that level have trust in me, that
32 she would have told me what she did. And if she had not
33 had that level of experience of me in my role as
34 anthropologist, she wouldn't have trusted me.
- 35 Q. Dr Philip Clarke gave evidence of conversation he had
36 with you on 11 July 1994.
- 37 A. That's right. Insofar as - yes, I don't know if that's
38 the date, but if he says that, I quite happily accept that.

- 1 Q. You told us that, initially at least, you tried to
2 contact Dr Clarke.
- 3 A. Yes.
- 4 Q. You wouldn't suggest that he was absolutely unobtainable
5 in the period during which you were preparing this
6 report.
- 7 A. No, I'm certainly not suggesting that. What I am
8 suggesting is that I was confronted with an incredibly
9 complex task to be achieved in a very short period of
10 time, and I was juggling a whole lot of balls.
- 11 Q. But for somebody with very little experience in the
12 culture of the Ngarrindjeri people, and in particular
13 around Hindmarsh Island, could I suggest to you he would
14 have been your first port of call, Dr Clarke.
- 15 A. No, because he's a man. I mean, clearly he was somebody
16 who I had a priority to talk to and I wanted to talk to.
17 As it happened, one of the things - I wanted to talk to
18 him not simply about the general cultural terrain of
19 this area, in particular, I wanted to talk to him about
20 his mother-in-law, but I think -
- 21 Q. But he ended up recommending to you some elderly ladies
22 that you could well have conferred with.
- 23 A. Certainly.
- 24 Q. I think Dulcie Wilson and Bertha Gollan were two of
25 those, weren't they.
- 26 A. Certainly. It is not a problem. The real problem -
- 27 Q. Could you answer that question. Did he recommend that
28 you speak to people such as Dulcie Wilson, Bertha
29 Gollan.
- 30 A. I don't recall that they were the names. I know that he
31 suggested people for me to talk to. The point is the
32 point at which he made those suggestions to me was the
33 point at which my brief had finished. I had actually
34 concluded my report. It was too late for me to do it,
35 and, in any case, to be perfectly frank, the chance that
36 I would have had of two women, who didn't know me from a
37 bar of soap - it would have entailed that I visit them
38 to actually set up the kind of contact on which I might

- 1 have had some meaningful discussions - it seems to me
2 was not a high priority given the kind of constraints I
3 was working with and what I needed to produce.
- 4 Q. Can you tell us what names he gave you, whether they
5 turned out to be amongst the dissident ladies.
- 6 A. No, I can't tell you what names he told me. I mean, you
7 have to understand I'd finished my report. As far as I
8 was concerned, and oh that it had been the case, I
9 understood my involvement in this matter to be over. So
10 that, although I recognised that -
- 11 Q. You said you had an ongoing interest in ensuring that
12 you could stand behind your report.
- 13 A. Yes, and it developed with some vigour, of course, as
14 soon as it became a matter in the sort of public domain.
15 I mean, you have to understand, I have a day job and
16 it's a fairly demanding one anyway.
- 17 Q. Did you agree with Philip Clarke that there was some
18 recent elements to the cultural background to the
19 women's business on the island.
- 20 A. Not in the way that he put them to me. In other words -
- 21 Q. In what way did you discuss it with him then.
- 22 A. My recollection is that he said that in relation to
23 Doreen Kartinyeri, and in that respect I do not believe
24 that I agreed with him, and I -
- 25 Q. Did he elaborate to you about what he meant by 'recent
26 elements' or whatever words he used.
- 27 A. My recollection is that Dr Clarke, who was then Mr
28 Clarke, said to me that he could - that he knew
29 particular conversations when particular issues had
30 arisen.
- 31 Q. Were you interested to know what that was.
- 32 A. I was very disturbed to hear that.
- 33 Q. Did you say to him words to the effect that as long as
34 35 women believed in the secret business now it had a
35 reality which couldn't be ignored.
- 36 A. No. I used the idea of the 35 women as a way of talking
37 about the notion of tradition under this Act. So I
38 certainly - I did refer to 35 women, but I didn't refer

- 1 to it in that way. It was about: under what
2 circumstances can we talk about tradition in a
3 contemporary sense? And that was with full
4 acknowledgment of the literature that he referred to.
- 5 Q. You talked about whether it was a site-related matter,
6 didn't you.
- 7 A. I don't recall.
- 8 Q. Did you not say to him, in the end, that it wasn't a
9 site-related matter, but it related to the fact that the
10 whole island should not be connected to the mainland.
- 11 A. Sorry, yes. That relates to what I was talking about
12 before, about the relationship between a site in the
13 sense that's understood mostly in the context of the
14 Northern Territory, and a notion of a significant area
15 under this Act. Yes, that's true.
- 16 Q. He claims to have given you a long list of male and
17 female researchers who had worked in the Lower River
18 Murray area.
- 19 A. Yes.
- 20 Q. He did do that, did he not.
- 21 A. I don't know if it was a long list. He referred to
22 people who had worked there.
- 23 Q. Did you reply to Philip Clarke, in the context of him
24 providing you with this list of researchers, that it
25 wasn't crucial to the existence of women's business
26 because none of them had worked within the feminist
27 anthropological tradition.
- 28 A. No, I did not.
- 29 Q. Was there a discussion between you about the feminist
30 anthropological tradition.
- 31 A. No, and the reason I know that is because that's a
32 phrase I would never use. What we would have had a
33 discussion about is the problem of male bias in the
34 literature and, in a sense, what we were just talking
35 about a little while ago, about how do you evaluate, in
36 a sense, the literature against the possibility that
37 somebody might have known this before, and, yes, we did
38 have a discussion on male bias.

1 COMSR

2 Q. Did Dr Clarke use that phrase, 'feminist anthropological
3 tradition'.

4 A. Clearly he does. I don't know if he did -

5 Q. I am just wondering if the phrase could have crept into
6 the conversation in that way.

7 A. It might have done, but I certainly wouldn't express the
8 issue of male bias in those terms.

9 XN

10 Q. I think the balance of your statement then is really a
11 discussion with particular reference to sections of the
12 Berndts' works, of the way in which you argue that the
13 existing literature does not, as it were, undermine an
14 assertion of secret women's business on Hindmarsh
15 Island.

16 A. Clearly the existing literature gives you pause for a
17 question. I guess what I am taking issue with is the
18 suggestion that this is a literature that is so massive
19 that it couldn't possibly have missed it. I think there
20 is two issues to that, one of which comes out in this
21 argument, which is addressing the question of under what
22 circumstance would somebody have had this disclosed to
23 them, and would they have recognised it. The other, I
24 think, is just a very basic issue of the kind of
25 acknowledgment that a researcher gives to the
26 possibility that their informants may tell them
27 something new. In short, it strikes me that there is no
28 point to the kind of research that I do if something has
29 to be in the literature for me to acknowledge its
30 authenticity, and, in that sense, it seems to me that if
31 an Aboriginal person tells me something at face value, I
32 must explore that. That doesn't mean I necessarily
33 believe it, and that in the end it becomes - will
34 necessarily become a key cornerstone of my work. But it
35 seems to me that one of the things that's going on here
36 is that we are having a debate about, in a sense, the
37 authority - two sorts of authority. The authority of
38 Aboriginal people to talk about their culture in the

1 face of an assertion that, if Europeans haven't already
2 got a handle on it in some way or another, it cannot
3 exist. My starting point is different, it seems to me,
4 from the starting point of some other people. My
5 starting point is that if an Aboriginal person tells me
6 that something is from their tradition, that's not to
7 say that I won't look at it in terms of the literature,
8 but I certainly wouldn't deny at face value that it
9 could not possibly exist on the basis of that literature
10 and, most particularly, in the context of a literature
11 like this which is profoundly unethnographic. In other
12 words, it seems to me that the first piece of true
13 ethnography that gets done here is, at best, Mr Philip
14 Clarke's. That, in fact, what the Berndts did in
15 respect of 'A World That Was' is a work of oral history,
16 and that, as they acknowledge, and as Tonkinson
17 continuously acknowledges, they were not measuring what
18 they were told against what they could see people doing.
19 They were actually in my position of being in fact given
20 an account of a set of practices and a set of knowledges
21 which they couldn't, they thought - and I have to
22 quickly say that their view of traditionality is
23 slightly different from mine - but they couldn't measure
24 that against practice either, and they say it throughout
25 their book. And it seems to me that they also give, in
26 a sense, a research priority to that which Aboriginal
27 people say. That is not to say that they don't check
28 and recheck. They are clearly researchers who do that
29 with meticulous care, but I think that if, in this
30 country, we are going to say that Aboriginal people can
31 only have traditions and practices that we know about
32 already for it to have an impact in law or an impact in
33 Australian public life, then my profession might as well
34 go home.

35 Q. One last question. Going back to p.2 of your statement,
36 which is the list of your qualifications, your BA from
37 the University of Papua New Guinea in 1976, what was the
38 major in that BA.

1 A. Anthropology and sociology and history.

2 MR MEYER: I understand I am first cab off the
3 rank.

4 COMSR: I didn't know whether we would be
5 starting the cross-examination of the witness in view of
6 the fact that there is areas that we haven't ruled on.

7 MR MEYER: I might as well have a try. I have to
8 unavoidably go to Sydney tomorrow morning. I will do my
9 best to finish. If I don't, we will make some other
10 arrangements between now and then. I will do my level
11 best to finish, subject to those matters of objection
12 between now and 5 o'clock.

13 COMSR: I take it, in view of time constraints,
14 counsel will not be canvassing matters that I have
15 already got a fair bit on from the witness?

16 MR MEYER: I will do my best not to traverse any
17 matter which I don't think needs some more
18 enlightenment. I don't want any form of reiteration if
19 I can avoid that.

20 CONTINUED

1 CROSS-EXAMINATION BY MR MEYER

2 Q. Is your report an anthropological report as such, or is
3 it an assessment, and if there as difference what is it.

4 A. Okay. An anthropologist might report on any number of
5 matters. My report is a focused assessment of a
6 particular matter in the context of a particular frame
7 of an Act and an application under an Act. An
8 anthropologist might make assessments on any matter of
9 focused issues. They may write a general ethnography
10 which addresses a variety of issues which has no
11 particular external frame like an Act and like an
12 application at issue. That doesn't mean it won't be
13 focused. Its focus will, in fact, be determined by the
14 desires of the researcher and any limits of the way in
15 which their funding is set up or their degree is set up,
16 or something like that.

17 Q. You used words in your report somewhere that one has to
18 be careful not to treat the report for something it
19 doesn't pretend to be.

20 A. That's right.

21 Q. You use words at p.42 like 'Given that I could not hope
22 to do the kind of comprehensive study that I might have
23 considered otherwise'. I take it that you don't put
24 your report forward as being some complete form of piece
25 of research.

26 A. It's a complete assessment.

27 Q. I have trouble, you see, in understanding what you mean
28 by that when you provide the qualifications that you
29 have.

30 A. I think what you need to do then is to, with respect, is
31 to look at the early pages of my report where I try to,
32 in fact, frame what it is I'm trying to assess; and I'm
33 trying to assess women's knowledge. I was briefed to
34 explore women's knowledge in relation to, in a sense,
35 the framing of the Aboriginal and Torres Strait
36 Islanders Heritage Protection Act.

37 Q. Isn't the first step of doing that to try and establish
38 whether what you are being told, in fact, exists.

- 1 A. It exists because you are being told it.
- 2 Q. That is not necessarily so. I have been told lots of
3 untruths in my life that don't exist.
- 4 A. No, you are asking a different question.
- 5 Q. And it doesn't exist. 'I have not got the money',
6 someone tells me and I discover later they have got the
7 money. What I was told wasn't the truth. You have to
8 go and assess whether something is the truth. What I'm
9 putting to you is in your doing this assessment, as you
10 call it, do you assess what you're being told as to
11 whether it's accurate, or do you just accept it.
- 12 A. The terms in which you are asking the question are terms
13 that most anthropologists would take issue with; that,
14 in a sense, belief is not something whose veracity you
15 can determine. I will give you an example. My mother
16 is a very, she is very religious. If I were to say to
17 her 'Look mum, evolution discounts genesis', she would
18 not in any way be swayed in her misbelief. I can't
19 produce that empirical test as a confirmation of her
20 belief. It's not my business to go around finding out
21 what people have as a basis in empirical fact and in
22 what they believe, my business is to explore what people
23 believe.
- 24 Q. It is to find out whether that belief is truly held.
- 25 A. Certainly.
- 26 Q. If you turn to p.65 of your report, in a quotation that
27 you have put in your report from a man called Raymond
28 Firth, he describes what I understand to be the
29 anthropologist's aim or requirement, and I quote the
30 last four lines describing the Berndts: 'Not being
31 satisfied with first impressions or easy answers. Their
32 approach embodies pertinacious pursuit of accuracy and
33 constant checking, which are the hallmark of sound
34 anthropological field research'.
- 35 A. Yes.
- 36 Q. What I wish to suggest to you is that, and this is why I
37 was asking you whether your report is a piece of
38 academic work as a report as such is, as to whether that

- 1 description can be applied to the piece of work that you
2 did.
- 3 A. Yes.
- 4 Q. We need to go and check out then, don't we, the pursuit
5 of accuracy and constant checking that you carried out.
- 6 A. Yes.
- 7 Q. As I understand the evidence, your informant was Doreen
8 Kartinyeri.
- 9 A. My -
- 10 OBJECTION Miss Pyke objects.
- 11 MR MEYER: I'm going to ask the question. If I put
12 something that is wrong, so be it.
- 13 XXN
- 14 Q. My question was quite deliberately put. I deliberately
15 excluded the word 'key informant'. I'm putting to you
16 that Doreen Kartinyeri was your only informant.
- 17 A. You're wrong.
- 18 Q. Mr Smith asked you a number of questions and you said
19 that you didn't have any direct conversation in relation
20 to the subject matter of this secret matter with Connie
21 Roberts; that's right, isn't it.
- 22 A. At what point?
- 23 Q. At any stage. No direct conversation with Connie
24 Roberts at all.
- 25 A. That's not the case.
- 26 Q. Then, when did you have direct conversation about this
27 topic with Connie Roberts.
- 28 A. After my report was submitted.
- 29 Q. That's not going to help us one bit, is it, because -
- 30 OBJECTION Miss Pyke objects to the question being
31 a statement.
- 32 Q. By then, what you are saying in relation to the matter
33 could well be known by other people.
- 34 A. I don't understand what you are saying?
- 35 Q. As at the time when Doreen Kartinyeri stood up at
36 Graham's Castle and described women's business, had you
37 had the opportunity to obtain any such information
38 independently from any other person.

- 1 A. I think your problem is that you don't understand the
2 way in which, in effect, the way in which the meeting
3 conducted itself.
- 4 Q. That is because no-one will tell me, so I have to -
- 5 OBJECTION Miss Pyke objects.
- 6 MISS PYKE: That is not the evidence at all. The
7 witness gave evidence of that. If my friend wants to
8 ask questions, that is fine, but that is not right.
- 9 COMSR: He is attempting to ask the question.
- 10 A. Your premise is that if something is unsaid -
11 XXN
- 12 Q. Are you answering me now.
- 13 A. Yes, I am.
- 14 Q. Good.
- 15 A. Your assumption is that the only material, the only way
16 an informant can know about something is by their saying
17 something to them. And my position is and the position
18 of an enormous number of anthropologists would be that,
19 in fact, informants tell you a great deal both by what
20 they say and what they don't say. There is a wonderful
21 book by Mary Douglas called 'By Implicit Knowledge' -
- 22 Q. I understand what you say -
- 23 OBJECTION Miss Pyke objects on the ground that the
24 witness should be able to finish her
25 answer.
- 26 Q. That silence is golden and can impact a lot of
27 information to you. I want to put these propositions to
28 you. Nobody has told you about any form of secret
29 women's business prior to Doreen speaking publicly at
30 the meeting of 35 women. That is right, isn't it.
- 31 A. That's correct.
- 32 Q. So, any opportunity that you have got of establishing
33 from anybody who was at that meeting independently of
34 Doreen Kartinyeri's version has now gone, hasn't it.
- 35 A. That's so. For the purpose of my report, not since
36 then.
- 37 Q. Whatever somebody might say -
38

1 COMSR

2 Q. You are saying that so far as the other women are
3 concerned, they may have given you some information
4 after your report went in.

5 A. Indeed.

6 XXN

7 Q. The same thing applies for Edith Rigney and Maggie
8 Jacobs.

9 A. In so far as I can recall.

10 Q. In fact, the reality is that nobody gave you any factual
11 information whatsoever about women's business, secret or
12 otherwise, the subject of this matter prior to Doreen
13 Kartinyeri.

14 A. That's so, with the exception of my conversations with
15 Sarah Milera.

16 Q. Sarah Milera, I think you accept, is not a reliable
17 informant.

18 A. I do not accept that.

19 COMSR

20 Q. I think you said that her comments were elliptical and
21 difficult to follow whilst she was, what she was
22 talking about.

23 A. I did, yes.

24 XXN

25 Q. What contact did you have with, in an anthropological
26 sense, Ngarrindjeri people prior to June 1994.

27 A. None in particular.

28 Q. How much notice did you get.

29 A. Except in so far as I worked in the Museum and met the
30 Ngarrindjeri people.

31 Q. How much notice did you get prior to your attending at
32 Graham's Castle; I understand it was a day or so.

33 A. That's right.

34 Q. Prior to listening to Doreen Kartinyeri at the meeting
35 at Graham's Castle, did you have any independent
36 discussion, separate discussion, with her about women's
37 business.

38 A. No, I don't believe so, unless she said - no, I'm sure

- 1 she didn't. The only conversation I had between being
2 engaged in this process and meeting her at the ferry was
3 a conversation in which she rang up to assure me that,
4 yes, I should take this consultancy on.
- 5 Q. Did you have the impression that she was a moving force
6 in relation to this matter even before you went to
7 Goolwa.
- 8 A. I don't believe so.
- 9 Q. She had chosen to contact you, hadn't see.
- 10 A. Mr Wooley had organised for her to contact me.
- 11 Q. She had chosen to contact you.
- 12 A. Yes, but that didn't surprise me in so far as Doreen was
13 one of the few people who were going to be there that I
14 knew. It may be that I knew that she was - well,
15 clearly she rang me. I don't think I had an
16 appreciation of the kind of key role she had in this
17 context until then.
- 18 Q. Did she tell you from whom she had learnt this women's
19 knowledge.
- 20 A. She did.
- 21 Q. Whom did she say.
- 22 A. I need to refresh my mind. I don't think it's here. I
23 believe that, to the best of my recollection at the
24 moment without my notes here, she referred to her
25 Grandmother Sally and her Aunt Rosy, but I'm open to
26 correction.
- 27 Q. Did she also refer to the person we called the daughter
28 of Pinkie Mack.
- 29 A. I don't believe at that stage she did.
- 30 Q. When did she mention the daughter of Pinkie Mack to you.
- 31 A. I'm not clear and I'm unable to answer that with any
32 preciseness at the moment.
- 33 Q. Her sources of information are of crucial importance,
34 aren't they.
- 35 A. No.
- 36 Q. Why not.
- 37 A. They are crucial in the sense that they purport to be in
38 the sense the receiving from an ascending generation.

1 They're also important in respect of, in the general
2 sense of who those women are and how likely they would
3 have been to have known that knowledge.

4 Q. You didn't inquire whether any of them were still alive.

5 A. I didn't. In fact, it may well be that, in fact, things
6 that Doreen had said to me implied they were already
7 dead.

8 Q. May she have deliberately misled you.

9 OBJECTION Miss Pyke objects.

10 COMSR: I don't know that this witness can
11 answer that.

12 MR MEYER: This witness in her profession is
13 skilled at testing, probing and deciding whether what
14 one is told is accurate or not accurate. I understood
15 that to be partly the role of an anthropologist,
16 otherwise I wouldn't have asked the question.

17 WITNESS: It hadn't been in my experience that
18 Doreen -

19 COMSR: Just a moment. Yes, by perhaps testing
20 the information itself, but I don't see that the witness
21 can say whether if there was something misleading that
22 it was deliberate, accidental or otherwise.

23 OBJECTION UPHOLD

24 XXN

25 Q. Pinkie Mack was an important person in terms of
26 anthropological knowledge for the Ngarrindjeri people,
27 wasn't she.

28 A. She was a significant informant to the Berndts.

29 Q. Her daughter held a position of high respect in the
30 Ngarrindjeri community.

31 A. Apparently so.

32 Q. Haven't you, since writing your report, made a
33 sufficient check to ascertain whether or not that is so.

34 A. I think the way in which you express it is not the way
35 which I would. Clearly, the daughter of Pinkie Mack was
36 a well respected Ngarrindjeri woman.

37 Q. Some people have referred to her as being a `Queen' in
38 inverted commas, of the Ngarrindjeri people, haven't

- 1 they.
- 2 A. I haven't heard that.
- 3 Q. Wouldn't she be somebody whom, as an anthropologist, you
4 would have been very keen to have talked to.
- 5 A. Certainly if I had had, you know, a frame in which to do
6 this work that gave me plenty of time to drive around
7 the countryside talking to people, I would clearly have
8 liked to have talked to somebody like that, there is no
9 question.
- 10 Q. It would be quicker to drive to Murray Bridge than it
11 would be to drive to Port Germein, wouldn't it.
- 12 A. I wasn't asked to drive to Murray Bridge. And if you
13 think about when I was, when I did drive to Port
14 Germein, I did so as it were not because I thought it
15 was important to my research task, but I was asked to do
16 so in my role as a facilitator.
- 17 Q. I'm talking about the opportunity to go and get
18 knowledge. You were able to go, you had time to go to
19 the Ngarrindjeri Action Group meeting.
- 20 A. Yes.
- 21 Q. I presume that that took some hours.
- 22 A. No, it took probably about 25 minutes.
- 23 Q. To go to the meeting, attend at the meeting and go home
24 again. 25 minutes.
- 25 A. What I could have assumed, and correctly assumed at the
26 time, was a number of people would be there from the
27 Ngarrindjeri at a meeting. Frankly, I didn't know of
28 the existence of the daughter of Pinkie Mack at the
29 time, so it wasn't a question that arose.
- 30 Q. What I'm suggesting is that not knowing of the
31 existence, in this context not knowing of the existence
32 of the daughter of Pinkie Mack is a really serious
33 omission.
- 34 A. No, I don't think it is. It's really a question of the
35 extent to which other people have to share restricted
36 knowledge for an anthropologist to concede that it
37 exists and to what extent you have to see other people,
38 acknowledge the existence of the restricted knowledge

- 1 for you to be able to say there are a group of people
2 who believe this too.
- 3 Q. When you were told of women's business down at Graham's
4 Castle, it had a geographical context, didn't it.
- 5 A. Could you repeat the question?
- 6 Q. When you were told of women's business at Graham's
7 Castle on, I think, 19 June or the first meeting you
8 went to, it had a geographical context.
- 9 A. Your question is not clear to me?
- 10 Q. I cannot put it very much clearer.
- 11 OBJECTION Miss Pyke objects.
- 12 Q. Every other witness has understood the question that we
13 have asked so far.
- 14 A. The real problem is that the notion of women's business
15 is not an analytic concept that the anthropologist would
16 use. That is a word in every-day speech that can vary,
17 so anybody can read anything into it.
- 18 CONTINUED

- 1 It is not a word that I would normally use and I see it
2 as a very imprecise word.
- 3 Q. Let's avoid the semantics. Whatever it is you were
4 told, about which you can't tell me about, and you can't
5 tell anybody else here about, had a geographical
6 context, didn't it.
- 7 A. Yes.
- 8 Q. And the geographical context is fundamental to whatever
9 it is that you were told.
- 10 A. It is an important dimension.
- 11 Q. Without it you have got a real problem.
- 12 A. No.
- 13 Q. This is like 20 questions. Doreen Kartinyeri has said
14 to Ray Martin and I refer to Exhibit 171A: `Q. At the
15 age of 17 you knew there was women's business on that
16 island.' Doreen Kartinyeri replies, `At the age of 17
17 I was told, because my mother, I lost my mother when I
18 was 10 years old. It is now my girl to tell you what I
19 think your mother would have told you, it was told to
20 me by elder members of my family.' I am reading from
21 - omit the first three, the next half a dozen or so
22 lines on p.2. Do you see those words.
- 23 A. Starting `At the age of 17.'?
- 24 Q. Yes.
- 25 A. Yes.
- 26 Q. Doreen Kartinyeri is agreeing, that she was told, at the
27 age of 17, that there was something, that at least she
28 was happy to call women's business, on that island i.e.
29 Hindmarsh Island, and he had been told that when she was
30 17.
- 31 A. That's what it says here.
- 32 Q. Can we take that as being accurate.
- 33 MS PYKE: The witness is waiting for a question.
- 34 Q. Can we take that as being accurate.
- 35 A. This transcript?
- 36 Q. The `I was told at the age of 17.'
- 37 OBJECTION Ms Pyke objects.
- 38 MS PYKE: What does Mr Meyer mean? Is he asking

- 1 `Can we take the transcript as being accurate?' or `Is
2 that consistent with what she said to you?'
3 XXN
4 Q. Can we take Doreen Kartinyeri's comment, that she was
5 told at the age of 17, as being an accurate comment by
6 Doreen.
7 A. Who could say?
8 MS PYKE: We are getting a bit into the difficulty
9 we flagged this morning, about the contents of what this
10 witness has been told by Doreen Kartinyeri.
11 COMSR: We're not getting into the contents of
12 it. We are just getting to the age.
13 MS PYKE: Presumably to answer that question the
14 witness has to refer to conversations that were
15 confidential.
16 COMSR: There has to be some matters which
17 can be broached. We're not getting into a
18 confidential conversation at this stage, this
19 particular question.
20 MS PYKE: How do we know? Can we ask the witness,
21 `To answer this question do you need to refer to what
22 was said to you?'
23 MR SMITH: Come on.
24 MS PYKE: Not come on.
25 COMSR: The question is not objectionable as it
26 is framed. The witness well knows what she should avoid
27 saying. I mean, the witness is quite perceptive.
28 MS PYKE: I accept that, but all I am getting at
29 is, if this was told to her in the context of a
30 confidential conversation, that raises the very issue.
31 COMSR: No, it is not. This is a conversation
32 that was had on television.
33 MS PYKE: We know that. He is asking the witness
34 to comment.
35 COMSR: This question, in itself, is perfectly
36 unexceptional.
37 COMSR
38 Q. Without explaining why, would you accept that as a

1 a possibly accurate claim.

2 A. It terms of, it seems to me that the age of 17 is
3 consistent with what Doreen said to me. Of course,
4 neither Mr Meyer nor I can determine whether Doreen's
5 memory, in this respect, is absolutely precise. I
6 presume that Doreen has the same sort of memory as if
7 you said to me, you know, 'Deane when did your mother
8 tell you X.' I might say, you know, 'I think I was
9 about 17' or whatever, and, you know, you would have to
10 take me at face value, because unless there is some
11 independent record of this we can't determine at when
12 precisely anybody was told anything. That is clearly
13 Doreen's view at that time and it is consistent with
14 what she said to me.

15 XXN

16 Q. I haven't got a problem, Dr Fergie, as to whether really
17 17 should be 16 or 20. I was merely saying, I was told
18 when I was in my late teens or thereabouts, that's right
19 isn't it.

20 A. Yes.

21 Q. You say that's consistent with what she told you.

22 A. Yes, my understanding, however, would be that, people
23 would, in fact, be getting snippets of this information,
24 that would have begun at a particular time and built and
25 I made the point in my statement that the way in which
26 people, in fact, develop this kind of knowledge, in fact
27 any kind of knowledge, is in a piecemeal kind of a
28 fashion. That you don't go out there, as an
29 Ngarrindjeri woman and do Ngarrindjeri womanhood 101,
30 and even if you did, it would take, in our University,
31 26 weeks to get that. That, in fact, people, in fact,
32 accumulate knowledge and an understanding of knowledge
33 over time, and very importantly, in a piecemeal fashion.

34 Q. What we have from this piece of information, at the age
35 from somewhere around 17, we have got knowledge of
36 there being something that Doreen calls women's
37 business and we have knowledge that it relates to
38 Hindmarsh Island.

- 1 A. Where is the words `women's business' here.
2 Q. In line four.
3 A. I see. So, that section, that's not what Doreen has
4 called it, that's what Ray Martin has called it.
5 Q. Lets not worry about the semantics. Whatever it is, she
6 was ackknowledging that she was being told something
7 that is the subject of this knowledge.
8 A. Yes.
9 Q. And, she was being told it related to Hindmarsh Island.
10 A. As put to her by Ray Martin, yes.
11 Q. She agrees with it.
12 A. Yes.
13 Q. Would you look at Exhibit MFI 204. Can you go to about
14 the fifth para. In that letter, Doreen Kartinyeri says,
15 `It wasn't until recently I learned about the location,
16 the exact places that are referred to.' Is that right.
17 A. Is that what it says are you asking me? Is that what
18 you are asking me?
19 Q. Yes.
20 A. That's what it says.
21 Q. The fourth to last paragraph reads `I have always known
22 about the stories associated with Ramindjeri and
23 Ngarrindjeri women's business, but until recently I
24 didn't know the exact place they referred to.'
25 A. That's what she has written.
26 Q. It is not, you have agreed with me, possible, to know
27 about this notion of secret knowledge or of whatever it
28 is, Doreen uses the words `women's business' before ever
29 this became a public matter, without knowing the place.
30 A. Yes, well, I think you have to ask Doreen what she meant
31 to imply by that sentence. What she has told me what
32 she meant to imply by that sentence is not that she
33 didn't know the place, women's business, as you call it,
34 referred to, but she doesn't know the place where the
35 bridge was being built.
36 Q. What does it matter where the bridge is being built.
37 A. Are you reading into this -
38 Q. Can you answer the question. What does it matter,

- 1 for this context, where the bridge is being built.
- 2 A. Yes, it was important that it was being built to
- 3 Hindmarsh Island.
- 4 Q. It doesn't matter where, right around Hindmarsh Island
- 5 the bridge is being built, does it.
- 6 A. Then I would have to be in the mind of the Minister to
- 7 tell you that.
- 8 COMSR: From the point of view of likely
- 9 consequences.
- 10 XXN
- 11 Q. From the point of view of what you are putting forward,
- 12 what you have facilitated, what does it matter, where
- 13 the bridge is built, because if there is another place
- 14 the bridge can be built, consistent with what you have
- 15 been told, please tell us now.
- 16 A. I wish you had asked me earlier. Look, I think the
- 17 really critical thing is, I cannot tell you what
- 18 was in Doreen Kartinyeri's mind. I can tell you what
- 19 she has said in response to me asking her, a question
- 20 about the very same phrasing, if you would like to hear
- 21 that, I am quite happy to tell you, but I can't tell -
- 22 Q. When did she tell you that.
- 23 A. She told me when this became public and I asked her
- 24 about it.
- 25 Q. When was that.
- 26 A. I don't recall.
- 27 Q. Well, was it in the last few weeks, a year ago, when.
- 28 A. Some months ago.
- 29 Q. I am interested to know when.
- 30 A. This letter is stated as being referred to in parliament
- 31 and I heard about it and I asked Doreen, 'What is this
- 32 all about?' And she told me what she understood. Well,
- 33 she told me. She gave me an account of what she had
- 34 meant to say in that sentence, which was, that the exact
- 35 place didn't refer to Hindmarsh Island and its
- 36 relationship to women's knowledge, but to where the
- 37 bridge, where the place, the exact location of the
- 38 bridge. That is, namely that it was a bridge proposed

- 1 to Hindmarsh Island. I can't do more than tell you
2 that. I can tell you that I enquired as soon as I saw
3 this, I almost immediately asked Doreen what it meant,
4 for very obvious reasons, and that's what she told me.
5 And I cannot tell you what was in her mind and I can't
6 tell you what she did or didn't know, at any particular
7 time in her life.
- 8 Q. Do you know Steve Hemming was the person who in fact
9 typed out this letter.
- 10 A. I have learnt it insofar as I have heard that in
11 evidence.
- 12 Q. Steve Hemming said he did so. We can accept that can't
13 we, or can't we. If Steve hemming says 'I typed the
14 letter' can't we accept that, or do you reckon he is
15 making it up.
- 16 A. I doubt -
- 17 OBJECTION Ms Pyke objects.
- 18 MS PYKE: If he says, 'Steve Hemming has said
19 this' it is not for this witness to comment.
- 20 MR MEYER: I would have thought that was the
21 simplest of propositions and it is a problem if the
22 witness can't even answer something as simple as that,
23 especially amongst the objections of my friend.
- 24 XXN
- 25 Q. Let's have a look at the sentence carefully, because I
26 suggest to you, that a reading of the sentence would
27 worry an anthropologist in your position.
- 28 A. As it did.
- 29 Q. Okay, that's why I am suggesting we should look at it
30 carefully. 'I have always known about the stories.' So
31 this sentence is about the stories, isn't it.
- 32 A. It appears to be.
- 33 Q. 'Associated with Ramindjeri and Ngarrindjeri women's
34 business.' That is describing what the stories are, is
35 that right.
- 36 A. Yes.
- 37 Q. 'But, until recently I didn't know the exact place, that
38 they -' 'they' relates back to the stories -

- 1 A. That is your reading of it.
- 2 OBJECTION Ms Pykes objects.
- 3 MS PYKE: You can look at that and form a view.
- 4 It is not for this witness to embark upon a construction
- 5 of a sentence.
- 6 COMSR: Mr Meyer can put something to the
- 7 witness to see if she agrees with it. Ms Pyke there is
- 8 nothing objectionable in that.
- 9 MR MEYER: The criticism that I will in fact make of
- 10 some of this evidence at the end of the day, is that,
- 11 this witness's counsel hasn't given her an opportunity
- 12 to properly answer the questions.
- 13 XXN
- 14 Q. That is a simple enough proposition Dr Fergie. You are
- 15 somebody who is well educated and brings to bear a
- 16 critical mind to these matters, don't you.
- 17 A. I do.
- 18 Q. Because that is your expertise in this field. And I am
- 19 telling you, that this letter was apparently prepared by
- 20 an articulate person, who you know is in the course of
- 21 writing a doctorate, don't you.
- 22 A. Yes.
- 23 Q. Do you mean that you -
- 24 A. I know that Steve wrote it. I think the word `prepared'
- 25 might be - anyway, go ahead.
- 26 Q. Steve has told us he fixed up the grammar and did
- 27 things things like that, in relation to the letter,
- 28 okay.
- 29 OBJECTION Ms Pyke objects.
- 30 MS PYKE: I am not sure if that is the evidence.
- 31 COMSR: Really.
- 32 MS PYKE: If my friend here is putting something
- 33 that is not accurate I think it is my role to stand up
- 34 here and say `I don't think that's the evidence of Mr
- 35 Hemming.' As I understand it, he said that Doreen
- 36 prepared it and he typed it.
- 37 XXN
- 38 A. In any case Mr Meyer, we're talking about your reading

- 1 with a European logic of this sentence and Doreen
2 Kartinyeri's response to me, that, the kind of
3 interpretation that you are putting is not what she
4 meant to entail.
- 5 Q. So you happily - I mean we're in the context of, only
6 one person ever telling you about women's business.
7 Anybody else who has said anything to you has said it
8 subsequently to listening to Doreen. And, secondly, a
9 letter written before she tells you about it, which
10 might, at the least, express doubt on where she is
11 talking about, but you still readily accept Doreen's
12 explanation.
- 13 A. I think you should take some heart from the fact that I
14 immediately asked her about it.
- 15 COMSR
- 16 Q. Perhaps can I find this out. Did you see it as any part
17 of your role, to accept or reject what you were told by
18 Doreen Kartinyeri, or was it your role simply to hear
19 it, understand it and then report on it.
- 20 A. And to see if it was in a sense resonant with what we
21 had around it, if there was cause for saying, yes, this
22 is reasonable, this is something which might fit our
23 understanding of Ngarrindjeri culture. I mean, in an
24 ultimate sense, what people believe can't be tested in
25 this kind of a way, and neither me nor other
26 anthropologists will purport to do that.
- 27 XXN
- 28 Q. Do you know who prepared the list of people who went
29 down, the Aboriginal people women that went down to
30 Graham's Castle.
- 31 A. Why?
- 32 Q. Do you know who prepared the list of people, the invited
33 funded people, Aboriginal people, who went down to
34 Graham's Castle.
- 35 A. No, I don't.
- 36 Q. Did you make any attempt to find out.
- 37 A. No, I did not.
- 38 Q. Have you ever made any attempt to find out.

