

1 COMSR STEVENS

2

3 HINDMARSH ISLAND BRIDGE ROYAL COMMISSION

4

5 THURSDAY, 2 NOVEMBER 1995

6

7 RESUMING 9.40 A.M. IN OPEN SESSION

8 WITNESS D.J. FERGIE CONTINUING

9 COMSR: I understand we are still in closed

10 session.

11 MR ABBOTT: I am happy to proceed in open session

12 this morning. I think I can cope with the restrictions.

13 I have covered the closed issues yesterday.

14 COMSR: Before you start asking some questions,

15 I would just like to clarify some matters with Dr Fergie

16 so that I can follow where we are going.

17 MR ABBOTT: Certainly.

18 COMSR

19 Q. I just need your assistance to help me clarify your

20 evidence a little. I think you can reply to these

21 questions in simple non-technical terms. As I

22 understand your evidence, the secret women's business

23 were those matters that were revealed by Doreen

24 Kartinyeri to the group in Graham's Castle on 19 June

25 1994. I just want to make sure we keep using the same

26 terminology.

27 A. What I would say is a fragment of it was.

28 Q. Thereafter, you had an in-depth discussion with Doreen

29 Kartinyeri on the meaning of the secret women's

30 business.

31 A. She basically expanded and gave me a much fuller account

32 in the drive from Kadina to Adelaide.

33 Q. She gave you a fuller account of the matters that she

34 had revealed to the women at the meeting.

35 A. There's a link, but basically I'd put it differently. I

36 would say, of the matters that were then - became the

37 contents of the secret appendices, they are not

38 unrelated, but -

1 Q. I just want to make sure where we are going. There was  
2 an account given to the women of the details of secret  
3 women's business.

4 A. A small fragment of that. A couple of small fragments.

5 Q. A couple of small fragments. Are you saying then that  
6 there was additional detailed information concerning  
7 secret women's business.

8 A. Yes.

9 Q. And you had an in-depth discussion at some time with  
10 Doreen Kartinyeri concerning the meaning or  
11 significance.

12 A. And the details, yes.

13 Q. And the detail. Was your role, as you then understood  
14 it, to provide a report on the significance of the area  
15 in cultural terms based on the information you'd  
16 received.

17 A. Yes, I think that's true.

18 Q. And in order to do that, you spoke to Doreen Kartinyeri.

19 A. I did.

20 Q. And then you reduced to writing your interpretation of  
21 the significance of the area based on your understanding  
22 of what Doreen Kartinyeri had said.

23 A. Appendix 2 is, in fact, a text that she in fact dictated  
24 to me which, in a sense, that, together with the other  
25 information I had, was the basis of an analysis in the  
26 third appendix.

27 Q. So the third appendix is your analysis of the broader  
28 significance of Aboriginal beliefs concerning the area.

29 A. Yes, a preliminary analysis. I wouldn't put it higher  
30 than that, but certainly it was -

31 Q. So appendix 3 is your work.

32 A. That's right.

33 Q. And appendix 2, is that the account from Doreen  
34 Kartinyeri of her understanding of her culture and  
35 heritage.

36 A. That's right. Effectively, I was a typist for that, and  
37 somebody that she could - because I'd heard her talk  
38 more broadly about it earlier, she would ask me

- 1 questions about, you know 'Should I put this in, or  
2 shouldn't I?' or whatever. I mean, I think she - the  
3 way to say it is she used me as a sounding board in the  
4 creation of a text, which she saw as a text that she was  
5 the author of.
- 6 Q. Is this the case, that neither appendix purports to set  
7 out details of the women's business as disclosed either  
8 at the meeting or by Doreen Kartinyeri.
- 9 A. No. Appendix 2 is Doreen's account of secret women's  
10 business - sorry, secret women's knowledge.
- 11 Q. Whatever you want to call it.
- 12 A. Yes.
- 13 Q. Part of that secret women's knowledge or business is  
14 what was revealed at the meeting at Graham's Castle.
- 15 A. A fragment of that.
- 16 Q. A fragment is a part, isn't it.
- 17 A. Yes. I'm just using that term so that - the problem  
18 with using a notion like 'a part' is that you might get  
19 the sense that you can, in fact, infer a great deal more  
20 from that part than might be necessarily the case for  
21 that text as a whole at the end. But, if I put that  
22 rider, I think that's -
- 23 Q. So, in this account by Doreen Kartinyeri of her  
24 understanding of her culture, are details of the actual  
25 women's business or knowledge.
- 26 A. That's right.
- 27 Q. And it contains other matters, the contemporary  
28 relevance of the practices of the treatment of the dead.
- 29 A. Not contemporary, I think. Doreen was proposing to me  
30 that this was a tradition rather than if - I made the  
31 distinction in my report between contemporary  
32 experiential authority, with specific reference to Sarah  
33 Milera, and I suggested that Doreen was saying to me  
34 that she was presenting me something that in fact  
35 accorded with a much more classic definition of what a  
36 tradition is, and it's that knowledge which is contained  
37 in appendix 2, her version of that knowledge.

- 1 COMSR: I don't think I have made a formal  
2 order, formally declaring that we have moved from  
3 private hearing into public session, so I will do so  
4 now.
- 5 MR MEYER: Nunc pro tunc, so to speak, so the  
6 transcript commences with the gallery being present from  
7 the start of play.
- 8 COMSR: Yes.
- 9 CROSS-EXAMINATION BY MR ABBOTT CONTINUING
- 10 Q. I want to return to a matter that I put to you yesterday  
11 that concerns the Saunders report at p.42. No need to  
12 make a note of it, just go to page 42.
- 13 A. I don't have her report.
- 14 Q. We will get it for you. If you go back to p.39, does  
15 your p.39 begin with Section 4, 'The nature and extent  
16 of the threat of injury to, or desecration of the area'.
- 17 A. No.
- 18 Q. P.36.
- 19 A. Actually the top is cut off mine. Just a moment. You  
20 want Section 4 'The nature and extent'?
- 21 Q. Section 4, whatever page number, 'The nature and extent  
22 of the threat of injury to, or desecration of the area.'
- 23 A. Yes.
- 24 Q. You have read the Saunders report.
- 25 A. I have.
- 26 Q. You will see that Professor Saunders then proceeded to  
27 deal with, on the first page of section 4, in the lower  
28 half, the paragraph beginning 'Considered in  
29 archaeological terms, the bridge site, alone or as part  
30 of the broader site, certainly will be subject to  
31 physical damage'. So she is there dealing with the  
32 physical damage in archaeological terms, isn't she.
- 33 A. Certainly, that's how it reads.
- 34 Q. Go over the page. We then read, three lines down  
35 'Considered as a cultural and spiritual site' this is  
36 the bridge site 'within the knowledge of Ngarrindjeri  
37 women, however, the bridge has a different impact'. Did  
38 any of the women, at any time, tell you that the bridge

- 1 site - that is, the bridge corridor specifically - was a  
2 cultural and spiritual site.
- 3 A. There was a problem that I had to consider in some  
4 detail in preparing this report, which was -
- 5 Q. Could I have an answer. You didn't prepare this report.  
6 This is Professor Saunders report.
- 7 A. In preparing my report.
- 8 Q. I am asking you whether any of the women told you that  
9 the bridge corridor was referable to a cultural and  
10 spiritual site.
- 11 A. No woman I talked to has used the word 'bridge'.  
12 OBJECTION Ms Pyke objects.
- 13 MS PYKE: 'Considered as a cultural and spiritual  
14 site'. There is no reference to that being the bridge  
15 site. The top of the page says 'Significant Aboriginal  
16 areas in the vicinity of Goolwa'.
- 17 MR ABBOTT: I am not asking that question. I am  
18 simply putting -
- 19 MS PYKE: If Mr Abbott is purporting to suggest  
20 that the word 'site' there refers to the bridge site,  
21 that's a wrong -
- 22 MR ABBOTT: You will have your turn in making  
23 addresses. Can I get on with the cross-examination?
- 24 COMSR: I think the witness has forgotten the  
25 question.
- 26 MR ABBOTT: No, she has answered the question.  
27 XXN
- 28 A. I haven't finished the answer. The point I was trying  
29 to make is that the notion of the bridge corridor is a  
30 notion which effectively was problematic, insofar as it  
31 was the focus of the Minister's attention, but, as a  
32 specific focus, and certainly when I was in the presence  
33 of the women, the corridor, defined in those terms,  
34 wasn't part of their focus, and the problem that arose  
35 was that the bridge corridor lies within an area of  
36 broader significance, a point that I tried to make very  
37 clearly in my report.

- 1 Q. You didn't even know where the bridge was going, did  
2 you.
- 3 A. I did by then.
- 4 Q. Are you sure.
- 5 A. Well, insofar as I had stood at Amelia Park and people  
6 had said 'This is the' - you know 'the bridge will go  
7 between here and here', in that sense I had an idea  
8 where the bridge was going.
- 9 Q. You thought the bridge was going to go from Hindmarsh  
10 Island to Mundoo Island.
- 11 A. I did not, Mr Abbott.
- 12 Q. Why, in your secret appendix 3, would you have put the  
13 words you wrote at p.42.
- 14 A. Because, in order to -
- 15 Q. Just a minute. I will read them out. 'A critical point  
16 may be that Kumarangk and Mundoo can only go together  
17 when they are mediated by the life-supporting waters of  
18 the Goolwa Channel'. As you admitted yesterday, the  
19 Goolwa Channel doesn't run between Hindmarsh and Mundoo  
20 Islands, does it.
- 21 A. No, Mr Abbott.
- 22 MS PYKE: We had this all yesterday, I thought.
- 23 MR ABBOTT: I am just clarifying. The witness  
24 doesn't need your assistance yet. She will in a minute,  
25 but not yet.
- 26 XXN
- 27 Q. Did anyone ever suggest to you that Kumarangk and Mundoo  
28 would ever be joined.
- 29 A. There was some talk about whether, in fact, this was  
30 part of a conspiracy to make several bridges, but I  
31 wasn't particularly concerned with that.
- 32 Q. Who ventilated that conspiracy.
- 33 A. I don't know. It was ventilated at the Graham's Castle  
34 meeting in terms of people were, you know, talking,  
35 hypothesizing about - it may well have been in response  
36 to the question I asked, having, for the first time,  
37 seen Hindmarsh Island which was - 'What on earth is the  
38 economic significance of this?' I frankly, when I went

- 1 there, couldn't imagine why anybody, let alone a  
2 government, would give any particular preference to  
3 putting a bridge between Goolwa and Hindmarsh Island. I  
4 mean, I'm clearly not a South Australian, but I found it  
5 extraordinarily perplexing, and it is quite possible I  
6 asked people what they thought the -
- 7 Q. Everything is possible, we had Mr Hemming on that  
8 subject. I would like to direct your attention to the  
9 claim that you now make. There was discussion on the  
10 topic of a conspiracy. I suggest you are just making  
11 this up as you go along.
- 12 A. I am not.
- 13 Q. You have never mentioned that before, have you.
- 14 A. No. It hasn't been relevant.
- 15 Q. What's the answer, you've never been asked that. Is  
16 that why you have never mentioned it before.
- 17 MISS NELSON: She has answered that. She said it has  
18 never been raised - or never been relevant, sorry.
- 19 MR ABBOTT: I thought that would be the answer.
- 20 XXN
- 21 Q. You say in your appendix 3 'A critical point may be I  
22 emphasize the words "a critical point" - that Kumarangk  
23 and Mundoo can only go together when they are mediated  
24 by the life-supporting waters of the Goolwa Channel'.  
25 Let's take away Goolwa Channel and say 'when they are  
26 mediated by whatever waters run between them'. No-one  
27 was suggesting that Kumarangk and Mundoo would never be  
28 other than 'mediated by the life-supporting waters', or  
29 whatever channel it is that runs between them, were  
30 they.
- 31 A. No.
- 32 Q. Why were you putting it in your report in secret  
33 appendix 3.
- 34 A. Secret appendix 3 is an analysis. You have actually  
35 taken one small part of it out of context. The analysis  
36 is one in which - which explores, as it were, the  
37 cultural logic of a large number of features in the  
38 Lower Murray, including the significance of Kumarangk

1 and of Mundoo, and of their relationship to each other,  
2 and that's the context in which that statement is made.  
3 It is not made in the context of any proposal that a  
4 bridge was being considered in any way, or was in any  
5 way relevant in this consideration of the Minister's  
6 between Kumarangk and Mundoo.  
7 CONTINUED



- 1 Q. But you didn't know the significance because you thought  
2 that the Goolwa Channel ran between Mundoo Island and  
3 Hindmarsh Island.
- 4 A. No, the only relevant thing is that water ran between  
5 Kumarangk and Mundoo too.
- 6 Q. You said that they mediate and are the life support  
7 waters of the Goolwa Channel.
- 8 A. And I note that I was mistaken in using the term `Goolwa  
9 Channel'.
- 10 Q. You are putting this forward, this explanation in secret  
11 appendix no.3 as a justification for the significance of  
12 the Goolwa Channel as well as the significance of  
13 Hindmarsh and Mundoo Islands, haven't you.
- 14 A. In fact, in this particular -
- 15 Q. What is your answer to that.
- 16 A. The answer is that is not precisely what it's saying;  
17 the fact that some part of the statement or some process  
18 of analysis has been taken out of context.
- 19 Q. You are putting this point forward as a critical point  
20 with reference to three major areas: Hindmarsh Island,  
21 Mundoo Island and the Goolwa Channel.
- 22 A. No, that's part of the discussion of the points of  
23 significance in that cultural logic.
- 24 Q. But the three points of significance that you are  
25 adverting to are Hindmarsh Island, Mundoo Island and the  
26 Goolwa Channel.
- 27 A. They are the three you can see.
- 28 Q. They are the three that you have written about.
- 29 A. They come in a broader discussion.
- 30 Q. They are the three that appear before you.
- 31 A. They are not the three that appear in the particular two  
32 paragraphs extracted out of a much broader discussion.
- 33 Q. What are the three that do appear in the broader  
34 discussion. You said they are not the three that appear  
35 in the broader -
- 36 A. They are not the only three that appear in that broader  
37 discussion.
- 38

- 1 OBJECTION Ms Pyke objects on the ground that  
2 what is being quoted is being quoted out  
3 of context.
- 4 COMSR
- 5 Q. What are the three that do appear in the said appendix  
6 three.
- 7 A. Those three are parts of the broader discussion.
- 8 Q. What are the other points.
- 9 A. I'm not prepared to say.
- 10 Q. It can be no secret for you to mention to us that  
11 Barkers Noll or the Tauwitchere barrage or the geography  
12 of the location are related to the geographical location  
13 of Hindmarsh Island, Mundoo Island and the Goolwa  
14 Channel that are mentioned in the secret appendix three.
- 15 OBJECTION Miss Nelson objects.
- 16 MISS NELSON: I don't know that that site is related  
17 and none of us know anything about it and also whether  
18 Mr Abbott, in naming the geography of the location, is  
19 not transgressing s.35.
- 20 COMSR
- 21 Q. Well, you see, as I understand the situation, appendix 3  
22 is an analysis by, presumably, an anthropological  
23 analysis.
- 24 A. That is so.
- 25 MS PYKE: I understood your ruling was that the  
26 witness wouldn't be required to disclose any information  
27 contained in the secret envelopes; that includes  
28 appendices 2 and 3. If you are going to change your  
29 ruling in that respect, you had better hear about this.  
30 This question clearly goes to the contents of the secret  
31 envelopes.
- 32 COMSR: That goes to the knowledge.
- 33 MS PYKE: We understand that this is an  
34 anthropological analysis and it's the witness's  
35 understanding.
- 36 MR ABBOTT: It's more than that. She is saying that  
37 we can't understand the excerpts given by Professor  
38 Saunders and which have been taken (a) out of context

1 and (b) referred to other geographical locations. I ask  
2 that she tell us what the other geographical locations  
3 are so that we can understand in some context the public  
4 portion of secret appendix 3.

5 MS PYKE: I say that that goes straight to the  
6 heart of this issue for this witness to talk about the  
7 analysis. How can she do that with the content of what  
8 Dr Kartinyeri said when we are here talking of what Dr  
9 Kartinyeri said; that is, this witness should not be  
10 asked questions about the context in which that appears  
11 and it flies in the face of the ruling that you have  
12 already made. If there is to be a change on that, I  
13 think that we are at the stage where the Australian  
14 Government Solicitor should again be involved. I think  
15 this goes to the nub of what your ruling was.

16 COMSR: It's not quite clear to me. Now, the  
17 witness says that this is an anthropological analysis  
18 and the secrets are contained in the other envelope.

19 WITNESS: This analysis refers directly from an  
20 analysis of that text drawing on some other things.

21 Primarily, that is an analysis of the text given to me  
22 by Doreen Kartinyeri, and it refers directly to it.

23 COMSR

24 Q. As I understand it, what you are saying is that this is  
25 - you have been asked by Doreen Kartinyeri not to reveal  
26 it, but on the basis of that, that is the disclosure.

27 A. To disclose the analysis would effectively disclose the  
28 secret information, I suggest, even though, in a sense,  
29 it's an exploration by me, in a sense it's - although  
30 the author of each of those is - clearly, the authorship  
31 is contingent on her so, in fact, it refers absolutely  
32 directly on what she said and it's, in part, an internal  
33 analysis of an internal logic of what she said to me and  
34 its significance it directly related to that.

35 MR ABBOTT: There is no suggestion that Doreen has  
36 ever read secret appendix 3 or knows what is in it.

37 It's entirely divorced and I submit that if I can't go  
38 into the internal logic of it, I'm entitled to know what

1 other geographical sites she dealt with in appendix, in  
2 her secret appendix three. So that there was obviously  
3 no restriction placed on Professor Saunders in how much  
4 of the secret appendix 3 was revealed publicly because  
5 Professor Saunders has chosen to reveal some of it. It  
6 hardly aids this witness to say 'Well, there is some  
7 confidentiality on the part of Doreen Kartinyeri'. It's  
8 not Doreen Kartinyeri's work, it's this witness's  
9 reconstruction and analysis and published in part by  
10 Professor Saunders - and there is no embargo on  
11 Professor Saunders publishing it.

12 MS PYKE: That is tantamount to a load of rubbish.

13 I refer to p.39, professor Saunders says:

14 'This, I note ... from its context.'