- 1 A. No, I have not.
- 2 Q. Did you know, before you went down to Goolwa, how many
3 people were likely to be down there.
- 4 A. No, I did not. I think, just looking at the back
5 of a telephone message that is in evidence, from Tim
6 Wooley, there is a reference to 15 core women, so I knew
7 that there was a number of women going to be there, I
8 presumed.
- 9 Q. Did you ever have any idea how this meeting was going to
10 be conducted.
- 11 A. No, not before I was there.
- 12 Q. Did you attempt to find out.
- 13 A. No, it transpired.
- 14 Q. You didn't seek to discuss it with Doreen when she rang
15 you up.
- 16 A. No, not that I can recall, that's for sure.
- 17 Q. Did you know why you were going.
- 18 A. Well, as I said, I had some - I was quite concerned
19 about the lack of preciseness about why I was going and
20 I have said to you, my understanding was that, I was
21 there as a kind of a safety net and that I sought to
22 have my role clarified, yes, on a number of occasions.
- 23 Q. Did you consider, when you were going to the meeting,
24 that it was important for you to try and establish what
25 the truth was, in relation to the existence or otherwise
26 of this belief of secret women's knowledge, that you
27 were told about.
- 28 A. Certainly not at that time and I think, the word
29 `truth' in the way in which you are using it, is not
30 something that in any case I could test.
- 31 Q. I don't mean `truth' in terms of the concept, I mean
32 truth in terms of its existence.
- 33 A. If somebody says it, it is in the air, it exists.
- 34 Q. We're not going to go through this again.
- 35 COMSR: I think we have covered it beforehand.
- 36 MR MEYER: I will leave it alone.
- 37 XXN
- 38 Q. What was the need for funding for people to be at

1 Graham's Castle.

2 A. My understanding is that it is that the - and, in fact,
3 I think we have heard in evidence, that is the kind of
4 responsibilities that Aboriginal people have under
5 a variety of Acts, are ones which, in fact, cost them a
6 lot of money and insofar as Aboriginal organisations are
7 able to, in pursuing responsibilities of Aboriginal
8 people, under a variety of Acts, they endeavour to get
9 funding so that people, in fact, they're out-of-pocket
10 costs are covered, for those kind of consultancies and
11 that was my assumption of what was going on here.

12 Q. Did you consider this to be a consultancy for these
13 people.

14 A. My understanding was, that these women were meeting
15 in order to make a submission to Professor Saunders.

16 CONTINUED

- 1 Q. Why should they be funded to do that.
- 2 OBJECTION Miss Nelson objects.
- 3 MISS NELSON: I don't know that that is really
- 4 relevant, frankly.
- 5 COMSR: Nor why this witness should know it.
- 6 MR MEYER: It is relevant only in so far as the
- 7 following question is:
- 8 XXN
- 9 Q. Hasn't it got the risk, firstly, of excluding some
- 10 people. And, secondly, hasn't it got the risk of
- 11 causing some people to not dissent in case they get
- 12 taken out of the funding list.
- 13 COMSR: How would this witness be able to answer
- 14 that?
- 15 MR MEYER: As an anthropologist, I would be very
- 16 concerned if I thought that people I saw were receiving
- 17 money for the information that they were providing.
- 18 That is where I say the relevance all ties up.
- 19 COMSR: I don't know that there is any
- 20 suggestion they were receiving money. Simply that their
- 21 expenses of attending were being met.
- 22 COMSR
- 23 Q. Unless I am mistaken in that.
- 24 A. No, that is my understanding, too.
- 25 COMSR: And I think the witness has expressed
- 26 her reservations about just how representative the group
- 27 might have been.
- 28 MR MEYER: All right, I will pursue it in a
- 29 different way.
- 30 XXN
- 31 Q. You said to my friend, Mr Smith, that you understood
- 32 invitations had gone out to people. Did you see any
- 33 such invitation.
- 34 A. No, and I don't know whether they were verbal or on
- 35 paper. I don't know what form they took.
- 36 Q. Do you know whether anybody refused invitations.
- 37 A. No, I don't.
- 38 Q. Do you know whether any invitations were sent to people,

1 for example, at Millicent.

2 A. No, I don't.

3 Q. Do you know whether invitations were sent to people at
4 Mount Gambier.

5 A. No, I don't.

6 Q. At some stage or other you have said that you understood
7 that these people that you talked to were representative
8 of people from all over the State.

9 A. I believe I have said that they were drawn from around
10 the State. I didn't say they were representative of
11 everybody from around the State or all Ngarrindjeri
12 people.

13 Q. Did you say to Chris Kenny in an interview with him,
14 Exhibit 148, 'I think it was a very representative group
15 of people.'

16 A. I don't recall.

17 Q. Looking at Exhibit 148 -

18 MR MEYER: It is a video. I have a transcript.

19 Apparently it is not an exhibit. It is a TV video. I
20 thought it had been typed up in the same way as the
21 others had been.

22 COMSR: No.

23 XXN

24 Q. This is a transcript of Exhibit 148, now before you, and
25 there is a question by Mr Kenny, being Chris Kenny said
26 'Perhaps from a broad sample of the women - ', and you
27 interrupted and said to him 'I think we did have a broad
28 sample, in fact.' He said 'Which was gathered for you
29 by Doreen Kartinyeri, wasn't it?' And you replied 'No,
30 not by Doreen Kartinyeri, at all. So, no, I think it
31 was a very representative group of people and obvious
32 prominent women who weren't there I tracked down, in
33 fact, to explore why they weren't there.' Okay.

34 A. Yes, can I keep it for a minute?

35 Q. Firstly, I am putting to you that, if you didn't check
36 where invitations went, and you didn't ascertain who had
37 not been invited, how could you say that it was a
38 representative group of people.

- 1 A. I did so on the basis of the enquiries that I made,
2 after I was engaged to do a report, with a number of
3 people who included Jean Rankine, Doreen Kartinyeri,
4 Sarah Milera, Shirley Peasley, Vi Deuschle and people at
5 the Ngarrindjeri Action Group. So, in so far as I had
6 time to follow up that question, I certainly did.
- 7 Q. `And obvious prominent women who weren't there I tracked
8 down.'
- 9 A. Yes.
- 10 Q. Who.
- 11 A. Jean Rankine, Muriel Van Der Byl and Val Power.
- 12 Q. And they are the only ones.
- 13 A. They are the only ones that I knew were conspicuously
14 absent. Who I would have expected to be there.
- 15 Q. What about the daughter of Pinkie Mack: an obviously
16 prominent woman.
- 17 A. Yes, it is very clear that there were prominent women
18 who I wasn't - A. Did not know, who were not there.
19 And B. I didn't track down.
- 20 Q. Did you enquire what was the aim and objective of the
21 Ngarrindjeri Action Group.
- 22 A. It became obvious to me in the course of the meeting
23 what the aim and objective of that group was.
- 24 Q. That was to stop the Hindmarsh Island bridge.
- 25 A. That's the case.
- 26 Q. Nothing to do with Ngarrindjeri culture, as such. Its
27 quite specific aim was to stop the bridge.
- 28 A. I think that it did have a clear reference to
29 Ngarrindjeri culture in pursuing that aim.
- 30 Q. And the people that you asked were all directly
31 associated with the Ngarrindjeri Action Group.
- 32 A. I don't believe Jean Rankine is associated with the
33 Ngarrindjeri Action Group.
- 34 Q. Muriel Van Der Byl.
- 35 A. She was there, certainly.
- 36 Q. Val Power.
- 37 A. Certainly.
- 38 Q. Vi Deuschle.

1 A. Certainly.

2 Q. Shirley Peasley.

3 A. Certainly.

4 Q. All people who were directly associated with some
5 political organisation -

6 A. Are you proposing that Aboriginal people shouldn't be
7 political?

8 Q. No, I am not. I am proposing that the group of persons
9 who you asked were of themselves by no means independent
10 or representative. In other words, you asked the wrong
11 people.

12 A. I disagree. I mean, listen, I would love to have asked
13 a lot more people. I did as good as I could in the
14 time. The fact that I didn't know that Muriel Van Der
15 Byl and Val Power before - that I went in search of an
16 explanation why they weren't at the meeting indicates
17 that I wasn't aware, when I was asking that question, of
18 the prominent role they had taken.

19 Q. Doesn't that now cause you concern.

20 A. In what sense?

21 Q. In the sense of the validity of your report.

22 OBJECTION Ms Pyke objects.

23 MS PYKE: What does Mr Meyer mean by that, 'the
24 validity of your report'? I mean, it is a report. It
25 exists. Presumably it is a valid document.

26 MR MEYER: You can have a totally invalid report.
27 Just because it exists doesn't mean it is valid. I have
28 seen lots of opinions that existed. It doesn't mean
29 they are valid.

30 WITNESS: I think what we would need to come back
31 to is in my view - and I continue to hold this view -
32 that group of women who were at Graham's Castle stood,
33 as it were, for a group of other women who were broader
34 than the 35 who were there. Now, whether they - and
35 they clearly aren't, whether they amount to the entirety
36 of Ngarrindjeri women and they clearly don't, was not
37 crucial for assessing the significance of a tradition,
38 because the critical bit is this is not a tradition that

- 1 all Ngarrindjeri people must agree existed for it to
2 have existed. Not all have to agree that they agree
3 with the level of significance for it to be understood
4 as significant. We are talking about restricted
5 knowledge.
- 6 XXN
- 7 Q. Sure, but we are talking about knowledge which is
8 restricted, on your evidence - and I will get an
9 argument from around the place - on your evidence to one
10 person.
- 11 A. No, that's not the case.
- 12 Q. Doreen Kartinyeri.
- 13 A. That's not the case.
- 14 Q. Because, prior to you speaking to Doreen in a public
15 place, ie all the other witnesses being led, there is no
16 other suggestion of the knowledge, is there.
- 17 A. That's -
- 18 OBJECTION Ms Pyke objects.
- 19 MS PYKE: We have spoken of Sarah Milera for a
20 start.
- 21 WITNESS: And the other thing is that you are
22 confusing the relationship between a key informant and -
23 XXN
- 24 Q. Are you talking to me or Ms Pyke.
- 25 A. No, I am talking to you. A key informant and a small
26 group of people who are understood to be custodians.
27 The fact that I only talked to one of those people. To
28 be a custodian doesn't mean that only a single person
29 was a custodian. To the contrary. It is a matter for
30 regret that I wasn't able to speak in detail to all of
31 the others, but it seems to me that the minimal
32 requirements that I felt I needed to assess under the
33 terms of the Act could be satisfied by a single
34 informant who had been authorised. The critical thing
35 is this is not a single informants off the the street.
36 This is a single informant authorised by a group of
37 women, in effect, standing for a broader group of
38 Ngarrindjeri women to speak on their behalf. And for

- 1 whom, at that meeting, there was an indication to me
2 they regarded to be a custodian able to speak.
- 3 Q. Doreen Kartinyeri is in an influential position in this
4 Aboriginal community, isn't she.
- 5 A. Yes.
- 6 Q. She is in a position to influence other people.
- 7 A. As other Ngarrindjeri people are.
- 8 Q. Is that right.
- 9 A. Go on.
- 10 Q. Is that right, that she is in a position to influence
11 other Ngarrindjeri people.
- 12 A. Are you suggesting she has got a special capacity to
13 influence people?
- 14 Q. Yes, I am.
- 15 A. I don't think she particularly has.
- 16 Q. She was the one who dressed down Rocky Marshall.
- 17 A. Yes.
- 18 Q. And she did so in very vigorous terms.
- 19 A. As a custodian.
- 20 Q. Let's not worry what she did it as, she did it in very
21 vigorous terms, didn't she.
- 22 A. Yes.
- 23 Q. She was, in fact, abusive.
- 24 A. I think it depends whose cultural perspective you are
25 looking at that from.
- 26 Q. Let's not worry about whose perspective it was. The
27 fact was she was abusive, wasn't she.
- 28 OBJECTION Ms Pyke objects.
- 29 MS PYKE: Let her answer.
- 30 COMSR: She did answer it.
- 31 XXN
- 32 Q. I am going another step and saying, whoever was
33 listening to that, she was abusive, wasn't she.
- 34 A. She told him he didn't have the right to say that.
- 35 Q. She did more than that. She harangued him and abused
36 him.
- 37 A. She harangued him.
- 38 Q. What did you mean by `harangued'.

- 1 A. She very stridently told him that he had overstepped the
2 mark.
- 3 Q. And she has a habit of doing that with people who
4 disagree with her, hasn't she.
- 5 A. I have seen her give people dressings down before, yes.
- 6 Q. In fact, on the appearances that we have been able to
7 see of Doreen Kartinyeri in public and combined with
8 evidence, for example, such as yours, is that she abuses
9 people who disagree with her about this matter.
- 10 A. No, she abuses people who she thinks have acted
11 inappropriately in the matter. I think she believed
12 Rocky Marshall - she believed very strongly that Rocky
13 Marshall had acted inappropriately. I believe that she
14 believes other people that I have seen her giving a
15 similar dressing down to have acted culturally
16 inappropriately.
- 17 Q. Have you read Sue Lawrie's evidence in this Commission.
- 18 A. No, I haven't.
- 19 Q. Did you listen to her give her evidence.
- 20 A. I did not.
- 21 Q. She describes the attack on Dorothy Wilson as extreme,
22 or words to that effect. And that attack was by Doreen
23 Kartinyeri.
- 24 A. Yes, I think - I mean, I didn't see that happening.
25 What I think we have to understand, there is a frame
26 for - what is happening here is a very keen cultural
27 process of contestation. And, in fact, I suspect of
28 succession. And I think that the accounts that I have
29 heard of what Doreen did at that meeting has all the
30 hallmarks of a very cultural process, of somebody saying
31 this was a culturally inappropriate thing for you to do.
- 32 Q. I don't mind what the processes are, an Aboriginal
33 person, in this particular instance, Dorothy Wilson,
34 deemed it appropriate to disagree with Doreen
35 Kartinyeri. And the cost of her doing so was to be
36 harangued and abused, wasn't it.
- 37 A. I wasn't there.
- 38 Q. Would you like to look at the evidence of Sue Lawrie, so

1 that you can answer the question.

2 COMSR: I don't know that the witness is in any
3 better position. She still wasn't there.

4 XXN

5 Q. The reason I put this to you is this, does it not affect
6 you, as an anthropologist, if the person - let's use
7 your terminology - the key informant, stridently
8 harangues or abuses anybody who cares to disagree with
9 her about it.

10 A. I think it is, as I have heard these accounts, very
11 strong evidence this is a very Ngarrindjeri process we
12 are looking at. The terms in which I understand Doreen
13 to have done these things and the way in which it has
14 been done, to my eye, look like a very Ngarrindjeri
15 process of political contestation between two women who
16 are on the verge - who are in a position of
17 contestation.

18 Q. Did you see the TV report where she recently abused
19 members of the press outside this building.

20 A. I can understand that.

21 Q. Did you see it.

22 A. I didn't.

23 Q. So you are unable to comment on that. Because they
24 weren't Aboriginal persons, were they. They were
25 members of the press.

26 A. I presume so.

27 Q. Just yet another example, you see, of Doreen Kartinyeri
28 abusing anybody who disagrees with her.

29 A. I think -

30 Q. Abused Colin James, for example.

31 A. Look, I and anybody in this room has a very strong sense
32 of the kind of pressures that people in this process are
33 under and somebody cracking up, from time to time,
34 hardly surprises me.

35 Q. We are not talking about cracking up, from time to time,
36 you see. That's why I ask these questions. There is a
37 continual history of Doreen Kartinyeri abusing or
38 haranguing, whichever word you like to use, people who

- 1 disagree with her.
- 2 A. I think you can interpret this in one or two ways. You
3 can say this is evidence of the extraordinarily deep-felt
4 feeling that Doreen has on this issue, or you can
5 interpret it as you would want me to. And I prefer to -
6 prefer the former.
- 7 COMSR
- 8 Q. I think you also put another suggestion forth. That it
9 is the way in which Ngarrindjeri people often handle a
10 problem.
- 11 A. I think we are looking at a very Ngarrindjeri political
12 process and the whole - the idioms with which people -
13 the way in which, as I hear it, Dorothy was put down at
14 that meeting are idioms which are entirely consistent in
15 my understanding of the way in which Ngarrindjeri
16 politics on this kind of an issue would be played out.
- 17 XXN
- 18 Q. Did you listen to the Aboriginal women who have come
19 here and given evidence.
- 20 A. I did.
- 21 Q. Would you agree with a summary that I put to Mr
22 Easdown. That they were calm, cultured and articulate.
- 23 A. I would.
- 24 Q. They didn't harangue or abuse anybody, did they.
- 25 A. Not in here they didn't surely.
- 26 Q. They were able to discuss the matter in a proper and
27 articulate fashion.
- 28 A. Certainly.
- 29 Q. Whenever it appears to get raised with Doreen
30 Kartinyeri, she harangues people. As an expert
31 anthropologist, doesn't that cause you concern.
- 32 A. No.
- 33 Q. Did you interview each of the 35 women that were at
34 Graham's Castle.
- 35 A. Interview?
- 36 Q. Yes.
- 37 A. No.
- 38 Q. Your counsel extensively cross-examined other people

- 1 about what was appropriate consultation. Asking all
2 sorts of questions about how traditional they were. And
3 how many baskets they had learned to make. Did you do
4 that, in relation to the people that you had got
5 information from.
- 6 A. No, but there is a reason for that. And there is a
7 reason for the other perspective, which is, in a sense,
8 my question was to answer the issue of - on whether or
9 not I could consider this to be a tradition of - an area
10 of significance according to Aboriginal tradition. And
11 I had a group of people who clearly did so. My question
12 in relation to the dissident women was the question of
13 why mightn't they and why mightn't they have been told.
14 And my counsel's questioning on that, in that respect,
15 was, in a sense, to give me some insight into how I
16 might evaluate the evidence that was transpiring in the
17 Commission.
- 18 Q. You suggest, as I understand it, that Rod Lucas didn't
19 know that a bridge was being built when he did his
20 report.
- 21 A. That's what he has told me.
- 22 Q. Did he know of the existence of Doreen Kartinyeri, at
23 that time.
- 24 A. He did.
- 25 Q. In fact, he had previously consulted with her in respect
26 of at least one other report that he had done, hadn't
27 he.
- 28 A. Yes, and he told me on this occasion he also sought to
29 interview her and that they had an arrangement and she
30 was ill on that day. Whether he tried to make an
31 arrangement. In any case, she was ill and, although it
32 had been his intention, he was unable to interview her.
33 And, in fact, we have often said how much pain and
34 suffering everybody would have been spared had that
35 discussion taken place.
- 36 Q. Why.
- 37 A. Because I believe that Doreen would have alerted Rod
38 that there was - it was necessary to follow up an issue

1 about women's issues.

2 Q. How could that have arisen, if he didn't know there was
3 a bridge being built.

4 A. Because presumably what he would have done was asked her
5 about Hindmarsh Island.

6 Q. And you think she would have told him.

7 A. I think she would have alerted him to the existence of
8 something that was needed to be explored.

9 CONTINUED

- 1 Q. If that's the case, and we're aware from other evidence
2 that prior to 1990 there was knowledge in the Tendi,
3 knowledge in the Ngarrindjeri Lands and Progress
4 Association, and knowledge in the Lower Murray
5 Aboriginal Heritage Committee, that there was a bridge
6 going to be built, how come it didn't raise its head
7 back then.
- 8 A. I can't know the answer to that.
- 9 Q. Doesn't that concern you.
- 10 A. No.
- 11 Q. What explanation do you give for it suddenly raising its
12 head in 1994.
- 13 COMSR: Do you mean for the witness becoming
14 aware in 1994? I don't see how she can give an
15 explanation for it raising its head.
- 16 MR MEYER: What I am putting to this witness is
17 there was adequate opportunity before June 1994 for
18 somebody to say something about the issue of some sort
19 of women's knowledge at Hindmarsh Island.
- 20 XXN
- 21 A. If they had known.
- 22 Q. And that knowledge that existed - we assume the
23 knowledge of this women's knowledge before 1989, because
24 Doreen has said it has been around for 40,000 years.
- 25 A. Has she?
- 26 Q. Yes. Just assume that as a fact for a minute. So in
27 1989 it existed. The question I am putting to you is
28 this: If there was knowledge in the various Aboriginal
29 communities - i.e. the Tendi at Raukkan, the
30 Ngarrindjeri Lands and Progress Association, and the
31 Lower Murray Aboriginal Heritage Committee - that a
32 bridge was going to be built in let us say 1990 - I am
33 asking you this as an expert anthropologist - why didn't
34 the question of this women's knowledge raise its head
35 then.
- 36 A. I presume, because of its restricted knowledge, that
37 those people weren't aware of it.
- 38 Q. Who do you say those people are.

- 1 A. The Tendi, the Ngarrindjeri Lands and Progress
2 Association and the Lower Murray Aboriginal Heritage
3 Committee.
- 4 Q. So all of these people are not aware of this knowledge.
5 A. That's right.
- 6 Q. George Trevorrow is said by Draper to be the person who
7 approached him.
- 8 A. Yes, but we don't know when George Trevorrow became
9 aware of the existence of this material.
- 10 Q. So it all keeps leading back to a recent assumption of
11 this knowledge by relevant people.
- 12 MS PYKE: That does not follow. `Recent
13 assumption', what does that mean and by -
- 14 MR MEYER: That is what these members have put.
15 XXN
- 16 Q. The members of the Tendi, members of the Lower Murray
17 Aboriginal Heritage Committee, and members of the
18 Ngarrindjeri Lands and Progress Association didn't know
19 about it in 1990, that's your proposition.
- 20 A. Look, I'm guessing -
- 21 Q. Don't guess, please. This is a very important matter.
- 22 A. I can do no more than that, because, as you well know, I
23 didn't have contact with these people at that time.
- 24 Q. I am asking your opinion as an expert.
- 25 A. My opinion as an expert is that this is restricted
26 knowledge that men were unlikely to know about. Insofar
27 as I understand those bodies, they are bodies which are
28 basically - the majority of their members, if not all,
29 are male. I don't believe they would be likely to know.
- 30 Q. You are not aware that Doreen Kartinyeri said that this
31 knowledge had been around for 40,000 years.
- 32 A. No, I'm not.
- 33 Q. Do you have Exhibit 171A in front of you, the one with
34 Ray Martin.
- 35 A. Yes.
- 36 Q. Would you go to the end of p.3.
- 37 A. Yes.

- 1 Q. `Ray Martin: "Well, did women's business begin last
2 year, or some time -" D. Kartinyeri "No, it begin
3 40,000 years ago. How long has women been in this
4 world, Ray?" Do you accept that Doreen says it began
5 something like 40,000 years ago.
- 6 A. I accept that that's what's here.
- 7 Q. You don't accept she said that.
- 8 A. I accept she is likely to have said that. I mean, this
9 is the kind of idiom in which people speak about this
10 knowledge.
- 11 Q. Prior to writing your assessment -
- 12 A. I wrote a report of an assessment.
- 13 Q. Prior to your writing your report of an assessment, did
14 you consult with the museum.
- 15 A. No. As you know, I tried to ring Philip Clarke, but I
16 didn't get through.
- 17 Q. I have got slight difficulties with that answer. You
18 said that the phone number might have changed.
- 19 A. Look, I have no - I am advancing that as a possibility.
20 I didn't talk to the museum.
- 21 Q. Why not.
- 22 A. I wasn't able to get onto Philip Clarke.
- 23 Q. Did you get onto anybody at the museum.
- 24 A. No. I also knew, from my husband's research, that it
25 was unlikely to be a productive line of research insofar
26 as he had spent a great deal of time there looking for
27 stuff and hadn't found it.
- 28 Q. When.
- 29 A. In 1990.
- 30 Q. May things have changed between 1990 and 1994.
- 31 A. Yes, they might have, but I was clearly in the position
32 of having to make judgments of how best to spend a very
33 limited period of time, and that was my judgment. My
34 judgment was that it was far better for me to read
35 Berndt and Berndt very closely than to spend a lot of
36 time searching through records.
- 37 Q. Doesn't the shortage of time and the qualifications that
38 you keep applying because of the shortage of time, cause

1 you to consider that some qualification should be put on
2 your report.

3 A. In the end I made an assessment that, in my view, this
4 was an area of significance according to Aboriginal
5 tradition, and I made it notwithstanding my recognition
6 of the difficulties of the process. My view was that my
7 assessment was adequate for that conclusion, and it is
8 the conclusion that I made.

9 Q. What I am putting to you is this, you keep making some
10 qualifications about time and opportunity and things
11 like that, and you say in your statement to this
12 commission 'The report can't be taken for something else
13 that it doesn't pretend to be' and qualifications like
14 that. And yet, at the end of the day, you don't apply
15 any qualification to your report. Either you don't make
16 qualifications and explanations and excuses, you say 'It
17 is good enough as it stands', or -

18 A. And that's what I am saying.

19 Q. Or you say 'I wish to add a qualification to the report'
20 a qualification which I could well understand 'because
21 of the extreme limitation of time that I was placed
22 under.'

23 A. I didn't wish to make such -

24 MISS NELSON: I don't think they are the only
25 alternatives available, and the question is put in such
26 a way that the witness has to acknowledge that in order
27 to answer the question. As I understand what Dr Fergie
28 is saying, she is explaining why she didn't do certain
29 things. It doesn't follow, as a conclusion from that
30 that, as a result of not doing things, in her view, her
31 assessment or her report is deficient as a result. I
32 just understand her to be explaining to Mr Meyer her
33 reasons for not following through other lines of
34 inquiry.

35 COMSR: I think Mr Meyer was saying, in effect,
36 why didn't you make qualifications in your report when
37 you are making qualifications in your evidence?

38 MR MEYER: That's, in essence -

- 1 MISS NELSON: That's a different question.
2 XXN
- 3 Q. One either stands on the report without qualifications,
4 or, if you wish to make qualifications in your
5 statement, then you attach them to your report.
- 6 A. It seems to me that I actually gave a much more fulsome
7 description of the basis of my assessment in my report
8 than would normally happen. In other words, I was very
9 upfront with the extent of my knowledge. If there is a
10 deficiency in that section, it is that I actually didn't
11 say what I'd read. But in terms of the Ngarrindjeri
12 people that I had spoken to, the process that I had gone
13 through, I was very straightforward about what was the
14 basis of that report. And I reached a conclusion which
15 I chose not to qualify because, in fact, my judgment was
16 that it was an appropriate conclusion based on those -
17 on that material, and that it was a conclusion that,
18 within the terms of the Act, required no qualification.
- 19 Q. Had you had more time, would you have done more
20 investigation.
- 21 A. I would have.
- 22 Q. Had you had more time, would you have gone and talked to
23 people like the daughter of Pinkie Mack, assuming you'd
24 found out from somebody that she existed.
- 25 A. I may have.
- 26 COMSR: I think the witness has covered this.
- 27 MR MEYER: I asked her why she didn't before. I
28 didn't ask her if she had -
- 29 COMSR: No, but previously in her earlier
30 evidence.
- 31 XXN
- 32 A. The point is, I guess, the difference in covering the
33 issue, and covering the issue in a way that, from an
34 academic's perspective, you would like to cover an
35 issue, and, in a sense, I wasn't asked to do the kind of
36 research that I would do at work in that context, I was
37 asked to do an assessment framed by a very specific set

- 1 of criteria, and I believe that my research was adequate
2 for coming to the conclusion that I had.
- 3 Q. Had you started doing your report, for example, in April
4 and you were required -
- 5 MS PYKE: Of this year.
- 6 XXN
- 7 Q. Of 1994, and you were required to report by end of June,
8 that would have been an adequate time, wouldn't it.
- 9 A. That would have been much more than adequate time.
- 10 Q. Doreen Kartinyeri apparently knew about women's business
11 in April and knew about a bridge being built. Is that
12 right.
- 13 A. That's what I've heard.
- 14 Q. And knew that any problem in relation to building a
15 bridge would be like nuclear fission for her.
- 16 A. Yes. Maybe I should explain that analogy.
- 17 Q. I'm just driving at time for the report because -
- 18 A. Those are my words, and they're my words in the context
19 of questions about secrecy and the legitimacy of secrecy
20 in any process like this. As someone who once worked in
21 the Department of Defence, I was actually using an
22 analogy in the fact that, in our culture, we understand
23 certain domains of our lives to be secret, and more, to
24 be quite appropriately secret. In other words, people
25 would find it entirely inappropriate if how to make an
26 atomic bomb was made secret - sorry, made public, and we
27 would all, I hope, I trust, see that it is entirely
28 appropriate for the State to guard such a secret.
- 29 Q. You were placing this on a high level. That's what it
30 amounts to, doesn't it.
- 31 A. I was trying to talk to people, whose view of the world
32 is from the eyes of our culture, why secrecy makes
33 sense, and why secrecy in this culture isn't giving
34 these people a special privilege in the world, but, in
35 fact, you know, any culture, anywhere, has secrets it
36 wants to keep. I always use an example of a secret that
37 everybody in Australia, without question, I would have
38 hoped, would agree with.

- 1 Q. You were trying to elevate it though to a high level of
2 importance.
- 3 A. I believe this knowledge does have a high level of
4 importance in Ngarrindjeri culture. Whether you can
5 make the link between my comments between nuclear bombs
6 and that is a different issue.
- 7 Q. My problem is this: Doreen Kartinyeri is your
8 informant.
- 9 A. My key informant.
- 10 Q. She is a person who knows of your existence.
- 11 A. Yes.
- 12 Q. She trusts you.
- 13 A. I assume.
- 14 Q. You said she does. 'I am a trusted person in relation
15 to Doreen Kartinyeri, that's why I got this
16 information'.
- 17 A. I assume that that's the case.
- 18 Q. Had you been told about the existence of this matter in
19 April, you would have had more than adequate time to do
20 a proper report.
- 21 A. Yes.
- 22 Q. But they chose not to tell you.
- 23 MS PYKE: With respect, that's -
- 24 COMSR: I don't think this witness can say that.
25 She can only say that she wasn't in fact told, not
26 whether they chose or neglected to tell her.
- 27 XXN
- 28 Q. You weren't in fact told.
- 29 A. I was not in fact told.
- 30 Q. At p.53 of your statement at about point 2 of the page,
31 you say that you are bound, first and foremost, by a
32 duty of conscience and truthfulness.
- 33 A. When you say 'point 2' do you mean 2 tenths of the way
34 down? Is that how you say it?
- 35 Q. Yes.
- 36 A. Yes. I say that, yes. I say that I have a duty of
37 conscience and truthfulness or - yes. I believe I said
38 the same thing to Mr Kenny in his interview.

- 1 Q. Is that a duty to establish truthfulness.
2 A. No, it's a duty to be truthful.
3 Q. But it is not a duty to seek truthfulness.
4 A. Not per se, no.
5 Q. Did you receive copies of the correspondence that passed
6 between the Australian Legal Rights Movement and Mr
7 Tickner in relation to the seeking of a declaration.
8 A. Can you ask me again?
9 Q. Did you receive copies of the correspondence, or any
10 correspondence, that passed between the ALRM and ATSIC
11 and or the Minister, Mr Tickner, in relation to the
12 seeking of a declaration.
13 A. I have seen some correspondence between Legal Rights
14 Movement and the Minister.
15 Q. Did you see either of the letters in December or April
16 that specifically made application for a section 10
17 declaration.
18 A. I may have.
19 Q. Both of those applications referred solely to
20 archaeological sites, and made no mention of any matter
21 that could in any way be suggested to resemble or be
22 connected with women's knowledge, or however you might
23 like to define it, do they.
24 A. If you were to show me, I would certainly be able to
25 confirm that.
26 Q. I can't show you because we are not able to produce them
27 in here. That's why I asked you if you had copies. The
28 point of my question is this, that the thrust in April
29 was archaeological knowledge, not anthropological or
30 anything associated with secret women's knowledge.
31 A. In April, you were saying?
32 Q. Beg your pardon.
33 A. You are saying that in April?
34 Q. April 6.
35 CONTINUED

- 1 A. Yes.
- 2 Q. Is that right.
- 3 A. I'm afraid I can't confirm that or not.
- 4 Q. Did you see the Draper report prepared on 29 April 1994.
- 5 A. Yes.
- 6 Q. When did you first see that report.
- 7 A. During the course of that consultancy, but I'm not
8 precisely clear when. I think it's probably that I saw
9 it in the week that I was writing my report, but I can't
10 be certain.
- 11 Q. He says that - what he describes in his report of 29
12 April 1994 is that women's business was described to him
13 by Sarah Milera.
- 14 A. He says that, does he?
- 15 Q. Yes. Does that report of 29 April 1994 have any bearing
16 or relevance to what was reported to you as being
17 women's business at the meeting at Graham's Castle.
- 18 A. It has relevance.
- 19 Q. If it has relevance, how can Dr Draper be talking about
20 it. He is a man, isn't he.
- 21 A. Yes.
- 22 Q. I've got a difficulty with Dr Draper being able to
23 address matters of secret women's knowledge issues when
24 this is something that can't possibly be discussed by a
25 man.
- 26 A. What you have to understand is that Aboriginal knowledge
27 is understood to have layers; that there are outside
28 layers and inside layers. And that what is acceptable
29 to disclose is an outside level and what is not
30 acceptable to disclose is what might be called 'inside
31 secrets', often as it is called in some literature.
32 Often that is different. In that context, it seems to
33 me it is in that context that it seems to me that you
34 need to understand that in so far as I know it - and I
35 haven't actually had the opportunity of reading Dr
36 Draper's evidence here - but it seems to me that it's
37 with an understanding of that gradation of knowledge;
38 and where restrictions are most tight is in respect of

- 1 the inside core of knowledge as opposed to the outside
2 pieces of knowledge.
- 3 Q. Do you have any idea how long the men were meant to have
4 known of the matters that they told Dr Draper.
- 5 A. No, I have no idea.
- 6 Q. Isn't that relevant and important.
- 7 A. No, not to my assessment.
- 8 Q. Is length of time of knowledge, in essence, irrelevant
9 to the entirety of your assessment.
- 10 A. No, it's not irrelevant.
- 11 Q. Then, we will hit on somewhere where it is relevant
12 sooner or later. Why is it not relevant as to how long
13 the men knew so that they were able to inform Dr Draper.
- 14 A. I don't see how that informs my assessment or should
15 inform my assessment?
- 16 Q. Let's say that the men made it up.
- 17 A. Listen, for the assessment it's not -
- 18 Q. Let's say the men made it up and you say it's something
19 relevant to what you were told. Doesn't that cause a
20 problem for you.
- 21 A. If the men made it up?
- 22 Q. If the men made it up.
- 23 A. It certainly would if the men made it up.
- 24 Q. That takes me back to saying when did the men find out
25 about it and how long did they know.
- 26 A. I don't see how that answers your question?
- 27 Q. If the men don't know and that they knew about it in,
28 let's say, 1980, that is a different issue to the men
29 demonstrating they first knew about it in March or April
30 1994.
- 31 A. It is not clear to me how much the men actually know.
- 32 OBJECTION Mr Tilmouth objects on the ground
33 that there is an important distinction
34 between knowledge of the existence in
35 general as opposed to particular detail.
- 36 COMSR: I don't - yes -
- 37 MR TILMOUTH: And that there is an ambiguity in that
38 as well.

1 XXN

2 Q. I'm going for knowledge in general. That would have
3 sufficed in 1990, wouldn't it.

4 A. Yes.

5 Q. It would have led to the next issue of the involving of
6 the women.

7 A. Them telling Rod would have done so, yes.

8 Q. But no-one did.

9 A. That's right, but that of itself doesn't disconfirm with
10 what was led to me; in other words, men not knowing.
11 And, in fact, many women not knowing in no way
12 disconfirms that other women believe they knew and other
13 women accorded that status to what they knew.

14 Q. To use your words, what would 'disconfirm' it for you.

15 A. A lot of things do confirm it.

16 Q. Give me an example.

17 A. Doreen Kartinyeri coming up to me and saying 'Reeled you
18 in Fergie'. I would be distraught.

19 Q. Let's assume that that is not going to happen because
20 she is the person who told you. Give me the next thing
21 that might suggest to you that was disconfirmed.

22 OBJECTION Miss Pyke objects on the ground of
23 relevance.

24 MISS PYKE: It is not relevant for the witness to go
25 through information that might confirm what Mr Meyer
26 says. That is something that he puts and it serves no
27 useful purpose and doesn't help your view to go through
28 the hypothesis of any conceivable disconfirming factors.

29 MR MEYER: As an anthropologist, I haven't got the
30 foggiest idea. I have attempted to put what my views
31 are as a lawyer.

32 MS PYKE: The problem is that I want you to rule.
33 I say that it's not an appropriate question and it can't
34 possibly be useful to you.

35 COMSR: Mr Meyer says he is trying to frame a
36 question that will mean something in anthropological
37 terms, but he has the difficulty of a disadvantage. The
38 witness appears to have an idea as to what he is driving

1 at.

2 Q. Are you having a problem with the -

3 A. I am wanting to tell Mr Meyer that, in fact, there is a
4 large body - in fact, in our department we have - for
5 many years, we used to, in fact, teach as a large
6 segment of first year in terms of not how an
7 anthropologist would disconfirm something, and I don't
8 believe that, in fact, it's a profitable line to go
9 down. In fact, systems of belief have, in a sense,
10 inbuilt resistance and inbuilt ways of explaining what
11 is to you and I disconfirming evidence. So that what we
12 used to do in some detail in the first year and what
13 used to be done in detail in areas around the world is
14 especially in the case from the Azande in Africa. That
15 is an area where people believed in witchcrafts. It was
16 interesting from the anthropological side in the way in
17 which in a sense what might be understood as apparently
18 disconfirming evidence did not act that way for the
19 people who held those beliefs. So, what I try to come
20 back to you with is that, in effect, belief systems have
21 ways that to an empiricist might appear to be
22 disconfirming when there are no such strings for the
23 adherence of these beliefs. That's why I brought up the
24 example - and I hope she doesn't mind me using this
25 example - of my mother's own set of beliefs and the fact
26 that it wouldn't matter what I said about scientific
27 understanding of the beginning of this universe, that it
28 would not in one measure change her fundamental belief
29 in Christianity.

30 COMSR: I think we went over this also.

31 XXN

32 Q. Did you see a TV report with Matt Rigney referring to
33 matters pertaining to Hindmarsh Island.

34 A. Yes, I've seen a TV report with Matt Rigney on it. I
35 don't know if it's the one you're referring to.

36 Q. That is the one talking about having a contingency plan.

37 A. Yes, I've seen that.

38 Q. And disclosing the nature of importance of Hindmarsh

- 1 Island to women.
- 2 A. I don't recall that.
- 3 Q. He proceeded to describe the importance of Hindmarsh
4 Island in terms related to female reproductive organs,
5 didn't he, on the television.
- 6 A. I actually haven't got sufficient recall to be able to -
- 7 Q. Is that something that you might consider could have a
8 problem in confirming or disconfirming the veracity of
9 this secret women's knowledge.
- 10 A. At the times that I saw that, there was nothing in that
11 that gave me particular concern. I mean, I obviously
12 would have thought about it, but I -
- 13 Q. What about if you put this in the context as it was in
14 June 1994 that no man at all could know anything about
15 this and that there was no disclosure and, in fact, deny
16 that any man knew anything about it until either - well,
17 no, after I was going to say late 1994 until some time
18 in 1995; i.e., until after the proceedings in the
19 Federal Court. Doesn't that cause you some concern.
- 20 A. Why?
- 21 Q. Because it's being stated that men don't know anything
22 about this and men can't have anything to do with it and
23 then subsequently you find that men did know things
24 about it and men's knowledge predates 19 June 1994.
- 25 A. Yes, I think you have to come back to the relationship
26 between inside knowledge and outside knowledge.
- 27 Q. I don't mind whether it is inside or outside. I'm
28 referring to any knowledge.
- 29 A. It strikes me to the extent that men know nothing and
30 I'm not convinced that they know a great deal and when
31 what they know is outside not inside.
- 32 Q. Why does that matter.
- 33 A. It matters a great deal. The kind of secrets you
34 preserve are inside secrets and the secrets that are
35 negotiable are outside ones.
- 36 Q. Why spend time denying that men could know anything
37 about it, including knowing anything about outside
38 knowledge.

- 1 A. Because that is the idiom of this culture. What you are
2 assuming is that secrecy is somehow lost. The question
3 is that the cultural concept, it's also a concept which
4 can have a hypothetical process. It can have a process
5 where there is the protection of secrecy. You are
6 assuming that there is an absolute secrecy entirely
7 veiling which is the only kind of concept of secrecy to
8 talk about there, and that is clearly not the case.
- 9 Q. Men will deny knowledge, even if they have knowledge.
- 10 A. Often.
- 11 Q. How can you cover consultation.
- 12 A. I don't see how that follows?
- 13 Q. You have criticised the consultation that took place in
14 relation to the construction of this bridge and you said
15 there hasn't been proper consultation. How can you have
16 proper consultation if the men will deny knowledge
17 that's relevant.
- 18 A. I think those two propositions don't have any -
- 19 MISS NELSON: Talk to the women.
- 20 MR MEYER: If I talk to the women, that conflicts
21 with Draper's evidence.
- 22 COMSR: Where is that leading us to?
- 23 MR MEYER: It's leading to what may be
24 disconfirming parts of the - I'm trying to put forward
25 anything that she might consider would cause her to
26 think again. That is the proposition I put.
- 27 XXN
- 28 Q. The proposition I put is: in essence, there is
29 absolutely nothing short of Doreen Kartinyeri saying to
30 you 'I made it all up' that would cause you to question.
- 31 A. Let me assure you from the beginning of this public
32 disservice that I have questioned and questioned and
33 questioned the process that I went through. To the
34 contrary, I've done nothing since this became a matter
35 of public importance but question -
- 36 Q. But you -
- 37 MS PYKE: Let the witness finish.
- 38

1 XXN

2 Q. Where in the statement is there any suggestion of any of
3 that questioning research over and over and over again.

4 Where is it.

5 A. The whole statement is a consequence of that process.

6 Q. I put it to you that the whole statement is merely an
7 argument in favour of your proposition.

8 A. It is in the end.

9 Q. There is no other objective evidence whatsoever in your
10 statement.

11 A. If I hadn't been questioning, I wouldn't have done the
12 extra research upon this which this statement is based.
13 I have done - I mean, I think it's absurd to think that
14 somebody in my position would sit there and not question
15 what they have done and to listen attentively to what
16 was said. I have listened very attentively and
17 carefully to an enormous amount of stuff that is said in
18 terms of whether or not I needed now to qualify,
19 withdraw, retract anything that I said.

20 Q. Do you believe that there is parallel sacred men's
21 knowledge to this women's knowledge.

22 A. I think it's probably likely.

23 Q. Have you heard any hypothetical of -

24 A. I said there are hints of it in Berndt & Berndt.

25 Q. Have you heard a hint of it recently.

26 A. No. And I think what you have to understand then that
27 what we are doing is reflecting under what conditions in
28 a sense is knowledge and what practice is going to be
29 preserved as one of the most important reasons and why,
30 in particular, knowledge has been preserved and if there
31 are other divisions of knowledge and practice which has
32 to do with the fact that Ngarrindjeri women have
33 continued delivering Ngarrindjeri babies a lot longer
34 than Ngarrindjeri men continued to have initiation
35 ceremonies.

36 Q. Isn't it important to know whether there is parallel
37 secret men's knowledge relating to Hindmarsh Island at
38 this point in time.

1 A. Relating to Hindmarsh Island? I don't know that that
2 necessarily follows.

3 Q. Dr Draper says there, doesn't he -

4 A. That is Dr Draper's opinion.

5 Q. I'm asking your opinion.

6 A. I'm not in a position to answer that.

7 Q. Let's say that it's established - and this is a

8 hypothetical question - that there isn't any women's

9 business that's real. Is secret men's business going to

10 come along.

11 A. Listen, we already know in Berndt & Berndt -

12 COMSR: I don't know that this witness -

13 A. In any case, Berndt & Berndt documented clearly that

14 they had disclosed to them that what they described as

15 `secret-sacred knowledge' in the context of male

16 initiation, that is documented well in Berndt & Berndt,

17 and I referred to it in my statement.

18 CONTINUED

- 1 Q. What's that got to do with Hindmarsh Island.
2 OBJECTION Ms Pyke objects.
3 COMSR: You just put the proposition `secret
4 men's.'
5 MR MEYER: I am asking what's the witness's answer
6 got to do with Hindmarsh Island?
7 COMSR: She didn't say it has anything to do
8 with Hindmarsh Island.
9 MR MEYER: I am only asking about Hindmarsh Island
10 because it is established the women's business is
11 tied to Hindmarsh Island. I am asking about parallel
12 matching men's knowledge or whatever, being tied to
13 Hindmarsh Island.
14 XXN
15 A. I don't know that we should assume that at all, but that
16 we might have parallel men's knowledge.
17 Q. Relating to Hindmarsh Island.
18 A. No, not necessarily.
19 Q. That's Dr Draper's evidence.
20 A. Well, Dr Draper is responsible for his evidence and I am
21 responsible for mine.
22 Q. You are not able to comment on that.
23 COMSR: The witness has said that Mr Meyer.
24 The witness has really given a very full explanation of
25 her approach to those issues.
26 XXN
27 Q. When you talked to Doreen Kartinyeri did you deep notes.
28 A. When?
29 Q. At any time.
30 A. In what process?
31 Q. In the process of learning about secret sacred women's
32 knowledge, or anything associated therewith.
33 A. I clearly typed it down.
34 Q. Did you make notes.
35 A. Yes, I typed down her account.
36 Q. Other than making notes, did you make notes in a
37 notebook.
38 A. No.

- 1 Q. You have told us you have already taken notebooks to the
2 ALRM.
- 3 A. Yes.
- 4 Q. What were they about.
- 5 A. About my consultancy.
- 6 Q. Did they relate to things that you had been told by
7 Doreen Kartinyeri.
- 8 A. Yes.
- 9 Q. Well, then you did take notes.
- 10 A. You asked me whether I took notes of what Doreen said to
11 me in my notebooks and the answer is no. Then you asked
12 me, if what I took notes on, related to things that
13 Doreen Kartinyeri had said to me and the answer is yes.
- 14 Q. We won't go into the semantics of what was said to you
15 not told to now.
- 16 A. No, that's not what I am talking about. Other people
17 talked about those matters and I took notes.
- 18 Q. I am interested whether, firstly, you made notes in your
19 notebook of what Doreen Kartinyeri said at Graham's
20 Castle.
- 21 A. I did not.
- 22 Q. Why not.
- 23 A. Because I was asked not to.
- 24 Q. Not make any notes at all.
- 25 A. No and I was in a process of fascilitating. I don't
26 know that I would have been asked to in any case but, or
27 tried to make an insistence but -
- 28 Q. As an anthropologist, isn't notekeeping a very important
29 aspect of the practice of anthropologists.
- 30 A. It is and that's why, quite often anthropologists
31 are quite often asked not to take notes, given that
32 they have been entrusted with informants.
33 That is precisely what most anthropologists would do.
- 34 Q. You end up with no written record of all this research
35 work that you might do.
- 36 A. Unless people themselves ask you to note it, that's
37 right. There is always aspects of a culture which
38 people will decline to have you note. I think it is

- 1 perfectly appropriate and I think many anthropologists
2 would agree with me on that. It is, afterall, their
3 knowledge, not yours.
- 4 Q. You have said that, this women's knowledge is limited to
5 a small number of people, right.
- 6 A. Yes.
- 7 Q. In fact, you said it is limited to midwife's.
- 8 A. No, I said that it is, that is my view, that formerly it
9 was and well, that formerly it was - that it was
10 knowledge that was associated with female putari, that
11 is my -
- 12 Q. Doreen Kartinyeri doesn't suggest, in the information
13 being passed to her, that it had - was being passed to
14 her because - that she might be a midwife.
- 15 A. No, that's not the case. But, we also find, in effect,
16 when a practice goes out, you can see it in relation to
17 Albert Karloan, indeed, that people, when a practice is
18 clearly on its way out, about to become, you know, a
19 nonpractice, that the way in which people transmit
20 knowledge about that practice is quite variable and
21 people, in fact, decide to tell certain things to some
22 people, in that context, that they might otherwise not
23 do.
- 24 Q. What vetting process was there then, for the 35 people
25 that Doreen Kartinyeri spoke to at Graham's Castle.
- 26 A. I think it is precisely in the context that this is a
27 practice that no longer takes place, that Doreen felt it
28 appropriate to say anything about it.
- 29 Q. My question was, what vetting was there of the 35 women.
- 30 A. I don't know. That was a matter for Aboriginal women,
31 not for me.
- 32 Q. Has Doug Milera ever visited your house.
- 33 A. Yes.
- 34 Q. When.
- 35 A. I am not precisely sure, but in the aftermath, I think,
36 of the Minister's declaration.
- 37 Q. Which one.
- 38 A. Pardon?

- 1 Q. Which one, there were three.
2 A. The only one I was around for which was number 10.
3 Q. We're still in the aftermath of that. So, when was
4 that.
5 A. I don't know. July the 11th.
6 Q. I mean, did he come and see you on July the 11th or was
7 it in August, September. When was it that he came.
8 A. It was in that month and it was within days of that and
9 it may have been earlier, but I don't believe so. My
10 recollection is that it was a Saturday morning and my
11 recollection is that, I received a telephone call to say
12 that Doreen and Sarah and Doug wanted to come and see me
13 but they were lost. And I actually got in my car and
14 went and found them and then brought them back to my
15 home, where, as I recall, we had a cup of tea. I also
16 recall that friends of ours and their child arrived in
17 that context and the kitchen became incredibly crowded.
18 COMSR: Is there any point to this enquiry Mr
19 Meyer?
20 MR MEYER: Yes.
21 XXN
22 Q. The next question is; at that meeting, there was
23 discussion, was there not, about the shape of the
24 island.
25 A. There was not.
26 Q. Not at all.
27 A. Not that I recall and I think I would recall if it was.
28 Q. Did they stay for a meal.
29 A. They did not.
30 Q. It was suggested to me that is an occasion when they had
31 a Chinese meal at your place.
32 A. It is possible.
33 Q. I have got that wrong.
34 A. Thank goodness.
35 Q. Apparently Wendy Warrell came to your house and had
36 a Chinese meal with you.
37 A. She has had many Chinese meals at my place.
38 COMSR: We're not going to follow a day by day -

- 1 MR MEYER: I was only trying to cause the event to
2 be recalled by that reference.
- 3 XXN
- 4 A. Could I ask for a short adjournment, if that is
5 possible?
- 6 ADJOURNED 4.33 P.M.
- 7 RESUMING 4.40 P.M.
- 8 COMSR: What matters do you propose to cover?
- 9 MR MEYER: There is not a lot now. I will finish
10 by 5 o'clock.
- 11 XXN
- 12 Q. You have told us that, on the 19th of June, Connie
13 Roberts was very much against there being any revelation
14 or disclosure, of any women's knowledge. That's right,
15 isn't it.
- 16 A. That's right.
- 17 Q. She was quite strong in that view.
- 18 A. She was, in my observation.
- 19 Q. Would that suggest to you, that there is no way that
20 prior to 19 June, Connie would have authorized Sarah to
21 disclose matters of women's business or women's
22 knowledge.
- 23 A. Well, I don't know that that necessarily follows. I
24 think what the question is, what was being disclosed and
25 how much was being disclosed and for what purpose. And
26 I think - look, I haven't read Dr Draper's evidence, so
27 I am only basically saying from what I have heard, but,
28 it seems to me that, that Connie authorising Sarah to
29 say certain things, in a certain context to one person,
30 is a different proposition from her authorising Sarah,
31 or anyone, to say anything in the context of what was
32 being considered at Graham's Castle on that occasion.
- 33 Q. The alternative view is, she might not have authorised
34 such a disclosure at all.
- 35 A. I would doubt that that was the case in terms of my
36 knowledge of Sarah and of Mrs Roberts.
- 37 COMSR: The witness can't really say.
- 38 MR MEYER: I don't know.

1 XXN

2 Q. Another alternative is that, Connie Roberts herself
3 never, despite your interpretation of her silence, never
4 authorized any revelation or disclosure.

5 A. She certainly did, when I saw her hand go up and I
6 watched very carefully to make sure that Connie's did go
7 up I have to say. The one person I am absolutely
8 certain about is Connie Roberts' hand and where it was
9 on that day.

10 Q. Was there anybody's hand who did not go up.

11 A. Not that I observed and I tried to. I basically went
12 right round the room to see what was -

13 Q. A 100% unanimous vote.

14 A. So far as I could see. I didn't notice anybody's hand
15 not being up.

16 Q. It would have needed courage, wouldn't it, on the odd
17 person out.

18 A. No, I don't believe it would have. I have stressed the
19 kind of debate that went on that day and it was a very
20 very healthy debate and significant. Connie's hand, in
21 my vision, was one of the last to go up and I suspect
22 there were a number of people, indeed, taking their lead
23 from her. I don't believe - I mean, what I saw was, to
24 my eyes, a very fullsome debate, a very fullsome debate
25 and it seemed to me that there was nobody who felt
26 inhibited from expressing any opinion that they wanted
27 to.

28 Q. Lindy Warrell. Can I put to you that you had a meeting
29 with your husband, with Lindy Warrell, during May 1994.

30 A. I think that's very likely.

31 Q. Which involved an occasion when you had a Chinese meal.

32 A. That's also possible.

33 Q. Discussed with Lindy Warrell about the possibility of
34 her taking a brief, in respect of this issue of
35 Hindmarsh Island, as it was then developing in April,
36 May, June 1994.

37 A. I think - I don't recall the specific event, but I think
38 that's likely.

- 1 Q. In the course of that discussion, discussed with you,
2 and with your husband, sacred secret business or
3 knowledge, as in the Indian subcontinent and in the
4 Pitjantjatjara lands.
- 5 A. I don't recall that, but it is quite conceivable since
6 Lindy works in her PhD work is in Sri Lanka, and that
7 she had recently been working not in the 'Pit' lands but
8 in Port Augusta, so it is quite possible such a
9 discussion took place.
- 10 Q. That was in May '94.
- 11 A. Well, I can't absolutely confirm that, that all happened
12 in that way, but, we often saw Lindy and we frequently
13 talked about her research in Sri Lanka and we often
14 talked of matters Aboriginal, so.
- 15 Q. You have made reference, on a number of occasions, in
16 your statement, to there not being any emphasis or need,
17 for you to establish any continuity of tradition or
18 anything of that nature, is that right.
- 19 A. It is my view, that a strict definition of the Federal
20 Act, does not require antiquity. That is not to say
21 that my - in my own application of the notion of
22 tradition, I don't see that a dimension of tradition
23 displayed in this context was a notion of it coming from
24 ascending generations.
- 25 Q. Your focus was on the issue of belief, rather than
26 tradition.
- 27 A. It seems to me that is one of - what I had to do in a
28 sense, was set myself a set of priorities and that was
29 clearly an early priority for me.
- 30 Q. I am putting to you, it was, in fact, the governing
31 priority in the preparation of your report of an
32 assessment.
- 33 A. I think it was one of my priorities.
- 34 Q. See, I am trying to put a further proposition than that.
35 That what you focussed on was the issue of belief,
36 rather than the issue of any continuity of tradition
- 37 A. No, that's not so.
- 38 Q. Have you made any comment that, in essence, this

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MST 57S

D.J. FERGIE XXN (MR MEYER)

- 1 argument is more about Aboriginal political agendas
- 2 than heritage issues.
- 3 A. I don't know.
- 4 CONTINUED

- 1 Q. Thinking back, is that something that you are likely
2 to have said.
- 3 A. Something it is possible that I said.
- 4 Q. Do you know a publication 'Environment South
5 Australia'.
- 6 A. I do.
- 7 Q. What I show you is a first page and p.14.
- 8 A. Certainly.
- 9 Q. Of a copy of that document.
- 10 A. Yes.
- 11 Q. Is that an article written by you.
- 12 A. That is.
- 13 Q. Were they your views, at least in November/December
14 1994.
- 15 A. These are my views in relation to the State Acts that
16 I signed.
- 17 Q. So, you distinguish, do you, between State Act and the
18 Federal Act.
- 19 A. Indeed, I do.
- 20 Q. Does that lead to the proposition that, had you been
21 asked to make this assessment under the State Act,
22 that you may have given a different answer.
- 23 A. Yes, because the State Act absolutely gives a temporal
24 dimension to the notion of tradition and traditional
25 owners, absolutely. I would have had to go about this
26 whole process quite differently, had I been working
27 under that Act, but I wasn't.
- 28 Q. Looking at the document, which I now produce to you, I
29 take it you have seen that document before.
- 30 A. Yes.
- 31 Q. That is a publication called 'Campus News'.
- 32 A. No, it is not. It is called -
- 33 Q. No, it is called 'The Adelaiddian', is that right.
- 34 A. Yes.
- 35 Q. And it is a section on campus news.
- 36 A. Yes.
- 37 Q. 'The Adelaiddian' is written up in the top right-hand
38 corner, is that right.

- 1 A. Yes, that's the case, yes.
2 Q. This is dated 1 August 1994, and is p.6.
3 A. Yes.
4 Q. Have you seen that article before.
5 A. Yes, I saw it about 1 August 1994.
6 Q. Exhibit 67, it is the second document, does that
7 properly set out your comments, as at 1 August 1994.
8 A. It is a report based on an interview with me.
9 Q. But, where you are quoted, does that accurately report
10 you.
11 A. If you just give me some time, I will tell you.
12 COMSR
13 Q. I suppose the first thing is, did you say what you are
14 reported to have said.
15 A. I can't know, but it is the sort of thing that I might
16 well have said, so, yes.
17 Q. It looks accurate, does it.
18 A. It looks like the sort of thing I might have said in
19 this sort of a context, yes.
20 XXN
21 Q. Looking at s.3.5 of Exhibit 16, now before you, what
22 we call in these proceedings the Lucas report.
23 A. Yes.
24 Q. That is your husband's report, isn't it.
25 A. It is.
26 Q. You have said your husband has, in fact, a particular
27 skill as a researcher.
28 A. He does.
29 Q. At para.3.5 he says `Although a large body of
30 Ngarrindjeri myths, legends, stories and songs has been
31 published - '
32 MR MEYER: I read this, because it is not
33 offensive in relation to s.35.
34 XXN
35 Q. `Although a large body of Ngarrindjeri myths,
36 legends, stories and songs has been published, a
37 comprehensive search of this material has failed to
38 find any specific reference to Hindmarsh Island', is

1 that right.

2 A. That's what is written there.

3 Q. Do you contest that now.

4 A. No, `a comprehensive search'. His comprehensive search
5 did fail to see it.

6 Q. What about the large body.

7 A. What large body?

8 Q. The third and fourth words of the paragraph.

9 A. Yes. No, I don't contest that.

10 Q. I understood you to say that, in fact, there is not a
11 substantial amount of writing or research material
12 available.

13 A. Then you misunderstood me. What I was trying to say
14 was that there was not a large body of research which
15 was likely to have had secret women's knowledge
16 disclosed in that context.

17 Q. Why wouldn't that, `a large body of Ngarrindjeri myths,
18 legends, stories and songs', have some reference in
19 some way to the existence of some secret knowledge.

20 A. I think what - it is very clear.

21 Q. Not its contents, but its existence.

22 A. That is very clear. What is meant is that in the
23 literature is now frequently the same stories.
24 Different versions of the same stories were told to
25 a variety of researchers. It is not difficult to
26 conclude that certain kind of information was freely
27 given to researchers and that, in fact - and there
28 was general agreement amongst Aboriginal people about
29 what information was perfectly appropriate to tell
30 outsiders about. And you can draw from that a
31 conclusion that there may also have been areas of
32 knowledge that Aboriginal people declined to reveal
33 to white researchers and white observers. Because
34 my point is that most of the early material is not
35 based on any kind of research, which it seems to me
36 was likely to elicit that kind of a knowledge. And
37 it is precisely outside `myths, legends, stories and
38 songs', which you are likely to find in the literature

- 1 and which I suggest you do find in the literature.
- 2 Q. Did your husband do a proper job.
- 3 A. My husband did, I have no doubt, as good a job as he
- 4 could within his brief and within the time available
- 5 had him.
- 6 Q. That wasn't the question.
- 7 A. I know it is not. How could I comment?
- 8 Q. I asked you whether you consider, as an expert
- 9 anthropologist, whether your husband did a proper job.
- 10 OBJECTION Ms Pyke objects.
- 11 MS PYKE: She did answer that.
- 12 MR MEYER: No, she answered it in a very qualified
- 13 way and I am asking her to answer in an unqualified way.
- 14 MS PYKE: She can't.
- 15 XXN
- 16 Q. I only ask it in that context, I will explain why: you
- 17 understand that that report was done in the context of
- 18 the State planning arrangements, don't you.
- 19 A. Yes.
- 20 Q. And you understand that your husband, in fact, wrote
- 21 the programme of what he required to do for the
- 22 purposes of preparing this report.
- 23 A. Yes, I didn't know that, but I will - you can propose
- 24 that to me and it seems not unreasonable. I don't
- 25 know under what context his belief was written
- 26 frankly.
- 27 Q. And I put the question to you in the context of your
- 28 comments to The Advertiser, that there wasn't proper
- 29 consultation.
- 30 A. Yes.
- 31 Q. Your husband's report is part of the consultation
- 32 process.
- 33 A. I think you need to return - you would need to turn
- 34 quickly to the end of my husband's report where he
- 35 recommends very clearly further consultation directly
- 36 between the developers and Aboriginal people and it is
- 37 certainly to that to which I referred.
- 38 Q. I am referring to the issue in 1990.