15 Professor Saunders acknowledged the same confidentiality  
16 applying to appendix 3 as it does to appendix 2 which,  
17 of course, makes sense. How could you possibly say that  
18 appendix 2 is confidential and have someone's analysis  
19 and has reference to appendix 2 that is in the arena?  
20 It makes a mockery.

21 MR ABBOTT: But the allegations of confidentiality  
22 in relation to appendix 3 and the confidentiality  
23 imposed by that witness, she says that it relates to  
24 appendix 2 which Doreen Kartinyeri asked to keep  
25 confidential. It's not Doreen Kartinyeri saying 'Keep  
26 appendix 3 confidential', it's this witness saying  
27 'Because I inferentially refer to appendix 2, I want it  
28 kept confidential'.

29 MS PYKE: That is incidental.

30 WITNESS: It was absolutely important, in my view,  
31 to make appendix -

32 MR ABBOTT: Well, we canvassed this problem with the  
33 witness wanting to score points when we are, counsel are  
34 wanting to debate matters.

35 MS PYKE: The witness is endeavouring to be  
36 helpful. Mr Abbott is trying, yet again, to get through  
37 the back door what he clearly cannot get through the  
38 front door. Your ruling relates to the three

- 1 appendices. It is quite clear with this witness and  
2 Professor Saunders that the same confidentiality  
3 operates to it and if you will be making a ruling  
4 contrary to this, I seek that this hearing be adjourned  
5 to enable the attendance of the Australian Government  
6 Solicitor.
- 7 MR ABBOTT: This is the same old threat trotted out  
8 to you.
- 9 MS PYKE: It is not a threat.
- 10 MR ABBOTT: That you shouldn't allow my questions  
11 because there is some purported basis for the  
12 intervention of the Commonwealth Government Solicitor.  
13 All I ask is that she identify the other geographical  
14 locales that she refers to in appendix 3, not that  
15 Doreen Kartinyeri refers to.
- 16 COMSR
- 17 Q. Well, can I just clarify one issue. You don't purport  
18 to say that this is Doreen Kartinyeri's analysis; it is  
19 your analysis.
- 20 A. Yes, but based directly on her stuff, yes.
- 21 Q. You would see it as a distinction between the two  
22 appendices yourself: One comes direct from Doreen and  
23 one is your analysis.
- 24 A. Based on what Doreen said, yes.
- 25 COMSR: I know that my ruling has been that I  
26 wouldn't allow questions which go directly to your  
27 knowledge of the contents of the sealed envelope, secret  
28 envelope. There seems to be two categories here of  
29 information that we are dealing with.
- 30 MS PYKE: Can I say that the ruling relates to the  
31 contents of the envelopes, not who has written it or  
32 analysed it. It's the contents of the envelopes.
- 33 COMSR: I appreciate that. I'm thinking about  
34 this, whether this, in fact, goes to the issue of  
35 revealing what is protected.
- 36 Of course, as far as you're concerned, this is  
37 information concerning secret women's business.
- 38 A. Yes, but I do believe that if I was asked to talk about

- 1 the contents of the third appendix, that it would serve  
2 to reveal aspects of Ngarrindjeri culture which I've  
3 been asked not to reveal.
- 4 Q. It's not the whole of your report that does that, I take  
5 it.
- 6 A. Sorry?
- 7 Q. The whole of your report doesn't reveal aspects of  
8 Ngarrindjeri culture.
- 9 A. No. What I tried to do in the open part of my report  
10 was to, in effect, articulate -
- 11 Q. I mean the appendix.
- 12 A. Sorry, can you ask me the question again?
- 13 Q. It's not the whole of the appendix which reveals it,  
14 there are aspects of the appendix which deal with secret  
15 knowledge.
- 16 A. I think they - I think without question they both do.  
17 I'm trying to think how to explain it. Secret knowledge  
18 is not just the words, although Doreen Kartinyeri  
19 clearly very carefully constructed this account. Secret  
20 knowledge is, in effect, the understanding that those  
21 words convey.
- 22 Q. That's your analysis of the understanding of what is in  
23 there.
- 24 A. It's an attempt to draw that out. It's an attempt to,  
25 in some senses, make explicit dimensions which are not  
26 made. They are made explicitly, but not made explicit.  
27 Does that make sense?
- 28 Q. No.
- 29 A. Okay, I'll try to make it differently. If I can go to  
30 the Three Little Pigs, and it has a moral. The moral is  
31 not set out in there directly in the Three Little Pigs,  
32 the moral is the effect of what the Three Little Pigs  
33 might have somebody to come to understand. But the  
34 moral is just as secret as are the details of the text.
- 35 Q. The moral, the inferences are as secret as the secrets  
36 themselves.
- 37 A. Yes.
- 38 Q. And the inferences are those, are Doreen Kartinyeri's

1 understanding of what is the significance of her  
2 culture.

3 A. Of this tradition in her culture, yes.

4 MR ABBOTT: My question is only for her to name the  
5 places the Three Little Pigs spoke about. I mean, we  
6 are talking about something which was created by her.  
7 I'm referring to her words at p.5304.

8 COMSR: I must admit that there is a certain  
9 complexity now in the situation.

10 A. In my view, those things are not created vacuously and  
11 it's no way that this is my creation, it's the way in  
12 which people live. Culture is the daily culture and  
13 understanding and meaning as created daily out of the -

14 Q. Well, I know -

15 A. And that anthropologists do that as much as anybody  
16 else. We do it in particular kinds -

17 MR ABBOTT: More I would say.

18 COMSR

19 Q. Are we talking about sites which have been mentioned in  
20 public.

21 A. Actually, I don't know whether they are of help or not.  
22 If Mr Abbott pushes this issue along much further, I  
23 will have real trouble in answering this about the  
24 appendix as I haven't read it for an awful long time. I  
25 can convey certain things by reference to this and my  
26 memory of it, but, in fact, I think we saw quite well  
27 yesterday that I cannot claim to have any absolute  
28 memory of the way in which that is constructed. And the  
29 relationships and this kind of an analysis are  
30 absolutely fundamental, and if I were to miss any of  
31 those that would actually - I don't know that it would  
32 facilitate. I think there are two things I should say  
33 about this, one is that I believe that this directly  
34 relates to and is bound by the same commitment of  
35 confidentiality I gave to Doreen about the text and it  
36 arises directly out of it. And my understanding has  
37 always been that and that is why I placed it in a  
38 confidential context that this analysis was as bound,

1 because of its direct relationship to what Doreen said,  
2 to a matter of confidentiality as the text I typed. In  
3 addition, I think there is the added complication which  
4 is that it's a complex analysis that I don't have before  
5 me and I'm not even certain - and it was really  
6 confirmed to me yesterday when we had these things asked  
7 by Mr Abbott that I actually wouldn't have any, you  
8 know, I wouldn't be half as confident in trying to - I  
9 wouldn't be confident picking up the intricacies of the  
10 analysis by any means.

11 Q. It's your analysis which you believe would be bound by  
12 the same.

13 A. Yes, I wouldn't have analysed, I wouldn't have gone to  
14 an analysis if I had actually - and I certainly wouldn't  
15 have done it in the appendix if I thought it should be  
16 publicly available. I saw it in a sense as being  
17 subject to my commitment of confidentiality as - because  
18 of its intimate relationship to appendix two.

19 MR ABBOTT: I persist with my question for her to  
20 name, if she can, the other locations which appear in  
21 appendix 3, other than Hindmarsh Island, Mundoo Island  
22 and the Goolwa Channel.

23 MS PYKE: I ask you to make a ruling. We have  
24 been arguing about it for some time now.

25 COMSR: I know we have and what has emerged is  
26 that we have got this far and it is the witness's  
27 understanding that this appendix is bound by the same  
28 issues as to confidentiality. Now, that's a far cry  
29 from what I understood to be the situation.

30 CONTINUED



- 1 MS PYKE: If what Doreen Kartinyeri has said is  
2 reported in direct speech and that is bound to be  
3 confidential, and the other reasons refer to  
4 confidentiality, is only one aspect of the basis of your  
5 ruling. How possibly could it then be permitted to come  
6 into this arena? It has a logical inconsistency.
- 7 COMSR: It appears to me that, the situation is  
8 this, that appendix 2, the witness can definitely say  
9 she has been asked by Doreen Kartinyeri, if no-one else,  
10 to keep that confidential and she has assumed that the  
11 same, by process of reasoning, that the same requirement  
12 as to confidentiality applies to appendix 3. It is not  
13 as clear to me that it does actually.
- 14 MS PYKE: You have already made a ruling.
- 15 COMSR: I know I have made a ruling.
- 16 MS PYKE: If you are going to now alter that  
17 ruling, there are any number of issues that would arise  
18 that we will need to argue again, not the least of which  
19 is to seek, from the Aboriginal Legal Rights Movement,  
20 their attitude to the appendix 3, not the least of which  
21 is to seek to obtain some instructions from Dr  
22 Kartinyeri to what, if you are going to distinguish  
23 between appendix 3.
- 24 COMSR: Somebody else has.
- 25 MS PYKE: It has always been clear that appendix  
26 3 is separate to appendix 2. I say, to create that  
27 artificial distinction, is totally artificial and let me  
28 say this, if this witness is expected, as she has  
29 suggested, to answer questions about what is in appendix  
30 3, I call upon you to enforce the subpoena to the  
31 Aboriginal Legal Rights Movement to produce their  
32 documents, including appendix 3, so this witness can  
33 fairly answer any questions, if she is compelled to.  
34 This witness has given evidence about the fact that she  
35 hasn't seen the appendix. She has just highlighted  
36 the difficulties. If you rule that she is to talk about  
37 appendix 3 - we have communicated with counsel  
38 assisting - we have communicated with the Aboriginal

1 Legal Rights Movement to seek production of these  
2 documents. You have within your power, you have issued  
3 a subpoena to the Aboriginal Legal Rights. This  
4 Commission should do its bit to enable this witness to  
5 give evidence, if that is going to be your ruling and  
6 if this Commission is not prepared to do its bit, then  
7 this witness shouldn't be called upon to guess about  
8 what is in there. As I say, that's a separate argument.  
9 It is highly inappropriate.

10 COMRS: She is not being called  
11 upon to guess, she is being asked if she can remember  
12 what the particular features are.

13 MR SMITH: Speaking for the Commission, the  
14 Commission were not apprised of the fact that Dr Fergie  
15 had handed her notes back to the ALRM until a week or  
16 so ago. The subpoena that went to the ALRM was for  
17 Tim Wooley's notes and it was never assumed that the  
18 secret envelopes or Dr Fergie's notes were in Tim  
19 Wooley's file. The Commission won't be holding its  
20 breath for the ALRM to come here and produce envelopes  
21 and appendices voluntarily.

22 MS PYKE: The Commission has, within its power -  
23 we notified counsel assisting and requested they take  
24 steps to recover the appendices from ALRM, pursuant to  
25 their powers to subpoena. I don't entirely agree that  
26 it is not covered by the subpoena that they have  
27 already issued. This witness, regardless of the  
28 argument, is being put in an invidious position, without  
29 the document in front of her.

30 COMSR: I am not quite clear from anything the  
31 witness has said, how it is that mentioning geographical  
32 features would reveal any confidential women's  
33 information, the merest citation of features, many of  
34 which have been discussed, I suppose, all of which have  
35 been discussed, during the course of this Commission,  
36 many times over.

37 XXN

38 A. I don't think the recitation of the name, the one name I

- 1 can recollect, in relation to Mr Abbott's question at  
2 the moment would do so, but, taking that question  
3 further, it seems to me, the way in which he has  
4 questioned me in relation to these two paragraphs,  
5 might.
- 6 COMSR: We're only going that far. Your  
7 recollection of any name that has been mentioned.  
8 XXN
- 9 Q. In secret appendix 3, apart from - we know the  
10 reference, we know there is a reference by you to  
11 Hindmarsh Island and Mundoo and the Goolwa Channel, any  
12 other geographical locale mentioned.
- 13 A. What Doreen Kartinyeri named to me as the mainland.  
14 Q. The mainland.  
15 A. Yes, Goolwa, yes.  
16 Q. That's all you can remember.  
17 A. With any preciseness, yes and in relation to this  
18 particular part of the analysis.
- 19 Q. In relation to the entire part of appendix 3, all of a  
20 appendix 3. Appendix 3 is your analysis of what Doreen  
21 Kartinyeri accounted to you in appendix 2. Are you  
22 telling us, that in your anthropological assessment,  
23 contained in secret appendix 3, the only places you  
24 refer to are Hindmarsh Island, Mundoo, Goolwa Channel  
25 and the mainland.
- 26 A. No, I am not saying that.  
27 Q. What are the other places.  
28 A. I am saying, they are the only ones I can recall in any  
29 accuracy, in terms of their relationships and certainly  
30 in relation to this particular discussion.
- 31 Q. Are you saying there are others or are you saying you  
32 don't know.  
33 A. I am saying there may well be.  
34 Q. Or there may well not be.
- 35 COMSR: The witness is saying she can't  
36 remember. She thinks there are others, but she cannot  
37 recall any others.
- 38 MR ABBOTT: She says she can't remember the

1 relationships.

2 XXN

3 A. No, I can't and I can't remember. Frankly Mr Abbott, I  
4 can't remember which of those, from appendix 2, that I  
5 specifically took up and discussed the significance of  
6 it in appendix 3 and I don't trust myself to be able to  
7 do that with any accuracy.

8 Q. Hindmarsh Island, you were told, was associated with  
9 birth, weren't you.

10 OBJECTION Ms Pyke objects.

11 MS PYKE: Is this going to the content of the  
12 secret envelopes?

13 MR ABBOTT: It is just a general question.

14 MS PYKE: It might be a general question. If it  
15 is contained within the secret envelopes and is  
16 information conveyed by Doreen Kartinyeri in the context  
17 of writing the information, the witness can't answer it.

18 COMSR: I don't know if Mr Abbott is putting  
19 it in that context.

20 MR ABBOTT: I am not.

21 XXN

22 Q. Were you told anything about Hindmarsh Island being  
23 connected with birth.

24 OBJECTION Ms Pyke objects.

25 MS PYKE: I think it has got to be put in the  
26 context of the witness not being required to say what  
27 was said.

28 COMSR: Perhaps if you preface it by that  
29 without relating it to appendix 3. Were you ever told?

30 XXN

31 Q. Without relating it to appendix 2, which is the result  
32 of your discussions with Doreen Kartinyeri on the 29th  
33 of June, is it not, appendix 2.

34 A. What day is the 29th?

35 Q. The 29th of June was Wednesday 29 June, with the three  
36 hour phone call to Doreen Kartinyeri when this witness  
37 took down, to use her words, 'merely acted as the typist  
38 for Doreen Kartinyeri.'

- 1 A. I said more than that Mr Abbott.
- 2 Q. Putting aside what Doreen Kartinyeri told you on 29  
3 June, were you ever told, that Hindmarsh Island was, in  
4 some way, related to birth.
- 5 A. Yes.
- 6 Q. By whom. By whom.
- 7 A. I am unable to - I don't recall.
- 8 Q. Have got no idea.
- 9 A. A Ngarrindjeri women certainly.
- 10 Q. And were you ever told that Mundoo Island related to  
11 death.
- 12 A. Yes.
- 13 Q. By whom.
- 14 A. Rhonda Agius.
- 15 Q. Anyone else.
- 16 A. Yes.
- 17 Q. Who.
- 18 A. I can't recall with any accuracy. I don't know who.
- 19 Q. When did Rhonda Agius tell you.
- 20 A. Insofar as I can recall, I believe Rhonda Agius told me  
21 in her telephone call on the Friday, 1st of July.
- 22 Q. P.42 of Professor Saunders' report, the extracts from  
23 your secret appendix 3, where you say 'a critical point  
24 may be that Kumarangk and Mundoo only go together.' In  
25 your view, did Kumarangk and Mundoo go together, in  
26 part, because someone had told you that Hindmarsh Island  
27 was referable to birth and Mundoo was, in some way,  
28 referable to death.
- 29 A. Is that a question?
- 30 Q. Yes.
- 31 A. Can you rephrase it again.
- 32 Q. No. I can ask it again. You make a claim here, that  
33 Kumarangk and Mundoo go together.
- 34 A. No I don't.
- 35 Q. Sorry.
- 36 A. I don't make that claim.
- 37 Q. Well, you assert, that they go together.
- 38 A. I do not assert they go together.

1 Q. What are you asserting when you say, Kumarangk and  
2 Mundoo, that they can only go together.

3 A. That they can only go together, not that they do go  
4 together. It is a qualification.

5 Q. You are saying that it is appropriate they do go  
6 together, aren't you.

7 A. No, it is appropriate that they, in effect, are adjacent  
8 in a medium of water.

9 Q. And is the fact that someone told you, that Hindmarsh  
10 Island was referable to birth and Mundoo was referable  
11 to death, in any way relate to the claim that Kumarangk  
12 and Mundoo can only go together.

13 A. No.

14 Q. So, there is no cosmological layer that is referable to  
15 life and death.

16 A. Yes, there is.

17 Q. But, it is not referable to Hindmarsh Island being site  
18 related to birth and Mundoo being site related to death.

19 A. Yes, it is, in part.

20 Q. The only person who told you it was site related to  
21 birth, you can't tell us, because you don't know. The  
22 only person who told you it was site related to  
23 death was Rhonda Agius, over the phone.

24 A. No, that's not right.

25 Q. Who else did.

26 MS PYKE: The witness has predicated on it not  
27 being related to Dr Kartinyeri. This makes these  
28 artificial questions and distinctions, make it almost  
29 impossible for the witness to answer the questions  
30 because Mr Abbott jumps to a conclusion which the  
31 witness then cannot respond to.

32 COMSR: I don't know that it is predicated on  
33 the assumption that the witness not be required to  
34 reveal anything Dr Kartinyeri said to her. The  
35 assumption is, as things stand, that she not be required  
36 to directly reveal the contents of the appendix.