1 A. Yes, I mean, there is clearly a lot of evidence that
2 planning processes - there is a very now detailed
3 anthropological discussion of the male bias in land
4 rights assessments, in land claims, in a variety of
5 contexts. The bodies with which anthropologists have
6 to deal have a clear male bias.

7 Q. So, this is a gender issue.

8 A. It has some relevance to this, of course. It is not
9 simply a gender issue. What you have to understand
10 is, that we have a body of literature which has a
11 profound male bias, both in the sense of who did it,
12 but also in terms of the culture in which terms it
13 was done. And that goes from Taplin's time to the
14 present. We have, in fact, and I have been critical
15 of it myself in public, we have a State heritage
16 process which is very male biased. And I was
17 certainly referring to that which, in a sense, has
18 never taken care to ensure that women are part of
19 the consultative processes. And in that I would have
20 been - I am quite happy to be critical of that. I
21 think that the processes here do not ensure that
22 women's business - women's issues are in any way
23 picked up in these processes. I think that has been
24 the case from the beginning of this Act until now.

25 Q. I don't want to debate this issue with you, but your
26 husband consulted Dr Kartinyeri in 1988 in relation
27 to Sellicks Beach, didn't he.

28 A. I was in Maree, so I can't -

29 Q. Have you looked at the Sellicks Beach report.

30 A. I have not.

31 MR MEYER: The relevance of that is that her
32 husband knew to go and consult women.

33 WITNESS: And he knew in this case, as well. I
34 don't see - I have already said that my understanding
35 is that he went - he sought to talk to Doreen Kartinyeri
36 in this context, as well.

37 XXN

38 Q. That's why I am attempting to put to you that the

- 1 criticism you are now making is not appropriate to the
2 report you are talking about.
- 3 A. My criticism is very much in the context that the
4 recommendation was for the developer to consult
5 directly with the named Aboriginal groups.
- 6 Q. Telecom: subsequent to your involvement in the
7 Hindmarsh Island issue, were you retained by the ALRM
8 to advise in relation to the laying of the Telecom
9 cable.
- 10 A. I don't know. I was to assist their solicitor in
11 gaining instructions is I think how - what my brief
12 was.
13 My brief is -
- 14 Q. Whichever way it was, did you have an association
15 with the ALRM, or Tim Wooley, or somebody associated
16 with the ALRM in relation to the laying of the Telecom
17 cable.
- 18 A. In the consultative processes about the laying of a
19 Telecom cable.
- 20 Q. Are you saying, yes.
- 21 A. Yes.
- 22 Q. Were you paid for that.
- 23 A. Yes.
- 24 Q. Was that subsequent to your doing this report in the
25 bridge matter.
- 26 A. It was.
- 27 Q. How is laying a cable joining the island to the
28 mainland distinguishable from a bridge.
- 29 A. Quite obviously.
- 30 Q. I haven't got it, so can you help me.
- 31 A. No, and I am not prepared to talk about these matters.
- 32 Q. Did you ask the women whether they approved the laying
33 of the cable.
- 34 A. I was there for discussions, which remained unresolved
35 when they were concluded.
- 36 Q. Did you ask the women whether they approved.
- 37 A. I was there when they discussed that very question.
- 38 Q. Did they approve.

- 1 A. Their consultation was - it didn't reach a solution.
2 Q. The cable has been laid, hasn't it.
3 A. I don't know.
4 MR MEYER: I have no other questions.
5 COMSR: We will be adjourning until tomorrow.
6 What is anticipated tomorrow?
7 MR SMITH: Dr Fergie will continue, as other
8 people ask the questions they want to ask of her.
9 COMSR: Perhaps I can get some idea.
10 Who intends to ask questions of Dr Fergie?
11 MR TILMOUTH: Not me. Only five minutes at the most,
12 if at all.
13 MR STRATFORD: No.
14 MS FREEMAN: Mr Abbott will on Wednesday.
15 COMSR: Will you be asking questions of the
16 witness, Ms Pyke?
17 MS PYKE: But I will have to do that at the end
18 after re-examination. I don't know whether Miss Nelson
19 is planning to ask any.
20 COMSR: I am just thinking that it sounds as
21 though Dr Fergie won't be very long with questions.
22 MR SMITH: No, and then there is Mr Hemming to be
23 completed also.
24 COMSR: We may well be able to -
25 MR SMITH: Yes, I am assuming that will occupy a
26 goodly part of the day. So, no-one else is arranged
27 and, of course, Mr Abbott has to complete Mr Hemming
28 and also has to cross-examine Dr Fergie. So, that
29 will be Wednesday, I hope.
30 MS PYKE: Just on that topic: as I remember, Mr
31 Abbott was halfway through cross-examining Mr Hemming.
32 Is it expected that we should cross-examine in the
33 midst of that?
34 COMSR: I am afraid it will have to be done,
35 Ms Pyke. We can't afford the luxury, at this stage,
36 of not going ahead and using all the available time.
37 But didn't Miss Nelson have to examine Mr Hemming?
38 MR SMITH: Yes, she will be here tomorrow.

5430

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D.J. FERGIE XXN (MR MEYER)

- 1 COMSR: She might well prefer to examination
- 2 tomorrow, Ms Pyke.
- 3 MS PYKE: Yes, Mr Hemming is her witness. I
- 4 imagine she is much like me and will examine at the end
- 5 of everyone's cross-examination.
- 6 COMSR: She may chose to do so.
- 7 MR SMITH: With the exception that I am last.
- 8 ADJOURNED 5.00 P.M. TO TUESDAY, 31 OCTOBER 1995 AT 9.30 A.M.

1 COMSR STEVENS
2
3 HINDMARSH ISLAND BRIDGE ROYAL COMMISSION
4
5 TUESDAY, 31 OCTOBER 1995
6
7 RESUMING 9.35 A.M.
8 WITNESS D.J. FERGIE ENTERS WITNESS BOX
9 MR SMITH: The program for today is the continuing
10 examination of Dr Fergie to the extent that she can be
11 completed today, because Mr Abbott, I see, is not here
12 today either. Dr Fergie might be faced with another day
13 tomorrow, or a part of a day at least. Then completion
14 of Steve Hemming to the extent that we can do that today
15 as well. The same problem exists in respect of him. I
16 think Mr Abbott has almost completed him.
17 COMSR: Who else has to examine Mr Hemming?
18 MR SMITH: Everybody else. Mr Abbott was the
19 first.
20 COMSR: That may be so, but if the situation is
21 that we have available time for someone else to examine
22 we will just have to use it.
23 MR SMITH: Yes. Dr Draper will be returning from
24 Brisbane tonight and he will be available Thursday,
25 Friday.
26 COMSR: It is essential we complete Dr Draper's
27 evidence by Friday.
28 MR SMITH: He will be returning to Adelaide
29 tomorrow evening and available Thursday, Friday.
30 COMSR: If need be, I will just have to
31 apportion the time between counsel.
32 MR SMITH: I think that is plenty of time anyway.
33 COMSR: I would think so. I can't imagine
34 anyone will be prejudiced by that allocation of time.
35 MR SMITH: Would you hear Mr Stratford on the
36 question of the documents produced by Dr Fergie and the
37 question of privilege relating to them?
38 COMSR: Which exhibit is that?

1 MR SMITH: 243.

2 MR STRATFORD: I have taken instructions on three
3 things. First of all, the Graham's Castle meeting;
4 secondly, subsequent to 26 June 1994, you will remember
5 that is when Dr Fergie's brief was changed; and thirdly,
6 in relation to the bundle of documents that was handed
7 to me yesterday. I will be brief on all three points.

8 With respect to the first point in relation to the
9 Graham's Castle meeting, all I say is this: The issue
10 is not really one of legal professional privilege in my
11 view. The issues are issues of confidentiality and the
12 constitutional issue raised by Ms Pyke yesterday. That
13 meeting, of course, was part of the Saunders inquiry,
14 and seems to me that if there is any argument at all in
15 relation to legal professional privilege, it is an
16 argument that must rest with Mr Tilmouth's clients. So
17 I don't have anything to say in relation to that meeting
18 insofar as legal professional privilege is concerned.

19 The second point is, in relation to events
20 subsequent to 26 June 1994, when Dr Fergie's brief
21 changed, I say this, that she was retained to prepare a
22 report to support the application to Mr Tickner, and
23 that any additional information she gathered on behalf
24 of the clients should be held the subject of legal
25 professional privilege. I add this rider, that the
26 report has, however, already been received into
27 evidence. I am not sure how widely it is distributed,
28 so it may be that privilege has been waived with respect
29 to the report.

30 I say this in relation to information gathered after
31 26 June, that any information gathered for the report
32 and not included in the report ought to be held the
33 subject of privilege. So if the report contained a
34 conclusion based on information gathered from various
35 sources, that information that was gathered should be
36 held privileged, but, because the report has been
37 disseminated, the conclusions shouldn't be held
38 privileged.

- 1 COMSR: So you are saying that Dr Fergie can say
2 what conclusions she came to, but not on what material
3 she came to those conclusions insofar as that
4 information was gained after 26 June?
- 5 MR STRATFORD: Yes, precisely. It is very difficult to
6 think of an example in the abstract because it will
7 probably be a matter of listening to the evidence, but
8 if Dr Fergie found some new information after the
9 Graham's Castle meeting - that is, new information to
10 her from a source that she regarded as relevant - then
11 the information that she gathered, it seems to me, ought
12 to be held privileged.
- 13 But because it was included in the report, it has
14 been disseminated, that privilege has been waived. If
15 the report hadn't been disseminated, I am saying it
16 would all be privileged. But because the report, as I
17 understand it, has been disseminated and certainly
18 received in evidence by you, privilege, so far as the
19 report is concerned, would appear to have been waived.
- 20 COMSR: Of course, the information that I have
21 heard from Dr Fergie is to the effect that she received
22 some explanation or expansion, but not what it was. She
23 has simply indicated that in her discussions with Dr
24 Kartinyeri she gained further insights, as it were, as
25 to what she had been told. I think that is the effect
26 of the evidence.
- 27 WITNESS: Yes.
- 28 MR STRATFORD: Yes, that was my understanding of the
29 effect of yesterday's evidence too. In relation to the
30 third issue, the bundle of documents that was handed to
31 me yesterday, I understand they are marked MFI 243.
- 32 COMSR: Yes, and then in numerical order.
- 33 MR STRATFORD: I don't know that I have ended up with
34 them in numerical order. I will deal firstly with
35 document 2. It is a larger bundle. The copy I have got
36 starts off 7 February 1995.
- 37 COMSR: Yes, that's correct.

1 MR STRATFORD: You will immediately appreciate that is
2 some time after the relevant events. My instructions
3 are these, that that first part, starting off dated 7
4 February 1995, in fact relates to matters associated
5 with the laying or not laying of a Telecom cable that we
6 heard some evidence of yesterday. So I would say, first
7 of all, that that information is irrelevant for your
8 inquiry. It is well after the events to do with the
9 Telecom cable and -

10 COMSR: Perhaps it has some relevance to the
11 anthropological evidence and the conclusions that
12 anthropologists are prepared to draw.

13 MR STRATFORD: Possibly. I can't answer that. All I
14 can say is that, on the face of the document, it would
15 seem to me to be well after the events that you are
16 interested in; those events of fabrication, yes or no.
17 So it is well after April, May, June of 1994, and I say
18 it is irrelevant. In any event, I would say that,
19 because that relates to an entirely separate matter, it
20 relates to matters which presumably are privileged in
21 another area. They certainly presumably are
22 instructions, from my information, by a lady called
23 Richardson to Dr Fergie. So they would seem to be
24 communications between a solicitor other than Mr Wooley
25 and Dr Fergie in relation to another matter.

26 COMSR: I don't see anticipation of any legal
27 proceedings of any sort - they may be communications,
28 but on what basis are they privileged?

29 MR STRATFORD: I am not sure if they have anything to
30 do with the Federal Court action, or if they have
31 something to do with a further section 10 application,
32 or whether they have anything to do with any litigation.
33 I am not instructed. All I can say is it is well after
34 the event, about a different matter, and I would say
35 irrelevant. The second part, about halfway through my
36 bundle is a page headed 'Draft Agenda.'

37 WITNESS: It is not in the book. It is a separate
38 - no, I'm sorry, it is in that book, yes.

1 MS PYKE: I am not able to help. We don't
2 actually have a copy ourselves.

3 COMSR: Can you tell me this much, does it
4 precede or follow an entry `Ann Lucas Mouth House 115
5 acres'?

6 WITNESS: It is after that, commissioner.

7 COMSR: I have found it. It is on the back of a
8 page.

9 MR STRATFORD: My instructions are these in relation to
10 that: those notes were made following the handing down
11 of the decision by O'Loughlin J in the Federal Court.
12 My understanding is that they are notes of a meeting Dr
13 Fergie attended following the handing down of that
14 judgment and the conference really covered possible
15 courses that might be followed after that judgment was
16 handed down.

17 So I would say that those notes relate to the legal
18 proceedings in the Federal Court, again they are well
19 after relevant events for this commission, and I would
20 say that the meeting is irrelevant for your purposes and
21 should be ignored. In any event, it was a meeting where
22 there were discussions about tactics, possibilities,
23 options following the handing down of Mr O'Loughlin J's
24 judgment.

25 COMSR: I think, from what you are putting to
26 me, that you are saying it will be necessary for me to
27 look through these notes to determine what part of them
28 are covered by legal professional privilege and what are
29 not, and what are relevant?

30 MR STRATFORD: Yes. I agree with the submission that
31 one of my fellow counsel made to you, that you really
32 need to have some understanding of the document or the
33 meeting to be able to rule on whether or not it is
34 relevant, whether or not it is privileged. I agree with
35 that submission.

36 So I think that you should look at that, you should
37 take into account what I say in relation to its content,
38 and then you should rule as to whether or not it should

D.J. FERGIE

1 be held the subject of legal professional privilege or
2 not. I have nothing further to say in relation to that
3 bundle of documents.

4 The other bundles that were handed to me seem to be
5 somewhat less important. I was handed a copy of what
6 appears to be a diary. It is number 11. These
7 documents, I understand, are documents taken from Dr
8 Fergie's diary dealing with the period in June 1994, and
9 insofar as the documents themselves are concerned I
10 don't have a problem with the documents.

11 But if you turn to notes of conferences, or notes to
12 indicate that conferences were held between Dr Fergie
13 and Mr Wooley, then I say that the contents of any
14 discussion that Dr Fergie had with Mr Wooley ought to be
15 held the subject of legal professional privilege on the
16 basis that Mr Wooley was apparently instructing Dr
17 Fergie with respect to either the meeting or,
18 alternatively, the report.

19 So the documents aren't a problem, once again,
20 because I think it probably helps you fix times when
21 discussions occurred, but as far as the discussions
22 themselves are concerned, I would say they should be
23 held the subject of legal professional privilege.

24 COMSR: What is the number of the next document?

25 MR STRATFORD: It looks like number 12, some field
26 notes dated June 1994. My comments in relation to this
27 document are the same as in relation to the previous
28 document, that is, I don't have a problem with the
29 documents being received by you, but insofar as any
30 conferences are concerned between Mr Wooley and Dr
31 Fergie, I say they should be held the subject of legal
32 professional privilege on the basis that Mr Wooley was
33 instructing Dr Fergie.

34 COMSR: I am not quite sure what you mean by
35 that. 'Mr Wooley rang me at work' and then she returned
36 his call. She explained her role. I mean, that can't
37 be -

38 MR STRATFORD: No.

- 1 COMSR: None of that.
- 2 MR STRATFORD: No, I am not worried about that. But if
- 3 the discussions were further pursued, if there was a
- 4 detailed examination or cross-examination on it, I would
- 5 say that would lead us into the area of legal
- 6 professional privilege.
- 7 CONTINUED

1 I don't have a problem with you receiving the documents
2 and I don't have a problem with you having an
3 understanding of what the telephone discussion or
4 meeting was about. I don't think there is a problem
5 with that. In fact, as I said, you need to know that to
6 be able to rule whether or not it is privileged. I have
7 one other bundle of documents which seem to contain an
8 assortment of numbered documents and I offer no comment
9 in relation to those.

10 COMSR: Perhaps you could give me an idea of
11 what the numbers are then. Do we have the numbers of
12 those documents?

13 MR STRATFORD: I understand from Miss Simpson that this
14 bundle includes a number of different numbered
15 documents.

16 COMSR: They do go in sequence.

17 MR STRATFORD: One is 32, I can tell you that.

18 COMSR: 32 is just three pages as far as I'm
19 concerned.

20 MR STRATFORD: That seems to be so. There are other
21 documents there and Miss Simpson is -

22 WITNESS: 21 is the phone message.

23 COMSR: 33 is another.

24 MR STRATFORD: I will read the numbers to you in a
25 moment when Miss Simpson gives me the numbers. My
26 position is the same that I don't have a problem with
27 you receiving those documents. I think that covers all
28 of the matters that it was suggested I get instructions
29 on.

30 I will read out to you the numbers: 32, 21, 8, 36,
31 10, 6, 13 and 3. That completes the list. I don't
32 think there are any other documents that I was going to
33 get instructions on. Obviously if something comes up, I
34 expect that counsel assisting will ask me to do
35 something about it.

36 MR SMITH: As to this witness, Mr Meyer had
37 finished. It's, I suppose, Mr Tilmouth.

38 NO CROSS-EXAMINATION BY MR TILMOUTH

1 CROSS-EXAMINATION BY MISS NELSON

2 Q. You know Steven Hemming, of course.

3 A. Yes.

4 Q. You have known him for some time.

5 A. Yes.

6 Q. Did he ever speak to you about anything to do with

7 Hindmarsh Island and the bridge prior to 19 June 1994.

8 A. He did not.

9 Q. Did he ever at any time arrange for you to speak to

10 Doreen Kartinyeri or to advise her.

11 A. He did not.

12 NO FURTHER QUESTIONS

13 MS PYKE: I wish to re-examine, but I can't do

14 that until Mr Abbott has cross-examined.

15 COMSR: Can we get this far: that you examine at

16 this stage and if anything arises out of Mr Abbott's

17 cross-examination, that you have the right -

18 MS PYKE: No, I really don't think that frankly

19 would be fair to the witness. My right to

20 re-examination comes after everyone else's had their go

21 and I'm not prepared, with respect, to alter that.

22 COMSR: I don't know that it is a right. The

23 question of any examination is a matter for the

24 discretion of the Commissioner.

25 MS PYKE: I accept that.

26 COMSR: The extent and the other -

27 MS PYKE: Everyone else has had the opportunity to

28 be re-examined after other counsel have cross-examined

29 and I think it would be unfair and inappropriate, given

30 the nature of the evidence of this witness, to call upon

31 me to examine her before I have heard clearly what is

32 going to be a major attack upon her report. I just urge

33 you not to put me in the position of needing to do that.

34 COMSR: Of having two goes, as it were. You

35 don't want that opportunity?

36 MS PYKE: Well, I want one go where I can sit or

37 stand in some logical way and put my case at the end of

38 all of the cross-examination and consider what has been

- 1 said.
- 2 COMSR: While I don't want you to feel that you
3 are being treated on any less favourable basis than
4 anyone else in respect of that, I've tried to give
5 everyone as full an opportunity really -
- 6 MS PYKE: I appreciate that.
- 7 COMSR: - of taking into account the particular
8 interests involved as far as the persons they are
9 representing are concerned.
- 10 MS PYKE: It seems to me that clearly Mr Abbott,
11 from what he has flagged and from a lot of his
12 criticisms put to other witnesses, is going to be a
13 major cross-examiner of my client. I put it that way
14 and I say I don't feel at all comfortable in
15 re-examining my client until I have heard what has been
16 put to her by Mr Abbott.
- 17 COMSR: Well, you see, there are some problems
18 here. We are having Mr Draper come back and because he
19 is coming back from Queensland, we will have to allocate
20 the time where he's here for his examination.
- 21 MS PYKE: I understand all of that. It seems to
22 me that my client shouldn't be prejudiced on account of
23 other people's difficulties. Dr Draper had difficulties
24 in that he could not stay for the weekend and Mr
25 Abbott's having difficulties. I have no problem with
26 that. My client should not pay the penalty.
- 27 COMSR: If you think it is a penalty, it might
28 be a bit of an advantage if you have two goes.
- 29 MS PYKE: I don't see it that way.
- 30 COMSR: There's no-one else at this stage who
31 wishes to examine this witness? Well, it looks like you
32 are going to have to have a break now.
- 33 WITNESS STANDS DOWN

- 1 COMSR: If I could get some idea of what the
2 time sequence is. Will we conclude whoever has to
3 examine Mr Hemming here today.
- 4 MS NELSON: Mr Abbott is part way through
5 cross-examining him.
- 6 COMSR: We can't wait for Mr Abbott's
7 convenience.
- 8 MS NELSON: He was the first counsel to examine him,
9 I think.
- 10 COMSR: I think the situation is that we are not
11 going to hold up the hearing.
- 12 MS NELSON: I understand that. My client is here
13 and he is ready to give all of his evidence.
- 14 COMSR: Who wishes to examine?
- 15 MR PALYGA: We do. I anticipated that I might have
16 to cross-examine Mr Hemming today. Mr Meyer is away
17 today as he is in Sydney. I didn't anticipate that it
18 would be likely to happen this early.
- 19 COMSR: I must say I'm surprised myself.
- 20 MR PALYGA: I am prepared to cross-examination Mr
21 Hemming today. I am wondering if it could be later
22 today?
- 23 COMSR: Is there anyone else?
- 24 MS PYKE: I would perhaps want to ask some
25 questions of Mr Hemming.
- 26 COMSR: Mr Tilmouth, when will your clients be
27 available? I was thinking that or I anticipate that
28 they won't individually take a very long time and I am
29 wondering what warning, what time they would need? It
30 looks almost as though we could slot one in this
31 afternoon if you had one available?
- 32 MR TILMOUTH: I don't have them available this
33 afternoon. Mr Kenny has been unfortunately taken out of
34 action as well. Victor Wilson, I indicated, would not
35 be giving evidence. I think I may receive a report
36 about George Trevorrow who is being operated on today,
37 so that might put him out of action for some time. One
38 of my other clients had a double by-pass last Friday, as

1 you may know. I am seeing Mr Rankine tonight and Tom
2 Trevorrow tomorrow night. The idea is, according to our
3 negotiations with Mr Smith, they will be available from
4 the beginning of next week; that was on the footing that
5 today and tomorrow are already accounted for and the
6 rest of the week accounted for by Mr Draper.

1 WITNESS STEVEN JOHN HEMMING CONTINUING
2 CROSS-EXAMINATION BY MS PYKE

3 Q. You have quite clearly spoken with many Ngarrindjeri
4 women over a period of time.

5 A. Yes.

6 Q. Have you come across any circumstances in which your
7 perception has been that any of these women have been
8 reluctant to disclose information to you concerning any
9 of their tradition or cultural practices and knowledge.

10 A. Yes, I have. I've indicated a few examples in my
11 statement.

12 Q. From your knowledge and experience in relation to
13 Aboriginal people, was that surprising to you at all.

14 A. Not really, no. It was fairly consistent through the
15 period I've worked with people. I think that reluctance
16 has been for a range of reasons ranging from perhaps
17 people not knowing me, my position in the Museum,
18 through to reluctance on the basis of gender. So I
19 think it goes through a range of reasons why people
20 might not talk about particular issues would be
21 depending on the situation.

22 Q. In your experience with Aboriginal people generally,
23 have you noted that they are perhaps more inclined to
24 disclose information or reveal sensitive information or
25 knowledge to people with whom they have established a
26 relationship of trust.

27 A. Yes, certainly. I think that's much the case with
28 everyone.

29 Q. Would that be particularly so with sensitive information
30 about, for example, men's business or secret men's
31 business or women's business or secret women's business.

32 A. I think it would be. As I said in my statement, I
33 haven't had much experience with details like that, but
34 I've come, I guess, to the edges of those situations
35 where people have shown their reluctance to talk about
36 things; perhaps like childbirth and issues like that.

37 COMSR

38 Q. I suppose natural reticence might account for, say, a

- 1 woman being reluctant to discuss with a man that's not
2 close to them details of childbirth. Are you talking
3 about that or something else.
- 4 A. Yes, that is partly that. I think from your experience
5 with Ngarrindjeri people, it's also another stage
6 further than that. I think that - I think John Campbell
7 gave evidence here about his reluctance to ask the
8 daughter of Margaret Pinky Mack certain questions about
9 women's issues. And I think being in the community for
10 a while, you observe those sorts of incidents. So,
11 there is certainly more than just a reticence, there is
12 basically an understood set of etiquette that you don't
13 ask certain questions of certain people. That would be
14 the way I see it. I would feel like I was insulting
15 someone if I was to go up and ask the daughter of Pinkie
16 Mack a particular type of question.
- 17 XXN
- 18 Q. The sort of information that we are talking about in
19 this Commission - and I'll use the phrase of `secret
20 sacred women's business' or `secret women's knowledge',
21 that sort of information - is that the sort of
22 information that you believe would be most unlikely to
23 be revealed in the absence of a position of trust and
24 confidence.
- 25 A. Yes, it is.
- 26 Q. Are you able to comment - and if you cannot please say
27 so - on whether you have any experience of Aboriginal
28 people disclosing information in the circumstances of
29 what I might call the cultural emergency; that is,
30 circumstances where a site is threatened and which is
31 the impetus for the disclosure of information.
- 32 A. I don't think I have really ever been in that situation.
33 Most of my work has been outside of those sorts of
34 parameters, I think.
- 35 Q. Have you done -
- 36 A. That's off the top of my head.
- 37 Q. Has any of your reading generally raised that issue for
38 you.

1 A. I'm certainly aware that within the literature and the
2 circumstances that people find themselves in, in terms
3 of having to make decisions that fall outside of the
4 standards of cultural practices and beliefs due to
5 circumstances that are being thrust upon them or
6 changing around them. Certainly from reading, I've come
7 across those circumstances from across Australia.

8 Q. If I could put it this way: In your work and
9 professional reading and experience, it wouldn't have
10 been any surprise to you at all that certain very
11 sensitive information was only revealed in the context
12 of, for example, a threat of desecration of the site
13 under consideration here by the building of a bridge.

14 A. I think that is consistent with my experience in reading
15 anyway, my readings of what I expect of the situation.
16 I think I've put in my statement one of the things that
17 has sort of informed me on the process has been the fact
18 that over the years or in a number of different
19 situations particularly, Doreen Kartinyeri said to me
20 there are things she cannot tell me because I'm a man,
21 basically. I had a close relationship with Doreen in a
22 research capacity and we were working closely for a
23 while. I have been alerted to the fact, I guess, of
24 things that cannot be revealed in particular
25 circumstances.

26 COMSR

27 Q. I can understand that, that Dr Kartinyeri told you the
28 things she couldn't disclose to you because you are a
29 man. But the evidence I've heard from a lot of
30 Ngarrindjeri women is that she wouldn't disclose the
31 information to them and they've never heard it. It's
32 never been disclosed to them from any source. That, of
33 course, is a somewhat different situation from
34 disclosing it to you or to a white person.

35 A. Sure. I wasn't really certain as to what she was saying
36 when she couldn't disclose because she wasn't telling me
37 whether it was specific information relating to
38 Hindmarsh Island and the region, or whether it was more

1 generally information relating to matters of women's
2 knowledge. I mean, I was thinking more along the line
3 of the second, but I think the actual context of whether
4 Doreen's revealing information on other people in this
5 particular situation is surrounded by a whole lot of
6 other circumstances and other reasons and other
7 pressures, I guess. I'm not sure if that answers your
8 question?
9 CONTINUED

1 XXN

2 Q. The concept that only certain women may have been
3 possessed of restricted or secret knowledge, do you have
4 any difficulty with that as a concept, that it wouldn't
5 be known to all Ngarrindjeri women.

6 A. No, I think that's consistent again with the literature.
7 I guess my understanding also of the circumstances of
8 who and who may not know certain things, from my
9 perspective, was more informed by the nature of the
10 impact of European settlement invasion on people and the
11 fragmentation of knowledge and the changing
12 circumstances, in terms of the passing on of particular
13 knowledge. So I guess I was coming - I have come at
14 that question from a slightly different perspective,
15 without the insights that perhaps Dr Dean Fergie has
16 from her recent experience.

17 Q. If, for example, the knowledge that we're talking about
18 is as Dr Fergie says, that knowledge that has its
19 origins in a restricted or the domain of female putari
20 and is restricted in the first instance, would you agree
21 with me, that that would be an explanation for why it
22 would be known to a comparatively small number of women.

23 A. Certainly if you look at the Berndts' book, that's
24 consistent from a reading of that, yes.

25 Q. Would you agree with me that, the process of
26 Europeanisation, if I can put it that way and dispersal
27 of the Aboriginal or the Ngarrindjeri community, would
28 that also be a factor that would lead you to think that
29 there is an explanation for why not so many women might
30 know about it.

31 A. I think it is a bit more complex than that, but
32 basically along those lines. There is a range of
33 factors.

34 Q. What would those factors be.

35 A. I guess the impact of Christianity, the different
36 experiences that different Ngarrindjeri people had with
37 contact with Europeans, some people living in camps for
38 a long period, others living in the mission, others

- 1 living in the city, basically what you are saying, but I
2 guess, breaking it down to slightly more specific
3 examples of how those processes might impact on how
4 people run their lives, what people think, how people,
5 particularly individuals, react to those new
6 circumstances. We have heard quite a few people say
7 that, basically, that a lot of the older people didn't
8 see the value in Ngarrindjeri culture and traditions for
9 the circumstances they were in. And the younger people,
10 they encouraged them to get involved in the wider
11 community and take on more of a forward, looking from
12 their perspective, approach. They felt that that was
13 important for the survival of their children and their
14 grandchildren. So I think those sorts of threads have
15 an impact on all of these situations.
- 16 Q. Putting it to you in summary, the fact that this
17 knowledge seems to have been known by only a few women
18 and with one key informant, does that, to you - it
19 doesn't present any difficulty in accepting the beliefs
20 are valid.
- 21 A. No. I, in my time, my work in the last 15 years has
22 been spent talking to people and finding a lot of people
23 have very different knowledge, depending on their
24 experiences and their life. The variation in
25 amounts of knowledge that different people have is very
26 marked. People who have grown up in the same place and
27 you would expect to have similar sets of histories or
28 stories, perhaps, don't and that's fairly consistent
29 with the work that I have been doing.
- 30 Q. The fact that a tradition is an oral tradition, and has
31 not been recorded, again, could that be some explanation
32 for why it would be known, perhaps by a more limited
33 number of people, than if it had indeed been recorded
34 somewhere in writing, or even in this day and age, on
35 tape or video.
- 36 A. Yes. That would certainly have an impact.
- 37 Q. You know Doreen Kartinyeri quite well.
- 38 A. Yes.

1 Q. As I understand it and you have worked with her at the
2 museum, over many or quite a number of years, I will
3 perhaps put it that way.

4 A. Yes.

5 Q. And you have known Doreen, as I understand your
6 evidence, to have been engaged in historical works and
7 genealogies.

8 A. Yes, that's right.

9 Q. Prior to the Hindmarsh Island dispute, where we heard
10 her - I think some of the television footage referred to
11 her as an activist, did you ever have the impression
12 that Doreen Kartinyeri was some sort of Aboriginal
13 activist.

14 A. No. Doreen, if you look back at her record, in the
15 sense of involvement in these sorts of issues, she has
16 never really been a high profile person involved in the
17 political situation. She really hasn't been on local
18 committees. Basically, her involvement has been through
19 research and interest in the history. I certainly
20 wouldn't have characterised her of that, prior to this
21 issue.