37 They're of different concepts entirely.

38 XXN

- 1 Q. Could you answer the question. Who else told you, apart  
2 from an unknown person.
- 3 A. Doreen Kartinyeri.
- 4 Q. When. And I am dealing with, did she tell you about  
5 both Hindmarsh/birth and Mundoo/death.
- 6 A. No, she didn't.
- 7 Q. Which one did she tell you about.
- 8 A. You have asked me a different question following from  
9 the previous one.
- 10 Q. I will deal with it. Did Doreen Kartinyeri tell you the  
11 same thing, or substantially the same thing, as the  
12 unknown person, in reference to Hindmarsh Island and  
13 birth.
- 14 A. No.
- 15 Q. Did she mention to you, the concept of Hindmarsh Island  
16 being birth related.
- 17 A. In part.
- 18 Q. When.
- 19 A. During the course of that consultancy.
- 20 Q. I know that, but when.
- 21 A. Well, I can't recall with any specifics at what point I  
22 was first appraised of that.
- 23 Q. Did she mention it more than once.
- 24 A. Yes.
- 25 Q. Did she mention anything on the topic of Mundoo Island  
26 and death.
- 27 A. Yes.
- 28 Q. Did you use what she had said, in relation to Hindmarsh  
29 Island and birth and Mundoo Island and death, in coming  
30 to the view, that you expressed in your secret appendix  
31 3, 'A critical point may be that Kumarangk and Mundoo  
32 can only go together when they have mediated with the  
33 life supporting waters.'
- 34 A. It may be.
- 35 OBJECTION Ms Pyke objects.
- 36 MS PYKE: This witness has given evidence about  
37 what you have ruled she didn't need to give answers to  
38 or answer questions in relation to. You have made your

- 1 ruling. If you are proposing to alter your ruling  
2 let's deal with that, but, this witness is being put  
3 time and again, in an invidious position, by the way in  
4 which Mr Abbott is putting his question.
- 5 COMSR: My ruling was that she not have to  
6 answer questions which directly go to her knowledge of  
7 the contents of the sealed envelopes.
- 8 MS PYKE: Questions like that surely the witness  
9 can only answer by going directly to what is in the  
10 sealed envelopes.
- 11 COMSR: If Mr Abbott takes it that step further  
12 and is asking her whether she put this in the sealed  
13 envelopes.
- 14 MS PYKE: He just asked her if she is talking  
15 about what is in the sealed envelopes and asking her  
16 for her comment.
- 17 MR ABBOTT: My question was - in relation to your  
18 ruling, I apprehend could never have, as it were,  
19 covered up what is at p.42, could never have prevented  
20 questions being asked about p.42. The p.42, I didn't  
21 understand to be covered by your ruling, nor could it  
22 ever be. And I am merely asking, when Dr Fergie came to  
23 the view expressed at p.42, did she utilize or was she  
24 making reference to the claim by Doreen Kartinyeri, that  
25 Hindmarsh Island was referable to birth and Mundoo was  
26 referable to death.
- 27 COMSR: This is not a secret part of the  
28 appendix, as I understand it. This is a part which  
29 forms part of Professor Saunders' report.
- 30 MS PYKE: Look, the difficulty with this and I put  
31 this quite bluntly; Professor Saunders herself says this  
32 appendix is confidential, this extract is divorced  
33 from its context. What we have is an extract divorced  
34 from its context, upon which Mr Abbott is purporting  
35 to ask this witness questions, which she can only answer  
36 by relationship to the total context. I am just  
37 saying, it is a totally unfair way of this witness  
38 being called upon to answer these questions and it is



1 quite inappropriate, regardless of elements of  
2 confidentiality. It is distorted, it is unfair and I  
3 urge you to only require this witness to answer fairly,  
4 put questions that she can answer fairly and in context.

5 COMSR: This appears to me to be devoted  
6 particularly just to this part of the report which is in  
7 the public arena. I don't know how one can draw any  
8 inference that it goes beyond that. And I take your  
9 point, that it may not, in the final analysis, be  
10 something from which you can draw a great many  
11 conclusions.

12 MS PYKE: What relevance can it be to you, that  
13 this witness, without being able to reveal what Dr  
14 Kartinyeri told her, without revealing the contents in  
15 which it appears to be called upon to answer questions  
16 totally out of context, what earthly relevance can that  
17 be to you, within the terms of the reference?

18 MR ABBOTT: I can answer that, because we're here to  
19 deal with the issue whether or not the women's business  
20 is fabricated and the stage at which the women's  
21 business in this envelopes came into existence and from  
22 whom. The are very relevant aspects.

23 COMSR: It seems to me that this is an area  
24 which the witness can deal with. It has been divorced  
25 from its context and in this respect she is only being  
26 asked to deal with it on that basis, as I see it.

27 MS PYKE: As long as it is made abundantly clear  
28 to the witness, she is not required, in any way,  
29 whatsoever, to refer to other elements of what is in  
30 appendix 3 or appendix 2 or what documents.

31 COMSR: The witness is well aware.

32 XXN

33 A. I am sorry, but could I just ask for a few minutes if  
34 that's all right.

35 ADJOURNED 10.40 A.M.

- 1 RESUMING 10.50 A.M.  
2 XXN  
3 Q. We were dealing with life and death and Hindmarsh and  
4 Mundoo Island and I asked you who else told you and you  
5 said Doreen Kartinyeri told you. Did she tell you about  
6 both Hindmarsh being related to birth and Mundoo being  
7 related to death.  
8 A. She didn't put it like that.  
9 Q. To that effect, though.  
10 A. Yes, I think that is fair.  
11 Q. How did she put it.  
12 A. I am unable to really recall accurately how she put it.  
13 Q. Just generally.  
14 A. I think you put it as generally as I might.  
15 Q. You can't tell us any further how Doreen expressed the  
16 concept of Hindmarsh Island and its relationship to  
17 birth and Mundoo Island and its relationship to death.  
18 A. Yes.  
19 Q. Is that your evidence.  
20 A. Yes.  
21 Q. Can't tell us, or won't tell us.  
22 A. I don't believe I can remember adequately to tell you.  
23 COMSR: We can't take that any further.  
24 MR ABBOTT: No, I agree.  
25 XXN  
26 Q. Was Doreen the only one who told you both concepts.  
27 Hindmarsh Island - birth: and Mundoo Island - death.  
28 A. I don't know if I can give you - I don't know if I can  
29 recall specifically to give you a definitive answer to  
30 that.  
31 Q. Again, you can't help us. Someone else might have, but  
32 you can't recall who, when and in what circumstances.  
33 A. That's right.  
34 Q. In relation to Hindmarsh Island and birth, did Doreen  
35 ever tell you anything - in what way Hindmarsh Island  
36 was related to birth.  
37 A. She did.  
38 Q. In what way is it.

- 1 A. I'm not -  
2 Q. So she claimed.  
3 A. I am not able to tell you.  
4 Q. Why not.  
5 A. Because it is a secret appendix 2.  
6 Q. She never said at any other time than on 29 June,  
7 because that's the date when you got the information  
8 that went into the secret appendix 2.  
9 A. I got that information I just checked I think on both  
10 the 29th and the 30th.  
11 Q. From Doreen.  
12 A. From Doreen. I think that is made clear in my notes on  
13 method.  
14 Q. So, apart from the occasion when you were compiling  
15 secret appendix 2, Doreen never told you or anyone else  
16 in your presence how Hindmarsh Island related to birth.  
17 A. She may have, but I can't recall.  
18 Q. Specifically, you don't recall her having told the  
19 Aboriginal women at the Graham's Castle meeting of 19  
20 June 1994 how Hindmarsh Island related to birth, do you.  
21 A. No.  
22 Q. Does the same apply to Mundoo Island and death. You can  
23 recall her having told you about that in relation to the  
24 discussions on 29 and 30 June.  
25 A. I have a vague recollection that Mundoo was mentioned in  
26 the meeting of the 19th at Graham's Castle.  
27 Q. In conjunction with death.  
28 A. Yes, I believe so.  
29 Q. In what way was Mundoo said to be related to death.  
30 A. My recollection is that Mundoo was - I am thinking about  
31 why it was - why the postcard facsimile or whatever it  
32 was of a -  
33 Q. A platform, a burial platform.  
34 A. Yes.  
35 Q. What was said about that then. Was it suggested by  
36 Doreen that that postcard related to Mundoo Island and  
37 death.  
38 A. I think that's likely, but I am not absolutely certain.

- 1 But I also have a vague recollection of other women  
2 talking about Mundoo in that context. One of them might  
3 have been Connie Roberts, but I can't -
- 4 Q. We are dealing with a concept of Mundoo Island and  
5 death.
- 6 A. Yes.
- 7 Q. You have told us so far that - and I am just  
8 recapitulating - someone you can't remember might have  
9 told you about Hindmarsh Island and birth, but Doreen  
10 Kartinyeri definitely did on 29 and 30 June.
- 11 A. The point about not being able to remember who told me  
12 is, in fact, you need to keep firmly in mind that I -  
13 those women were not instantly recognisable to me. I  
14 didn't know who they were.
- 15 Q. So far I am right.
- 16 A. Could you say it again?
- 17 Q. Yes, you have told us that some informant, whom you  
18 cannot remember, may have told you of a claimed  
19 connection between Hindmarsh Island and birth. And the  
20 only other person who may have told you, or who did tell  
21 you, you are sure about this, was Doreen Kartinyeri, on  
22 the 29th and the 30th. And you can't tell us what she  
23 said, because you put all that in secret appendix 2.
- 24 A. Yes, it may be that Sarah Milera mentioned something  
25 about it, as well, but I'm not sure.
- 26 Q. That's speculation, isn't it.
- 27 A. Yes, from my recollection now, yes, it is.
- 28 Q. In relation to Mundoo Island and death, you said Rhonda  
29 Agius you think mentioned it to you.
- 30 A. To the best of my recollection.
- 31 Q. And Doreen definitely did, on the 29th and 30th. And  
32 you won't tell us about what Doreen said, because that  
33 went into secret appendix 2.
- 34 A. In so far as I can recall, I think that's the case.
- 35 Q. I put it to you that you have made up what you have told  
36 us about Rhonda Agius. That you are just making this up  
37 as you go along about Rhonda Agius telling you about  
38 this.

- 1 A. I don't believe that is the case.
- 2 COMSR: Haven't we been over this ground with  
3 the witness?
- 4 MR ABBOTT: No.
- 5 WITNESS: What I am trying to do is recollect to  
6 the best of my ability. And that's what I am  
7 Endeavouring to do.
- 8 XXN
- 9 Q. You see, I suggest to you that to date, that is, until  
10 today, your only claim about what Rhonda Agius told you  
11 about Mundoo Island was not that it related to death,  
12 but it related to men's business.
- 13 A. Rhonda certainly said that.
- 14 Q. That it related to men's business.
- 15 A. She did.
- 16 Q. I am putting it to you that, until today, you have made  
17 no claim that Rhonda Agius referred to Mundoo Island and  
18 death.
- 19 A. That may be so.
- 20 Q. If she did, if your memory is now that she did mention  
21 Mundoo Island and its reference to death, why didn't you  
22 put that in your report.
- 23 A. I clearly didn't think it was relevant to the public  
24 part of my report.
- 25 Q. But you specifically put in that Rhonda Agius said it  
26 referred to men's business.
- 27 A. Yes.
- 28 Q. Why leave out that Rhonda Agius also said it referred to  
29 death.
- 30 A. My recollection is that I put in the stuff about men's  
31 business in relation to a comment about Connie Roberts  
32 thinking that it had been inappropriate - and it is in  
33 my report, so maybe I should look at it, but my  
34 recollection is that that -
- 35 Q. At p.10.
- 36 COMSR: Mr Abbott, the witness has given her  
37 explanation as to her difficulties with her memory. Are  
38 we going to take that aspect any further?

- 1 MR ABBOTT: This is not a difficulty with memory.  
2 This is Rhonda Agius telling her two things about Mundoo  
3 Island, two important matters. 1 of them that it was  
4 associated with men's business. And 2, she now claims  
5 today for the first time that Rhonda Agius told her that  
6 Mundoo Island was associated with death. And I am  
7 asking her why she didn't mention both of them in her  
8 report and why she only chose to mention one of them.
- 9 WITNESS: And I am telling you that my - I believe  
10 that - I mentioned things in the body of my report which  
11 I thought were relevant to that report. I thought that  
12 it was relevant to mention that Connie Roberts - sorry,  
13 that Rhonda Agius had reported that Mundoo was a men's  
14 site precisely in relationship to Rhonda's  
15 characterisation of her mother, the significance of her  
16 mother's behaviour in the tour of Hindmarsh Island.
- 17 MR ABBOTT: I will go on. I could deal with that,  
18 but I won't. It is not going to be central to your  
19 deliberations.
- 20 XXN
- 21 Q. You told us yesterday that, although Doreen Kartinyeri  
22 mentioned to the women at Graham's Castle on the night  
23 of 19 June 1994, she made a claim that Hindmarsh Island  
24 was where Ngarrindjeri women went to abort foetuses  
25 conceived as a result of liaisons with white or partly  
26 white men. Do you remember telling us about that  
27 yesterday.
- 28 A. Yes.
- 29 Q. You told us that you didn't choose to put any of that in  
30 your report.
- 31 A. In the open part of my report, yes.
- 32 Q. What, it is in the secret appendices.
- 33 A. I am not prepared to say.
- 34 Q. Do you deny that it is in the secret appendices.
- 35 A. I am not prepared to say.
- 36 Q. Yesterday you did deny it. Yesterday you told us that  
37 it was nowhere to be found in your report at all.
- 38 A. I think what you need to -

- 1 Q. Didn't you.
- 2 A. I don't know what I said yesterday and let me clarify  
3 what I said yesterday. What I would like to clarify is  
4 that there is an issue about abortion. And the role -  
5 and issues about abortion in Ngarrindjeri tradition.  
6 There was a comment that I recollect Doreen making to  
7 that meeting about a specific kind of abortion. Namely,  
8 the abortion of children conceived with white fathers.  
9 To the best of my recollection, the comment about the  
10 abortion of foetuses that were - you know, that were  
11 fathered by white men does not appear in appendix 2 to  
12 the best of my recollection.
- 13 Q. And you agree that the concept is not examined by you in  
14 appendix 3.
- 15 A. No, I don't agree to that.
- 16 Q. What, it was examined.
- 17 A. Which concepts are you referring to?
- 18 Q. The concept of Hindmarsh Island being site-related to  
19 the abortion of foetuses.
- 20 A. I think, first of all, you would need to clarify with me  
21 how you are using 'site', because I have been very  
22 careful not to use 'site' in those terms. I have  
23 endeavoured not to use 'site' in that sense and I think  
24 the Act talks about significant areas.
- 25 Q. I am not talking about site in any term other than plain  
26 English.
- 27 A. As a location?
- 28 Q. All I want to know is, I suggest to you that you have  
29 not dealt with, in appendix 2 or 3, Hindmarsh Island  
30 being a place to which women resorted, Ngarrindjeri  
31 women resorted for the purposes of aborting foetuses.
- 32 A. Look, I can't answer this question, but I think I need  
33 to point out that you have got a very literalist  
34 understanding of tradition and that what you are  
35 actually trying to propose is that the way in which  
36 people talk about traditions are empirical realities.  
37 They are ways of speaking and they are ways of speaking  
38 about meaningfulness and they may or may not have to do

1 with empirical realities.

2 COMSR

3 Q. I have had a bit of difficulty in this area and that's  
4 why I thought what you were saying was this: that the  
5 appendices really don't deal with women's business as it  
6 was discussed in front of the women. It deals more with  
7 the significance that is to be or cultural significance  
8 that was understood by, in this instance, Doreen  
9 Kartinyeri.

10 A. No, I don't think that's quite right and I am sorry that  
11 I have given that impression. I think it is a  
12 constructed account in the same way as - which clearly  
13 talks about significance. That is, in a sense, it is an  
14 account that is I think constructed by Doreen in order  
15 to elucidate some central tenets of Ngarrindjeri  
16 tradition. At the same time, it is presented in a form  
17 which you might understand as a kind of an oral  
18 tradition.

19 XXN

20 Q. I will ask you this question: did Doreen Kartinyeri  
21 present to you, as a central tenet, that Hindmarsh  
22 Island was in any way related to aborting foetuses of  
23 Ngarrindjeri women after liaisons with white people.

24 A. Could you ask me that again?

25 Q. Did Doreen Kartinyeri tell you or make a claim that  
26 Hindmarsh Island was in any way related to a practice of  
27 aborting foetuses of Ngarrindjeri women conceived as a  
28 result of liaisons with white people.

29 A. I have said that she said that at Graham's Castle.

30 Q. Did she claim to you that that was a 'central tenet'.

31 You have used those words.

32 A. No.

33 Q. I suggest to you that you did not cover that claim made  
34 at Graham's Castle in the secret appendix 2.

35 A. Clearly I can't answer that question.

36 Q. Why not. I am asking you what is not in it.

37 A. You are asking me to say whether something is or is not  
38 in the secret appendix.



1 COMSR

2 Q. No, he is not asking you to say whether it is. He is  
3 asking you to say whether it isn't.

4 A. To the best of my recollection, a reference to the  
5 aborting of foetuses that were fathered by white men is  
6 not in appendix 2.

7 XXN

8 Q. When she made the claim that Hindmarsh Island was such a  
9 place, did you ever check it out.

10 A. In what sense?

11 Q. See whether it was historically correct.

12 A. No, because I didn't see the tradition needed - as I  
13 have said before, tradition and belief are not subject  
14 to empirical testing. It would not have been a  
15 meaningful thing to have done.

16 Q. But here was a claim made by Doreen Kartinyeri to the  
17 women at Graham's Castle that, at least for the last 100  
18 years or so, Hindmarsh Island had been used as a place  
19 where Ngarrindjeri women went to abort foetuses  
20 conceived after unions with white people.

21 A. And Genesis says that the world was created in six or  
22 seven days.

23 Q. Pass over Genesis, we are dealing more with revelations.

24 A. And Revelations are absolutely untestable.

25 Q. I am just wondering whether this comes in the same  
26 category in your eyes as Revelations.

27 A. In other words, it was a claim made that was so wild and  
28 woolly that you didn't need to investigate it. Are we  
29 talking about Revelations in the Bible here, or are we  
30 talking about revelations generally, the Book of  
31 Revelations?

32 Q. She made a claim -

33 A. The Book of Revelations, which is understood by many  
34 Christians to be wild and woolly, is nevertheless a part  
35 of the corpus of the Bible.

36 Q. Doreen Kartinyeri made a claim to the women at Graham's  
37 Castle on the night of 19 June that Hindmarsh Island was  
38 a place to which Ngarrindjeri women resorted, and had

1 resorted over the last 100 years or so, to abort babies  
2 conceived as a result of unions with white people,  
3 didn't she.

4 A. In my recollection.

5 Q. Did you ever conduct any examination to see whether that  
6 claim was true.

7 A. Two issues are relevant. One is that was in the period  
8 of my consultancy in which I was a facilitator and I was  
9 in no way obliged to test anything in particular at the  
10 time. And, in the second place, such a claim - the  
11 validity of such a belief or tradition could be neither  
12 confirmed nor denied by the kind of testing that you are  
13 suggesting. And therefore I wouldn't have considered  
14 doing it any way.

15 Q. How do you know it could be neither confirmed or denied.

16 A. It is irrelevant to an anthropological assessment  
17 whether or not - it would be a very nice case, if you  
18 could demonstrate that it was, but it in no way bears on  
19 the significance of an Aboriginal tradition.

20 Q. You said it could in no way be confirmed or denied. I  
21 am asking you a question: how did you know that it could  
22 be neither confirmed or denied as an historical fact.

23 A. It may well be confirmed or denied as an historical  
24 fact, but whether such a confirmation or disconfirmation  
25 has any relevance whatsoever to an anthropological  
26 assessment is what I am saying. And that, in a sense,  
27 when you are talking about belief, any belief, my belief  
28 or yours, the validity of that belief is not subject to  
29 any empirical testing. You can simply say that is a  
30 well-held belief or not, but you can't say, look, Deane,  
31 stop believing that, because it is clearly, you know, it  
32 has no foundations in material reality. And so it seems  
33 to me that the answer to this question is no, I did not  
34 do that testing, nor would I have seen it as relevant.

35 Q. Do you detect a difference between rationally held  
36 beliefs and irrationally held beliefs.

37 A. That is why I have used the words cultural logics and  
38 that different cultural setup - a different set of -

- 1 COMSR: I think actually the witness has covered  
2 this in previous questioning.
- 3 COMSR
- 4 Q. And I understand the basis on which you are saying a  
5 belief can be genuinely held, no matter whether there is  
6 a rational explanation for it or not.
- 7 A. Absolutely.
- 8 MR ABBOTT: But I want to take it further.
- 9 XXN
- 10 Q. Put aside that a belief may genuinely be held, albeit  
11 irrationally, albeit without a shred of evidence to  
12 buttress it up -
- 13 A. In your Eurocentric logic.
- 14 Q. I will continue with the question, if I may. You were  
15 there, at least after you stopped being a facilitator  
16 and became a reporter, to investigate the validity of  
17 beliefs claimed, weren't you.
- 18 A. Not the validity. I was asked to assess the  
19 significance of a claim under Aboriginal tradition.
- 20 Q. So you weren't there to test the validity of any belief.
- 21 A. Not in the empirical sense that you are suggesting, no.
- 22 Q. Not in any sense.
- 23 A. Yes, I was there to test.
- 24 Q. Indeed, as I understand it, appendix 3 is meant to be  
25 some logical assessment of the validity of those beliefs  
26 expressed to you by Doreen Kartinyeri in the context of  
27 Ngarrindjeri tradition generally.
- 28 A. It is an exploration of their cultural logic, but not  
29 according to a Eurocentric cultural logic.
- 30 Q. Did you ever test the belief held by Doreen Kartinyeri  
31 that Hindmarsh Island was a place where people went -  
32 where Ngarrindjeri women went to abort foetuses. Did  
33 you ever test whether that belief was held as a matter  
34 of logic by Doreen Kartinyeri.
- 35 A. I did. That it was held as a matter of logic, I did.
- 36 Q. What did she tell you.
- 37 A. A great many things.
- 38 Q. Tell us.

- 1 A. I am not prepared to tell you.
- 2 Q. How did she demonstrate to you that there was a proper
- 3 basis for holding the belief which she expressed to the
- 4 women on the night of 19 June that Hindmarsh Island was
- 5 a place where Ngarrindjeri women went to abort foetuses.
- 6 CONTINUED

- 1 COMSR: First of all, did she.  
2 MR ABBOTT: She has already said she did  
3 demonstrate.  
4 XXN  
5 Q. How did she demonstrate it.  
6 A. I think we need to distinguish two things. One is that  
7 the analysis in appendix 3 is analysis that is primarily  
8 concerned with appendix 2 - the account in appendix 2.  
9 The account you are referring to, is an account that was  
10 given at Graham's Castle on 19 June. It -  
11 Q. How did Doreen Kartinyeri demonstrate to you, and so  
12 that you were satisfied that she validly and genuinely  
13 held a belief that Hindmarsh Island was a place to  
14 which, over the last hundred years, Ngarrindjeri women  
15 had resorted for the purposes of aborting foetuses after  
16 unions with white people.  
17 A. I have said to you it wasn't necessary for me to test  
18 that.  
19 Q. But you told us she did demonstrate it to you.  
20 A. However, the way in which Doreen made that account, in  
21 her demeanour, in a variety of other ways, in the way in  
22 which that account was heard by other women, I had  
23 reason to believe that Doreen was saying what she  
24 believed to be the case.  
25 Q. Is that the only testing you did of that claim by Doreen  
26 Kartinyeri.  
27 A. Of that particular claim, yes, I would say. I mean,  
28 that I can recall.  
29 Q. You mention a variety of other ways. What were the  
30 variety of other ways. In giving your answer, it was a  
31 rolled up answer, you said 'In this way, that way and a  
32 variety of other ways'.  
33 A. What an anthropologist does, in exploring the  
34 significance of a situation, is to listen both to what  
35 is explicitly said and to explore the way in which  
36 something is said.  
37 COMSR  
38 Q. And that's what you did on this occasion.

1 A. Clearly, when I was at Graham's Castle, I was watching  
2 those events very much as an anthropologist and  
3 listening to what people were saying, watching how it  
4 was said, watching very carefully what people - how  
5 people responded, looking at the way in which elements  
6 of that were taken up in conversation, and basically, in  
7 a sense, making the kind of assessment, I suppose - I  
8 don't know if this is a fair parallel, but it strikes me  
9 as not dissimilar from what a judge may do in court, to  
10 listen to what is said, to listen to its internal  
11 consistency, to watch the demeanour of the person who is  
12 saying it, and to see what other corroborating or  
13 disconfirming material is presented to one in that  
14 context. I mean, I may be misunderstanding the role of  
15 a judge, but an anthropologist is basically being as  
16 observant as possible, and watching both for the said  
17 and the unsaid. In a sense, quite frequently, for an  
18 anthropologist, silences are as important as statements.  
19 The way in which a statement might be said is of - you  
20 know, may be of real significance.

21 Q. Is this an assessment of the person and their apparent  
22 sincerity.

23 A. Yes. I mean, these things are qualitative assessments  
24 and one can never in fact be sure that one knows  
25 precisely what one believes - someone else believes, so,  
26 yes, it is such an assessment.

27 XXN

28 Q. I don't know whether you appreciate it, but a judge  
29 usually has the benefit of cross-examination by counsel,  
30 you didn't.

31 A. In that sense, anthropology is different from the law  
32 and, similarly, there are some significant differences.  
33 The other, of course, is that lawyers are, in effect,  
34 asked to be the absolute advocate no matter whether they  
35 believe what their client says is true or false.  
36 Whereas an anthropologist - certainly I, myself,  
37 wouldn't see that as my role in such a context. My role

- 1 is - I don't want to get - it is a much more - in fact,  
2 it seems to me that it is -
- 3 Q. It is your role to accept it, regardless of whether it  
4 is true or false. You don't talk about true or false in  
5 empirically true or false. You ask about whether  
6 someone believes in it. Whether it is true or false is  
7 irrelevant.
- 8 A. It can be true or false in a number of ways.
- 9 COMSR: You have been through this with this  
10 witness a number of times.
- 11 MR ABBOTT: I will get onto something else.
- 12 A. I think that's a position most anthropologists would  
13 make, that, in fact, an anthropologist's role is not to  
14 test the truth or falsity.
- 15 COMSR
- 16 Q. I think you have explained that to me on previous  
17 occasions.
- 18 XXN
- 19 Q. You mentioned yesterday that, in the description that  
20 was given at Graham's Castle of -
- 21 COMSR: We were in closed session yesterday.  
22 Are we going to go into something that is confidential  
23 or what?
- 24 MR ABBOTT: I don't think so. This is the Rocky  
25 Marshall letter, which has merely been suppressed, but  
26 is not confidential.
- 27 XXN
- 28 Q. About the correspondence between the area of the Lower  
29 Murray and various parts of female anatomy, you told me  
30 yesterday that blood was an organ in that scenario.
- 31 A. No. I asked you if blood was, and you suggested that it  
32 might be understood, in the way you were making the  
33 proposition to me, as an organ.
- 34 Q. You said that you, on that basis, recall that blood was  
35 mentioned.
- 36 A. I don't recollect saying that to you yesterday. If you  
37 could show me the transcript, I will -
- 38 Q. I will ask you then. Perhaps it is quicker to ask you.

- 1 Was blood mentioned at the Graham's Castle meeting on 19  
2 June.
- 3 COMSR: Is that something that's in the public  
4 arena?
- 5 MR ABBOTT: I thought it was, but perhaps I will  
6 leave it and come back to it.
- 7 XXN
- 8 Q. I asked you yesterday whether on 19 June at the Graham's  
9 Castle meeting, you ever heard Doreen Kartinyeri make  
10 any claim in relation to the Lower Murray area of being  
11 a mother figure.
- 12 A. Yes.
- 13 Q. Or any part of it being a mother figure. Do you  
14 remember that.
- 15 A. Yes, I remember that.
- 16 Q. Then you said that the phrase `mother figure' might be  
17 too broad, and I said `I don't want to be hung up  
18 semantics'. I asked you whether, if I changed `mother  
19 figure' to `mother earth' - you said `You would be  
20 absolutely wrong, without question'. `Did she use the  
21 word or phrase like "mother" with reference to what she  
22 was saying to you' and you said `Not that I recall'.  
23 What I was trying to elicit from you there was: was any  
24 claim made on 19 June about a mother earth/mother figure  
25 claim for this area.
- 26 A. My recollection is that the critical word was `woman'.
- 27 Q. Was there any claim made for a mother earth, mother  
28 figure for this area - that's the Lower Murray area, or  
29 any part thereof - on 19 June.
- 30 A. I can't recall those words being used, or any words like  
31 them.
- 32 Q. So no such claim, to your recollection, was made on 19  
33 June.
- 34 A. Not that I recall.
- 35 Q. What about later on, any such claim made.
- 36 A. Not in those terms.
- 37 Q. I don't want to be again hung up on semantics. We are  
38 talking about a claim -



- 1 A. We are talking about critical - you are asking me to  
2 make a comment, when I can't refer to one set of things  
3 and clarify it.
- 4 Q. Any claim made by anyone in relation to this area being  
5 somehow related or associated with the concept, or a  
6 concept, of mother earth, mother figure, anything of  
7 that nature.
- 8 A. As you put the question, I think the answer is no.
- 9 Q. I wouldn't want you to slide by it on the basis that my  
10 question has been understood by you in a way that I  
11 haven't wanted you to understand it. I am asking you  
12 about a concept of mother earth, mother figures,  
13 mothers, any connection -
- 14 A. `Mothers' is clearly a word that was used and - yes.
- 15 Q. Semantically I was wrong. I should have added `mothers'  
16 to my question. Was anything said by anyone -
- 17 A. People talked about -
- 18 Q. Can I just ask my question. By anyone in this period,  
19 from 19 June onwards, or including 19 June and onwards,  
20 about any association between any of this area in the  
21 Lower Murray and mothers.
- 22 A. In order to answer that question sensibly I would have  
23 to refer directly to appendix 2, and I can't see how I  
24 can actually make the kind of qualification which would  
25 make your question sensible without doing so.
- 26 Q. Apart from the discussion you had with Doreen Kartinyeri  
27 on 29 June, and following, was there ever any discussion  
28 with anyone along the lines I've indicated.
- 29 A. Not along the lines you've indicated.
- 30 Q. So, apart from possibly Doreen Kartinyeri on the 29th,  
31 making a connection between some or part of this area  
32 and mothers or mother earth or mother figures, no-one  
33 else did.
- 34 A. I think you are making an imputation to Doreen that's  
35 not quite accurate.
- 36 Q. Tell me what way it is not accurate.
- 37 A. I'm unable to do that without referring to the secret  
38 appendices.

- 1 Q. If it wasn't Doreen from the 29th, who was it before  
2 then.
- 3 A. The way in which you are expressing the question, I  
4 think - that's not a formulation. The stress was on the  
5 word `woman', I would say, rather than `mother'. Now,  
6 insofar as women are mothers -
- 7 Q. I want to make it clear. I am not dealing with the  
8 connection of women and any of these parts. I'm dealing  
9 with an alleged connection of mothers and these parts.
- 10 A. Then, I think, in the strict sense, the answer is no.
- 11 Q. Even in a general sense, other than the fact that some  
12 women might happen to be mothers, I'm wrong.
- 13 A. In the sense that all women, theoretically, have the  
14 capacity to be mothers.
- 15 Q. The opening words `To all the mothers that were, to all  
16 the mothers that are, to all the mothers that will be' -
- 17 A. Doesn't relate to that knowledge. That relates to a  
18 particular statement that Doreen Kartinyeri said to me  
19 was a verse that people - that Ngarrindjeri people said  
20 when some change to the environment was to take place,  
21 for example, she used the specific example of fence  
22 building.
- 23 Q. Could be anywhere then. From Mt Gambier through to  
24 Tailem Bend.
- 25 A. I think the implication was that it was a Ngarrindjeri  
26 verse that related to the Ngarrindjeri territory, but I  
27 have to admit that I - that you might be right.
- 28 Q. Did you check on whether there was any basis, historical  
29 basis, for her claim.
- 30 A. I did not.
- 31 Q. It was enough for you if she believed that to be so then  
32 you would accept it to be so.
- 33 A. Certainly. Certainly to use as a title, because she  
34 explicitly asked me to use that in the title of this  
35 report.
- 36 Q. But lots of people asks anthropologists to do lots of  
37 things, and often anthropologists adopt a critical  
38 approach. I discern from what you said that you didn't.

- 1 A. I don't think that the title to my report makes any  
2 difference to - you know, is relevant in any way to the  
3 rigour with which I assessed the claim before me.
- 4 Q. You say in your statement that - I don't want to refer  
5 to it, because I don't want to take up time - but you  
6 clearly reject the suggestion that was made by those who  
7 criticised your report, that there was anything to do,  
8 even in relation to the secret appendices, with mother  
9 earth, mother figures and the new age versions of mother  
10 earth and mother figures that have arisen in the  
11 literature, both anthropological and otherwise, in the  
12 last 50 years.
- 13 A. Specifically denied that there was any reference to a  
14 mother earth with any imputation that there was a  
15 pan-Australian new age kind of basis to this belief in  
16 the terms, for example - since it was brought up here -  
17 that Swain has suggested in his work.
- 18 Q. But you deny that there was anything that could be  
19 connected with a concept of mother earth in your report  
20 and appendices, didn't you.
- 21 A. No, I denied that there is any - in reference to this  
22 question, I deny that there is any pan-Australian, new  
23 age, non-traditional reference to mothers insofar as - I  
24 mean, what do we do when we have a tradition that pivots  
25 around women, and where women are culturally understood  
26 to be always potentially and sometimes actually mothers?  
27 Am I not allowed to use the word 'mother' from your  
28 perspective, Mr Abbott?
- 29 Q. I am here to ask the questions, and I want to get to the  
30 bottom of this.
- 31 COMSR: We have dwelt a long time on this  
32 particular aspect.
- 33 MR ABBOTT: Only because the witness is not giving  
34 me straight answers, and I have had to go the long way  
35 about this rather than the short way. We have gone the  
36 long way because I am not allowed to see what is in  
37 appendices 2 and 3, and I have to ask questions mindful

1 of the ruling you have made, and the time it is taking  
2 is directly referable to the ruling that you have made.

3 XXN

4 Q. Given your last answer, are you telling us that you did  
5 draw a connection between this area - that's the Lower  
6 Murray area that we have been talking about - and a  
7 concept, new, old, pan-Australian or otherwise, and  
8 mother earth or earth mothers.

9 A. No. I think, to the best of my recollection, I used  
10 words like 'fertility'.

11 Q. It means the same thing though.

12 A. It may to you, but it doesn't to me.

13 Q. What earth mother, mother earth and fertility.

14 A. They may refer to each other, in the sense that, in  
15 order to talk about a mother, there is an implicit  
16 assumption that she has been fertile in the sense of  
17 being able to reproduce, and quite clearly in my report  
18 I've been very clear that I'm talking about cosmological  
19 and human reproduction. In that sense, you know, I have  
20 to accept that there is, in a broad sense, a discussion,  
21 an implication - I don't know how to specify it well -  
22 but I can't deny that this has nothing to do with women  
23 or with mothers. Clearly I can't. It has to do with  
24 reproduction. It has to do with human reproduction and  
25 cosmological reproduction. It has to do with human  
26 fertility and the fertility of the cosmos. They are, in  
27 broad sense, related concepts.

28 Q. It is not a new or recent aspect of anthropological  
29 literature for examinations to be made of a mother earth  
30 or earth mother concepts. It occurs in the  
31 anthropological literature since anthropologists started  
32 writing about anthropological subjects, doesn't it.

33 A. In some ethnographic context. The pivotal words that I  
34 chose to use in this analysis, as I recall, are words  
35 like 'fertility' and 'reproduction', and I clearly, in  
36 some respects, if you want to say, implicitly, chose not  
37 to place analytic stress on the word 'mother', which is  
38 not to say that the word 'mother' was never used to me.