22 Q. So, her involvement in this particular issue, and the
23 degree of passion of her involvement, is something that
24 is, if I can put it to you, out of character with her
25 history, as you know it.

26 A. In a sense, I think the passion comes from her interest
27 and her obvious connection with what she sees as the
28 important crux of this issue.

29 Q. In your work with Doreen, have you found her to be
30 anything other than what I might perhaps paraphrase as,
31 intellectually honest, in the way she has gone about her
32 history preparation and genealogical preparation.

33 A. No, I have always found her that way. She is always
34 meticulous in trying to check things and make sure she
35 is as accurate as she can be in the circumstances.

36 Q. You have not found in her any tendency to try to distort
37 or to fabricate material.

38 A. No.

1 Q. Or interpretation.

2 A. No, I haven't.

3 Q. Would you agree with me that, insofar as the
4 Ngarrindjeri people are concerned, that leaving aside
5 Catherine Berndt, up to that time, there was, in fact,
6 limited female research done by, by that I mean, limited
7 female researchers - I put that badly. But, do you
8 understand what I am getting at.

9 A. Yes, I do, yes.

10 Q. Would you agree with that.

11 A. Yes. I have to agree with that, there is very little.

12 Q. Were you present for the evidence of Alison Harvey.

13 A. Yes, I was, yes.

14 Q. You heard from her that, it would seem she, in fact,
15 spent very little time with Pinkie Mack.

16 A. Yes.

17 Q. Would you agree with me that, based upon the evidence of
18 Alison Harvey, that it would be most unlikely that
19 Pinkie Mack would have disclosed any sensitive or secret
20 or sacred information to her.

21 A. Yes, I think it would be unlikely, given the short term
22 period, the fact that she perhaps wasn't there with
23 someone else from the community and maybe the
24 relationship between, I guess, Europeans and Aboriginal
25 people at that time. But, I think it would be unlikely.

26 Q. Just generally speaking on that topic, insofar as Betty
27 Fisher is concerned, you have been present during, at
28 least, part of her evidence.

29 A. The open part.

30 Q. You understand - well, I will put this to you. Her
31 evidence, in one particular area that I am putting to
32 you, is that, she received information from Rebecca
33 Wilson, in circumstances where Gladys Elphick had
34 introduced them and Gladys was a person with whom Betty
35 Fisher had a quite longstanding history of research and
36 it would seem, trust. In that circumstance, would it
37 surprise you if Rebecca Wilson disclosed her to Betty
38 Fisher, if she were there with Gladys Elphick, with whom

- 1 she had an established a long history of recording
2 sensitive information.
- 3 COMSR: Disclosed after a very brief
4 acquaintance.
- 5 XXN
- 6 Q. I am talking about - what I am putting is that, Betty
7 Fisher had a longstanding relationship with Gladys
8 Elphick to do with the recording of information.
- 9 OBJECTION Ms Freeman objects.
- 10 MS FREEMAN: Ms Pyke has been misleading. I don't
11 think there is any evidence that Gladys Elphick gave any
12 sensitive information to Mrs Fisher. There is certainly
13 no evidence of that.
- 14 MS PYKE: I don't think that is quite right.
- 15 COMSR: There is no evidence of what the
16 information, the details of the information, there is
17 only Mrs Fisher's characterization of the information.
18 I think that is the situation.
- 19 MS FREEMAN: The only part we have actually heard
20 is in relation to the selling of a wheat and grains, I
21 believe, on the tape.
- 22 MS PYKE: I think the evidence of Betty Fisher has
23 been she had the relationship.
- 24 XXN
- 25 Q. The evidence of Betty Fisher covers the relationship of
26 trust with Gladys Elphick, over a period of time, when
27 she was recording Gladys Elphick's history. In that
28 context she was introduced to Rebecca Wilson and
29 Rebecca Wilson told her certain things that Mrs Fisher
30 has described as secret sacred information and
31 associated with Hindmarsh Island. Does it surprise you,
32 that in that circumstance, that Rebecca Wilson might
33 speak to Mrs Fisher.
- 34 A. I guess, let me put it this way, I think that the
35 relevance of Betty Fisher's relationship with Gladys
36 Elphick would be a very important question.
37 Gladys Elphick had a close relationship with Rebecca
38 Wilson, and Gladys Elphick was seen as a major person

- 1 within the Adelaide community at the time and respected.
2 I think that, if Betty Fisher was given an introduction
3 via Gladys Elphick and support from Gladys Elphick in
4 terms of her credibility, that is a very important point
5 and I think that certainly impacts on the nature of that
6 particular encounter I guess.
- 7 Q. If you have a situation where, there is a position of
8 trust, between Betty Fisher and Gladys Elphick, and a
9 position of trust between Rebecca Wilson and
10 Gladys Elphick, who, by all accounts, seems to have been
11 a very well respected member, as you say, of the
12 Aboriginal community. That triangle, if I can't put it
13 that way, doesn't in any way detract from the
14 information that Rebecca gave.
- 15 A. No, I don't think it does. It sets up the possibility,
16 certainly.
- 17 Q. In her book or in the book 'Religion in Aboriginal
18 Australia and Anthology' edited by Max Charlesworth,
19 Dianne Bell has an article in that book. I will just
20 sort of read it out to you and it might make it a bit
21 quicker than getting the book. 'Women field workers
22 face the same problems as their male counterparts, when
23 it comes to secret material, which is restricted to one
24 sex. Aboriginal women have preferred to deny the
25 existence of certain ceremonies rather than allow the
26 significance of their beliefs and practices to be
27 probed. Feigned ignorance by ritual bosses, has in fact
28 protected certain women's ceremonies which have been
29 performed in the bush away from the gaze of their own
30 men and also of most field workers.' Would you agree
31 that - firstly, have you experienced any denial of the
32 existence of certain ceremonies or beliefs by any women
33 whom you have been involved, Aboriginal women.
- 34 A. Within the Ngarrindjeri area or?
- 35 Q. Yes, well, generally I suppose and more particularly the
36 Ngarrindjeri area.
- 37 A. I think I have been more often steered away from
38 particular questions, would be the way I would put it.

- 1 I have certainly witnessed public interpretations of
2 particular events and then a private version of the same
3 particular event, but not necessarily in relation to
4 ceremonies, but private information.
- 5 Q. That information being quite different to the public
6 information.
- 7 A. Yes. And I have been aware that I was one of the people
8 listening to the public version for a long time myself
9 so -
- 10 COMSR
- 11 Q. You are talking about matters of Aboriginal tradition.
12 I mean it is not unusual to have a public -
- 13 A. They are certainly related to tradition. They do not
14 necessarily concern - they have private matters
15 related to family matters or individuals.
- 16 Q. Personal.
- 17 A. To some extent, yes.
- 18 Q. That is not peculiar to Aboriginal families is it.
19 There may be public information given out.
- 20 A. No, the interpretation, the type of version of the
21 interpretation of what the story is, is certainly
22 specific in the style and the content. I think you can
23 certainly draw parallels across cultures there, but it
24 is a little bit more than that.
- 25 XXN
- 26 Q. Just backtracking slightly. I asked you about Alison
27 Harvey. We have had some notes from Mrs Tindale, that
28 are contained in Exhibit 220. Would you agree - you
29 have those notes.
- 30 A. Yes, I have, yes.
- 31 Q. Would you agree with me, that those notes seem to record
32 practical detail, if I can put it that way, physical
33 signs and manifestations and certainly don't purport to
34 deal with any esoteric, spiritual or mythological
35 matters.
- 36 A. Yes, I would say that's the main focus. There are a
37 couple of little notes that Mrs Tindale included, but
38 they weren't very detailed and didn't really go into

- 1 those, I guess, esoteric areas. It is not
2 surprising, given the nature of the research that was
3 being carried out, it was basically a physical
4 anthropological -
- 5 Q. Insofar as Catherine Berndt was concerned, again I
6 will just put this to you generally. She certainly
7 seems to have had a limited number of informants.
- 8 A. It appears so. I think she spoke to a number of people
9 in that broader study of what she was worked on
10 that was published as *Black to White* in South Australia,
11 but it appears within the bounds of the research that
12 focussed on Ngarrindjeri traditions and culture, that
13 was fairly small group of informants.
- 14 Q. But, indeed, if one looks at Berndt and Berndt, the main
15 informants are male. By that I mean, there certainly is
16 Pinkie Mack, but if you look at the others; Mark Wilson,
17 was it Clary Long, Clarence Long.
- 18 A. I don't think Clarence long was a major informant on
19 this work. I think people are making a mistake there.
20 I think that's a major issue in relation to the
21 relationship between the Berdts, Tindale, Clarence Long
22 and Albert Karloan. I don't think Clarence Long was
23 really a major participant in that book and that does
24 actually exclude quite a bit of knowledge and
25 information relating to the Coorong, which I think could
26 well have provided some differences in relation to the
27 Yuraldi material that the Berdnts were working on, but
28 that is a side issue I would like to comment on later.
- 29 COMSR
- 30 Q. I suppose that one of the issues I have got to grapple
31 with is that, in this instance, it wasn't only a case of
32 the Ngarrindjeri women keeping secret knowledge of
33 women's business from Aboriginal men or from white
34 persons, but, they were keeping the knowledge that had
35 even existed from, at least - well, given that only very
36 few people claim to know it, from virtually the whole
37 body of Ngarrindjeri women, as I understand it.
- 38 A. I think it depends which period you are talking about.

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S.J. HEMMING XXN (MS PYKE)

1 I think if you are talking about the 1940s, it seems
2 that the knowledge was very restricted at that stage.
3 If you look at the Berndts' book, you can see a whole
4 range of realms of knowledge that was very restricted.
5 I mean, the fact that Albert Karloan and Pinkie Mack
6 were seen as the custodians, there is a great body of
7 knowledge that a lot of people didn't have in
8 a range of areas, is fairly relevant in that kind of
9 context.
10 CONTINUED

- 1 Q. I can understand that, but female putari, the work they
2 did was at least known to other Aboriginal women, was
3 it.
- 4 A. I think it was known, certainly. And it was known there
5 were female doctors. I have heard it myself from people
6 I have spoken to.
- 7 Q. The information that a female putari might have, to whom
8 would she pass that information.
- 9 A. I think it seems as if, from the Berndts' literature,
10 that it was a process of apprenticeship with a
11 particular younger person who would take on the
12 knowledge, in the ideal circumstances. But I guess what
13 you have to take into consideration is that things were
14 changing and very rapidly and people were making
15 decisions about what they would do with knowledge or a
16 particular practice. And the normal situation was not
17 there. So that new ways of passing on knowledge may
18 have been occurring. People may have been deciding just
19 to disclose some information to someone without the
20 normal process of apprenticeship or learning or even
21 within the context of a ceremony or maybe childbirth.
22 It is a very - a situation that was changing and there
23 was a lot of pressure on people and people were making,
24 I think, individual decisions, to some extent, at that
25 time.
- 26 Q. How does one determine then whether it is an Aboriginal
27 tradition to restrict the knowledge to particular
28 persons who mightn't have been in the category of
29 persons who would previously have been given the
30 knowledge, as I understand what you are saying.
- 31 A. Sure, well, I guess you are looking at a changing
32 cultural setting. You are looking at a Ngarrindjeri
33 culture that is continually changing and adapting so
34 that there is no one template to compare a particular
35 context in terms of that's traditional and this is no
36 longer. You have got a situation where Ngarrindjeri
37 people are changing and adapting throughout. So, you
38 have a changing tradition. You are not going to find

- 1 perhaps - it is not very effective to actually try and
2 look for something that was there once and no longer is.
3 There is a contact and a change in between. And
4 certainly Ngarrindjeri culture today is not the same as
5 it was 50 years ago or 150 years ago.
- 6 Q. As I understand what the proponent women are saying and
7 Dr Kartinyeri, in particular, that the information can
8 only be released and known on a very restricted basis,
9 which apparently would permit it to be divulged to or at
10 the next Federal inquiry that is to be heard, but not
11 this Inquiry. Would that be part of Aboriginal
12 tradition, or just a process of selection, if I can put
13 it that way.
- 14 A. I think it would be, you could argue that it was part
15 of Ngarrindjeri tradition. It is hard to say the
16 processes behind those decisions, because I am not
17 aware of how those decisions are being made, but there
18 are a number of elements in there, including, I guess,
19 the religious beliefs. But I guess there is also the
20 belief in involvement with European culture, in a
21 sense. That, from a Ngarrindjeri tradition, in terms
22 of the broad sense, there is certainly a
23 tradition amongst Ngarrindjeri people of not divulging
24 information to Europeans unless needed. So, there is
25 a tradition of secrecy on a more general level. And,
26 within Ngarrindjeri tradition, it has been, I guess,
27 a manner of adapting to the context and surviving,
28 protecting what people see as their culture and
29 traditions and being reticent to open up to white
30 people, in a sense. So, I think there is certainly,
31 from a broader perspective, too, a tradition of
32 reticence and being involved in processes that probe
33 history and culture. I mean, that is a slightly
34 different perspective, but I guess that is all I
35 can comment on in any detail, because I am not really
36 aware of the processes and the practices and beliefs
37 behind the decisions that Doreen Kartinyeri and other
38 women are making.

- 1 Q. You are not aware, then, whether it is any part of
2 Aboriginal tradition that Dr Kartinyeri would say to
3 the other Ngarrindjeri women that, well, I am not
4 going to give you this information now, but I will
5 after the court processes are concluded.
- 6 A. It does seem that the holder of particular knowledge
7 was in charge of when that knowledge would be divulged.
8 I mean, the revealing of the knowledge was a very
9 restricted thing. And, looking at that putari
10 situation within the Berndts' text, it was certainly
11 in the hands of the doctor, male or female, as to when
12 certain knowledge and information would be released.
13 So I think that is consistent.
- 14 XXN
- 15 Q. Can I perhaps put this to you, the information that was
16 revealed by Dr Kartinyeri and the other informants to Dr
17 Fergie was received in a particular set of
18 circumstances, I suggest to you. That is, an
19 application being made to the Federal Minister for the
20 purposes of protecting sites, protecting Aboriginal
21 sites. You would agree with that.
- 22 A. Yes.
- 23 Q. And that's something that is happening, I suggest to
24 you, around Australia in relation to land claims.
25 That Aboriginal people are in extremis, if I can put
26 it that way, disclosing information that they would
27 otherwise never put into the public arena.
- 28 A. Yes, I agree with that.
- 29 Q. I suggest that what the Commissioner is putting to
30 you is perhaps capable of some explanation in the
31 sense that one could with respect to this Commission
32 scarcely say that it is a Commission designed to
33 protect Aboriginal sites, traditions or heritage.
34 And, in that context, might it be that the Aboriginal
35 women have decided that this is not a cultural -
- 36 OBJECTION Mr Smith objects.
- 37 COMSR: It can be put. Let's see what the
38 question is first, Mr Smith.

1 XXN

2 Q. What I am putting to you is this: the Tickner inquiry,
3 if I can put it that way, was an inquiry that was set up
4 specifically for the purposes of getting information for
5 the protection of a site. And information was revealed
6 in that context.

7 A. Yes.

8 Q. What has then happened is that there has been some
9 dissent from the position of the proponent women and
10 this Commission has been established. This Commission
11 is not a Commission that is set up for the purposes of
12 protecting an Aboriginal site or Aboriginal tradition or
13 an Aboriginal culture. The Terms of Reference make no
14 reference to that. Can you see why it might be that the
15 women who hold the beliefs would not see this as an
16 appropriate forum in which to make a disclosure,
17 consistent with having disclosed it to Mr Tickner.

18 OBJECTION Mr Smith objects.

19 MR SMITH: I object to that question. Is this an
20 area of anthropological expertise or
21 historical/anthropological expertise?

22 MS PYKE: The witness has already said that, in
23 his professional experience and his reading, that the
24 cultural imperative often is the situation in which
25 information is disclosed. So, I am just putting to him
26 that what is happening here is not a cultural
27 imperative.

28 COMSR: Not under circumstances under which
29 information might be disclosed.

30 MS PYKE: Yes.

31 COMSR: Yes, I think that is an
32 anthropologically-based question, Mr Smith, to some
33 extent.

34 COMSR

35 Q. In other words, as far as your knowledge of the
36 circumstances under which Ngarrindjeri people might be
37 prepared to disclose information, would it be consistent
38 with their tradition, as you know it.

- 1 A. Yes, I think that this might be a circumstance that
2 wasn't in accordance with what they would see as being
3 in line with their tradition.
4 XXN
- 5 Q. And that, therefore, women that -
6 A. At least, within the perspective of those people who are
7 arguing that point, at the moment.
- 8 Q. Therefore, the women who are the custodians of the
9 information perceived as being participating in
10 something that they believed to be not a circumstance in
11 which the information would be revealed would be a
12 reason why they wouldn't be part of the custodians
13 wanting to impart it to those women.
- 14 A. Run that past me again.
15 Q. What I am putting to you is this: we have talked about
16 the custodians not wanting to give evidence in this
17 Commission - we just dealt with that - or not giving
18 evidence in this Commission. And their reasons being
19 quite consistent with giving evidence in the, for
20 example, Federal inquiry. What I am suggesting to you
21 is this: the same analysis could be applied to the
22 custodians not giving, or being unwilling to give the
23 information to women who they perceive to be connected
24 with this inquiry.
- 25 COMSR: Perhaps that is not correct, because
26 there was no inquiry, I think, at the time at which
27 there was a refusal to divulge the information.
- 28 COMSR
- 29 Q. But would that, by a parity of reasoning, as it were, or
30 on any other basis, would that be consistent with the
31 custodian or custodians of the information refusing to
32 give the information to other women whom they perceived
33 to have perhaps a different interest from their own.
- 34 A. Yes, I would say yes to that.
35 XXN
- 36 Q. You have read Dr Fergie's statement, I would imagine.
37 A. Yes, I have.
38 Q. The issue of economy of knowledge that she has raised,

1 which is that there are certain advantages and politics
2 associated, if I can put it in the general sense, of
3 information and dissemination of information within the
4 Aboriginal communities.

5 A. Yes.

6 Q. It will save me going through it: do you agree with the
7 comments that Dr Fergie has made in her statement in the
8 general sense.

9 A. I think broadly, yes. It is a well-discussed issue on
10 the literature. It is a well-established sort of
11 knowledge to look at that concept within the Aboriginal
12 literature, in a sense.

13 Q. I will put it to you: it is quite well-documented that
14 there are frequently in Aboriginal communities tensions
15 between those who hold the information and those who
16 don't hold it. And those tensions are exacerbated at
17 times of cultural emergency, if I can put it that way.
18 Not in every circumstance, but certainly that has
19 happened.

20 A. I don't know if it is quite that sort of obvious.

21 Q. Let me put to you, for example, in some of the land
22 claim cases there have been situations where there have
23 been quite heated debates and disputes between members
24 of the same or related Aboriginal communities about
25 ownership of certain sites.

26 A. Yes.

27 Q. And disputes in relation to information and knowledge.

28 A. Yes.

29 Q. The word 'tradition', do you see that as being the same
30 as traditional, or do you distinguish those two words.

31 A. I would distinguish between those two words.

32 Q. If you can tell us from your perspective, dealing with
33 tradition first, how would you define tradition.

34 A. I think tradition is a broader term that relates to
35 cultural beliefs, practices, the things that basically
36 people have that organise their daily lives.
37 Traditional I think if we go back to that is a term that
38 has been used a lot within perhaps anthropological

- 1 literature and other literature to define what is seen
2 as preEuropean Aboriginal, or, in the Aboriginal
3 setting, Aboriginal practice and belief. It is fairly
4 restrictive in terms of not necessarily recognising
5 Aboriginal culture's ability in terms of change. So, I
6 see it as a very restrictive term in the ways that it is
7 often used.
- 8 Q. And tradition has a far broader concept.
- 9 A. Yes.
- 10 COMSR
- 11 Q. Is it a contemporary sort of concept.
- 12 A. Tradition?
- 13 Q. Yes.
- 14 A. I think tradition encompasses a much broader range.
15 That's basically it. Not just contemporary.
16 Traditional is a term that contains certain
17 misconceptions, I think, and tends to stereotype culture
18 as such and restrict it to a sort of unchanging form.
- 19 XXN
- 20 Q. You certainly agree that Aboriginal tradition and
21 culture is an evolving process. We are not set in a
22 time warp. We are not set in preEuropean days.
- 23 A. No, certainly.
- 24 Q. And it is the word tradition that, for example, is used
25 under the Federal Act.
- 26 A. Yes.
- 27 Q. You agree with me that, for the purposes of the Federal
28 Act, there is simply no requirement as to antiquity, if
29 I can put it that way, in relation to tradition.
- 30 A. As far as I could see from the readings of it.
- 31 Q. That use would accord with your broader interpretation,
32 if I can put it that way, of tradition being an evolving
33 thing.
- 34 A. Yes, and I think that is a broadly held view within
35 various disciplines.
- 36 Q. And, for example, just to get back to what perhaps the
37 Commissioner was adverting to a little earlier, the fact
38 that, for example, the means of transmission of a

1 knowledge or transmission of knowledge or the persons to
2 whom it is transmitted change doesn't make it any less a
3 tradition, does it.

4 A. No.

5 Q. The fact that the information was then transmitted, not
6 just to apprentice putaris, but to other women on the
7 basis that it was secret and sacred, would be quite a -
8 a very good example of tradition and culture evolving
9 over a period of time.

10 A. Yes, that certainly could happen, yes.

11 Q. And it wouldn't be a conscious decision, look, we are
12 going to change the way in which we transmit this
13 information. It would be something that evolved over
14 many years.

15 A. Yes, it would be a mixture, yes.

16 Q. The sort of situation that, look, we don't have female
17 putari any more. This knowledge either is lost, or we
18 transmit it in a different way, but still maintain its
19 secret and restricted basis.

20 A. Yes, that certainly could happen.

21 Q. Does it always have to have been secret for it to be
22 Aboriginal tradition. For example, does the status of
23 information change sometimes.

24 A. I think it can, yes.

25 Q. Again, that is part of a tradition.

26 A. Yes.

27 Q. A tradition process of the evolution of cultural
28 tradition.

29 A. Yes.

30 Q. I use that word 'evolution', but you know what I mean.
31 It is life happening.

32 A. Certainly it is not predictable and it can change in
33 ways that aren't in accordance with what you predict,
34 perhaps.

35 COMSR

36 Q. Can I just explore that: if a single person is the sole
37 recipient of some knowledge and they, in passing it on,
38 don't exactly reproduce what they were told and so it

- 1 goes, that process means that something new is added or
2 something is left out, from time to time, is that part
3 of the evolutionary process.
- 4 A. That is part of oral tradition, in a sense. Everybody
5 tells a story slightly differently and puts emphasis on
6 something slightly different often. I mean, there are
7 more formal rules in a lot of the passing down of oral
8 traditions, but I think it is fairly obvious that there
9 are always some changes or perhaps circumstances
10 surrounding the telling of a particular tradition at a
11 particular point that mean that an aspect of it may
12 become more significant, at that time.
- 13 CONTINUED

- 1 Q. If one of the custodians adds a significant
2 embellishment and passes that information on, if it is
3 received by the next recipient as being part of the
4 tradition that's passed on, that makes it part of the
5 tradition, does it.
- 6 A. I would say so. I mean, the embellishment might be an
7 insight from that person that no-one else had, or
8 perhaps an experience through a dream, or perhaps a
9 rethinking of a particular tradition. It would be an
10 intellectual process as well. That's just a
11 generalisation on my part.
- 12 XXN
- 13 Q. The book I have just referred you to, there is an
14 introduction by Max Charlesworth, at p.11 of 'Religion
15 in Aboriginal Australia, an Anthology'. Again, it might
16 make sense if I read it out to you at this stage. He
17 says 'The connection of land and sites and objects and
18 activities with the Dreaming, so that they are seen as
19 the incarnation or embodiment of the spiritual power of
20 the Dreaming, bestows a sacred character on them'. You
21 would agree with that.
- 22 A. Yes.
- 23 Q. 'That is to say they are viewed as set apart and also as
24 potentially dangerous to those who have no rights of
25 access to them.'
- 26 A. Broadly, yes.
- 27 Q. 'Many of these sacred phenomena are also secret, that
28 is, knowledge of them is restricted to certain groups.
29 Knowledge of or contact with secret sacred objects or
30 activities may, for instance, be restricted to initiated
31 men, or again, may be restricted to adult women so that
32 all males and children are excluded'. This is perhaps
33 the bit I particularly would like you to comment on
34 'Some places may be permanently sacred, but secret and
35 sacred, because they contain sacred objects or drawings
36 that may not be seen by those who are not initiated. In
37 other cases, it is the interpretation of certain
38 symbolic drawings or objects that is both secret and

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- 1 sacred in that it may be known only to those of the
2 appropriate sex or age group or totemic group who have
3 the right of knowledge to it'. If we are just dealing
4 particularly here with Hindmarsh Island, is it quite
5 consistent that the actual island itself, in terms of
6 being able to visit it and walk on it by Aboriginal
7 people, wouldn't be an issue, but certain knowledge or
8 interpretation of it, in the esoteric sense, may be
9 secret and sacred.
- 10 A. Yes, that's consistent.
- 11 Q. And that secret and sacred esoteric knowledge may be
12 knowledge that would only be known to a limited group of
13 people, for whatever reason, be it age, gender, domain.
- 14 A. Yes.
- 15 Q. So, I am simply putting to you that Hindmarsh Island,
16 for example, could be secret, could have secret sacred
17 connections that not everyone need know about.
- 18 A. Certainly, I think, yes.
- 19 Q. Because it is the interpretation and belief that would
20 be secret and sacred, not necessarily the site.
- 21 A. Yes.
- 22 Q. What I simply put to you, and it is perhaps a long way
23 around, there can be a site that in day-to-day life is
24 not secret and sacred, but its place in esoteric
25 knowledge, mythology and the like may be secret and
26 sacred.
- 27 A. Yes, I think there's examples of that.
- 28 Q. In fact, I think Professor Charlesworth - I assume he is
29 a professor - Max Charlesworth, goes on to say 'There is
30 no obvious way for the outsider to know whether sites or
31 objects or drawings are secret sacred. Rather, they
32 derive their secret sacred character from the context of
33 religious myth and ceremonials in which they play a
34 part'. I would simply go on there and perhaps add 'or
35 in relation to a domain of knowledge'. Would you agree
36 that that may well be the context in which we are
37 viewing Hindmarsh Island in this commission.
- 38 A. Yes, I think that relates, certainly.

1 Q. Were you here when Clara Campbell gave her evidence.

2 A. Yes, I was.

3 Q. The evidence that she gave, in essence, was that she had
4 been told by her mother that there was secret women's
5 business associated with a particular site that was
6 sacred. Does that have any impact upon the views that
7 you've expressed in this commission.

8 A. It does, in the sense that I was hearing firsthand from
9 someone who has that particular experience or belief,
10 and I think that sort of has an impact on my broader
11 view.

12 Q. Even though it doesn't relate to Hindmarsh Island, it
13 would seem to be evidence from a Ngarrindjeri woman that
14 clearly indicates, certainly from her point of view,
15 that there is secret women's business related to a
16 particular place which is sacred that she didn't feel at
17 all willing to disclose to this commission.

18 A. Yes, yes.

19 Q. An element of that that I want to put to you and again
20 ask you to comment on is that it would seem that Clara's
21 sister, Amelia, didn't get that information from her
22 mother, but Clara said that she was actually, at about
23 the age of 16, interested and was asking questions of
24 her mother, and it was in response to questioning that
25 she got imparted information. Again, is that something
26 that you find relevant.

27 A. I think the fact that someone is showing an interest is
28 relevant.

29 Q. So we have got a prime example of a family of one
30 daughter showing an interest and having certain
31 information disclosed to her; and another daughter, for
32 whatever reason, not getting that information.

33 A. Yes, yes.

34 Q. It would seem that Clara was closer to her mother in any
35 event, from her own evidence.

36 A. Yes, that was the evidence.

37 Q. So, in that particular instance, Clara was the younger
38 daughter, as the evidence of both her and Amelia was

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1 given. We have got a circumstance where it was not even
2 a genealogical passing down to the eldest child. It
3 seems to have been a selective dissemination of what has
4 been referred to as secret sacred women's business and
5 information that has been transmitted in a very
6 selective way.

7 A. Yes, and it seemed like there were a range of
8 circumstances that set that up.

9 Q. Just generally speaking, would you agree with me that
10 anthropology is not a science, in the sense that there
11 are frequently no definitive scientific answers to many
12 of the issues that anthropologists deal with.

13 A. I certainly would, in the social realm of anthropology.

14 Q. Again, the land claims cases are perhaps an indicator of
15 that, where there are variations in views amongst the
16 Aboriginal people as to who are the traditional owners,
17 who is the most connected with a particular area of
18 land, who has the knowledge. Would you agree that is a
19 situation that really, from our perspective, is very
20 difficult to resolve.

21 A. Certainly. I think it's - although anthropological
22 training is very valuable in interpreting those
23 situations.

24 Q. In the case that we have at hand here, where there are
25 some women who say that they have the belief and accept
26 it, and there are some who say that they don't have the
27 belief and there is a variety of views expressed, in
28 your experience, is that the sort of area of dispute and
29 debate that, from your reading of the literature, is not
30 at all unknown in anthropological debate.

31 A. Yes. I think it exists within the debate, and I think
32 it's - again, I am not surprised by that particular set
33 of circumstances. I think there is a series of
34 historical and cultural reasons behind that.

35 COMSR

36 Q. Are you able to indicate whereabouts in the literature
37 that it exists.

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- 1 A. It terms of the specific debate relating to where there
2 is dispute about whether there is information known or
3 not?
- 4 Q. Yes.
- 5 A. I would say, more generally, I guess, in terms of land
6 claims cases I'd be thinking. I was thinking more
7 generally. I will keep thinking.
- 8 Q. You are referring to the actual cases rather than the
9 anthropological literature, if I can draw the
10 distinction.
- 11 A. I am just trying to think of an appropriate example
12 within the literature. I think more in terms of
13 historical literature that I've come across through oral
14 histories, and the differences in people's knowledge,
15 and the differences in perspectives on a particular
16 region or history.
- 17 XXN
- 18 Q. Are you aware of a body called the Native Titles
19 Research Unit, which is part of the Australian Institute
20 of Aboriginal and Torres Strait Islander Studies.
- 21 A. Yes.
- 22 Q. Have you read some of their publications.
- 23 A. Only a little bit actually. I've just recently looked
24 at -
- 25 Q. Can I just read, this is put up in our -
26 COMSR: What is this an anthropological report?
- 27 MS PYKE: Yes, 'Conflict in Native Title Claims'.
28 It was handed up as part of our statement, as I
29 understand it. It is a particular issue by Mary
30 Edmunds. I am reading from a February 1995 paper, issue
31 paper no.7.
- 32 XXN
- 33 Q. She says this 'In the year since the passing of the Act'
34 and she is there talking about the Commonwealth Native
35 Title Act 1993 'it has become clear that the Act itself
36 has become a context for disputes. This is not because
37 the Act, or disputes associated with it, are novel but
38 that they act, rather, as one more factor has been added

1 to the resources of Aboriginal political life'. She
2 then goes on to say 'The disputes that are confronting
3 the Tribunal and the courts in many instances
4 demonstrate some of the fundamental principles of
5 Aboriginal social action, for example: Traditional
6 ownership of land takes a number of varying forms, and
7 individuals and groups exercise differential rights
8 within an overall collective ownership. What appears,
9 then, as conflicting claims to ownership may in fact be
10 addressing different aspects of ownership, which exist
11 in relation to each other. The principles on which
12 dissent develops are also the principles on which
13 traditional relations operate, for example, questions of
14 descent, of who has the right to speak, of who holds
15 what knowledge and how that knowledge may be used.
16 Particular disputes may be longstanding and deeply
17 embedded, but often signal the importance of matters at
18 stake and the buoyancy of Aboriginal interests'. She
19 refers to Fingleton, an article by him, and continues
20 'Conflict, that is, is an indication of the continuing
21 vigour of Aboriginal society, not of its breakdown'.
22 Whilst that particularly refers to the Commonwealth
23 Native Title Act, if I were to suggest to you that
24 exactly the same sorts of concepts are applying to the
25 Heritage Protection Acts, State and Federal, you
26 wouldn't disagree with that.