## D.J. FERGIE XXN (MR ABBOTT)

- 1 Q. Did anyone suggest to you that there was a connection  
2 between a concept, in any way, in any form, of earth  
3 mother or mother earth in this area we're talking about.
- 4 A. I can't answer that question without reference to  
5 appendix 2.
- 6 Q. You can tell us. Did Doreen. (NOT ANSWERED)
- 7 Q. Did Doreen make some connection to you.
- 8 A. I'm unable to answer that question without reference to  
9 appendix 2.
- 10 Q. I am not asking for a name. I am not asking where,  
11 when, in what capacity.
- 12 MS PYKE: The witness has answered the question.  
13 She said she can't answer it without reference to  
14 appendix 2.
- 15 MR ABBOTT: I am not sure if she says I need to have  
16 appendix 2 to see whether Doreen did tell me, or whether  
17 she is saying `Merely giving you the name of who told me  
18 about this concept would violate your ruling on appendix  
19 2'.
- 20 COMSR
- 21 Q. Are you saying you don't know who told you.
- 22 A. No, I'm not saying that.
- 23 Q. You are saying you do know, but to mention it would -
- 24 A. Maybe I should say, in the strict way in which - I would  
25 need to qualify an answer with reference to appendix 2  
26 in order to answer it.
- 27 Q. Perhaps if you could answer without the qualification.
- 28 XXN
- 29 Q. Just the name of the person who told you about the  
30 connection between this area and mother earth or earth  
31 mothers.
- 32 A. I think, in fact, the specific relationship that you are  
33 trying to draw between this area specifically and the  
34 notion of mother earth is not a relationship that was  
35 made to me, in those terms.
- 36 Q. Not made to you by anyone.
- 37 A. In those terms, that I can recall.
- 38 Q. Not in terms of earth mother or mother earth.

- 1 A. In the, in that precise way, no.  
2 Q. Have a look at your notes, document no.48.  
3 A. Which number?  
4 Q. It's document no.48. (MFI 243). This is the note  
5 `Cheryl's late today'. See that.  
6 A. Yes.  
7 Q. This note was written at the time that you were dealing  
8 with Professor Saunders.  
9 A. Could well have been written after it, given the page on  
10 the other side is dated 30 June. It's an old cover,  
11 sheet for.  
12 Q. On that page is written in your handwriting `Life/death.  
13 Bodily integrity. Killing times. Closure. Blood', and  
14 then arrow `Mother earth'.  
15 A. Yes.  
16 Q. What does that relates to.  
17 A. It relates to Ngarrindjeri women bleeding into the  
18 earth.  
19 Q. Into mother earth, doesn't it.  
20 A. It does.  
21 Q. Who told you that Ngarrindjeri women were bleeding into  
22 mother earth.  
23 A. Nobody told me that.  
24 Q. Where did you get that from.  
25 A. You formulated it incorrectly.  
26 Q. I've used your words. You told me what it related to -  
27 you told me it related to Ngarrindjeri women bleeding  
28 into mother earth. Who told you that.  
29 MS PYKE: She said `the earth'.  
30 XXN  
31 Q. Who told you that.  
32 A. Doreen Kartinyeri.  
33 Q. When.  
34 A. I'm not clear.  
35 Q. Did she use the words `mother earth'.  
36 A. She did.  
37 Q. You can now remember it, can't you.  
38 A. No, if - no, I've always remembered it. You have given

- 1 me a formulation that was not strictly so and your part  
2 of your formulation is not strictly -
- 3 Q. I have asked you whether the words `mother earth' was  
4 ever used.
- 5 A. You asked me specifically whether it was used in  
6 relation to that area of the Lower Murray and my point  
7 is that it was used in a more broad sense about the  
8 impact, the cultural impact, of menstruation and  
9 menstrual practices.
- 10 Q. All over the Ngarrindjeri territories, from Mount  
11 Gambier to Tailem Bend.
- 12 A. As I understand it.
- 13 Q. As you understand it.
- 14 A. As I understand it.
- 15 Q. What date does this discussion relate to as `Life/death.  
16 Blood'. And then into `Mother earth'.
- 17 A. It strikes me that it post-dates my report given, by  
18 what it's written on.
- 19 Q. It could well predate your report.
- 20 A. Certainly the note doesn't.
- 21 Q. When did you have this discussion with her.
- 22 A. The point is when did I print this cover, and I clearly  
23 didn't print this cover page before 30 June, and my  
24 suggestion would be that I actually printed it in the  
25 early hours of 1 July. I can't say with any certainty.
- 26 Q. It was the discussion you had before you sent out the  
27 final on 4 July.
- 28 A. I don't think that that follows.
- 29 Q. But it might.
- 30 A. It might.
- 31 Q. You amended that secret appendix after that discussion,  
32 didn't you.
- 33 A. No, I didn't.
- 34 Q. You didn't.
- 35 A. No, I did not.
- 36 Q. Have a look at your diary, your diary note, and keep  
37 that in your hand and look at your diary.
- 38 A. I know what you are going to say. I did not amend my -

- 1 Q. You know what I'm going to say. Does the note in that  
2 diary refers to that, doesn't it, it doesn't refer to  
3 redrafting your secret appendix.
- 4 A. That means write them for the first time, appendix 3. I  
5 will have a look at my diary note which is - I don't  
6 know, which number?
- 7 Q. It's no.11. Looking at that produced (MFI 243), it says  
8 `Appendix 3 corrections on Monday, 4 July'. What else  
9 could that relate to but appendix 3 corrections.
- 10 A. No, it actually relates to the very first time of  
11 writing appendix 3.
- 12 Q. What, on 4 July was the first time you had written  
13 appendix 3.
- 14 A. That's so.
- 15 Q. 4 July is the date you sent off the final copy of the  
16 report. You had already sent the copy off.
- 17 A. That's the day that is indicated and I actually sent it  
18 off on the 5th.
- 19 Q. You already sent a copy off on the 1st.
- 20 A. That's correct.
- 21 Q. You tell us that you sent a copy of your report off on 1  
22 July without appendix 3.
- 23 A. That's right.
- 24 Q. And you compiled appendix 3 between 1 and 4 July.
- 25 A. That's so.
- 26 Q. And that this note `Appendix 3 corrections' is not  
27 referable to correcting appendix 3, but to creating  
28 appendix 3.
- 29 A. That's so.
- 30 Q. I suggest that is just untruths, one after the other.
- 31 A. It's not at all. If you look at my letter to Tim  
32 Wooley, that is very plain. I have never hidden this.
- 33 Q. It could well be -
- 34 COMSR: All of this, of course, is going, I  
35 suppose, to the credit, a great deal of this line of  
36 questioning.
- 37 MR ABBOTT: It goes to the extent which the  
38 fabrication occurs, as I will make clear in my



- 1 submissions to you.
- 2 MS PYKE: Are you saying that Dr Fergie fabricated  
3 this?
- 4 MR ABBOTT: Dr Fergie has assisted in the  
5 fabrication and has assisted in the dissemination of the  
6 fabrication.
- 7 WITNESS: I have never hidden the fact that  
8 appendix 3 was written on 4 July and, in fact, it's very  
9 clear in the correspondence that I have with Tim Wooley  
10 that -
- 11 COMSR: I want to clarify this.  
12 XXN
- 13 Q. Could you point out the passages in your statement where  
14 you make that abundantly clear.
- 15 A. That is in a part of my statement I had written up and  
16 that my solicitor asked the Commission for the typist to  
17 complete to hand up to counsel on the first day that I  
18 appeared. And my understanding is that that didn't  
19 happen and I spoke to them -
- 20 Q. We have got an 86 page statement from you where, in your  
21 statement, you tell us clearly that appendix 3 was  
22 written up on 4 July.
- 23 OBJECTION Miss Pyke objects.
- 24 MS PYKE: There are documents handed up as part  
25 of the MFI that make it quite clear in the letter to Mr  
26 Tim Wooley that talks about the two phase stage and that  
27 is not suppressed any more, that is an MFI.
- 28 COMSR
- 29 Q. The appendix 3 that we are talking about -
- 30 A. Is my analysis.
- 31 Q. You prepared that at a subsequent stage.
- 32 A. Yes, I did.
- 33 Q. As I take it, that is not part of the material you  
34 submitted to Dr Kartinyeri before you sent it off.
- 35 A. No.
- 36 Q. That was something that you added yourself.
- 37 A. Yes. Doreen actually didn't see any of the report  
38 before I sent it off. Basically, there was simply no

1 time.

2 Q. That wasn't a part that you referred to her, it was your  
3 own analysis.

4 A. That's true. I may have actually had a telephone  
5 conversation with her about it. I can't recollect. I  
6 can't recollect, but certainly - I mean, I think the  
7 reason it wasn't elicited in evidence, it was - I wasn't  
8 asked about it and I've never in any way hidden that the  
9 appendix 3 was written on that day.

10 Q. I'm trying to ascertain the status of appendix 3. It  
11 was something that you added yourself because it was  
12 necessary to expand on.

13 A. Well, what actually - yes, what happened is that I  
14 submitted a report that had - we actually had the  
15 evidence-in-chief which'd been elicited in the same way  
16 as the other people's in evidence-in-chief. We would  
17 have come to the point that on the morning of the  
18 Saturday - which I don't know if that is the first or  
19 the second - I had to get my report on an Ansett flight,  
20 the papers of which are in the box, and it had been  
21 anticipated, I think, that I get it on a flight at  
22 around about 6.05, or somewhere like that. I'd actually  
23 spent half the night working frantically at home. I  
24 think the point is that in a sense what I did was a  
25 mis-timing; that I had a problem of adequately  
26 satisfying myself that I adequately had - I assessed the  
27 problem of writing the report. I wrote it, I wrote it  
28 and, indeed, we missed the first plane. And my husband  
29 came in at the very end when I went to work in the  
30 middle of the night to print it, and I'd missed the  
31 plane and put it on the next plane to Melbourne. I  
32 hadn't even had time to run a spell check, as everybody  
33 would see on the document, and off it went. And because  
34 I had been basically working around the clock for  
35 several days, I went home to bed. But the next day, my  
36 mother said to me 'How can you bear to have all these  
37 typos in here', and so, of course, I agreed it was kind  
38 of tortuous -

- 1 Q. I can understand the sequence in which it happened, but  
2 this was a document which is your own composition and  
3 it's not part of the material that you have  
4 collaborated.
- 5 A. It's a direct consequence of collaboration, in a sense  
6 it's the - and in a sense what I realised that I hadn't  
7 - although I'd, in a sense, helped in the creation of  
8 the text which was appendix 2, that Professor Saunders  
9 wasn't an anthropologist and the kind of analysis that  
10 one would generally try and, you know, put in this kind  
11 of report hadn't been done. And I did it and sought to  
12 find out if I could send it off. And that's the case I  
13 did.
- 14 XXN
- 15 Q. This document no.48, that is in your hands; that's the  
16 one with the 'life/blood, mother earth' which is on the  
17 other side of the report which went off on the Saturday.
- 18 A. No, I don't believe that cover went off anywhere.
- 19 Q. No, that is the cover which went on off the Saturday  
20 presumably.
- 21 A. Yes, and I don't believe it was this one, but I'm not  
22 sure.
- 23 Q. What was the one that went off on the Saturday.
- 24 A. It didn't have the date - or may have had the date of 1  
25 July.
- 26 Q. Did it have the little couplet from Doreen.
- 27 A. Yes.
- 28 Q. Did appendix 2 or anything like it go off on 1 July.
- 29 A. Yes.
- 30 Q. But not appendix 3.
- 31 A. That's right.
- 32 Q. Were you asked to provide appendix 3 by anyone.
- 33 A. No.
- 34 Q. You have told us that you thought it was a good idea for  
35 Professor Saunders to have something like appendix 3.  
36 Did Wooley ever ask you to supply appendix 3.
- 37 A. Absolutely not.
- 38 Q. Did Professor Saunders.

- 1 A. Not that I can recall.
- 2 Q. This document no.48, you agree, may contain notes of an  
3 important discussion you had with Doreen Kartinyeri from  
4 between 30 June and 4 July.
- 5 A. No, I think it's just my jottings.
- 6 Q. You told us it relates to your discussion with Doreen  
7 Kartinyeri, the date which you cannot tell us.
- 8 A. I think that the relationship between blood and mother  
9 earth is a consequence of a conversation I had with  
10 Doreen Kartinyeri; whether there is a note of that  
11 conversation - in fact, I doubt that she's given that.  
12 The word 'closure' is something I would say and Doreen -  
13 I can't imagine Doreen using the word 'closure' or  
14 'bodily integrity' for that matter.
- 15 Q. You are now running 100 miles away from the proposition  
16 you initially embraced. This was a note which you,  
17 yourself, volunteered and of a discussion you had with  
18 Doreen Kartinyeri and you couldn't tell us when.
- 19 A. I don't believe - I think that - I believe that I said I  
20 had a conversation with Doreen. That if I made that  
21 note about the blood and then arrow 'mother earth', that  
22 it related to a conversation I had with Doreen  
23 Kartinyeri. I've never purported that, and if I did I  
24 believe it not likely now this relates to such a  
25 conversation. I mean if you can tell me that you think  
26 - I cannot imagine a context in which Doreen Kartinyeri  
27 would have used the words 'bodily integrity' or  
28 'enclosure' in any conversation that I ever had with  
29 her, and I absolutely know that they're words that I use  
30 quite frequently.
- 31 Q. They may be your words as a result of your discussions  
32 with Doreen Kartinyeri.
- 33 A. That is not the form I would normally take that note or  
34 note down in that case.
- 35 Q. You cannot exclude the possibility that this was a note  
36 of a discussion, where your words are hers, that you had  
37 with Doreen Kartinyeri between 30 June and 4 July.
- 38 A. Of course, I can't exclude it. I think that looking at

- 1 it, looking at it in context, I think that that is an  
2 extraordinarily improbable possibility.
- 3 Q. Where did you get the words -
- 4 COMSR: Haven't we gone through this?
- 5 MR ABBOTT: No. This is important for another  
6 reason.
- 7 XXN
- 8 Q. `Blood' with an arrow to `mother earth' is referable to  
9 a particular concept, isn't it.
- 10 A. Menstruation.
- 11 Q. Where did you learn about that.
- 12 A. In a Ngarrindjeri sense or in a general sense?
- 13 Q. I mean in a Ngarrindjeri sense. There is no need to be.
- 14 A. Certainly I had conversations about that with Doreen  
15 Kartinyeri.
- 16 Q. Anyone else.
- 17 A. I may have done.
- 18 Q. Not that you can recall though.
- 19 A. Not that I can recall.
- 20 COMSR
- 21 Q. Is it possible that you got it from some of the  
22 literature that you read on the topic.
- 23 A. Yes, it's possible. Yes, it's possible.
- 24 XXN
- 25 Q. Let me put it this way: I think it's fair to say that  
26 you have told us that in your view there existed, and  
27 has existed for hundreds of years, a Ngarrindjeri - as  
28 parts of Ngarrindjeri tradition of a concept of the  
29 resemblance between female reproductive organs and the  
30 Lower Murray area; that's so, isn't it.
- 31 A. That is certainly how it was represented to me.
- 32 Q. Do you also agree that you were told of another facet of  
33 the Ngarrindjeri tradition and its relationship to the  
34 Lower Murray area, that the waters around these islands  
35 were spiritual waters.
- 36 A. Yes.
- 37 Q. Were you also told that the waters were spiritual in a  
38 part because in one sense they could be seen - that is

- 1 in the sense of perceived or thought - to be menstrual  
2 blood.
- 3 A. No.
- 4 Q. Or that in any way menstrual blood is related to water.
- 5 A. Not in that sense.
- 6 Q. In any sense.
- 7 A. No, there's a reference to the problem of the  
8 relationship between menstrual blood and water in the  
9 literature.
- 10 Q. I know that you have made a note of it, haven't you.
- 11 A. I may have done.
- 12 Q. You got it in your Jenkens.
- 13 A. I may have done.
- 14 Q. You got it out of that.
- 15 A. It's elaborated in the document and it's very clear in  
16 Berndt & Berndt as well.
- 17 Q. Did you interpret what you were told about this  
18 tradition, or these facets of the tradition, as leading  
19 to a possible conclusion that any interference with the  
20 area by a bridge of the type that was proposed was, in  
21 Ngarrindjeri eyes, an interference with fertility.
- 22 A. I said that is what I've said.
- 23 Q. Why is there an interference with fertility.
- 24 A. In order to answer that, I would have to refer to  
25 appendix 2, and I can -
- 26 Q. You can't answer that by reference to what any other  
27 woman, or Doreen Kartinyeri told you prior to 29 June  
28 1994.
- 29 A. I don't believe so.
- 30 COMSR
- 31 Q. Is that a conclusion you came to yourself.
- 32 A. No. That's a statement that people said to me baldly,  
33 and it's also, in a sense, a conclusion I came to as a  
34 consequence of my analysis. In fact, if you want, it's  
35 part of the internal examination of the logic, so I  
36 think both - the answer is yes in both cases that people  
37 said that to me.
- 38

1 XXN

2 Q. You see, you now tell us that there is something in your  
3 reports, including the appendices, referable to  
4 foetuses and Hindmarsh Island and where women who had  
5 fallen pregnant - and that Hindmarsh Island is a place  
6 where women who have fallen pregnant by white men go to  
7 to abort their babies and bury them.

8 A. Referrable in the broader sense. I think that you are  
9 trying to push me into a reply and I would have to say  
10 that where you're pushing me to that effect, it is  
11 incorrect.

12 Q. I put it to you yesterday that - I don't want to repeat  
13 this at length - but you told us at the Graham's Castle  
14 meeting that Doreen Kartinyeri made a particular point  
15 of telling the women who attended there how Hindmarsh  
16 Island was, in her eyes, a place to which Ngarrindjeri  
17 women resorted for the purpose of aborting the product  
18 of unions with white people.

19 A. Yes.

20 CONTINUED

- 1 Q. You told us yesterday, that you made no reference to  
2 that facet at all in your report, appendices  
3 or otherwise.
- 4 A. Yes.
- 5 Q. That's not true, is it.
- 6 A. I think, in the strict way in which you formulate it, it  
7 is true.
- 8 Q. I am not formulating in a strict way, I am asking; I  
9 said any reference, direct, indirect, oblique, otherwise  
10 you see.
- 11 A. Look, I can't clarify this without reference. I just -  
12 you're putting to me a proposition with a particular  
13 reference, that is to the foetuses of white men, which  
14 sets the question in a particular way that doesn't  
15 exclude that other dimensions of that formulation may  
16 or may not be held elsewhere and in order to answer  
17 you adequately and accurately, I would have to refer you  
18 to appendix 2, which I am not prepared to do.
- 19 Q. I suggest you are playing semantic games with me and  
20 with this Commission.
- 21 A. Look, it is very plain, I am caught in an extraordinary  
22 cleft stick and my intention is not to mislead this  
23 Commission. My intention is to answer as fully as I can  
24 within that boundary, and you're forcing me to the  
25 boundary and trying to make it sound as if I am  
26 inconsistent, when, in a sense, what I am doing, is  
27 attempting to try and, to ride that boundary and, in  
28 fact, offer the Commission as much as I possibly can  
29 without, in effect, going against the confidentiality  
30 that I am bound by. And, if that appears to be a  
31 misleadingness it is not intended in any way. I am  
32 trying to be as specific and accurate and at the same  
33 time as open about this as I possibly can and I have  
34 done my best Mr Abbott.
- 35 Q. I will read to you something that occurred yesterday.  
36 P.5623. `Q. Why is there nothing in your report about  
37 foetuses.' Do you want to note this down as we go or  
38 should I just read it out to you.



- 1 A. Please read. I can note it as we go.
- 2 Q. You can have a look, save you noting it. Line 29 'Why  
3 is there nothing in your report about foetuses and that  
4 Hindmarsh Island is where the women, who had fallen  
5 pregnant to white men, went to abort their babies and  
6 bury them.' You answered 'I clearly didn't think it was  
7 relevant to Professor Saunders's deliberations in that  
8 way.'
- 9 A. That's so.
- 10 Q. You are telling the Commission there was nothing in your  
11 report about foetuses and about Hindmarsh Island being  
12 the place where women had fallen -
- 13 A. Foetuses and Hindmarsh Island and pregnancies to white  
14 men.
- 15 Q. Being what.
- 16 A. There are three propositions in that formulation.
- 17 Q. So there were three propositions in a formulation of  
18 what Doreen Kartinyeri told the ladies on the night of  
19 19 June at Graham's Castle, weren't there.
- 20 A. Insofar as I recall.
- 21 Q. But, when she later recounted this to you, there was  
22 still three propositions.
- 23 A. No.
- 24 Q. Which one had dropped off.
- 25 A. The proposition in that particular way.
- 26 Q. I am sorry. You have distinguished my question and  
27 claimed your answer is right, by saying I have got three  
28 propositions in my question.
- 29 A. Yes, but, you are using this as a way of actually making  
30 me reduce three propositions down to two, so that you  
31 can actually then turn around and say, this is in the  
32 secret envelope and I don't think that's - it is one  
33 thing to say that, there is an infinity set of  
34 possibilities and I am just going to choose one. It is  
35 another thing to take three and reduce it down to two  
36 and then, presumably, reduce it down to one.
- 37 Q. I am suggesting that you have misled the Commission  
38 yesterday and that your explanation so far, in answer to

1 my suggestion, that you misled this Commission, is,  
2 `Well Mr Abbott, you asked a question which contained  
3 three propositions. The question you asked contained  
4 proposition one, foetuses, proposition two, Hindmarsh  
5 Island and proposition three, Ngarrindjeri women falling  
6 pregnant to white men.' And you are saying, you didn't  
7 say anything that contained those three propositions to  
8 Professor Saunders and that's how we should view the  
9 answer that you gave `I clearly didn't think it was  
10 relevant to Professor Saunders's deliberations in that  
11 way.'

12 A. That's to the best of my recollection that is the case.

13 Q. I am now trying to clarify where I went wrong. Are  
14 you telling us, that Doreen - and you have already told  
15 us that Doreen Kartinyeri reiterated something of this  
16 nature, foetuses, Hindmarsh Island, Ngarrindjeri women,  
17 which did go in the report. I am asking you what, of  
18 the three propositions in my question, didn't go in your  
19 report.

20 OBJECTION Ms Pyke objects.

21 MS PYKE: The witness has said that she can't  
22 answer this and indeed it is an impossible answer,  
23 because to answer that is to tell what is in the  
24 report. I can only refer you again to the issues  
25 raised here. He can't get in by the back door what he  
26 can't get in by the front door.

27 COMSR: He may be able to get it in by the back  
28 door.

29 MS PYKE: The question is, `Which of these three  
30 didn't go in your report?' The only answer is this,  
31 `This is in the report.' The witness has to give  
32 evidence what is in the report to answer that question  
33 and I can only refer you again to, firstly, to your  
34 ruling, secondly, to the letter from Mr Ernst Willheim,  
35 the counsel for the Attorney-General's Department, about  
36 the areas in which this witness is limited. She cannot  
37 tell you, directly or indirectly, in any way, what is  
38 contained in the envelopes, by process of elimination or

1 by direct comment. That is exactly what Mr Abbott is  
2 doing. That's exactly what the witness is saying she  
3 can't do.

4 MR SMITH: Mr Willheim is not running this  
5 Commission.

6 MS PYKE: I appreciate that, but I am making a  
7 submission, based upon my - I am referring that to you  
8 because it directly encompasses what I am talking about  
9 and was taken into account by you in your direction.  
10 You can't say - it is a bit like me standing here and  
11 formulating a proposition, if I was, I suppose  
12 a monkey at a typewriter, sooner or later I would  
13 write about Doctor Fergie's secret envelopes. We can  
14 stay here till doomsday by a process of elimination and  
15 it is just not appropriate.

16 MR ABBOTT: I would like very briefly to respond. I  
17 am not here seeking to find out what is in the secret  
18 envelopes. I am seeking to find out what her answer is  
19 to my suggestion, that she misled the Commission in the  
20 answer she gave to my question at p.5623. Her answer  
21 so far, is 'Well, your question Mr Abbott, contained  
22 three propositions.' And what I understand to be the  
23 effect of what she is claiming, is that, her answer  
24 should be taken as saying, 'I didn't say anything in the  
25 report about those three propositions, because I didn't  
26 think it was relevant to Professor Saunders's  
27 deliberations in that way, but I did include something  
28 about some of the propositions' and I am asking her  
29 which of the propositions, in my question, was not in  
30 her report.

31 MS PYKE: Mr Abbott is alleging the misleading.  
32 If Mr Abbott wants to stand here and tell you what is  
33 misleading about that, the witness can answer that  
34 question. She says it is not misleading. She has given  
35 an answer. Now, if Mr Abbott wants to get into the  
36 witness box, as I have invited him to do before, refer  
37 to the secret envelopes and say in what way it is  
38 misleading, let him do it. But, this witness is not

1 required to answer questions about what is in the  
2 envelopes. And for her to answer a question that Mr  
3 Abbott is putting, I suggest to you quite improperly,  
4 that she has misled the Commission, when to answer that  
5 question she has to tell you what is in the envelopes,  
6 is entirely inappropriate and I ask Mr Abbott to  
7 withdraw his implication that there has been any  
8 misleading, because this witness can't answer the  
9 question without revealing what is in the envelopes.

10 MR ABBOTT: I persist with my allegation and I  
11 persist with my question. I left this Commission  
12 yesterday, with the view, that this witness had excluded  
13 from her report an important strand of the information  
14 imparted to the Aboriginal women at the Graham's Castle  
15 meeting on 19 June. Having heard what she said at  
16 p.5623, I am sure that you, and indeed, counsel  
17 assisting, understood her to be saying; Doreen  
18 Kartinyeri told the women at Graham's Castle about  
19 aborting foetuses, Hindmarsh Island and white men, but  
20 for reasons best known to herself, Dr Fergie declined to  
21 put any of that information in the report she sent to  
22 Professor Saunders.

23 COMSR: That is not how I understood Dr  
24 Fergie's evidence yesterday. I understood her to be  
25 saying, that part of the report, at least, whatever the  
26 size of it, does refer to that.

27 MR ABBOTT: No.

28 XXN

29 A. To fragments of that, that's right. And, the answer  
30 that I gave is also true, I still -

31 MR ABBOTT: What we have got so far is Doreen  
32 Kartinyeri telling the Aboriginal women about three  
33 propositions; foetuses, Hindmarsh Island, Ngarrindjeri  
34 women falling pregnant to white men. Dr Fergie said, I  
35 didn't say - I didn't retail that in my report to  
36 Professor Saunders, because I didn't think it was  
37 relevant to Professor Saunders's deliberations.

38 XXN

- 1 A. In that way. In that way. In that way.
- 2 COMSR: Perhaps I can clarify that.
- 3 MS PYKE: You didn't follow it up Mr Abbott.
- 4 COMSR
- 5 Q. It really wasn't necessary, for the purposes of the
- 6 report you were making, to actually detail anything.
- 7 A. Yes and most specifically that particular anything.
- 8 MR ABBOTT: If you read the rest of the transcript -
- 9 I won't read it out.
- 10 COMSR: No, because some of that, of course, may
- 11 well be -
- 12 MR ABBOTT: It is not, but if you read the rest of
- 13 the transcript, p.5623 to 5624, it is clear that my
- 14 question is entirely legitimate. Ms Pyke said I didn't
- 15 follow it up, I am now following it up and Ms Pyke is
- 16 objecting to me following it up.
- 17 XXN
- 18 A. Are you suggesting that I answered you incorrectly
- 19 yesterday?
- 20 MR ABBOTT: I am making my submissions to you
- 21 Commissioner, not to the witness.
- 22 MS PYKE: I am just saying, this is, I think, let
- 23 me me blunt; the way it is going on is an abuse of this
- 24 witness. As she says, she is in the cleft stick, she
- 25 cannot tell you what is in the envelope. She is being
- 26 accused of misleading. She can't answer properly
- 27 without reference to the envelopes. I direct you
- 28 withdraw that assertion and let's get on with it. It is
- 29 abusive to this witness. It is an abuse of the process
- 30 of this Commission, that she should be put through this
- 31 situation of trying to defend herself against most
- 32 serious allegations when she can't do, without
- 33 taking it into a multitude of factors.
- 34 COMSR: She is in an awkward position. If the
- 35 reason why she can't respond to a question is that it
- 36 directly reveals something in the appendices, but I
- 37 understood you to be making a distinction here.
- 38 MR ABBOTT: I am asking now that she said, `I didn't

- 1 retail to Professor Saunders about foetuses, Hindmarsh  
2 Island, Ngarrindjeri women who had fallen pregnant  
3 to white men' I am entitled to ask her, 'What did you  
4 retail? Did you retail foetuses and Hindmarsh Island?'
- 5 MS PYKE: To say that will reveal what is in the  
6 envelopes.
- 7 MR ABBOTT: She has already revealed -
- 8 MS PYKE: She hasn't revealed anything. She has  
9 told you that what you have put to her isn't there.
- 10 MR ABBOTT: Can I have an opportunity to make  
11 submissions? We have been debating this for almost half  
12 an hour and it has been backwards and forwards and I  
13 submit that it is an entirely proper question to clarify  
14 her evidence, at p.5623 and her answer, 'I didn't think  
15 it was relevant to Professor Saunders's deliberations  
16 in that way.' I am entitled to ask her 'In what way?'
- 17 COMSR: In what way was it not relevant?
- 18 MR ABBOTT: Yes.
- 19 COMSR
- 20 Q. That is the question.
- 21 A. Okay, if that's the question, I didn't think it was  
22 relevant to Professor Saunders that it was - that the  
23 babies of white men were aborted on Hindmarsh Island.
- 24 XXN
- 25 Q. That's the missing - that's the missing topic, that was  
26 not - of the three topics, three aspects that Doreen  
27 Kartinyeri retailed to the women on 19 June, which was  
28 not conveyed to Professor Saunders.
- 29 OBJECTION Ms Pyke objects.
- 30 MS PYKE: I urge you to, in accordance with your  
31 existing rulings, to disallow that question.
- 32 COMSR: I don't think you can take it any  
33 further. It is a matter, I suppose, of looking at the  
34 evidence in any case and seeing what conclusion it leads  
35 to.
- 36 MR ABBOTT: I would like to observe that the cleft  
37 stick that Ms Maureen Pyke speaks of, is a stick of the  
38 witness's own making I suggest. And Ms Pyke speaks of

- 1 difficulties for the witness. It is far more difficult  
2 for the cross-examiner and I suggest that this  
3 difficulty has been caused because of this witness's  
4 deliberate actions in putting a copy of her secret  
5 sacred envelopes and her field notebooks in the  
6 premises of Aboriginal Legal Rights Movement, which  
7 has now become some sort of criminal Alsatia.
- 8 MS PYKE: Might I say that is just nonsense as Mr  
9 Abbott knows this witness's cleft stick is on an account  
10 of your ruling, that she should not be required to  
11 reveal the contents of the secret envelopes, or  
12 information pertaining to that. That is quite a  
13 separate issue. It has nothing to do with the  
14 production of her notes or the secret envelopes.
- 15 MR ABBOTT: I will ask her.
- 16 MS PYKE: Your ruling would be the same.
- 17 XXN
- 18 Q. You took your notebook or notebooks - is there only one  
19 or more than one.
- 20 A. There is two.
- 21 Q. What period do the notebooks cover.
- 22 A. They have - there is some reference in them to the  
23 initiating of my contract with ALRM, but, in essence,  
24 they refer to the period after I was asked to make a  
25 report.
- 26 Q. Do the notebooks contain any other material.
- 27 A. Well, they have got phone numbers and things like that  
28 in. What sort of other material were you referring to?
- 29 Q. Were they fresh notes starting with reference to this  
30 consultancy.
- 31 A. Insofar as I can recall.
- 32 Q. Two of them.
- 33 A. Yes.
- 34 Q. What period do they cover. Do they cover different  
35 periods or both ran at the same time or what.
- 36 A. No, I think they are consecutive. To the best of my  
37 recollection they relate to that week in which I was  
38 working on the assessment.

- 1 Q. That is, after your instructions changed from being  
2 facilitative to report writing.
- 3 A. Yes, I mean, there are - there is, you know, addresses  
4 that people gave me in them and telephone numbers, and  
5 there is an account of the setting up of the contract  
6 but, in essence, that's true.
- 7 Q. The notebooks contain what, your researches at the  
8 library, when you got hold of a copy of Berndt and  
9 Berndt.
- 10 A. There is some short notes on that.
- 11 Q. What else do they contain.
- 12 A. They contain my notes on conversations with Sarah Milera  
13 for example.
- 14 Q. Doreen Kartinyeri.
- 15 A. I imagine so and telephone calls, presumably.
- 16 Q. You handed them over, I think on 11 August.
- 17 A. I don't know. I would need to have that confirmed.
- 18 COMSR
- 19 Q. About that time.
- 20 A. I don't know that - I mean, I have got a receipt. I  
21 didn't actually -
- 22 COMSR: I think this evidence has been given in  
23 any case.
- 24 MR ABBOTT: Yes it has. I want to tackle it on a  
25 different basis.
- 26 COMSR
- 27 Q. The notebooks of anthropologists are the  
28 anthropologists' personal property.
- 29 A. I think that you would, from time to time, actually have  
30 sort of - what is the word - vigorous - you could have  
31 a vigorous argument about whether they are the property  
32 of the anthropologist or the property of the -
- 33 Q. How do you consider them.
- 34 A. I think, in relation to this matter - I view -  
35 I don't know how. I view them as documents that the  
36 Aboriginal Legal Rights Movement had a call on in the  
37 sense, as the solicitors for the people who, in fact,  
38 gave me that information. I suppose it is a kind of



1 a - it is a difficult problem because, in part, you are  
2 talking about, sort of, people's intellectual property  
3 in a sense, that they gave you in a particular context,  
4 for a very particular purpose and I didn't see those as  
5 field books, for example, that I could take away and use  
6 for any other purpose, but that which I was - in other  
7 words, I didn't see them as a notebook that I put on my  
8 shelf and that, you know, in two years I might decide  
9 that I am going to write an account of the Hindmarsh  
10 Island affair and use them in the way that I might my  
11 normal field notes.  
12 CONTINUED

1 XXN

2 Q. If there is vigorous - as you say, vigorous debate or  
3 vigorous argument as to in whom the propriety rights  
4 those notebooks reposes, whether it be the  
5 anthropologist or the person who engages the  
6 anthropologist, why did you hand them over if you were  
7 of the view that there is an issue as to who owns them.

8 A. Because they were asked for by people whom I thought  
9 had a -

10 Q. A possible right.

11 A. No, I think there is two issues here. One is the issue  
12 of safekeeping and it seemed to me that the Aboriginal  
13 Legal Rights Movement, as the people who had  
14 commissioned that work, were an appropriate place for  
15 those notes to be held in safekeeping. The right to the  
16 notes, the right to the material, in a sense, it seems  
17 to me, is a matter between me and the people who gave me  
18 the information. So that, for example, I have had this  
19 happen to me in another context, for example, where I  
20 have genealogies -

21 Q. I am not asking you in another context, I am asking you  
22 in this context.

23 COMSR: Yes, we seem to be taking a fairly long  
24 time to make progress here.

25 MR ABBOTT: Because of the length of the witness's  
26 answers.

27 XXN

28 Q. You say you were asked to hand them over. By whom.

29 A. In the form of a letter that went to my solicitors.

30 Q. No, any other form.

31 A. No.

32 Q. Any telephone call.

33 A. Not that I am aware of, no.

34 Q. So, you got a letter from ALRM.

35 A. Through my solicitor.

36 MR ABBOTT: I haven't seen that letter. Could it be  
37 produced?

38 COMSR: Is it necessary to go into this aspect?

1 MR ABBOTT: Yes, it is. It wasn't produced when Mr  
2 Smith was questioning.

3 LETTER PRODUCED

4 XXN

5 Q. Is it the letter of 4 August 1995.

6 A. I don't have those documents with me.

7 Q. Looking at a copy of the letter, now before you.

8 MR ABBOTT: And I call for the production of the  
9 letter of 28 July 1995 to which this letter refers.

10 MS PYKE: It has been produced.

11 MR ABBOTT: Yes, I know. I haven't got a copy,  
12 that's all. Counsel assisting has. 28 July.

13 LETTER PRODUCED

14 WITNESS: Can I have a copy of the other  
15 correspondence that relates to this?

16 COMSR: Yes, it is clear that the witness  
17 doesn't have those notes.

18 MR ABBOTT: Yes, but I suggest this is a deliberate  
19 ploy to put them beyond your reach. I mean, the letter  
20 of 28 July contains, as its last comment 'Further we - '

21 XXN

22 Q. This is on behalf of you, Dr Fergie 'Further we would be  
23 grateful if you would write to us setting out any  
24 requests or directions that you may wish Dr Fergie to  
25 consider relating to the field notes kept by her in the  
26 course of preparing that report.' Your lawyers raise on  
27 your behalf and suggest the ALRM might write to your  
28 lawyers and set out any requests or directions for your  
29 consideration in relation to your field notes. That's  
30 so, isn't it.