27 A. No. Again, broadly, I think that's very relevant.

28 Q. She says on p.3 of the article 'As Rose points out, in
29 Aboriginal societies, knowledge is land-based. Personal
30 authority, personal achievement, the authority of
31 seniors and the integrity and the autonomy of local
32 groups depend on the control of knowledge through
33 restrictions on its dissemination. Knowledge
34 constitutes proof of ownership of land'. She then goes
35 on to say 'It should come as no surprise, therefore, to
36 find tensions over dissemination of knowledge'. I
37 suggest to you, don't we have a clear example of that in
38 what's been unfolding in relation to Hindmarsh Island.

- 1 A. Yes, there is certainly parallels.
- 2 Q. There has been a deal of evidence led in this commission
3 about the barrages and the construction of them and how
4 poles have been driven into the ground and the like.
5 Can I put this to you, if the proponent women have their
6 beliefs associated with Hindmarsh Island, would you
7 agree with me that the construction of a barrage unto
8 itself would not be likely to impact upon their belief
9 system or their beliefs, even though it may interfere
10 with them.
- 11 A. It's a bit hard to comment fully, because I really don't
12 know the nature of the beliefs that are going to be
13 impacted on them, in a sense.
- 14 Q. I am really just referring to the general summary in Dr
15 Fergie's -
- 16 A. In general, I think they impact on things.
- 17 Q. What I'm saying is this, that a person's beliefs and
18 belief system and structure wouldn't necessarily be
19 undermined, although you might find what's been done,
20 for example, offensive to your beliefs. A bit like
21 blasphemy in a church. You would still have your
22 beliefs. The fact that someone had blasphemed by word
23 or action wouldn't necessarily affect, one iota, your
24 beliefs.
- 25 A. Yes.
- 26 COMSR: I think it is this: if the belief is
27 that the mainland should not be joined to Hindmarsh
28 Island, does the fact that the barrages have already
29 achieved that -
- 30 XXN
- 31 Q. European logic, which says exactly that, which is, that
32 you believe that Hindmarsh Island and the mainland
33 shouldn't be joined, but we have already put in a
34 barrage, therefore, does that suggest your belief is in
35 some way impacted or flawed doesn't follow, does it.
- 36 A. Not necessarily, no.
- 37 Q. Because we are looking at it from a European point of
38 view, because, as I say, that may well be the same as

- 1 someone committing an act of desecration in a church.
2 It wouldn't affect our belief system, even though what
3 has happened is an act of desecration.
- 4 A. Yes. As I say, to comment on that really I would need
5 to know more about the actual body of belief in relation
6 to that. I do know that people have complained about
7 the building of the barrages in more general terms to me
8 during discussions, but that would relate more to the
9 impact on the environment and the change in
10 availabilities of fish, erosion of the Coorong region.
- 11 CONTINUED

- 1 Q. What were those discussions had with you.
- 2 A. I've got an example on one of the tapes that has been
3 put into the Commission, the tape called 'Camp Coorong,
4 Sharing our Culture', has a discussion between Lindsay
5 Wilson, Margaret Jacobs, Marjorie Koolmatrie, George
6 Trevorrow, Tom Trevorrow and a couple of other people
7 talking about changes to the region that have been
8 brought about by barrages and the changing of the river
9 lake system. There is a sort of more general
10 environmental/economic, in a sense, discussion there,
11 but which is interesting.
- 12 Q. Again, from your knowledge and research, are you able to
13 tell us about, generally speaking, the position of
14 Aboriginal people in Australian society in 1940 - 1935
15 to 1940, when those barrages were being built.
- 16 MS PYKE: One of criticisms I discern about it is
17 they did not complain at the time and I need to know
18 whether they were in such a position to be able to
19 complain.
- 20 COMSR: I don't know whether there has been a
21 criticism: there has been an explanation which has been
22 advanced, there being no obvious objection at the time.
- 23 MS PYKE: I think this witness has an interest in
24 the area.
- 25 A. I don't think they were in a position to have any impact
26 on that decision at that time.
- 27 XXN
- 28 Q. There was certainly no heritage legislation.
- 29 A. No.
- 30 Q. They were living on the reserves and needed to have a
31 permit to come off the reserves at that stage.
- 32 A. That's right, at that time.
- 33 Q. I'm putting it to you bluntly and not too emotively:
34 They were very disempowered people at that stage.
- 35 A. Certainly.
- 36 Q. You clearly have had many years' experience working with
37 Ngarrindjeri people and are you familiar with their
38 various committees, the Lower Murray Aboriginal Heritage

- 1 Committee and similar organisations.
- 2 COMSR: Before you go on with that, I'm not
3 clear on what were 'many years' experience'.
- 4 MS PYKE: I sorry, I thought it was in the
5 witness's statement.
- 6 COMSR: I haven't quite got it in my mind.
- 7 XXN
- 8 Q. How many years have you been working with Ngarrindjeri
9 people.
- 10 A. I guess since about 1980, late 1980.
- 11 COMSR
- 12 Q. We are talking about what, eight, nine -
13 A. 15 years.
- 14 XXN
- 15 Q. You have worked with those people and you have been
16 aware of the various consultative bodies and groups.
- 17 A. I have slowly got to know things better as I've gone
18 along, yes.
- 19 Q. Would you agree with me that, generally speaking, those
20 consultative bodies and groups were predominantly men.
- 21 A. I think, yes, in general. I think that would be the
22 case, yes. It's changing more recently. I think it
23 depends on which period you are talking about.
- 24 Q. If we take prior to 1994.
- 25 A. Also, I guess it depends, for instance, say on how many
26 are on the council. The Raukkan Council itself has
27 always had a representation of men and women on it. I
28 think in the area of heritage, heritage has largely been
29 more of a male domain through that earlier period, so I
30 think there is a difference in relation to the types of
31 activities and committees that you are talking about.
- 32 Q. If we say Raukkan and the domestic running of Raukkan,
33 if I can put it that way, the local committee presumably
34 that runs the place, you say that that has pretty well
35 had even numbers of men and women.
- 36 A. There has always been women involved in different - it
37 depends on who gets elected. I'm not quite sure what is
38 the set proportion.

- 1 Q. Heritage issues have had a male preponderance.
2 A. There has been more men involved with heritage issues.
3 Q. You have read Dr Fergie's reports and you have seen the
4 appendix one to her report which sets out various people
5 who were consulted at various stages. But perhaps if I
6 ask you in particular about the women who attended the
7 Graham's Castle meeting on 20 June. Would you agree
8 with me - and I'm not suggesting that each and every
9 Ngarrindjeri person was in that group - but, generally
10 speaking, we have there a cross-section of Ngarrindjeri
11 women in terms of age and geographical location.
12 A. I think it's reasonably broad, yes. I think you have
13 got people from Adelaide, Raukkan, Meningie, Murray
14 Bridge, a range of places and a range of different age
15 groups.
16 Q. Looking at that list, would you say in any way that that
17 was any distorted group of Ngarrindjeri women.
18 A. In what way do you mean `distorted'?
19 Q. If you look at that group of women, did you see any
20 clear selectiveness or distortion about that in the
21 sense of being representational or non-representational.
22 COMSR: Can we first establish whether the
23 witness knows the women or knows of them.
24 A. Yes. I think I know of the majority of the people on
25 that list.
26 XXN
27 Q. You heard of the evidence of where they come from and
28 their ages and the like.
29 A. Yes.
30 Q. Looking at that list, you would, I suggest to you, come
31 to the view that that was a reasonable representation of
32 various of the Ngarrindjeri women.
33 A. I think it's got quite a good cross-section. I mean
34 certainly there are people who are not there.
35 Q. If I could put it that there is like Muriel Van Der Byl
36 and Val Power who would be seen in this day and age as
37 the proponents, and there are some of the
38 dissident women who were not there.

- 1 A. Yes.
- 2 ADJOURNED 11.23 A.M.
- 3 RESUMING 11.31 A.M.
- 4 CROSS-EXAMINATION BY MR PALYGA
- 5 Q. If I start where Miss Pyke left off. That list of women
6 at Graham's Castle, the daughter of Pinkie Mack is an
7 important omission from that list, isn't she.
- 8 A. She's a very significant person in the community, but I
9 would say, thinking about the time period, she certainly
10 wasn't very well from that sort of period of time and
11 she's not, she doesn't normally take a high profile part
12 in meetings. She will often, I think from my
13 experience, pass on information to a meeting, but not
14 necessarily - she's not, I don't think she was a regular
15 attender of the meetings, put it that way.
- 16 Q. Dulcie Wilson is an important omission, isn't she.
- 17 A. I think she is an important person who would have been
18 good for her to be there if it was possible.
- 19 Q. Bertha Gollan is an important omission.
- 20 A. Again, I think it would have been good if she had been
21 there. It depends on how you characterise an 'important
22 omission' in that context, whether she's represented by
23 other women there.
- 24 Q. You would agree that Dulcie's fairly highly regarded and
25 level-headed.
- 26 A. Yes.
- 27 Q. The sort of person that should have been consulted by
28 someone investigating these sorts of matters; the
29 matters of women's business.
- 30 A. I think if you had the time, you could cover a range of
31 bases. It would depend, I guess, in terms of the
32 availability of time and opportunity in a particular
33 circumstance.
- 34 Q. So, time permitting, the answer is yes.
- 35 A. Yes.
- 36 Q. Does the same apply for Bertha Gollan.
- 37 A. Yes.
- 38 Q. And also the daughter of Pinkie Mack.

1 A. Certainly, yes.

2 Q. Can I take you to Miss Amon's statement - and you won't
3 need it as I'll read out this passage: 'I was in the tea
4 room before sending the fax, overhearing snippets of a
5 conversation between Doreen and Steve and Steve saying
6 to Doreen, words to the effect of and in the gist of
7 which was "I will back you up Doreen".' Now, as I
8 understand your evidence, you characterise those words
9 as having a meaning of you would support her in having
10 her say.

11 OBJECTION Miss Nelson objects.

12 MS NELSON: The witness has been asked his
13 recollection of what he said to Dr Kartinyeri and he's
14 said that he did say something to the effect of 'I'll
15 support your right to have your say', or words to that
16 effect. What is being put to him is that Miss Amon
17 reports words to the effect of or the gist of 'I will
18 back you up Doreen', and then he is asked 'you
19 characterise those words as having a meaning' of
20 something. Now, the impression given by that question
21 is that, in fact, he did say the words 'I will back you
22 up Doreen', and Miss Amon does not say that. She says
23 her impression or recollection of the gist of what was
24 said was that phrase. So it's a misleading question in
25 my submission.

26 COMSR: Yes, I suppose that you put it on the
27 basis that that is the actual evidence. Mr Palyga,
28 perhaps that is best to go to the evidence.

29 OBJECTION UPHELD

30 XXN

31 Q. Perhaps let me put it to you this way: Were the words
32 'back you up' used.

33 A. I really don't have a good enough memory in terms of -
34 as I said before, I certainly was saying that I would
35 support Doreen on her right to have a say about her
36 beliefs, so I'd say it's possible that those words were
37 used, but in that sort of context.

38 Q. Well, are you saying that it's possible you used words

- 1 `back you up', but there was further conversation, or
2 are you saying that you used those words in that sense.
- 3 A. I'm saying there would have been further conversation,
4 but I'm saying that my memory of the conversation was
5 that I was very strong on saying that I would support
6 Doreen having a right to have a say on this, on
7 something like this.
- 8 Q. Looking at MFI 204 produced. I would like to take you
9 to the first sentence of the 5th paragraph, which says:
10 `I've always known about the source associated with
11 Raminyeri and Ngarrindjeri women's business, but until
12 recently I didn't know the exact place that they
13 referred to'. That you assisted in the setting the
14 grammar of that sentence, is that your evidence.
- 15 A. No.
- 16 OBJECTION Miss Nelson objects on the round that
17 that was not the witness's evidence.
- 18 COMSR: I think what might be the question is
19 `Did you assist'. Is that what you were asking?
- 20 MR PALYGA: That is the question, yes.
- 21 A. What I said was that I typed it out and there may be
22 some small matters of grammar that may have been - I may
23 have been involved with, but, in terms of that sentence,
24 I'm not sure whether there's any grammatical changes in
25 relation to that at all. I don't think so.
- 26 XXN
- 27 Q. The word `they' in the second line is an obvious
28 reference to the words, the stories, is it not.
- 29 A. It appears to be.
- 30 CONTINUED

- 1 Q. Miss Cubillo-Alberts, in her evidence or in her
2 statement, said that you told her that Doreen was
3 recording information with Deane Fergie and that's the
4 reason why she would no longer be required. Is that
5 correct, did that happen.
- 6 A. Well, I certainly was aware that Deane Fergie's name was
7 being mentioned. I was never - I made no contacts and I
8 was never certain as to what that actually meant, other
9 than that the suggestion was that Deane was going to be
10 the person to be contacted or was contacted. I don't
11 think I was certain at that stage. I think I have said
12 that I have a feeling that it was Kate Alport that gave
13 me that impression.
- 14 Q. It wasn't Doreen Kartinyeri.
- 15 A. I don't think so, no.
- 16 Q. You're not aware of any subsequent contact either of
17 Doreen or yourself with Deane Fergie, about the matter.
- 18 A. How do you mean?
- 19 Q. Well, did you get in touch with Deane Fergie for the
20 purpose of organising Doreen recording information with
21 her.
- 22 A. No, no.
- 23 Q. Are you aware of Doreen getting in touch with her for
24 that purpose.
- 25 A. No, I am not really aware of that, no. I mean, not in
26 that period. Subsequently I am aware that Doreen worked
27 with Deane, but -
- 28 Q. But nothing more than that.
- 29 A. No, not in terms of whether she contacted her or what
30 the process was.
- 31 Q. I take it, from an answer that you gave Ms Pyke, that
32 you don't see tradition as being something that is
33 necessarily set in pre European days. That you have a
34 view of tradition that is more closely aligned with the
35 definition in the Federal Act rather than the State Act.
- 36 A. I think the State Act is also fairly much in line with
37 my version of tradition too, I think.
- 38 Q. Can I suggest to you that, the Federal Act apparently

- 1 has little or no need for an element of antiquity
2 for an Aboriginal tradition. Is that your
3 understanding.
- 4 A. I think my understanding is that, it uses the term
5 'tradition' in a fairly broad way and doesn't
6 necessarily tie it down to what is seen as a pre
7 European concept.
- 8 Q. In the matter of preparing your report for this
9 Commission, have you approached it in that way.
- 10 A. I mean, I haven't really focussed on the question of
11 tradition, as such, in my report. I have approached
12 things from a different perspective I think.
13 If you can draw my attention to a particular spot.
- 14 Q. Well, you are of the opinion, as I understand it, that
15 it is possible that a certain tradition relating to
16 Hindmarsh Island could exist in the Ngarrindjeri
17 community.
- 18 A. Yes.
- 19 Q. In coming to that opinion, have you worked, if you like
20 to call it that, from a definition of tradition that
21 equates to the Federal Act definition.
- 22 A. What I have done in coming to that conclusion was to
23 work through a number of levels of processes. And what
24 I did was, look at the published and unpublished
25 literature, first of all to see if there was any
26 indication that there was a possibility of such an
27 existence. I also looked at my own experiences over the
28 last, say, 15 years and then I looked at the
29 contemporary expressions of belief. So it wasn't
30 necessarily a single type of approach. I actually
31 applied it to various bodies of information or source
32 material. So, in that sense, I was looking at it in the
33 published and unpublished material, at an earlier period
34 and looking at the possibilities there. So, I get my
35 definition of tradition in looking at that material. I
36 was certainly looking for any indications within an
37 earlier period.
- 38 Q. But, you have told us, that the main influence of your

- 1 opinion is your view of the veracity or the
2 believability of the women who say it does exist now.
- 3 A. I don't know if I have said that that's the main part
4 of my argument at all.
- 5 Q. Isn't that the thrust of what you you told Mr Abbott.
- 6 A. I don't think so. As I have said, I have got various
7 components to my argument that are all relevant in
8 terms of coming to a conclusion.
- 9 Q. Can I take you to Exhibit 19. I take you to to pp.13
10 and 14.
- 11 A. Yes.
- 12 Q. Where you have listed the key people with whom you have
13 conducted research. I appreciate that you were based
14 at Glenside for the early part of 1994, but, can you
15 tell us now whether there is anybody that there are -
16 firstly, are there people on that list with whom you
17 conducted research in the period October 1993 to April
18 1994.
- 19 A. October 1993?
- 20 Q. I am particularly -
- 21 A. In the Aboriginal people.
- 22 Q. The Aboriginal people and in particular those who were
23 on the Lower Murray Aboriginal Heritage Committee or
24 their wives.
- 25 A. Right.
- 26 Q. I mean, in particular, Henry Rankine, Jean Rankine,
27 Robert Day, George Trevorrow, Tom Trevorrow, Ellen
28 Trevorrow.
- 29 A. I certainly had meetings with George Trevorrow, Tom
30 Trevorrow, Robert Day and a number of other people from
31 the region. I think in that early part of the year, I
32 had a meeting at Camp Coorong, in relation to talking
33 about the results of the Ngarrindjeri site project that
34 I had been working on for a number of years. If I can
35 recall right.
- 36 Q. This was in early 1994.
- 37 A. Just let me check my - I think it was in early 1994,
38 yes.

- 1 Q. Was the subject - well, I take it from your previous
2 evidence, that you first heard of women's business on
3 15 April, the subject.
- 4 A. Yes.
- 5 Q. That the subject of women's business wasn't raised.
- 6 A. No.
- 7 Q. Was the subject of the bridge raised.
- 8 A. Not from memory. We were pretty well specifically
9 talking about certain things and it was really more just
10 a process of providing information to people on the
11 basis of what we had, what sort of work we had been
12 doing, the sorts of information that we had gathered and
13 maybe what would happen next, in a sense.
- 14 Q. Can you be more specific about the date of that meeting.
- 15 I think you said it was -
- 16 A. Yes, I can.
- 17 Q. At Camp Coorong. Did you say it was at Camp Coorong.
- 18 A. Yes, I think it was held at Camp Coorong. I am thinking
19 where I can look it up to be very specific. I think it
20 was in February.
- 21 Q. Did George Trevorrow, or firstly, was George Trevorrow
22 at that meeting.
- 23 A. I think he was, but I don't think he took much of a part
24 in it. It was more of an - it was basically like a
25 seminar, I could describe it.
- 26 Q. Was anything raised about the heritage of coastal waters
27 by George Trevorrow or anyone else with you, at any time
28 during that Camp Coorong meeting in February 1994.
- 29 A. No, I don't think so. It doesn't jump to mind.
- 30 Q. Did the men give you any indication that they had been
31 speaking to their wives about any heritage associated
32 with Hindmarsh Island.
- 33 A. No, not at that -
- 34 Q. Was Doreen Kartinyeri at that meeting.
- 35 A. No, I don't think she was.
- 36 Q. Can I take to you p.17.2 of your statement, where you
37 say `To my knowledge Doreen Kartinyeri became involved
38 in the Hindmarsh Island issue a few months prior to the

- 1 temporary ban.' You are aware, from the letter of
2 12 May, that Mr Tickner's temporary ban was made on 11
3 May, is that correct.
4 A. Say that again sorry.
5 Q. Are you aware that Mr Tickner's temporary ban was made
6 in early May 1994.
7 A. I am now.
8 Q. You would have been aware, that he had intervened in the
9 Hindmarsh Island issue, from the letter of 12 May
10 that you assisted Doreen with, is that correct.
11 A. I think I was aware that Doreen was making a particular
12 contact.
13 Q. In any event, when this statement was drawn up, Exhibit
14 19, you were aware the temporary ban was made in early
15 May 1994.
16 A. Yes, I think so.
17 Q. So, you say that Doreen became involved in the Hindmarsh
18 Island issue a few months prior to that.
19 A. That's my memory.
20 Q. Can you be more specific, in terms of time.
21 A. Not really. I think that's fairly as much as I can
22 remember, just a basic period like that.
23 COMSR
24 Q. I take it from what you are saying, that it was in 1994
25 and not earlier.
26 A. No, that's when I became aware in 1994, yes.
27 Q. As far as you are aware, that is when you first gained
28 the knowledge of her involvement.
29 A. That she was taking an interest, yes. It would seem to
30 be.
31 XXN
32 Q. Doreen was in hospital in early 1994 wasn't she or are
33 you unaware of that.
34 A. I think that's right. I mean, she has been - she has
35 had some medical problems a number of times over the
36 last couple of years but -
37 Q. Are you able to be more specific as to when she 'became
38 involved' to use your words, in the Hindmarsh Island

- 1 issue, by reference to that event.
- 2 A. No, not really, no.
- 3 Q. You can't tell us if it was before or after.
- 4 A. I would just be guessing I think.
- 5 Q. There has been evidence given in the Royal Commission
6 by Mr Jolly, that Doreen was seen at the bridge site on
7 25 November 1993, which is almost six months prior to Mr
8 Tickner's temporary ban. Do you have any knowledge
9 about her attending any meeting at that time.
- 10 A. No, no.
- 11 Q. So, you can't assist us in any way with fixing the date
12 that she first seemed to become involved in the
13 Hindmarsh Island issue.
- 14 A. No, it is really just an impression of months before
15 that situation.
- 16 COMSR
- 17 Q. Did Dr Kartinyeri ever indicate to you the method by
18 which she was able to identify that Hindmarsh Island was
19 the locality that was connected with the women's
20 business.
- 21 A. No, she didn't, no. She didn't go into any detail like
22 that.
- 23 Q. Were any of the enquiries that she made of you, the
24 assistance that she sought from you, suggestive that she
25 was looking for information that would help identify a
26 location of any sort.
- 27 A. Not from me really. The types of things that, as I have
28 said, I was able to comment on, were some references
29 relating to burials and historical comments about people
30 shearing on the island and the Goolwa Fringe Camp and
31 things like that, so, not really, no, no.
- 32 Q. See, the suggestion that has been put forward is that,
33 Dr Kartinyeri said that she had the knowledge but not -
34 didn't know the location to which it related. Were her
35 enquiries of you connected with Hindmarsh Island.
- 36 A. No - well, they were in general terms. I mean, in a
37 sense of, what do I know about that area? And again, as
38 I say, my knowledge of that was limited to things like,

1 burials, and historic events and historic association
2 with the place, more in terms of things like, work
3 histories. I knew of one person who had a holiday on
4 Hindmarsh Island. It was actually Albert Karloan,
5 stayed on Hindmarsh Island at one stage with his family,
6 just briefly. That was just an oral history record.
7 Things like that and I think that was actually told to
8 Rod Lucas, that particular reference, previously. So,
9 there wasn't really anything. I didn't believe that I
10 could add a great deal in a sense. It wasn't an area
11 that I knew a lot about.

12 Q. Would you say it is unlikely that anything that you told
13 her would have identified Hindmarsh Island as the
14 location of any women's knowledge.

15 A. Yes, I can't see that being possible at all.

16 MS FREEMAN: Mr Abbott still has to complete the
17 cross-examination of this witness. I understand it is
18 possible that his appeal will be finished by lunch time.
19 So I would ask perhaps that if we can resume this
20 afternoon and I will be able to let you know what the
21 situation is with Mr Abbott.

22 MISS NELSON: There are some matters that I could
23 start on. I obviously wouldn't want to finish any
24 examination of the witness until Mr Abbott did, but I
25 think I can usefully put some questions.

26 COMSR: I mean, if it is necessary for you to
27 reopen your examination following Mr Abbott's
28 examination then, of course, you could do so.

29 MISS NELSON: It would be.

30 COMSR: You anticipate it will be?

31 MISS NELSON: I am certain of it.

1 CROSS-EXAMINATION BY MS NELSON

2 Q. Can I ask you when you first met Professor and Mrs
3 Berndt.

4 A. I think I first met Professor Berndt around about 1983,
5 Dr Catherine Berndt I think would have been a bit
6 later than that, to my memory.

7 Q. Did you meet them in the museum.

8 A. I think so, yes. It was definitely associated with
9 museum business.

10 Q. What contact did you have with them thereafter, either
11 together, or individually.

12 A. I think, as people have said, they were pretty regular
13 visitors to the museum; perhaps once or twice a year and
14 often together. Sometimes it was just Ronald Berndt. I
15 don't recall too many occasions where just Catherine
16 Berndt came in over the years a number of times.

17 CONTINUED

- 1 Q. In the course of those visits, did you have discussions
2 with them about the Lower Murray area and the
3 Ngarrindjeri people, amongst other things.
- 4 A. Yes, certainly they were the focus of the common
5 interest.
- 6 Q. Did that involve an exchange of ideas and theories and
7 views on cultural aspects of Ngarrindjeri life, both in
8 the past and contemporary aspects.
- 9 A. It did, to some extent. And certainly towards the
10 latter stage in discussions.
- 11 Q. Can you elaborate on the topics that were exchanged or
12 discussed in what you describe as the latter stages.
- 13 A. Apart from that brief discussion that I have mentioned
14 in my statement, I think we talked generally about
15 issues relating to research, working with particular
16 people, the types of personal contacts and relationships
17 that the Berndts had built with particular individuals.
18 Talked about the nature of their research in the region
19 and that it was an intense period, but they had a long
20 separation from the region and then came back to it very
21 late in life and wrote it up and the impact that that
22 might have on writing about the region. A range of
23 things, I guess, but a lot of the time it was sitting
24 and listening to Professor Berndt or Catherine Berndt
25 telling their experiences and talking about their
26 knowledge.
- 27 Q. Did either of them ever raise in those discussions any
28 difficulties that, with the wisdom of hindsight in their
29 later years they perceived relating to those experiences
30 in the late 30s early 40s researching Ngarrindjeri
31 culture.
- 32 A. I can certainly remember generally just the comment on
33 experience, gaining much broader experience later on.
34 And pity they didn't have it when they were working at
35 that early time. But specifically it doesn't come to
36 mind straight away.
- 37 Q. In the sense that, as they became more experienced, they
38 recognised that they might perhaps have approached

- 1 things in a better way, or a different way, working with
2 the Lower Murray people.
- 3 A. Yes, perhaps approached it with hindsight I guess, but
4 everyone thinks that way I think, certainly.
- 5 COMSR
- 6 Q. You remember those conversations, do you.
- 7 A. In general terms, yes, that sort of issue was discussed,
8 but it is difficult, yes, I won't push my memory too
9 much in terms of what topics were discussed.
- 10 XXN
- 11 Q. From your own experience, you have now been working as
12 an anthropologist for some 15 years.
- 13 A. Yes.
- 14 Q. Is it your experience that, with the passage of time,
15 you have become more skillful or more adept or whatever
16 in approaching people and perhaps gaining, as a result
17 of that skill, more knowledge than you did in your
18 earlier years.
- 19 A. Certainly, yes.
- 20 Q. Having listened to the evidence, it seems to me that
21 anthropology, to a very large extent, is dependent upon
22 your ability to communicate well with your informant to
23 the point where, not only do you develop trust, but you
24 know what questions to ask in order to get the material
25 you need. Do you agree that that is the position, or
26 would you disagree or comment on it.
- 27 A. No, I would generally agree with that, I think. As you
28 get to know people and get to know the situation, you
29 certainly know - you learn how to ask questions that
30 make sense to people so that you are not confusing them
31 and you are actually finding out information or
32 recording information that is what you are looking for.
33 Certainly experience is critical and experience in a
34 particular region is important too.
- 35 Q. Particularly working with Aboriginal people, would you
36 agree that you need, not only a sense of what to ask and
37 how to ask it, but a degree of sensitivity to body
38 language and expression and so forth.

- 1 A. Yes, certainly.
- 2 Q. You also had some correspondence with Professor Berndt,
3 did you not.
- 4 A. Yes.
- 5 Q. I think that started in 1983.
- 6 A. As far as I can tell, yes, that's the earliest letter I
7 have.
- 8 Q. You have actually got some of that correspondence, if
9 anyone wants to see it, is that the position.
- 10 A. Yes.
- 11 Q. In 1983, were you chairman of a particular committee at
12 the museum.
- 13 A. Yes, I was the chairperson of the I think it was called
14 the Sterling Gallery Redevelopment Committee, at that
15 stage. So, the correspondence that I was having with
16 Professor Berndt was in relation to plans for exhibition
17 galleries in the museum.
- 18 Q. He indicated his willingness to help.
- 19 A. Yes, he was quite interested, at that stage, very keen
20 actually.
- 21 Q. Ultimately the book that has become the gospel at the
22 bar table, 'A World That Was', was published. When was
23 it published, do you recall.
- 24 A. In 1993, I think.
- 25 Q. What was your involvement with that book, if any.
- 26 A. I had - I didn't have a high level of involvement during
27 the editing stage. What I did do, though, I provided
28 support and information during the period leading up to.
29 And I specifically provided some extra information on
30 genealogies to Professor Berndt about a particular
31 family and helped to document the photographs that were
32 being used in the book. So, in terms of specific
33 contributions, those were the two areas towards the end
34 that were significant.
- 35 Q. You are acknowledged in the front of the book under the
36 heading 'Acknowledgements', that's right, isn't it.
- 37 A. Yes, I am.
- 38 Q. You heard Mr Jones suggest that that was a mistake. I

- 1 assume there was some sort of discussion with you before
2 the book was published, an indication from Professor
3 Berndt that there would be a suitable acknowledgement.
- 4 A. I think there was an indication. I don't recall a
5 specific discussion. And I think, in relation to that
6 particular situation, I think that Philip Clarke would
7 have been acknowledged. I think there was an omission
8 there, but I think both myself and Philip Clarke would
9 have been acknowledged. So, I certainly think there was
10 an omission, but I don't necessarily think it was a
11 swapping around of names.
- 12 Q. In fact, your copy of 'A World That Was' has a
13 dedication to you.
- 14 A. Yes, it has a personalised plate in the front.
- 15 Q. From.
- 16 A. I am just trying to think if it is Ronald Berndt or
17 Ronald Stanton. I think it is - you have got it.
- 18 Q. Either Professor Berndt or John Stanton.
- 19 A. Yes.
- 20 Q. Who was the co-author and that was given to you, was it,
21 the book.
- 22 A. Yes.
- 23 Q. I want to ask you about the events of 1994. First of
24 all, as I understand it, in 1994 you were based at the
25 museum annex at Fullarton Road.
- 26 A. That's right, yes.
- 27 Q. When did you move to the annex.
- 28 A. I was based there from pretty much the beginning of the
29 year. When I moved back to the museum from the
30 University of South Australia that was my allocated
31 office space.
- 32 Q. Prior to the beginning of 1994, you were lecturing at
33 the University of South Australia.
- 34 A. That's right, yes.
- 35 Q. How long had you been doing that.
- 36 A. About 20 months I think.
- 37 Q. You were based at which campus.
- 38 A. Underdale.

- 1 Q. Because you were at the annex, is the position that,
2 from January to March, you only visited the museum
3 building on North Terrace at the most once a week and
4 possibly less.
- 5 A. Yes, I think in that early period I was visiting the
6 museum a bit more than the later period and I would say
7 about once a week would be a reasonable average.
- 8 Q. Let me take you to April 1994: you went on a field trip
9 to the Riverland on 8 April.
- 10 A. Yes.
- 11 Q. A further field trip to the Riverland on 14 and 15
12 April.
- 13 A. Yes, that's right.
- 14 Q. Then later in April can I suggest you attended a funeral
15 in the Riverland, on 28 April.
- 16 A. That's right, yes.
- 17 Q. Then, on 30 April, you went to Mannum and subsequently
18 to Lake Victoria.
- 19 A. That's right, yes.
- 20 Q. You were at Lake Victoria until 3 May.
- 21 A. That period I was away actually I was at Lake Victoria
22 and then I travelled down to Millicent to attend the
23 funeral of Lindsay Wilson.
- 24 Q. Lindsay Wilson was someone with whom you had done a lot
25 of work.
- 26 A. Yes, absolutely.
- 27 Q. And he was one of your main informants about certain
28 aspects of Aboriginal life in the Lower Murray.
- 29 A. Yes, I would sort of describe him as a co-researcher.
30 He was very interested in his own history and culture
31 and I think - and Colin Cook was another person who I
32 was very close to and, at that stage, working on history
33 relating to further up the River Murray. So, it was a
34 pretty traumatic period, with the two funerals coming
35 up. And so that period was affected by those events.
- 36 Q. Those two deaths were things which occupied your mind.
- 37 A. Certainly.
- 38 Q. At least during the latter portion of April.

1 A. Yes.

2 Q. And, apart from the four trips that you have talked
3 about in your evidence in April what were you working on
4 during April of 1994.