31 A. It appears to be so.

32 Q. Did you instruct them to do that.

33 A. We certainly had discussions about the matter. I don't  
34 know - I can't recall whether indeed I specifically  
35 instructed them, but, on the face of it, presumably I  
36 may well have done.

37 Q. Or not, as the case may be, but the response that comes  
38 back is in relevant part from ALRM signed Sandra

- 1 Saunders of 4 August 'In order to preserve their  
2 security, confidentiality and legal professional  
3 privilege, we request that all such notes be returned to  
4 the ALRM for safekeeping on behalf of the clients of Tim  
5 Wooley.' Who were the clients of Tim Wooley.
- 6 A. My understanding was that the clients of Tim Wooley in  
7 this matter were, in fact, my informants.
- 8 Q. What, Doreen Kartinyeri, Sarah Milera, Edie Rigney,  
9 Maggie Jacobs and Connie Roberts.
- 10 A. That was my understanding.
- 11 Q. Who told you that.
- 12 OBJECTION Ms Pyke objects.
- 13 MS PYKE: Tim Wooley has given that evidence in  
14 this Commission.
- 15 MR ABBOTT: Yes, in 1995, not in 1994.
- 16 MS PYKE: It relates to that.
- 17 MR ABBOTT: Not at the time of the creation of those  
18 notes, the field notes.
- 19 MS PYKE: They were created in 1994. At the time,  
20 they were clients.
- 21 WITNESS: There was a problem with the field  
22 notes, which is that after the period in which I had  
23 taken the copy of the secret appendices which I had and  
24 delivered it to the ALRM, my field notebooks were no  
25 longer in the safe deposit box that they had been in  
26 with the -
- 27 XXN
- 28 Q. I am just asking whether this was a set up job, or  
29 whether it happened to occur unrelated to you.
- 30 A. I don't understand what you mean by 'a set up job'.
- 31 Q. I will put it bluntly. That to your knowledge your  
32 solicitors were conspiring with ALRM to create  
33 correspondence which would have the end result of your  
34 field notebooks going to ALRM where it was thought  
35 unlikely that they would ever be produced to this  
36 Commission.
- 37 OBJECTION Ms Pyke objects.
- 38 MS PYKE: That is a most improper question. If Mr

- 1 Abbott is going to add to his list of potential  
2 conspirators in this - I think we are up to about ten  
3 now - myself and Ms Eszenyi and this witness, I think  
4 that the time has come where we can no longer -  
5 COMSR: I don't think the witness can answer  
6 that question, in any event.  
7 MS PYKE: I ask that it be withdrawn. I ask that  
8 you rule that it be withdrawn.  
9 COMSR: This witness can't answer whether  
10 somebody else may or may not be conspiring or anything  
11 else.  
12 MS PYKE: If that is an allegation, I ask that it  
13 be withdrawn, or my instructor and I will have to ask  
14 for an adjournment with a view to taking some advice  
15 ourselves. It is a most serious allegation and we will  
16 need to take our own advice.  
17 I ask for it to be withdrawn or for an adjournment.  
18 MR ABBOTT: I maintain what I said.  
19 COMSR: But it is not a question the witness can  
20 answer, Mr Abbott. You are putting to the witness  
21 whether someone else is conspiring. It is just not a  
22 question, apart from what the objection taken by Ms Pyke  
23 is and to her exception to it being categorised as such.  
24 MR ABBOTT: This is a situation where, not only have  
25 this witness's copy of the envelopes but also her two  
26 field notebooks gone to ALRM. They went to ALRM on 11  
27 August 1995, within two days after Betty Fisher had, in  
28 effect, told you that she regarded all this stuff that  
29 related to women's business as secret and sacred.  
30 And I will be making submissions, in due course, as  
31 to the coincidence of the date.  
32 COMSR: That may be a matter for submissions, in  
33 due course, but it is another thing to ask this witness  
34 whether someone else is conspiring.  
35 MR ABBOTT: As a result of agreement. I withdraw  
36 `conspiring'.  
37 XXN  
38 Q. As a result of agreement.

1 A. I think that that is absolutely incorrect and I think it  
2 is - to be perfectly frank, we hung about trying to  
3 ascertain whether we would be summonsed or not before,  
4 in fact, we took any action. And I - and, in fact, that  
5 action was taken after, as I understand it, very  
6 explicit requests had been made of the Commission about  
7 whether or not I would be summonsed. And whether or not  
8 - I mean, there was no intention at all -

9 Q. I tell you why I am doubting your bona fides in this, so  
10 you can comment: to your knowledge, did anyone bother to  
11 tell the Royal Commission or counsel assisting that this  
12 was proposed. That there was going to be a hand over of  
13 the field notebooks to ALRM.

14 OBJECTION Ms Pyke objects.

15 MR ABBOTT: Are you objecting to the question?

16 MS PYKE: Yes, I am.

17 MR ABBOTT: On what basis?

18 MS PYKE: That the witness shouldn't be required  
19 to discuss matters that are privileged.

20 COMSR: I doubt that this line of questioning,  
21 Mr Abbott, is going to assist me.

22 MR ABBOTT: I want to know whether we are dealing  
23 with a responsible anthropologist or a partisan  
24 anthropologist. And I suggest evidence of a partisan  
25 anthropologist is the fact that these field notebooks  
26 have been placed beyond the realm of this Royal  
27 Commission without the Royal Commission or your counsel  
28 assisting having been informed of the proposed course of  
29 action. My questions would not have been asked if the  
30 warning had been given to the Royal Commission that this  
31 was going to happen and it had had an opportunity of  
32 doing something. In fact, as I understand it, no  
33 warning was given and counsel assisting did not find out  
34 until last week that this, in fact, had happened.

35 Now, it will be for you to judge whether that is an  
36 irresponsible attitude for an anthropologist to take or  
37 a responsible attitude. I can tell you what my  
38 submission will be.

- 1 MS PYKE: Let me say this: given Mr Abbott's  
2 grandstanding with a view to attracting a bit of  
3 coverage of him in the media, it was quite clear that  
4 they were handed over and it was for the purposes of  
5 ensuring their security and confidentiality. There was  
6 no suggestion other than the safekeeping of the notes.
- 7 MR ABBOTT: It could have been done by handing them  
8 into the Royal Commission.
- 9 MS PYKE: We were not even - this witness was not  
10 even a witness, as this Commission well knows.
- 11 MR SMITH: Have a look at para.2 of the letter of  
12 28 July.
- 13 MS PYKE: I have seen para.2 of the 28th.
- 14 MR SMITH: It is an acceptance that she is going to  
15 be a witness in the Commission.
- 16 COMSR: We are spending an inordinate amount of  
17 time on this, Mr Abbott, and you still have got, as I  
18 understand it, a whole area of cross-examination to put  
19 to the witness.
- 20 MR ABBOTT: Yes.
- 21 COMSR: That we are just not getting around to  
22 while we are dealing with these aspects.
- 23 MR ABBOTT: I take it these two letters are exhibits  
24 before you?
- 25 MR SMITH: They are marked for identificaiton, at  
26 the moment.
- 27 MR ABBOTT: I ask that they be received as exhibits.
- 28 MR SMITH: There is no claim for privilege in  
29 relation to them.
- 30 MR MEYER: Can we sort that out? This is part of  
31 MFI 243. That is the index.
- 32 MR SMITH: Yes.
- 33 MR MEYER: That is the index of documents that I  
34 have got.
- 35 COMSR: Yes, I understand that there is  
36 virtually no - there has been no objection as to the  
37 documents themselves. Is that the position?
- 38 MR SMITH: Just dealing with this, this particular

- 1 document, just dealing with that: there is no objection  
2 to it. No.6 and no.8, you could receive them fully.  
3 EXHIBIT 243(6) MFI 243(6) tendered by Mr Abbott.  
4 Admitted.  
5 EXHIBIT 243(8) MFI 243(8) tendered by Mr Abbott.  
6 Admitted.  
7 XXN  
8 Q. Did Doreen Kartinyeri ever tell you, in relation to the  
9 proposed construction of a bridge on Hindmarsh Island,  
10 that it would have an impact on sites.  
11 A. I don't believe she would have used that term `sites'.  
12 Q. Whether she used the term or not, did she ever tell you,  
13 put aside - we know that she was telling you it would  
14 have an impact on Ngarrindjeri tradition. Did she ever  
15 tell you it would have an impact on Ngarrindjeri sites.  
16 A. I don't understand actually what you mean by that.  
17 Q. Sites in the sense of physical bases.  
18 A. Yes.  
19 Q. She did tell you that.  
20 A. Yes.  
21 Q. What sites did she mention.  
22 A. The area where the pylons went into the ground, for  
23 example, and into the water.  
24 Q. That would have an impact, the pylons would have an  
25 impact on sites known to Ngarrindjeri people.  
26 A. That's a different proposition. But, if you are talking  
27 about physical places, the answer is yes.  
28 Q. What was the significance of where the pylons went in,  
29 as claimed by her.  
30 A. Doreen suggested that the pylons going into the ground  
31 would be like a spear into her side (INDICATES), or  
32 something going into her side (INDICATES).  
33 CONTINUED



- 1 Q. Maybe they would be, but how does that site - that is,  
2 the area where the pylons have been driven in - impact  
3 on Ngarrindjeri sites.
- 4 A. It is Ngarrindjeri land.
- 5 Q. You say it impacted on her body. That is not a  
6 Ngarrindjeri site.
- 7 A. The land is.
- 8 Q. Sorry.
- 9 A. The land is, and Doreen, in effect, is commenting on her  
10 - she is talking about her sense of her bodily  
11 relationship to the land.
- 12 Q. She had a relationship to this land, did she. Is that  
13 what she claimed.
- 14 A. I think you need to clarify the way you have said that,  
15 because I find it quite offensive in the way in which  
16 you have phrased it.
- 17 INTERJECTOR: So do we.
- 18 XXN
- 19 Q. Did she claim to have a relationship to the specific  
20 bridge corridor.
- 21 A. Insofar as it was proposed that the ground would be  
22 disturbed, yes.
- 23 Q. Did you ask her what that relationship was.
- 24 A. It was very evident from the way in which she talked  
25 about it, what that relationship was.
- 26 Q. Tell us, what did she say about it.
- 27 A. She basically said that she could feel it as if it was  
28 happening to her own body.
- 29 Q. But how did she herself claim a relationship: because  
30 she had been there before, or knew about it, or what.
- 31 A. Because she's a Ngarrindjeri woman and that is  
32 Ngarrindjeri land in her terms. She didn't say it in  
33 that way. That's the inference I took.
- 34 Q. Because that was Ngarrindjeri land, all of this area, so  
35 it wouldn't matter where the bridge was built, would it.  
36 She would always demonstrate with reference to pylons  
37 going into her side.

- 1 A. If you are asking about the pylons, then you're right,  
2 it seems to me that it is possible that you could take  
3 that inference possibly anywhere else in Ngarrindjeri  
4 territory. Maybe you might not. But Doreen's specific  
5 objections have a very specific traditional base - base  
6 in tradition, sorry.
- 7 Q. If there was a bridge going from the Clayton Peninsula  
8 across to Hindmarsh Island, you would expect Doreen's  
9 reaction to be the same. That's on the northern side of  
10 Hindmarsh Island.
- 11 A. Where is the Clayton Peninsula?  
12 MR SMITH INDICATES ON MAP
- 13 A. I am not sure that the response would be the same.
- 14 Q. What would be the difference.
- 15 A. I don't know sufficient about the meaning of that  
16 Peninsula in Ngarrindjeri tradition and the tradition  
17 that Doreen -
- 18 Q. But your thesis, as advanced in your recent answers, is  
19 that Doreen Kartinyeri has no special relationship with  
20 this area - that is, special in the sense of different  
21 from other Ngarrindjeri women - that she, and presumably  
22 all Ngarrindjeri women, according to what she told you,  
23 would feel a sense of hurt, if a bridge were constructed  
24 anywhere in the area which is sacred to Ngarrindjeri.  
25 That's your thesis, isn't it.
- 26 A. No, that's an answer to a proposition, a specific  
27 proposition you put to me.
- 28 Q. Is that your answer.
- 29 A. To what proposition?
- 30 Q. To the proposition I put to you.
- 31 A. Which one?
- 32 Q. Look, I will move onto something else if you are playing  
33 those sort of games.
- 34 MS PYKE: The witness is endeavouring to answer  
35 the question, and when Mr Abbott reads the transcript he  
36 might see what the witness's difficulty has been.
- 37 MR ABBOTT: The witness is not endeavouring to  
38 answer the question, and I will move onto something else.

1 XXN

2 Q. Is there any other way that you can suggest that Dr  
3 Doreen Kartinyeri was related to the site proposed by  
4 the bridge corridor.

5 A. My recollection is that all - well, most, if not all,  
6 the Ngarrindjeri women who were in the Graham's Castle  
7 meetings were concerned about the presence of  
8 archaeological sites in the vicinity of the bridge  
9 corridor.

10 Q. So, when you mentioned that the bridge will have an  
11 impact on sites, are you talking about anthropological  
12 concepts or archaeological concepts.

13 A. I'm talking about statements people made about the  
14 presence of middens and possible skeletal remains in the  
15 bridge's corridor.

16 Q. Let me take you to p.8 of your report. You say, in the  
17 first complete paragraph, line 7 'Of particular  
18 importance to this report is an account given to me by  
19 Doreen Kartinyeri, a custodian of women's secret  
20 knowledge, concerning the impact on Ngarrindjeri  
21 tradition and sites' plural 'posed by the construction  
22 of the proposed Hindmarsh Island Bridge. I have  
23 attached this account as a confidential appendix,  
24 appendix 2'. What sort of sites are you talking about.

25 A. I make a distinction, in the body of the report, between  
26 sites in respect of the bridge corridor and sites in  
27 respect of the localised area.

28 Q. What sort of sites are you talking about in that  
29 sentence.

30 A. I am talking about an area of significance in  
31 Ngarrindjeri tradition.

32 Q. Which area.

33 A. The area of Hindmarsh Island and Goolwa.

34 Q. Hindmarsh Island and Goolwa. What are the sites plural.

35 A. The word 'sites' might be misleading. I am referring,  
36 as I read it, to an area of significance, and the sites  
37 - there are specific sites to which that word was

- 1 attached, and those are the sites of middens, a common  
2 camp site in the vicinity of Amelia Park.
- 3 COMSR
- 4 Q. These are sites that are, as it were, public knowledge,  
5 or are they sites of restricted knowledge.
- 6 A. It depends what the status of my report is, I think.  
7 I'm not clear on that myself.
- 8 XXN
- 9 Q. If this is a reference to archaeological sites, you are  
10 talking to the sites which we have been told about in  
11 open session in a general way, which are said to be on  
12 the Goolwa foreshore and on the Hindmarsh Island  
13 foreshore. Is that generally the sites that you are  
14 referring to, if this is referable to archaeological  
15 sites.
- 16 A. It may also refer to the sites that Rhonda Agius drew my  
17 attention to.
- 18 COMSR: We don't want to go into any sites which  
19 are not a matter of public record in a way that would  
20 identify them at all.
- 21 MR ABBOTT: I am conscious of that.
- 22 XXN
- 23 Q. So is it true, as your report states, that Doreen  
24 Kartinyeri gave you an account concerning the impact on  
25 Ngarrindjeri tradition and archaeological sites posed by  
26 the construction of the proposed Hindmarsh Island  
27 bridge.
- 28 A. I think how I word it is ambiguous, when you are asking  
29 me that question.
- 30 Q. I suggest to you it is not true.
- 31 A. I beg your pardon?
- 32 Q. I suggest how you have worded it is not true, and that  
33 Dr Kartinyeri didn't give you an account of the impact  
34 on Ngarrindjeri tradition and archaeological sites posed  
35 by the construction of the proposed Hindmarsh Island  
36 bridge.
- 37 A. Yes, Doreen did refer me to archaeological sites, those

- 1 sites we visited, but I'm not sure that's implied in  
2 this sentence.
- 3 Q. To the ordinary reader, I suggest, it is implied. The  
4 words are 'Of particular importance to this report is an  
5 account given to me by Doreen Kartinyeri, a custodian of  
6 women's secret knowledge, concerning the impact on  
7 Ngarrindjeri tradition and sites posed by the  
8 construction of the proposed Hindmarsh Island Bridge. I  
9 have attached this account' that's Doreen's account 'as  
10 confidential appendix number 2'.
- 11 A. I can't imagine an everyday reader interpreting 'sites'  
12 in that context as meaning specifically archaeological  
13 sites. I think it is an extraordinary suggestion, but,  
14 in any case, I can't account for how other people might  
15 read that sentence.
- 16 Q. Whilst it may be an extraordinary suggestion, that's how  
17 you interpreted it, first of all, when I referred you to  
18 the passage, isn't it.
- 19 A. I was looking at it out of context. I don't -
- 20 Q. We will pass onto something else. You speak, at p.11,  
21 in the following lines, middle of the page 'Many of the  
22 women at the Graham's Castle meetings were aware of  
23 Sarah's vision of significance in Ngarrindjeri tradition  
24 of Hindmarsh Island and the waters of the Goolwa  
25 Channel.'
- 26 COMSR: Again, I don't want to get into  
27 mentioning matters that are not in the public arena.
- 28 MR ABBOTT: No.
- 29 COMSR: It is not only yourself and the witness  
30 who has got problems in this area, Mr Abbott. I am also  
31 faced with problems.
- 32 MR ABBOTT: Yes.
- 33 XXN
- 34 Q. You said that she mentioned these often, that is, these  
35 signs of spiritual links with her ancestors when  
36 presenting versions of her vision.
- 37 A. Yes.
- 38 Q. You say that, don't you.