5 A. As you can sort of see from the trips, most of my work
6 in that period and I guess that year was focused on the
7 Mid to Upper Murray region of the State. And during
8 that period I was working on writing up a report
9 relating to the work I was doing in that region. So,
10 most of my attention was focused on Swan Reach history,
11 basically and that region and working with people in
12 that area.

13 Q. Were you doing any work on the Lower Murray or the
14 Coorong or Goolwa or Hindmarsh Island or anything in
15 that area in the month of April 1994.

16 A. Not that I can recall, no.

17 Q. I think you have said in your evidence that you typed
18 this letter for Doreen Kartinyeri on 12 May 1994 and she
19 spoke to you by telephone on the previous evening.

20 A. That's right, yes.

21 Q. Which would have been 11 May.

22 A. Yes.

23 Q. Prior to 11 May 1994, did you have any contact with her,
24 at all, between January and May 1994.

25 A. Yes, I would have done, just through the museum. And I
26 recall in that period I was trying to get around to
27 working on a project called the Narrunga Family History
28 Project, which was finishing off work to do with Point
29 Pearce, but I didn't actually get the opportunity to
30 chase that up with Doreen and there was a need to sit
31 down with her and spend some time on that project and
32 that was my main focus of contact with Doreen, at that
33 time. It was attempting to do some work on the Narrunga
34 Family History Project.

35 Q. Prior to 11 May, were there any discussions between you
36 and Doreen about Hindmarsh Island or the bridge, the
37 proposed bridge.

38 A. As I have said in my memory I had a general impression

- 1 that Doreen was interested in the issue for a number of
2 months before, so I think there may - there certainly
3 would have been some discussions, at that stage, but my
4 memory is very vague and I don't have any specifics at
5 all.
- 6 Q. Did she ever seek your assistance, prior to 11 May 1994,
7 on any occasion, connected with Hindmarsh Island, the
8 waters around it, the proposed bridge, Goolwa, the
9 Murray Mouth, or anything that subsequently became an
10 issue.
- 11 A. There may have been a general mention of did I know
12 anything about the region, as I have said, in terms of
13 burials and those sorts of things, but my impression was
14 that I had nothing to offer, really, at that period.
15 So, there was no specific major search by me for extra
16 information. So it is a vague period.
- 17 Q. 11 May is really the first time -
- 18 A. That really enters my -
- 19 Q. That she approached you.
- 20 A. Yes.
- 21 Q. And said 'Can you give me some data?', or words to that
22 effect.
- 23 A. Yes.
- 24 Q. As I understand your evidence, you didn't have any data
25 yourself, but you knew that Philip Clarke had a data
26 base which would make retrieval of data pretty easy or
27 easier.
- 28 A. I knew have some references, but one reference in
29 relation burials was in a book called Bellchambers and I
30 knew that Philip Clarke certainly had a good data base
31 and a lot of good references, so he was able to extract
32 anything quickly.
- 33 Q. And so you rang him.
- 34 A. Yes.
- 35 Q. And asked him for it.
- 36 A. Yes.
- 37 Q. You have told us about your conversation with him and I
38 don't propose to go over that again. Then I think you

- 1 had, in fact, arranged to meet Doreen on 12 May.
- 2 A. Yes, I have a memory that it was a day that was going to
3 be a discussion about I think Narrunga family history
4 was the topic.
- 5 Q. That was your project connected with Point Pearce.
- 6 A. Yes, it was basically Doreen's, but I was assisting with
7 some of the work.
- 8 Q. Am I correct in saying this, that that was really the
9 first opportunity in 1994 that you had to sit down with
10 her and get on with this project in any way because of
11 the other commitments that you had had.
- 12 A. Yes, and I think her commitments, as well.
- 13 Q. As I understand your evidence, when she rang you on 11
14 May you assumed it was to do with that project
15 initially.
- 16 A. Yes.
- 17 Q. And it turned out to be -
- 18 A. And she was changing the agenda, basically.
- 19 Q. Dr Clarke has told us that it wasn't uncommon for Doreen
20 to get help typing things, because she didn't type. Is
21 that also your recollection.
- 22 A. Yes, that's right.
- 23 Q. You weren't at all surprised when she asked you to type
24 the letter out for you.
- 25 A. No.
- 26 Q. Had you typed things out for her before.
- 27 A. Yes.
- 28 Q. Had other people in the museum also typed things out for
29 her before, to your knowledge.
- 30 A. Yes.
- 31 Q. After typing that letter and the events that you have
32 described of 12 May, did you have anything further to do
33 with Mr Tickner or anyone else connected with the
34 Hindmarsh Island bridge or the issue generally.
- 35 A. No, other than talking about things in the museum, which
36 has been recorded in this.
- 37 Q. I will come back to that. I think on 17 May you went to
38 hospital.

- 1 A. Yes, I was in hospital that day.
- 2 Q. The following day you went on a field trip to the
3 Riverland.
- 4 A. Yes.
- 5 Q. Which was a two day trip.
- 6 A. Yes, and I remember that, because I was still slightly
7 groggy and a fellow worker did the driving up to the
8 Riverland.
- 9 Q. On 20 May, you had to go to the Underdale Campus of the
10 University of South Australia.
- 11 A. Yes.
- 12 Q. Were you there the whole day.
- 13 A. That's what my diary says, yes, or my desk calendar.
- 14 Q. You have either heard or read the evidence of Francesca
15 Cubillo-Alberts, is that right.
- 16 A. Yes, that's right.
- 17 Q. Talking about an arrangement to see Doreen Kartinyeri.
- 18 A. Yes.
- 19 Q. Did you make an arrangement with Francesca or speak to
20 her about talking to Doreen.
- 21 A. Yes, I did. And I think Doreen was with me, at the
22 time. I'm not sure. I wouldn't dispute that version of
23 Francesca's memory, at all, but I certainly that was my
24 reaction to the situation was to ask Francesca whether
25 she could provide some assistance to Doreen, being a
26 female person, being trained in anthropology and working
27 in the museum.
- 28 Q. And also Aboriginal.
- 29 A. Yes, that was another issue.
- 30 CONTINUED

- 1 Q. When you became aware that Doreen Kartinyeri hadn't
2 followed that up, was that as a result of something
3 Francesca said to you.
- 4 A. I'm really not sure. I really - that's not clear, but I
5 don't - from looking back at the timing of things, it
6 certainly wasn't the same day or the day after. It was
7 certainly a number of days after the meeting.
- 8 Q. You understand Francesca to say that the conversation
9 took place a day or two after the letter was sent.
- 10 A. Yes.
- 11 Q. Is it the position that you could not, because of what
12 you were doing elsewhere, have spoken to Francesca
13 before 22 or 23 May.
- 14 A. Yes, that's right.
- 15 Q. Is it your memory that it was even later than that when
16 you spoke to Francesca.
- 17 A. I have a feeling that it was later than that, and I had
18 a feeling that it kind of slipped my mind, and I was
19 just assuming that things had just run along but then I
20 - somewhere in a conversation, Deane Fergie's name was
21 mentioned, and I'm not sure how specific that was, but
22 that was my impression, that that was the direction
23 things were going in.
- 24 Q. That takes us close to the end of May. In June you went
25 on leave until July.
- 26 A. Yes. I bought a house in that period as well and spent
27 time doing renovations.
- 28 Q. You bought a house, went on leave, did some renovations
29 to your house. You were on leave for a month, I think.
- 30 A. Yes.
- 31 Q. Did you speak to Philip Clarke about the Hindmarsh
32 Island issue prior to your going on leave in June of
33 1994.
- 34 A. I'm not really certain about that. My impression is it
35 would have been later than that.
- 36 Q. Was it the case that you had a lot of events taking
37 place in your life at that time.
- 38 A. I did.

- 1 Q. And Hindmarsh Island wasn't exactly the top of your list
2 of priorities.
- 3 A. No, it certainly wasn't, no.
- 4 Q. Had you had any contact with either Maggie Jacobs or
5 Connie Roberts about any knowledge they might or might
6 not have connected with the women's business, prior to
7 your going on leave in June of 1994.
- 8 A. No, no.
- 9 Q. Is it the case that you later became aware that they had
10 that knowledge.
- 11 A. Yes, that's my impression.
- 12 Q. Later than 1994.
- 13 A. Yes, and I think I only really ever had a conversation
14 with Maggie Jacobs this year, where she basically
15 supported the fact that she did know something based on
16 what was being said.
- 17 Q. In 1994, was your awareness about Maggie Jacobs and
18 Connie Roberts having some knowledge a result of what
19 you read in the press or heard on television, or did it
20 come from them.
- 21 A. That's my memory. I mean, I don't speak to Connie
22 Roberts very often at all. I think the first time I saw
23 Connie Roberts for a long time was at Doreen
24 Kartinyeri's presentation ceremony for her doctorate,
25 which was this year.
- 26 COMSR
- 27 Q. Your initial knowledge of what they knew came from what
28 you heard in the press or in the media in some way.
- 29 A. Yes, it was another source. It certainly wasn't from
30 their mouths.
- 31 XXN
- 32 Q. Then I think, for what was left of July 1994, you
33 returned to your mid Murray sites report at the annex.
- 34 A. Yes, I was working on that - which period is that?
- 35 Q. End of July 1994.
- 36 A. Yes.
- 37 Q. Did you attend a meeting with Doreen Kartinyeri, Maggie

1 Jacobs, Bruce Carter and Ken Sumner at Point McLeay in
2 August.

3 A. Yes, yes.

4 Q. Do you recall the date.

5 A. Not straight off the top of my head, but I know the
6 period. I think I've written it down.

7 Q. Would you agree it was a Tuesday, 9 August.

8 A. 9th, yes.

9 Q. Do you have notes of this.

10 A. Yes, actually there is a set of minutes, I think, of
11 that meeting, but it was basically about - it was
12 specifically about organising a reunion at Point McLeay.

13 It was a meeting with the Point McLeay Council to talk
14 about that, and Hindmarsh Island wasn't an issue at all.

15 It wasn't discussed.

16 Q. Did Doreen, on that occasion, discuss Hindmarsh Island
17 or women's business or any of these issues with you.

18 A. Not that I can remember. The main topic of conversation
19 that day was preparing for the Raukkan reunion. Doreen
20 was very keen to try and incorporate a publication that
21 she's working on, looking at World War I veterans from
22 Point McLeay, the people from Point McLeay who actually
23 were involved in the war and died. She has got a book
24 that she was hoping to try and combine launching on that
25 particular occasion, and there was also the discussion
26 about the restoration of the memorial window at Point
27 McLeay in the church, which had the names of those who
28 were killed in the first World War, and that was
29 actually paid for by the women at Point McLeay - the
30 children and sisters and mothers, et cetera, of the
31 people who'd died. So that was high on the list of
32 things we were going to talk about.

33 Q. Were you involved in preparation of that Raukkan
34 reunion, which I think took place on 3 and 4 December
35 1994.

36 A. Yes. Before that I was actually organising and involved
37 in an excavation that took place at Swan Reach on the
38 mission and that was -

- 1 Q. I will come back to that.
- 2 A. But, yes, I was involved in the Raukkan reunion, putting
3 together an exhibition of panels of - focusing mainly on
4 old photographs. I think there were about 30 or so
5 panels. It was a very large exhibition, and the Raukkan
6 reunion booklet, which I think is part of an exhibit in
7 this commission.
- 8 Q. It is Exhibit 74, I am told by counsel assisting.
- 9 A. So I was very busy on that project during that period.
- 10 Q. Then I think you said August and into September you were
11 working on this excavation at Swan Reach.
- 12 A. Yes, preparing for it, and then several weeks actually
13 at Swan Reach.
- 14 Q. I think on 30 August you went to Melbourne to give a
15 paper at Melbourne University.
- 16 A. Yes, that's right.
- 17 Q. You were there for some days. Then returned to your
18 work at Swan Reach.
- 19 A. Yes, I think so.
- 20 Q. The work at Swan Reach took you up until the end of
21 September.
- 22 A. From memory, yes.
- 23 Q. Is it the case that in October you were preparing a
24 paper for the world archaeological congress.
- 25 A. Yes, I was working on that. It was results of the
26 excavations that year and previous work. It was a joint
27 paper with Richard Hunter and Vivienne Woods, the
28 archaeologist, and it was going to be presented at the
29 World Archaeology Congress in India later that year,
30 something I couldn't go along to because I was too busy,
31 basically.
- 32 Q. Busy in the context of the work you were doing at Swan
33 Reach.
- 34 A. And getting married as well at the time.
- 35 Q. I think you were married in November.
- 36 A. Yes.
- 37 Q. And you took some leave.
- 38 A. During that period, yes.

- 1 Q. And didn't return to work until early December.
- 2 A. That's right, yes.
- 3 Q. In October you made three field trips.
- 4 A. Yes. Again, they were basically meetings in the
5 Riverland or field trips.
- 6 Q. When you returned to work, did you go to the Raukkan
7 reunion weekend.
- 8 A. Yes, I did, yes.
- 9 Q. That was 3 and 4 December.
- 10 A. Yes.
- 11 Q. Was there any discussion by anyone there at that time
12 about women's business, secret women's business, secret
13 sacred women's business, or anything like that.
- 14 A. No, I don't remember it being a topic on the discussion
15 at all.
- 16 Q. I just thought I would cover the field.
- 17 A. It was a weekend to get together and reminisce about
18 growing up and just general chats.
- 19 Q. In December, did you move back to the North Terrace
20 building of the museum.
- 21 A. I was packing to move back. I think I moved back in
22 January. It might have been just before Christmas. It
23 was around that period.
- 24 Q. You heard Mr Jones' evidence about this discussion which
25 he says took place concerning Ronald Berndt theorising
26 about the feminine or possible feminine aspect of the
27 area associated with Hindmarsh Island.
- 28 A. Yes.
- 29 Q. And you certainly don't dispute that you told him that
30 you had had that recollection.
- 31 A. No, I don't dispute it.
- 32 Q. Mr Jones places it, in his memory, in this context 'We
33 were talking about another matter' this is p.4,236 'or
34 perhaps a related matter, in a sense, which was a
35 request that we had to provide a data document relating
36 to Aboriginal land relationships on the Murray River for
37 the Attorney-General's Department'. Mr Jones places
38 that towards the end of 1994. Do you have a specific

- 1 memory of doing some work on Aboriginal land
2 relationships on the Murray River for the
3 Attorney-General's Department.
- 4 A. I have a very specific memory of that particular issue,
5 and it was raised in February 1995, and I do remember
6 the context of the discussion with Philip Clarke and
7 Philip Jones, where Ronald Berndt's name was mentioned
8 in association with that discussion about the Murray
9 River native title project, and that would have been
10 towards the end of February, early March 1995, certainly
11 no earlier than February. And I have a date when I was
12 asked to put together a very sort of basic overview of
13 what might be needed to conduct such a process which
14 included a basic costing of consultation, field work and
15 those sorts of things, and that was in February. I will
16 just quickly look at my notes.
- 17 Q. Can I suggest that you, in fact, prepared a brief paper
18 entitled 'Survey of the Aboriginal significance of the
19 Murray River from Berri to Renmark.'
- 20 A. Yes, it was actually - it was entitled that, but it was
21 basically a costing and an indication of what might be
22 needed to be done.
- 23 Q. Look at that document dated 14 February 1995.
- 24 A. Yes, that's it.
- 25 Q. Is that the document to which you refer.
- 26 A. Yes, that's the one.
- 27 Q. Was it before the production of that document or after
28 the production of that document that you said anything
29 to either Jones or Clarke about Ronald Berndt theorising
30 about a female body in the landscape, or however you
31 phrase it.
- 32 A. My memory would be after this, and in terms of Philip
33 Jones' mention of that conversation, it was - my memory
34 would be in that context of discussion about the Murray
35 River native title and, as far as I remember, we were
36 having meetings towards the end of February and early
37 March, talking about that issue. So it could have been
38 in that period. That's where I'd locate it.

- 1 MISS NELSON: I am happy to tender that, if it's
2 necessary. I have only put it to the witness for the
3 purpose of refreshing his memory on a date. I know you
4 are overwhelmed by exhibits, but if anyone requires me
5 to tender it, I will.
- 6 MR SMITH: Can I ask my learned friend if there is
7 anything to be drawn from the document itself on the
8 topic of the River Murray and the lakes being evocative
9 of a female body?
- 10 MISS NELSON: No, there isn't.
- 11 MR SMITH: The witness isn't trying to relate that
12 comment to this research?
- 13 MISS NELSON: No, and it doesn't relate to that area.
14 It is the mid Murray.
- 15 WITNESS: No, it is the whole.
- 16 MISS NELSON: It is the whole of the Murray.
- 17 COMSR: The purpose of it is to establish the
18 date on which this conversation took place.
- 19 MR SMITH: On that basis, we wouldn't want it
20 tendered.
- 21 MISS NELSON: If anything comes out that links that
22 document to anything relevant to the commission, I will
23 tender it.
- 24 XXN
- 25 Q. But your understanding is that that costing related to
26 Murray River native title research.
- 27 A. Yes.
- 28 Q. And the whole of the Murray River.
- 29 A. Yes, it was in - I have just had a quick look again to
30 refresh my memory - it was in two parts. It was a focus
31 on the area from Berri to Renmark, and then it was the
32 whole of the River Murray as well discussed. So it had
33 two sections to it.
- 34 Q. Did you have any meetings with either Philip Clarke or
35 Philip Jones, or both of them, about the possible Murray
36 River native title research project prior to February
37 1995.
- 38 A. No, not on the Murray River, not at all.

- 1 Q. You are quite positive, are you, that your remark about
2 Ronald Berndt was made after you produced that costing
3 report.
- 4 A. My memory is strong in terms of it was a discussion in
5 that - on that topic with Philip Jones and Philip
6 Clarke, and that relates it to that period. That's
7 about as far as I can go.
- 8 Q. When you say that period, what period do you mean.
- 9 A. End of February, March.
- 10 Q. Of which year.
- 11 A. 1995, yes.
- 12 Q. You've been examined by counsel assisting on what you
13 said, and I don't propose to go over that again. Philip
14 Jones' recollection is that you said something about
15 Philip Clarke being present when Ronald Berndt made that
16 remark. Is that correct, that you did say that.
- 17 A. I think I did. I think I thought that Philip Clarke was
18 present. I wasn't convinced of that, but I thought that
19 he was.
- 20 Q. Your reason for saying that was because you were looking
21 to Philip Clarke to support your memory of what had been
22 said. Is that the position.
- 23 A. I think so, yes.
- 24 Q. Indeed, you asked him if he had a note of it somewhere.
- 25 A. I'm not sure if I specifically asked him if he had a
26 note of it, but I think that was probably asked of him.
27 Certainly I was under the impression that he was there.
28 I wasn't certain, and I thought that he would have an
29 opportunity of having a note, if he was.
- 30 Q. John Stanton is someone with whom you have had some
31 dealings over the years.
- 32 A. Yes.
- 33 Q. And someone you would feel that you could approach on a
34 professional matter for help, if necessary.
- 35 A. Yes, yes.
- 36 Q. In fact, after this discussion with Clarke and Jones,
37 did you make attempts to speak to John Stanton in
38 Western Australia.

- 1 A. I don't think so. I'm just trying to -
- 2 Q. Did you go away and re-read 'A World that was' -
- 3 A. Yes.
- 4 Q. Looking for a reference.
- 5 A. I did that certainly.
- 6 Q. Did you find a reference.
- 7 A. The only reference I could find was the reference that
- 8 talks about the region as a body, and then at the end of
- 9 that elaboration it describes that body as being
- 10 symbolic of Ngurunderi himself, so I think that may have
- 11 been - and I have mentioned that I'd thought I'd seen
- 12 something somewhere, it may have been the reference that
- 13 I was thinking about. That was all I was able to locate
- 14 in 'A World that was'.
- 15 Q. Wasn't the reference that you believed existed the one
- 16 to which you referred Mr Jones.
- 17 A. It could have been, yes, yes. I mean, I wasn't certain
- 18 at the time. I was just saying that I'd thought I'd
- 19 seen something.
- 20 Q. Did you subsequently say anything to Philip Jones about
- 21 that reference.
- 22 A. Yes. I believe I mentioned, on a couple of occasions,
- 23 but I certainly remember mentioning it to him. It
- 24 probably would have been the day after he went to the
- 25 media on the Channel 10 interview we had a discussion
- 26 outside of the museum.
- 27 Q. What did you say.
- 28 A. We were mainly talking about the results of what he had
- 29 done in terms of the museum, and there was discussion
- 30 about the preparation of a press release from the
- 31 museum, clarifying the museum's position, and there was
- 32 a number of people who were involved in that discussion
- 33 at that time.
- 34 Q. What did you say to him about the reference.
- 35 A. I just recall saying, in the midst of talking about the
- 36 other issue, that I hadn't found the reference and the
- 37 thing that I'd looked at wasn't the case in Ronald
- 38 Berndt.

1 Q. You recall Mr Abbott when you were last in the witness
2 box was asking you some questions.

3 A. Yes.

4 Q. He spoke to you about an extension of the Taillem Bend
5 road.

6 A. Yes.

7 Q. He suggested to you that you alerted the Lower Murray
8 Aboriginal Heritage Council about something to do with
9 the road and where it was going to go.

10 MR SMITH: That was me.

11 A. That's right.

12 XXN

13 Q. Mr Smith says it was him.

14 A. That's right.

15 Q. You said, and you weren't able to elaborate on the
16 answer, that the Highways Department had, in fact,
17 contacted you.

18 A. Yes. I wasn't really certain of the sequence of events
19 because it was going back quite a period, but I remember
20 that, I remember the event. I did write a very brief
21 report which I've been looking around for a copy of and
22 haven't found yet. But I was in the process of working
23 on site recording in that region with representatives
24 from, I would think it was, the Ngarrindjeri Lands and
25 Progress Association. And at that stage I remember
26 contact with Phil Fitzpatrick and then having meetings
27 with the Highways Department. I was under the
28 impression that there was more of a contact coming from
29 the Highways Department in terms of elaborating on the
30 process, but I'm not absolutely certain. I wasn't
31 totally certain at that stage in the evidence, but I
32 felt that there was nothing untowards about what was
33 going on. It was a matter of alerting various parts and
34 if I had alerted the Heritage Committee office or
35 the Ngarrindjeri Lands and Progress Association about
36 it, that would have been appropriate in the
37 circumstances.

38 Q. And appropriate, I suppose, to alert the Highways

- 1 Department to potential problems if they went ahead in
2 certain ways.
- 3 A. Certainly, yes. I remember they weren't really aware of
4 the Act that was coming into being at that stage and the
5 implications that it had for their work. So, I think
6 Phil Fitzpatrick was involved in telling them about that
7 and I know I was there at the meeting in relation to
8 that.
- 9 Q. Phil Fitzpatrick is associated with what.
- 10 A. He was part of the Aboriginal Heritage Unit at that
11 stage, which was, I think, in the Department for
12 Environment & Planning then.
- 13 Q. Is it the position that if the Highways Department had
14 been permitted to blunder along in the usual myopic
15 fashion they could have committed an offence against the
16 Act.
- 17 A. Yes, they could have.
- 18 COMSR: I don't want to join another party.
- 19 MS NELSON: Mr Halliday tells me the only person not
20 represented here is the canoe tree in Goolwa.
- 21 COMSR
- 22 Q. In any event, that was just after the new Act came into
23 account.
- 24 A. I think it was. That was the issue.
- 25 Q. I think you were saying that most people were not
26 familiar at that stage with the implication of it.
- 27 A. No, most people weren't. In the Act, ignorance was not
28 a defence. There were a range of complications, let's
29 put it that way, with the people.
- 30 XXN
- 31 Q. You have given some evidence about various times when
32 Doreen Kartinyeri, prior to May of 1994, has said things
33 to you which, to you, again with the wisdom of
34 hindsight, were indicative of some secret women's
35 knowledge or restricted women's knowledge.
- 36 A. Restricted I would say.
- 37 Q. You have said that she wouldn't tell you the details of
38 stories. Did she indicate to you there were stories.

- 1 A. No. Basically said she just wouldn't go into detail.
2 It was more comments along the lines of `There are
3 things I can't tell you because you're a man', or `I
4 shouldn't be at all talking, I can't tell you about this
5 because you're a man'. Comments like that came up
6 fairly regularly. This indicated there was something
7 Doreen knew that she couldn't pass on to me on the basis
8 of the fact I was a male and she made - I think she made
9 that point because I was working closely with her and
10 had a close relationship, but she was unable to reveal
11 something to me. Even though we had a close
12 association, there was a point like that. It came out
13 strongly when doing the Ngurunderi exhibition. Looking
14 at the case relating to shelter and camps, we had a
15 female seated figure in the case and Doreen commented on
16 the fact that the figure was actually indicating a
17 particular - I think it was related to a particular
18 female bodily function in that particular seated
19 position and would indicate to other people around, like
20 boys and men - and she gave us a little bit of an
21 indication of that and then she said `Look, stop the
22 tape' - and I've got the tape recording where she says
23 that on it.
- 24 Q. I think you produced the transcript.
25 A. Yes, there was a very rough version.
- 26 Q. Through Mr Smith, that transcript has been produced and
27 you actually have the tape.
- 28 A. I have an updated version of the tape which is a little
29 bit extra. There are conversations going on in two
30 areas, with myself and Winston Head are talking closest
31 to the tape and Doreen and Philip Clarke were in the
32 background talking. And I also have a note in one of my
33 diaries of the time, I guess, relating to a meeting
34 where Doreen has strengthened the point that there were
35 things she couldn't tell even me which related to that
36 particular occasion.
- 37 Q. You have interpreted that reluctance on her part or
38 refusal on her part to communicate certain information

- 1 as an anthropologist as indicative that there was
2 knowledge which was restricted to women in the
3 Ngarrindjeri culture, is that right, or possibly.
- 4 A. It gave an indication that that was to be, yes. There
5 was certainly something Doreen felt couldn't be told and
6 was an indication that was possible in relation to a
7 broader group of people.
- 8 Q. In your work with the Aboriginal community generally,
9 have you come across areas where knowledge may not be
10 shared, first of all, with a member of the white
11 community.
- 12 A. Yes.
- 13 Q. Knowledge which may not be shared man to woman or woman
14 to man.
- 15 A. Yes.
- 16 Q. In those instances, if you can speak generally, does
17 that relate to sacred knowledge.
- 18 A. Most of the instances that I can recall would have
19 related to talking to people in relation to areas like
20 midwives and then having a barrier put up and
21 restrictions around discussing the issues relating to
22 childbirth and those sorts of areas, not wanting to talk
23 about those issues.
- 24 Q. Is that simply a nicety that you know in certain
25 communities where some things are not discussed in a
26 public way, or is it indicative of a restricted category
27 of knowledge.
- 28 A. To me, it appears to be indicative of something more
29 than just a nicety, and I think it was even as not just
30 a gender thing in some ways in that lots of the women
31 who gave evidence here, gave evidence about the fact
32 that their parents and others didn't pass on any
33 information at all about their changes in their bodies
34 and child birth. It was a real restricted area in a
35 sense of knowledge. There seems to be an indication of
36 that there, and certainly in my discussions with older
37 Ngarrindjeri women, there were boundaries around talking
38 about certain areas.

1 COMSR

2 Q. I wonder about that. I suppose if you were to talk with
3 older white women, you might find that they didn't
4 readily discuss matters of that sort, would you.

5 A. That's true. But I think it's - there's more of a
6 specific situation going on in that community. And it's
7 more of a restriction than you find even just in the
8 general white community of that age group and what
9 Aboriginal people have basically said to me. I've also,
10 it's also observing other people and how they approach a
11 particular area, the Aboriginal people; as I said, John
12 Campbell's response was a good example of that.

13 Q. I'm wondering how you would draw the boundaries of where
14 something is just due to natural reticence and -

15 A. I don't think there is any such thing as natural
16 reticence. All reticence has a basis in some sort of
17 belief. I think the question is how much was
18 Ngarrindjeri people's beliefs connected with the wider
19 community's beliefs on the same sorts of areas, and I
20 think there is certainly, definitely some crossover
21 there. I think it's more than that. Certainly that
22 would be my conclusion.

23 XXN

24 Q. In the course of the answer before that last one, you
25 said, words to the effect, that Aboriginal people had
26 told you - and this is my for instance inference that is
27 coming now - that it was more than simply a nicety, that
28 it had something to do with the restriction of
29 knowledge. Can you elaborate on that.

30 A. Not so much necessarily restriction of knowledge, but
31 more to do with a sense of taboo, a taboo topic.

32 Q. I don't want to take this too far into detail, but it is
33 the case, is it not, that every society has, as part of
34 its development, a belief or a theory about things like
35 conception, procreation, and that is a belief which has
36 little to do with the physiological facts.

37 A. Yes. In general, I would agree with that.

38 Q. That is true of Aboriginal communities that they have

1 stories or dreamings or spiritual beliefs as to how life
2 is created.

3 A. Yes.

4 Q. That's got nothing much to do with the biology of what
5 happens.

6 A. Sometimes it does and sometimes it doesn't. That's
7 their explanation of the biology.

8 Q. Is it your view that what is missing in the Berndts'
9 book is any description of the spiritual or religious
10 beliefs to do with those aspects that you have spoken
11 about in the periphery: conception, birth, and so forth.

12 A. I think what is missing in there is an elaboration from
13 a female perspective; the sorts of explanations that
14 women would be given in relation to those changes that
15 were occurring, why was it that particular things were
16 occurring. There is a lot of detail or explanation that
17 just appears to be missing. What's mostly given is a
18 physical description and what seems to be a broader, a
19 broad sort of general perspective rather than a
20 perspective that you would expect from a female
21 perspective, I suppose.

22 Q. It's in that area that you say there is an indication of
23 the possibility of restricted women's knowledge, if I
24 could use a neutral term.

25 A. Yes. I think that's one area. And I think I've also
26 said that we have got initiation ceremonies being
27 identified as being separate to women, males excluded
28 from them, and we don't know much about what was going
29 on in terms of knowledge being passed on. I think the
30 two were interrelated, but there have been comparisons
31 drawn with the Tiwi, what we know about the Tiwi, of the
32 Tiwi, the Tiwi with joint initiation ceremonies for the
33 men. I think that having separate women's initiation
34 ceremonies is a fairly significant factor that was
35 identified in various stages.

36 Q. It's your position, is it, that you allow for the
37 possibility of secret sacred women's business to do with
38 Hindmarsh Island.

1 A. Yes, but and I've said, I guess -

2 Q. You are not claiming it exists.

3 A. No. I think I would follow along the lines of the
4 definition that Deane Fergie gave of what secret sacred
5 women's business might mean. I've used in my statement
6 quite often 'restricted women's knowledge', 'restricted
7 women's business', in those terms.

8 ADJOURNED 12.55 P.M.

1 RESUMING 2.26 P.M.

2 MISS NELSON: I understand that Mr Abbott won't be
3 available until tomorrow morning, so can I suggest I go
4 as far as I feel that I can and I would resume my
5 examination of this witness when he concludes his
6 cross-examination.

7 XXN

8 Q. In answer to Mr Smith last week Mr Hemming, you said;
9 Ngurunderi, as a male ancestor, came into being after
10 the landscape. Now, first of all, as I read the
11 evidence, particularly of Bertha Gollan, who is one of
12 the dissident women, she didn't know of Ngurunderi until
13 recent times. You were part of the committee that set
14 up the Ngurunderi exhibition and produced the video that
15 was tendered earlier in the piece.

16 A. Yes.

17 Q. That's right, isn't it. As I understand it, you had a
18 lot of meetings with Aboriginal people. There was
19 consultation about the production of the video.

20 A. Yes, there was a long process of consultation in
21 relation to the video and the exhibition. It really
22 started back in probably 1983, or before. We set up an
23 exhibition at Point McLeay school based around the
24 Ngurunderi dreaming story and that was used as a test
25 case, to see what the reactions of the community would
26 be to actually putting on such an exhibition and using
27 that dreaming. I guess consultation took place from
28 about there, right through to near the end of the
29 exhibition process, which is a number of years and a
30 series of things occurred. We held a seminar in the
31 museum, I think, in 1983. We invited Aboriginal
32 education workers and other people working in the, sort
33 of, cultural area, to come into the museum and talk
34 about development of an exhibition of Aboriginal
35 culture. We had formal meetings in communities like
36 Point McLeay, Meningie, Murray Bridge, several stages of
37 those. The Ngurunderi video itself I did consult with a
38 number of people over a wide area in the community, to

1 talk about the version that would be produced and,
2 during that process came into contact with people who
3 knew something about the Ngurunderi dreaming, and that
4 was only a very few people really who had much knowledge
5 about the dreaming stories itself.

6 Q. It doesn't come as any surprise to you that, for
7 example, Bertha Gollan -

8 A. No.

9 Q. Who you agreed was a well respected person, highly
10 regarded in the community, hadn't heard of that
11 particular Ngurunderi story.

12 A. No, that's not a surprise at all, because that was one
13 of my major early bits of work, was to discover who knew
14 something and how much and what and the knowledge about
15 Ngurunderi was restricted to a fairly small group of
16 people and details of the dreaming was fairly restricted
17 as well, detailed knowledge, at least, in relation to
18 what people would talk to me about. But, it did appear
19 it was restricted to only a small group of people and
20 that's interesting, given the importance of that
21 dreaming, in the forties at least.

22 COMSR

23 Q. I got the impression, from the other evidence, that the
24 Ngurunderi story is a composite, as it were, of bits of
25 information from various sources.

26 A. Well, it was based on the original published account by
27 Ronald Berndt and it was supplemented by other small
28 segments from some of the work that Tindale had done
29 with other Aboriginal people in the region. And then,
30 it was also modified according to some contemporary
31 knowledge of the dreaming. For instance, Henry Rankine,
32 within his family, there was some knowledge of one
33 aspect of the dreaming story, that was able to be used
34 in our account in the video. Same thing through the
35 salt water version of the dreaming. But, it was largely
36 based on the account that Ronald Berndt recorded, I
37 think originally with Albert Karloan, with a bit of
38 Reuben Walker, I think, adding to the sort of Encounter

1 Bay part of the dreaming. Certainly it seems that it
2 was well known amongst a wider group of people in the
3 1940s and certainly, by the time I was talking to
4 people, very few people knew much about that particular
5 dreaming. One significant aspect actually was that, and
6 Taplin records the fact that, as a missionary he was
7 looking around for a term which would equate with God
8 and he initially used Ngurunderi as an example of a term
9 that he thought might communicate the same sorts of
10 meanings to Aboriginal people when he was talking about
11 Christianity. He said that he gave away that practice
12 at a particular stage, because he found that some of the
13 practices and beliefs associated with Ngurunderi didn't
14 fit in with Christian beliefs, but certainly a number of
15 people I spoke to in the 1980s, saw the term
16 'Ngurunderi' as being equivalent as the concept of God.
17 It would seem it was very significant. It was a
18 combination of Christian beliefs and Ngurunderi beliefs
19 I think.

20 XXN

21 Q. Certainly it would appear that the Berndts heard from
22 some of their, or one of their informants, that
23 Ngurunderi story and either heard all of it or pieced it
24 together from bits of information, because it appears
25 in their book.

26 A. Yes.

27 Q. But, presumably, they got this information in the late
28 30s or early 40s.

29 A. Yes, yes.

30 Q. Nevertheless, in the 1980s, 1990s, there are large
31 sections of the Ngarrindjeri community, who had never
32 heard of it.

33 A. It certainly seems that way, yes.

34 Q. And yet, in your view, as an anthropologist, it is a
35 highly significant part of the Ngarrindjeri tradition.

36 A. It is certainly argued in that way, particularly by
37 Ronald Berndt and Catherine Berndt.

38 Q. Is that an example of knowledge not being transmitted.

- 1 A. I think -
2 Q. That's open knowledge.
3 A. I think it is a clear example of knowledge not being
4 transmitted, yes.
5 Q. You will recall, that when Dr Clarke gave his evidence I
6 asked him some questions about Thukabi, that is an
7 alternative version, isn't it; the turtle coming down
8 the river.
9 A. Yes, it is another dreaming story associated with the
10 River Murray and the lakes, yes.
11 Q. As I understand it, the only person who seemed to know
12 about that was Henry Rankine.
13 A. He seemed to be the prime source of that story, yes.
14 Q. So, that the Thukabi story, can we take that as an
15 example of an area of significant knowledge which is
16 known, perhaps, only to one person, but if more than
17 one, very few people.
18 A. I think it is another example of just a few people
19 perhaps, or maybe one, but I think it would be a few
20 people, knowing a major dreaming story, yes.
21 Q. When you said in your evidence, that
22 Ngurunderi came into being after the landscape, is there
23 any significance about that, in terms of what preceded
24 the Ngurunderi story or might have preceded the
25 Ngurunderi story.
26 A. I think it is in that, it tends to show up another area
27 of knowledge relating to Ngarrindjeri culture, perhaps
28 at a time when the Berndts were recording it, that
29 wasn't very much available. You have got other dreaming
30 stories certainly recorded, like the Kondoli the whale,
31 and a range of others that connect in with other parts
32 of the landscape, the Tjilbruke story from the Adelaide
33 Plains down to Cape Jervis, but you don't have much of
34 the other creations, stories associated with the
35 landscape itself as such and Albert Karloan comments on
36 that in the book, I think. Ronald Berndt and Catherine
37 Berndt record that during the initiation processes that
38 Albert Karloan was involved in, a great deal of the

- 1 esoteric knowledge wasn't being handed down at that
2 stage, so, there may well have been another level of
3 dreaming interpretation of the landscape that wasn't
4 being handed down even to Albert Karloan at that stage
5 and was a major part of the Ngarrindjeri culture that
6 was missing in that record. So, I think it is very
7 significant that aspect.
- 8 Q. In response to the Commissioner this morning, you said
9 that the manner in which knowledge is transmitted,
10 changes when there is a change in society and how people
11 behave and what they do and their practices.
- 12 A. Can I add one more thing to that last point I have just
13 thought about sorry? The other point that is
14 significant in the Berndts' work, they don't record any
15 actual songs and dances or ceremonies associated with
16 Ngurunderi, they record text and story, but they don't
17 record performance elements of that dreaming action,
18 and Taplin, certainly in his early years at Point McLeay
19 records the fact that, the people there were actually
20 performing the Ngurunderi dreaming as such, singing a
21 song and its interesting to find that a major dreaming
22 story like that doesn't appear to have any major
23 ceremony dances, songs, associated with it, according
24 to the Berndts' record. But, there was certainly
25 evidence of people performing aspects of it prior to
26 the Berndts' period. So, I think that's an interesting
27 - another interesting missing link, to some extent.
- 28 Q. Now I was asking you about some responses you gave to
29 the Commissioner this morning on the topic of the
30 manner which knowledge is transmitted. You explained
31 that, when society changes, as it does from time to
32 time, in an evolutionary way and practices cease or
33 alter in a significant way, then people adopt other ways
34 of passing on knowledge, other than historical
35 traditional ways. Do you remember that evidence.
- 36 A. Yes, yes.
- 37 Q. The incidents, first of all, of European invasion, was a
38 significant impact on Aboriginal society, is that not

1 the case.

2 A. Yes, certainly that impact of the early contacts and the
3 invasion process, absolutely.

4 Q. Then, the endeavour to convert Aboriginal communities to
5 Christianity and a more European lifestyle, would have
6 been a major disruption to traditional ways of living
7 and practices, would it not.

8 A. It was a major disruption to the ways before, the pre
9 European certainly.

10 Q. Then, if we look even at relatively recent times, up
11 until the 1960s, there was not just a practice, but a
12 law, which effectively removed some Aboriginal children
13 from their families and placed them in a European type
14 of community. Did that practice apply at all in the
15 Lower Murray.

16 A. There was, yes, there was certainly cases of people
17 being removed from their families. I can think of one
18 family that had that happen to them over several
19 generations, so.

20 Q. It would be natural then, would it not, for people who
21 were the custodians of traditional Aboriginal beliefs,
22 or knowledge, to be fearful of imparting that, even
23 within their own community.

24 A. Yes, I think that would certainly be the case. I mean,
25 there would have to be consideration given to who you
26 would be talking about particular things because of the
27 types of beliefs that some of the people within your own
28 community would hold and they would be, if someone was
29 very strongly, very strongly Christian, in a particular
30 form of Christianity, they would necessarily have
31 negative views towards pre European Aboriginal culture.
32 That's not any valued judgment on those people, but that
33 would be the case and I guess on older person, who had
34 particular types of beliefs, in relation to signs being
35 given by birds or other aspects, if they felt those
36 beliefs wouldn't be taken seriously or there may be
37 some, if they talked about those things, there may be
38 some element of ridicule, they wouldn't be talking about

- 1 those things to those particular people perhaps. So
2 there is a range of different circumstances there.
- 3 Q. Is it going too far to say that, until very recent
4 times, the fact of being Aboriginal has been perceived,
5 by a lot of Aboriginal people, as being a hindrance.
6 That, in order to progress, they really need to align
7 themselves, not only with the white community, but the
8 manner in which the white community thinks and subscribe
9 to their set of philosophies and beliefs.
- 10 A. That's a tough question I think. I don't think I -
- 11 Q. If you can't answer it say so.
- 12 A. I think Aboriginal people might conceive it in a
13 different way, but, certainly the pressure has been
14 there to, basically, take on European beliefs and -
- 15 Q. And culture and to conform.
- 16 A. Conform, certainly.
- 17 Q. You heard the evidence of both Amelaia and Clara
18 Campbell, didn't you.
- 19 A. Yes, yes.
- 20 Q. The evidence that, when their mother was approached
21 about aspects of Aboriginal tradition, or secret women's
22 business, she didn't respond to the question but said,
23 'It is no good looking at the past we have to look at
24 the future.'
- 25 A. Yes and I think that is - that would be a common
26 reaction by older people to that sort of occasion and
27 situation.
- 28 Q. May those factors also account for the fact that if,
29 and I know you only suggest it is a possibility, this
30 restricted knowledge exists, it would be in the hands
31 only of a very few and only those who expressed in a
32 consistent way, an interest in Aboriginal tradition and
33 culture.
- 34 A. Yes and I think there would have been a situation of
35 positioning, luck involved as well. It may not be just
36 that, it may have been circumstance and a range -
- 37 Q. I am not suggesting that is the only factor. You said
38 you have got to be in the right place at the right time,

1 but also, you would have to have demonstrated, over a
2 period of time, that you were a person to whom such
3 important information could be trusted.

4 A. I think that's very true, yes.

5 Q. I want to deal just briefly with what I understand to be
6 a criticism of what Rebecca Wilson may or may not have
7 known. You recall Mrs Fisher's evidence on that topic,
8 insofar as you heard it all and you didn't hear all of
9 it. As I understand the criticism it is that, Rebecca
10 Wilson couldn't have had any restricted knowledge
11 because one of her grandmother's came from another
12 community. Is that a valid criticism, in your view.

13 A. Well, I think the evidence or the criticism was not
14 quite as pointed as that, it was that -

15 Q. That's my gloss on it, but I think that's what was being
16 said. It may have been said more tactfully.

17 A. The generalisation seemed to be that her connections
18 were really just with the Port Adelaide or the Adelaide
19 area and it is clear from her genealogy, that she had a
20 grandmother who came from the Coorong as well,
21 Elizabeth P-E-T-E-M-B-I-T-P-I-R-I, I think, something
22 like that. That was her name before she was married
23 but, there is certainly a strong Coorong connection
24 there, through one side, on the mother's side and also a
25 strong connection with the Coorong through the
26 grandfather, the grandfather who was married to the
27 woman who was connected with Adelaide, or possibly
28 connected with Adelaide. So, from that perspective,
29 there is every chance that knowledge relating to that
30 region was there.

31 CONTINUED

- 1 Q. But isn't there another perspective. One could be
2 pardoned for getting the impression from some of the
3 witnesses that the Ngarrindjeri community is this
4 community with defined parameters that has not been the
5 subject of cross-pollination from other Aboriginal
6 communities.
- 7 A. Sure.
- 8 Q. Now, that can't be right, can it.
- 9 A. No, I mean, that's a - yes, that is a major problem in
10 understanding, if people have that perception. Because,
11 from a very early time, given the establishment
12 admissions and fringe camps in the region, people from a
13 range of different areas were coming together, marrying,
14 having children. You have connections with the
15 Adelaide, the west coast, the Lower Murray, the Upper
16 Murray, Victorian areas, from a very early time in that
17 region. You also perhaps before European contact you
18 have got - Tindale's argument was stronger connection
19 between the Encounter Bay people and the Ramindjeri
20 people and the Adelaide people. And the Ramindjeri
21 people were one of the groups that had an association
22 with Hindmarsh Island.
- 23 Q. Can I just interrupt there.
- 24 A. Sure.
- 25 Q. And perhaps just ask you to expand on that. Hindmarsh
26 Island in the past was occupied, was it not, with three
27 different language groups. The Yaraldi being one of
28 them.
- 29 A. That region certainly had an intersection of at least
30 three different language or dialect groups.
- 31 Q. Who were the others.
- 32 A. You had Yaraldi, Thangarni or Tangani, and Ramindjeri.
33 And then there was a couple of other groups coming in
34 there, but they were the three main groups. And the
35 Berndts' book is primarily about one of those groups,
36 the Yaraldi. That is, the main source of information
37 comes from Albert Karloan, who was a Yaraldi -
38 predominantly a Yaraldi man. That case or that point is

1 made in the book, that it is largely about Yaraldi
2 culture. It certainly touches on other people. The
3 fact that the Coorong people, the Tangani people, likely
4 had variations in their cultural practices and beliefs
5 that perhaps the Berndts didn't record, because they
6 focused more on the Yaraldi as a possibility. And
7 Clarence Long, who was Norman Tindale's main research
8 source, was from the Coorong and he certainly had
9 disagreements in terms of some of the cultural beliefs
10 and practices that Albert Karloan argued were common to
11 the Ngarrindjeri people. And then you have got the
12 Ramindjeri people, as I say, who had strong associations
13 with the Adelaide people and seemed to have influences
14 from that Adelaide culture coming in, as well. So,
15 there were at least three different groups of people
16 around the lake, in a sense, who could well have had
17 different perspectives even on perhaps some elements of
18 secrecy. So, I think it is wrong just to think - to
19 group everybody together under the same banner and
20 thinking of them all as holding exactly the same
21 beliefs. There were influences coming in from different
22 groups and differences amongst the groups around the
23 lakes, even at the time of European contact, I would
24 say.

25 Q. Tindale worked with the Coorong people.

26 A. He focused a lot of his work with Clarence Long. I
27 mean, he worked with a number of different people, as
28 well, but Clarence Long was one of his major informants
29 and he was from the Coorong.

30 COMSR

31 Q. There were different language groups you have spoken
32 about on Hindmarsh Island: were they all Ngarrindjeri.

33 A. They have been described as Ngarrindjeri people later
34 on. They were still seen by them - the people, at the
35 time, as being distinctive according to the language
36 they spoke and having some differences in culture.

37 Q. Were the different language groups associated with
38 different parts of the island.

- 1 A. I think there were - the different groups touched on
2 different parts, that he had particular clan pieces of
3 country from a particular - one of the languages. So,
4 you might have a group, I think there was a group from
5 the Ramindjeri people, another one from the Yaraldi
6 people, having an association with Hindmarsh Island.
7 And I think the Tangani people come in on the bottom
8 end. And I am referring to an archival document that
9 was written by Jacob Harris, an Aboriginal man from the
10 area. And he talked about the differences between the
11 groups of people living around the lake and he spelt
12 them with a TH rather than just a T. So, you have got
13 Yaraldi - it is only a little difference. It is not
14 that important.
- 15 MISS NELSON: I can't remember, has the Berndts book
16 been tendered as an exhibit?
- 17 OMSR: Yes, it has been tendered as an exhibit.
- 18 XXN
- 19 Q. Looking at Exhibit 4, now before you, can you just turn
20 to p.304, there is a map on that page. And does that
21 set out the various, or some of the various language
22 groups or linguistic dialect groups, I think you would
23 prefer to describe them.
- 24 A. If you look on this, there you have Ramindjeri, Tangani,
25 Yaraldi included on there in those regions.
- 26 Q. The Ramindjeri had close links, did they not, with the
27 Adelaide people.
- 28 A. They certainly did in the early period of contact, yes.
- 29 Q. When you talk about 'contact', you mean with - European
30 contact.
- 31 A. With Europeans, yes.
- 32 Q. Did the Adelaide people have secret men's business which
33 was documented.
- 34 A. Yes, they did. According to the missionaries who were
35 working with the Adelaide people, Tickleman and
36 Shermann, they had initiation ceremonies that were based
37 more around other practices. I won't go into detail.
38 But, yes, that's documented.

- 1 Q. Berndts' book records the existence of similar
2 initiation rites amongst the Yaraldi to the Adelaide
3 people, do they not. For example, the body scarring
4 rite.
- 5 A. What he said in the book is that Albert Karloan said,
6 yes, there were body scarring rites for men, but he
7 didn't know much about the details of those. And he
8 thought that they may have come from the north, but he
9 did acknowledge they existed within the Ngarrindjeri
10 tradition.
- 11 Q. Is it not the obvious inference that what Karloan was
12 saying was that the Yaraldi practised initiation
13 ceremonies and that part of it had been introduced from
14 the north or from Adelaide some time in the past.
- 15 A. That seems to be what Albert Karloan is saying, yes.
- 16 Q. And that is an example of how other Aboriginal
17 communities, beliefs and traditions have been
18 assimilated or amalgamated into, in this case, the
19 Yaraldi.
- 20 A. Yes, it is an indication that was going on. And I think
21 Norman Tindale talks about the impact or the influence
22 of different initiation practices coming from, say, the
23 Adelaide area down through to the Encounter Bay area and
24 the fact that it was the boundary from his perspective
25 of two different types of male initiation. So, there
26 was some theorising about that in the early - and those
27 changes happening in the early contact period and
28 perhaps before Europeans.
- 29 Q. In your work with Lindsay Wilson or in your research
30 dealing with Clarence Long and what he has apparently
31 told Tindale, do you have an impression or an
32 understanding that the people in the Lower Murray area
33 had considerable knowledge of what was happening in
34 other Aboriginal communities.
- 35 A. From the work that Tindale did with people like Clarence
36 Long and Albert Karloan, they certainly knew stories
37 relating to - they knew, for instance, the Tjilbruke
38 dreaming story, which covered basically a distance up to

1 Port Adelaide virtually and down to Cape Jervis. So,
2 people who had associations with the Coorong and the
3 Lower Murray had knowledge about dreamings that at least
4 went out to that distance. That may have been as a
5 result of living with people from those areas early in
6 the contact period, but it is hard to say exactly where
7 the source of the knowledge came from, but they
8 certainly had that knowledge.

9 Q. It would appear, at least from Berndt, that women's
10 initiation and matters associated with it lasted longer
11 than men's.

12 A. No, not -

13 Q. I don't mean the ceremony lasted longer, but the
14 practice of women's initiation continued for a long
15 period of time into the late 19th, early 20th century.

16 A. Not - it is a little bit contradictory, what the Berndts
17 say. They say on one occasion that the male initiation
18 rites stopped before the men. And then they give a date
19 of 1890 something for one particular person being -
20 going through the scarring process, a female, I think it
21 was Susan Pelngemini. So, it is a contradiction in
22 terms of date, but I guess my argument on that line
23 would be a little bit more associated with the
24 continuing tradition of midwives and the fact that that
25 meant that the cultural practices associated with that
26 and perhaps the beliefs that were associated with that
27 persisted for longer, in a sense, than the male
28 initiation, which had some sort of equivalents to the
29 female realm. So, I guess what I am arguing is that the
30 opportunity for female knowledge, perhaps restricted
31 knowledge, to be handed down at a time after male -
32 similar male knowledge existed was there through the mid
33 - continuation of the midwife tradition. And I made
34 that comment in my statement, just briefly.

35 Q. Now I take you back to matters associated with the
36 history of the Hindmarsh Island bridge issue. You were
37 asked some questions in cross-examination this morning
38 about a meeting at Camp Coorong in, you thought,

- 1 February 1994. What topics were actually discussed
2 there.
- 3 A. What we basically did was just talk about, firstly, the
4 work that had been done. What we were doing. Recording
5 sites.
- 6 Q. In relation to what.
- 7 A. Recording sites in the region. Mainly on - around Point
8 McLeay, around Meningie and along the Coorong, near
9 Tailem Bend. A lot of the focus was on historical - it
10 is called historical sites, as we call them, fringe
11 camps, looking at the history of the mission, the houses
12 on the mission, who was living in them. Some of that
13 work is published in the Raukkan Reunion Booklet. And
14 it was basically telling people what we had been doing
15 and looking at ways of actually presenting that
16 information and pulling that information together. And
17 basically I think I just gave a summary of the project.
18 And I think Lindsay Wilson gave a talk on that day.
- 19 Q. Do you recall if you ever, in October 1994, travelled
20 with Doreen Kartinyeri and Maggie Jacobs to the Nunga
21 Centre at Murray Bridge.
- 22 A. Yes, that was the occasion that we were travelling down
23 as a group - and that included, I think, Bruce Carter
24 and Ken Sumner - to a meeting at Point McLeay, Raukkan,
25 to talk about the Raukkan reunion plans for that. So
26 that we were on our way to the Raukkan reunion meeting
27 and we stopped.
- 28 Q. Was there any discussion about Hindmarsh Island or
29 women's business.
- 30 A. I don't remember it as a subject that was being talked
31 about. I think we were talking about the plans of the
32 Raukkan reunion, as I said, the launching of the Anzac -
33 the World War 1 book, or trying to work on that topic
34 and things like that.
- 35 Q. You heard Bertha Gollan's evidence sometime ago now.
- 36 A. Yes, that was a different meeting.
- 37 Q. Do you recall her saying that, in March of 1995, she
38 attended where she understood there was a meeting of the

- 1 Lower Murray Aboriginal Heritage Committee at Camp
2 Coorong.
- 3 A. Yes.
- 4 Q. She saw you with Patrick Byrt.
- 5 A. Yes.
- 6 Q. Could you tell the Commission how you came to be there.
- 7 A. I was alerted to the fact that there was going to be a
8 heritage meeting, I think by Maggie Jacobs. And she
9 mentioned it might be interesting for me to come along.
10 I thought the meeting was going to be a generalised
11 heritage discussion and there might be perhaps twenty or
12 thirty people there. And I was hoping to have a chance
13 to talk about the native title work that we were looking
14 towards doing, getting a chance to do a little bit of
15 broader consultation and meet up with people from a
16 range of different areas. But, when I got there, I
17 realised that it was a meeting to do with something
18 bigger and there were lots of people, over one hundred
19 people I think, coming along to the meeting. I wasn't
20 that keen to go into the meeting at all, but, before I
21 could really discuss the issue, the meeting was
22 starting. And I think Matt Rigney put to the meeting as
23 to whether it would be appropriate for white people to
24 be admitted and I think myself and Patrick Byrt were the
25 only people there who weren't Ngarrindjeri people. And
26 I think there was a vote and we lost and so we didn't go
27 in and I sat outside for the morning talking to Patrick
28 and then had some lunch and left. So, I was never in
29 the meeting.
- 30 Q. So you don't know what went on.
- 31 A. I know there was a discussion relating to Hindmarsh
32 Island in the meeting just on the basis of people coming
33 out of the meeting and mentioning that that was
34 happening, but I don't really know the details of it.
35 And I think the main issues to be talked about were the
36 formation of a new heritage committee, from my knowledge
37 of it.
- 38 Q. The Tindale collection: you became aware that the

- 1 Tindale collection had arrived at the museum in 1994.
- 2 A. Yes.
- 3 Q. It was being unpacked.
- 4 A. Yes.
- 5 Q. You were naturally anxious when you had the opportunity
6 to have a look at it.
- 7 A. I was, although, as I think I have said, I didn't get
8 too many opportunities early on. I was too busy with
9 other things and I was only able to have a very small
10 chance, at this stage.
- 11 Q. Did you, from time to time, speak to Aboriginal people
12 about the fact that the Tindale collection was at the
13 museum.
- 14 A. Yes, I think I recall doing that with a number of
15 people. When I saw people. To particular people I saw,
16 or probably mentioned at that seminar earlier in the
17 year - it is a possibility - that the Tindale collection
18 was arriving.
- 19 Q. On those occasions, did you encourage them to go and
20 look at it.
- 21 A. Yes, definitely. My line, I guess, was that 'It's
22 arrived at last', in a sense, because people had been
23 hearing about the Tindale collection for a long time and
24 I was keen for people to come in and have a look at
25 actually what it was, so that they would understand the
26 nature of the complexity of the journals and the types
27 of information that were there. And get a feeling for
28 what the actual collection was, rather than perhaps
29 conceiving of it as something it wasn't, I guess.
- 30 Q. Do you recall if you ever suggested to Victor Wilson
31 that he should go and look at the Tindale collection.
- 32 A. I may have, yes.
- 33 Q. Were you ever present when either Doug Milera or Victor
34 Wilson attended the museum, apparently for the purpose
35 of looking at the Tindale collection.
- 36 A. I have a vague memory of talking to Victor Wilson in the
37 museum about the Tindale collection, but I am not quite
38 sure exactly when or under what circumstances. It is a

1 fairly vague memory.

2 Q. Is this the situation, that you would have expected, in
3 the ordinary course of events, that Aboriginal people
4 would have, once they became aware that the Tindale
5 collection was there, have visited the museum for the
6 purpose of looking through it.

7 A. Yes, sure. We are getting people from all over the
8 country doing that very thing.

9 MISS NELSON: I think I have now gone as far as it is
10 possible for me to go until Mr Abbott concludes his
11 cross-examination.

12 COMSR: There is no-one else here who wishes to
13 ask questions of Mr Hemming?

14 MISS NELSON: No, I think they have either
15 cross-examined or indicated they don't wish to so. It
16 is really now Mr Abbott finishes his cross-examination,
17 I finish mine and then counsel assisting, I assume, may
18 have some questions and that would then conclude my
19 client's evidence.

20 MR SMITH: In that event, there is no other
21 evidence for this afternoon.

22 MS PYKE: I considered over the luncheon
23 adjournment with my client whether she could usefully
24 give some evidence, but she feels more comfortable to be
25 cross-examined rather than chop and change her evidence
26 from examination to cross-examination.

27 COMSR: Mr Hemming, you can step down.

28 WITNESS STANDS DOWN

29 CONTINUED

- 1 MR SMITH: There are a couple of small matters we
2 can take care of before you rise. You will recall that
3 during the evidence of the solicitor, Tim Wooley, there
4 was an exhibit which composed a bundle of documents,
5 Exhibit 223, some documents were added to that. At
6 p.4,394 it was planned to substitute a new and complete
7 indexed exhibit for Exhibit 223. I do that now.
8 Therefore, the existing exhibit with the additional
9 documents can be replaced by this document which I hand
10 to you now. Counsel have copies of that.
- 11 COMSR: Counsel who are present at the hearing?
- 12 MR SMITH: Yes. I also tender what's been called
13 the Department of Road Transport documents which are
14 indexed and page numbered. It is proposed that no oral
15 evidence be called as to this Exhibit. It is largely
16 documentation relating to the troubled history of the
17 construction of the bridge.
- 18 EXHIBIT 244 Road Transport documents tendered by Mr
19 Smith. Admitted.
- 20 MR SMITH: I also tender, and again there will be
21 no evidence given as to this topic, the report of Dr
22 R.P. Bourman, Associate Professor of Geomorphology of
23 the University of South Australia, as to the
24 geomorphology of the area of Hindmarsh Island, and the
25 history of the land forms over many thousands of years.
26 Again, counsel have a copy of that document.
- 27 EXHIBIT 245 Report of R.P. Bourman, Associate
28 Professor of Geomorphology tendered
29 by Mr Smith. Admitted.
- 30 MR SMITH: Perhaps I could indicate in open hearing
31 that it may not be necessary to sit on Saturday, but the
32 commission ought to consider the necessity for doing
33 that on the current -
- 34 COMSR: I suppose there are logistical problems.
- 35 MR SMITH: I anticipate, depending on how we go
36 with the balance of this week, that the evidence to be
37 deduced by the commission will conclude in the course of
38 the next week. That will leave sufficient time for

1 addresses and the report to the new termination date.
2 So there ought to be no urgent necessity for a Saturday
3 morning sitting, with all the trouble that that causes
4 people.

5 COMSR: How long do you anticipate the evidence
6 of your witnesses will take, Mr Kenny? Have you any
7 idea?

8 MR KENNY: No, to be quite honest. Their evidence
9 in-chief shouldn't take more than half a day each, but,
10 as I have previously indicated, Mr Robert Day - I
11 haven't had an update on him recently, but I understand
12 he is still in Royal Adelaide Hospital recovering from
13 open-heart surgery, and Mr George Trevorrow is
14 undergoing an operation this afternoon.

15 COMSR: You might recall that I went and visited
16 a witness at Berri who was not well.

17 MR KENNY: Yes, we were looking at that beforehand
18 with Mr George Trevorrow. There might be some bedside
19 evidence from those people.

20 COMSR: From what you are saying, obviously we
21 couldn't expect them to appear at the commission for the
22 hearing.

23 MR KENNY: Yes. Robert Day had a heart attack, and
24 I can assure you he was always intending to attend.

25 COMSR: I wasn't thinking of Mr Day, by the
26 sound of it, but he -

27 MR KENNY: Certainly Mr Trevorrow - I spoke to him
28 last night - he indicated that he still wishes to give
29 evidence to the commission. I simply said to him
30 'Depending on the outcome of your surgery, I will talk
31 to you a few days after that, and we will see how you're
32 going'. If you are willing to perhaps consider a
33 bedside hearing, I will certainly bear that in mind and
34 speak to Mr Trevorrow about that.

35 COMSR: You can discuss that with Mr Smith in
36 any case. I am just suggesting it as a possibility
37 rather than bringing anyone who is not well into the
38 commission when it is not necessary.

- 1 MR KENNY: Yes. We were looking at perhaps
2 providing a bed for him and giving evidence down at Camp
3 Coorong before he had his operation. He was that bad.
- 4 COMSR: As to the other two then, they can
5 attend at short notice?
- 6 MR KENNY: Essentially, yes. Mr Rankine is here
7 this afternoon. Mr Tilmouth is speaking to him.
- 8 COMSR: We might usefully use the time then.
- 9 MR KENNY: We don't have a statement prepared to
10 deliver at this stage. Mr Tilmouth wishes to speak to
11 him. We can usefully use the time to speak to him this
12 afternoon, which would aid us considerably, but not as
13 far as giving evidence at this stage.
- 14 COMSR: When can we expect a copy of the
15 statement then?
- 16 MR KENNY: Hopefully in the next day or so.
- 17 MR SMITH: Mr Tilmouth suggested to me - perhaps Mr
18 Kenny might enlighten us - that at least two of the men
19 would be ready on Monday, is that right?
- 20 MR KENNY: Yes. I would expect they certainly
21 would be available on Monday. Mr Tom Trevorrow, as I
22 have indicated before, runs Camp Coorong with his
23 brother Mr George Trevorrow, and they have school camps
24 booked in there this week. Mr George Trevorrow, as you
25 are aware, is absent, and Mr Tom Trevorrow, as I have
26 assessed the evidence is likely to take the rest of the
27 week, I have warned him that Monday certainly he should
28 be available.
- 29 MR SMITH: Perhaps I might just foreshadow to
30 counsel that it is proposed by you to take final
31 submissions partly written, partly oral.
- 32 COMSR: The matter will be limited as to time.
- 33 MR SMITH: Perhaps, although I will write to
34 counsel about this on your behalf, I think it is
35 envisaged that written addresses would have to be in to
36 the commission by 15 November, and that counsel be given
37 the right to speak to those written addresses for no

1 longer than an hour to the extent that their clients'
2 interests are concerned.

3 COMSR: Or their evidence.

4 MR SMITH: Or their evidence on Friday, 17
5 November. So that's what's planned. If there is some
6 violent opposition to that, perhaps that could be
7 communicated to me so that I can consult with you about
8 it. That is all we can do today. The commission
9 certainly has other things to do, so the early minute
10 will not hurt, and we will continue with the further
11 examination of Dr Fergie and Mr Hemming tomorrow.

12 COMSR: That will leave us the balance of the
13 week for -

14 MR SMITH: Thursday and Friday to finish those
15 witnesses off, and Dr Draper, of course, who will be
16 returning.

17 COMSR: That means there may have to be some
18 allocation of time -

19 MR SMITH: That is nearly three full days from 9.30
20 to 5. I couldn't imagine that we won't be able to
21 finish those witnesses in that time.

22 COMSR: I think my imagination stretches that
23 far.

24 ADJOURNED 3.15 P.M. TO WEDNESDAY, 1 NOVEMBER 1995 AT 9.30 A.M.