- 1 A. Yes, I clearly say that.  
2 Q. How many visions did she tell you she had had.  
3 A. I didn't count them.  
4 Q. They were numerous though, were they.  
5 A. There were several.  
6 Q. How many different versions of the visions did she tell  
7 you she had had.  
8 A. Insofar as each time she told me about them they were a  
9 different version, I don't know, several.  
10 Q. So we have got several visions and several versions of  
11 each vision that Sarah Milera told you about.  
12 A. Possibly. I don't know that she told me about each of  
13 them each time we talked.  
14 Q. As well as telling you about her visions and versions of  
15 her visions, she also told you about the unusual  
16 behaviour of a Murray magpie.  
17 A. That's right.  
18 Q. What did she say was unusual about the behaviour of the  
19 Murray magpie.  
20 A. She talked about the way in which it acted -  
21 Q. You tell us, please. I would like to know.  
22 A. I can't actually recall the wording, but she said that a  
23 Murray magpie was her Ngatchi, and in a sense -  
24 Q. I don't want you to tell us what she said about it being  
25 a Ngatchi. I have deliberately not referred you to  
26 that. I have asked you a question that Sarah Milera  
27 told you about unusual behaviour of a Murray magpie. I  
28 am asking you to tell us what she said about what was  
29 unusual about the behaviour of the Murray magpie.  
30 A. I can't recall in absolute detail, but she talked about  
31 the way in which it moved in relation to her, and the  
32 interpretation that she made of it.  
33 Q. It came to too close or -  
34 A. The significance she drew from that.  
35 Q. Hung around like an albatross, or what.  
36 A. No, particular moves. I can't recall what they were,  
37 but they were clearly not normal movements for a Murray  
38 magpie as she knew it, and she saw them as exact.

- 1 Q. I would like you to tell us what she recounted of these  
2 so called unusual movements of a Murray magpie. Did  
3 they appear to be unusual movements of a Murray magpie  
4 to you.
- 5 A. Insofar as I know anything about Murray magpies -
- 6 Q. They did appear to be unusual.
- 7 A. Well, I don't know much about the Murray magpies,  
8 frankly.
- 9 Q. In what way did they appear to be unusual to you.
- 10 A. Because she drew - she said these were exact movements  
11 and they were movements out of which she could draw  
12 significance.
- 13 Q. No, you asked her about the movements of a Murray  
14 magpie.
- 15 A. I didn't ask her. She told me.
- 16 COMSR: Does it matter how they appeared unusual  
17 to this witness? Isn't it more to the point -
- 18 MR ABBOTT: I want to know if there is any substance  
19 to this -
- 20 COMSR: The witness obviously would be in no  
21 position to be a judge of that from what she has told  
22 me.
- 23 MR ABBOTT: But she said that she, herself, when  
24 Sarah Milera recounted it, thought to herself `Aha,  
25 those are unusual movements of a Murray magpie'. I just  
26 want to know -
- 27 COMSR: I don't think the witness has said any  
28 such thing. What she has said is that Sarah Milera  
29 represented it to her as being unusual movements. The  
30 witness then says: well, she wouldn't know, she doesn't  
31 know sufficient about it.
- 32 MR ABBOTT: I want to make sure. We have to dot  
33 every I and cross ever T with this witness.
- 34 XXN
- 35 Q. Are you telling us that you now can't remember the  
36 movements described by Sarah Milera, and you can offer  
37 no assistance, because of your limited relationship with

- 1 Murray magpies, as to whether what she described was  
2 usual or unusual.
- 3 COMSR: There are two questions there.
- 4 A. So lets start with the first one. Say again.
- 5 XXN
- 6 Q. Are you telling us that you now cannot remember what  
7 Sarah Milera described was the unusual movements of a  
8 Murray magpie.
- 9 A. In precise detail.
- 10 Q. Or at all really.
- 11 A. Well, no. I know that she gave me some very precise  
12 descriptions, but I can't remember what they were.
- 13 Q. Either specifically or generally, you can't remember,  
14 can you. You don't know whether she classified the  
15 Murray magpie as hopping, scratching, rolling over.
- 16 COMSR: Is this going to take us anywhere?
- 17 Q. Of all the things that you were told either by Sarah  
18 Milera or Doreen Kartinyeri, you are not saying that  
19 everything you were told found its way into your report.
- 20 A. No, that's right.
- 21 MR ABBOTT: But the unusual behaviour of the Murray  
22 magpie did, and that's why I'm cross-examining on it.  
23 Top of p.11.
- 24 XXN
- 25 A. My memory is something to do with how it walked along  
26 power lines or it was in a tree or something, but I  
27 wouldn't want to be held in any way to that vague sense  
28 of it, but it did have to do with the way the bird  
29 moved. It is not dissimilar in the way some of your  
30 clients talked about the significance of Willy wagtails,  
31 for example. If you asked me now, I couldn't actually  
32 remember if they lay on their back, or whatever, in  
33 order for people to draw cultural significance from  
34 those actions of those birds.
- 35 Q. Did you ask her about the ancestral spear that she  
36 claimed to have found.
- 37 A. She told me about it.



- 1 Q. What did she tell you about the ancestral spear that she  
2 found.
- 3 A. She told me she had found one.
- 4 Q. Did you ask to see it.
- 5 A. No.
- 6 Q. Did you ever hear that it had been given to her by a man  
7 at Strathalbyn.
- 8 A. I heard such an allegation made in this place - or such  
9 a suggestion made in this place.
- 10 Q. You have used Sarah Milera's claims, her amazing claims,  
11 to buttress up your argument in your report, haven't  
12 you.
- 13 A. No. Because what you are failing to do is understand  
14 the critical dimension of Dreaming and visions in  
15 Ngarrindjeri culture, as amongst many cultures, and that  
16 what you see as an absurdity is not an absurdity at all.  
17 It is a piece of real significance.
- 18 Q. It doesn't matter whether there is any foundation in  
19 fact or not to you, does it. It doesn't matter, for the  
20 purpose of the significance of Sarah's claims, whether  
21 the Murray magpie acted perfectly normally, whether the  
22 cockle shells were found in a perfectly normal location,  
23 and whether she never had a spear at all, does it.
- 24 A. What is significant to me is the significance that's  
25 attached to it, that's right.
- 26 COMSR
- 27 Q. The significance she attached to it.
- 28 A. That is attached either by her or somebody else. So  
29 that, for example, an anthropologist might go to a  
30 divination, where something is taken out of somebody's  
31 side, anthropologically it is not important whether or  
32 not, you know, they divine something out of, or shaman  
33 or suck something out of somebody's side or not. In a  
34 sense, what is important is the way in which that is  
35 understood culturally. How, in a sense, in a cultural  
36 frame, that seems a sensible thing to do, amongst other  
37 things, that would be interesting to an anthropologist.

1 XXN

2 Q. The important fact is that it was said to you by Sarah  
3 Milera, not that it was necessarily true.

4 A. It was important to me that it was said by Sarah and, in  
5 fact, that other people referred to those things too.

6 Q. But not important as to whether it was true, is it.

7 A. Well, the word 'true' in this sense, it seems to me is  
8 not a relevant concept to bear on it. It is a very  
9 culturally bound one. You are actually trying to judge  
10 somebody else's culture, and the significance that they  
11 attach to action in the world from a perspective which,  
12 in fact, is not held by all people in our culture by any  
13 means, but of a gross empiricist. And it seems to me  
14 that that's not a valid test of somebody else's cultural  
15 beliefs.

16 COMSR

17 Q. It is more a question of whether it is a truly held  
18 belief, rather than whether it is a belief which is  
19 true.

20 A. Yes, and it might be - yes - no, in short that's the  
21 answer.

22 XXN

23 Q. We go to her next claim that she was a descendant of  
24 Pulami, the last Rupulle or paramount chief. You never  
25 checked that, did you.

26 A. No, I did not.

27 Q. Again, it doesn't make any difference to you whether  
28 that is true or false in an absolute sense, does it.

29 A. In respect of this report, in fact, it certainly didn't.

30 Q. I will not bother asking any questions as to whether it  
31 was true or false, because it doesn't make any  
32 difference. You go on to say that -

33 COMSR: A lot of this material in the report has  
34 been covered, has it not?

35 MR ABBOTT: These aspects have not been covered.

36 XXN

37 Q. I want to refer you to what you said about the secret  
38 appendices. I have referred you to p.5 already.

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D.J. FERGIE XXN (MR ABBOTT)

- 1 A. Of my report?
- 2 Q. Yes. I think I have already referred you to p.5.
- 3 CONTINUED

1 P.5, I think you mention at p.5 `Doreen Kartinyeri gave  
2 an account of the women's secret knowledge of the  
3 cultural terrain of the Lower Murray' - that is the  
4 Graham's Castle meeting, and that was what you imparted  
5 in part in your secret appendices. You have told us  
6 that. I next go to p.12 - I am misleading you. I think  
7 these are references to Saunders' report. Do you have  
8 the Saunders' report before you, Exhibit 17.

9 A. I have got it here.

10 Q. Do you have the Saunders' report.

11 A. I do.

12 Q. Would you look at p.5, it's the last paragraph on p.5,  
13 beginning `Knowledge of these matters'.

14 A. I've found it.

15 Q. Professor Saunders said, apropos of the secret sacred  
16 women's business: `Knowledge of these matters lies  
17 largely within the secret oral tradition of the  
18 Ngarrindjeri women', and then she goes on to talk about  
19 how it was disclosed to her. She said `Only a general  
20 account of the tradition, therefore, is contained in the  
21 body of the report. A more comprehensive account  
22 appears in a report prepared for the Aboriginal Legal  
23 Rights Movement by anthropologist Dr Deane Fergie who  
24 had separate meetings with the Ngarrindjeri women  
25 concerned and who received an account of the traditions,  
26 which is entirely consistent with the account given to  
27 me. Dr Fergie's account includes two confidential  
28 appendices', she has, `To be read by women only, which  
29 will be submitted with the other representations made to  
30 me'. Do you understand there that when Professor  
31 Saunders is talking about `knowledge of these matters',  
32 that is a reference to the preceding paragraph.

33 A. It's very hard for me to put myself in Professor  
34 Saunder's mind.

35 Q. I am putting it you as an intelligent reader.

36 A. It's clearly an interpretation that could be made.

37 Q. If we look at the preceding paragraph which, therefore,  
38 is - maybe one construction and be only a general

1 account of what is in your secret, appendix no.2, we  
2 read in Professor Saunder's view of your secret appendix  
3 two, 'viewed from this perspective', that 'It's the most  
4 important place for the Aboriginal people of the Lower  
5 South' - which is something Doreen Kartinyeri told you,  
6 isn't it.

7 A. Yes.

8 Q. 'Viewed from that prespective, the bridge presents a  
9 threat to the area in the form of a permanent, prominent  
10 and physical link above the water between two parts of  
11 the territory, which would, in accordance with  
12 Ngarrindjeri tradition, render the cosmos and human  
13 beings within it sterile and unable to reproduce'.  
14 That's a fair summary of appendix 2.

15 A. No.

16 Q. Has she got it wrong.

17 A. No.

18 Q. Appendix 2, which she says in giving a general account,  
19 generally deals with how the bridge represents a threat  
20 in the form of a permanent, prominent and physical link  
21 between two parts in the territory which, in  
22 Ngarrindjeri tradition, would render the cosmos and  
23 human beings sterile.

24 A. I think it's quite possible that Professor Saunders came  
25 to that judgment from a variety of ways.

26 Q. Mainly from appendix 3.

27 A. I suspect, actually, that that may have contributed. I  
28 also expect her direct discussions with Doreen  
29 Kartinyeri may well have contributed to the form of that  
30 view. I think really that is, you know, this is just  
31 speculation on my part about how she came to form that  
32 view.

33 Q. Before 29 June, which was the day of those long  
34 telephone discussions where you were typing out on your  
35 computer what Doreen was retailing to you, had any  
36 Ngarrindjeri Aboriginal women told you that linking  
37 Hindmarsh Island to the mainland above the water would,  
38 in accordance with Ngarrindjeri tradition, render the

- 1 cosmos and human beings within it sterile and unable to  
2 reproduce.
- 3 A. No, not in those terms.
- 4 Q. Again, I don't want to harp on semantics, but anything  
5 like that.
- 6 A. Yes, some things like that.
- 7 Q. Who.
- 8 A. Certainly Doreen Kartinyeri.
- 9 Q. When.
- 10 A. I think that she probably said something like that in a  
11 variety of contexts.
- 12 Q. We know the context in which it was vented before 29  
13 June. On what occasions prior to 29 June did she say  
14 anything like that. You said she said things like that  
15 at the Graham's Castle meeting on 19 June.
- 16 A. There is no way she used those kinds of words on the  
17 19th.
- 18 COMSR
- 19 Q. She's said something which, when you interpreted it, you  
20 drew that inference from it.
- 21 A. I think it's drawable from it. Whether I drew it from  
22 that time, it's not clear. She certainly basically gave  
23 a strong impression she saw the building of the bridge  
24 to have a cataclysmic effect.
- 25 XXN
- 26 Q. Sterile, unable to reproduce; that sort of effect.
- 27 A. I don't think that she referred specifically in those  
28 terms.
- 29 Q. She may have on 19 June to the women at Graham's Castle  
30 - yes.
- 31 NOT ANSWERED
- 32 COMSR
- 33 Q. But, in any event, however she referred to them, that  
34 was the interpretation that you put on it in terms of  
35 Ngarrindjeri culture.
- 36 A. Certainly, by the time I had completed my assessment, it  
37 was a conclusion judgment that I had arrived at.
- 38 Q. Although she might not have mentioned those factors, you

1 thought that it was a reasonable inference to draw.

2 A. Yes.

3 XXN

4 Q. In bald terms, did Doreen Kartinyeri, before 29 June,  
5 tell you that Hindmarsh and Mundoo Islands have to  
6 remain separate, otherwise Ngarrindjeri people would not  
7 continue to exist.

8 A. No, not in those terms.

9 Q. Anything like that.

10 A. I don't recall, in fact, Doreen making that relationship  
11 between Hindmarsh and Mundoo that firm in a sense.

12 Q. I suggest that your report, in particular your secret  
13 appendices and Professor Saunders' report, proceeds on  
14 the erroneous basis that someone was going to connect  
15 Hindmarsh and Mundoo.

16 A. Not at all. Mundoo came into connection in a sense in a  
17 very specific and important way in terms of later  
18 discussions that I had with Doreen Kartinyeri and that  
19 it's part of my analysis precisely because, in a sense,  
20 it's part of an ensemble of territorial lands which I  
21 needed to take into account in order to understand the  
22 cultural logic of what was being put to me. Any  
23 suggestion that at any point - I mean, I didn't have the  
24 remotest interest in any suggestion of a bridge between  
25 Hindmarsh Island and Mundoo. The issue at stake was a  
26 bridge between Goolwa and Hindmarsh Island. The point  
27 is, in order to understand the significance of that as  
28 was being proposed to me, I had to make some  
29 consideration of Hindmarsh Island, not as an isolate but  
30 in a sense as part of a constellation of meaning with  
31 other areas; meaning that the other places in the area  
32 had meaning as well - and one of those was Mundoo  
33 Island. And any suggestion that in the foggiest either  
34 - I can't act for Professor Saunder's - at no point  
35 until you put it to me today has it occurred to me that  
36 anyone would think that I thought there would be a  
37 bridge built between Hindmarsh Island and Mundoo Island.

38 Q. Or any link between Hindmarsh Island and Mundoo.

- 1 A. Not at all.
- 2 Q. Whereas in your report on p.19 you say all this that  
3 `There is a fundamental difference between the nature of  
4 the link that is made between Hindmarsh Island and the  
5 mainland and between Hindmarsh Island and Mundoo by the  
6 barrages or the ferry cable', what possible link was  
7 there between Hindmarsh Island and Mundoo.
- 8 A. I'm clearly talking about my the interest in exploring  
9 the culturalology of the relationship between the island  
10 and the mainland. If you are trying that inference, it  
11 seems to me that is entirely inappropriate and it was  
12 not intended when I wrote it.
- 13 Q. At p.19, you talk about a link between Hindmarsh Island  
14 and Mundoo in the alternative to Hindmarsh Island and  
15 the mainland, don't you.
- 16 A. Is there a barrage that goes to Mundoo?
- 17 Q. You talk about Hindmarsh Island and Mundoo by the  
18 barrages, plural, or the ferry cable.
- 19 A. It strikes me that maybe what I was taking about is a  
20 barrage. Is there a barrage that goes there?
- 21 Q. You don't follow. I suggest that you have no real idea  
22 what you are talking about. At p.20 you say: `But all  
23 presented' - this is all Aboriginal women you spoke to -  
24 `Presented a final and compelling argument. It was, in  
25 essence, that at the time when the barrages, or series  
26 of ferries for that matter, were built around 1940.' Who  
27 told you of a series of ferries -
- 28 A. The compelling argument was the way that the whole -  
29 what the fundamental theme was was brought out  
30 consistently and elaborately at the 19 June Graham's  
31 Castle meeting and was the whole issue of the impact on  
32 the Ngarrindjeri people, the impact on the protectors,  
33 the -
- 34 Q. Who told you about a series of ferries. Is that just a  
35 guess on your part.
- 36 A. I don't know.
- 37 COMSR: Can you give any indication to other  
38 counsel who are concerned when they will be able to



1 proceed - and your indication last night was that you  
2 would be a couple of hours.

3 MR ABBOTT: It's very difficult to - I mean several  
4 times I've had to sit down and wait for the witness to  
5 finish because her answers have been so long.

6 MS PYKE: This is not necessary.

7 COMSR: Yes, Miss Pyke, as I understand before,  
8 it seems to be difficult for an anthropologist in  
9 certain circumstances to give a brief answer - and the  
10 witness is not unique in that respect I might suggest.  
11 And we do have to press ahead. And I understand that  
12 you have got other aspects that you wish to put to this  
13 witness and we may never get to it.

14 MR LOVELL: A point about yesterday's transcript. I  
15 know we have had a busy morning, but it was in the  
16 closed session and can I ask you to consider about the  
17 release of yesterday afternoon's transcript?

18 COMSR: What I had in mind was at the conclusion  
19 of this witness's evidence, because she naturally is  
20 looking to be released as soon as she can. I have  
21 considered that.

22 MR LOVELL: I have pages marked and I will speak to  
23 counsel assisting.

24 ADJOURNED 1.03 P.M.

1 RESUMING 2.15 A.M.

2 MR SMITH: By arrangement with Miss Nelson and her  
3 client, I am the only person to ask Mr Hemming any  
4 further questions prior to his release. I seek your  
5 leave to interpose him on the basis that that will  
6 obviate the risk of Miss Nelson having to come back  
7 tomorrow just to complete him. Could I call Steve  
8 Hemming back into the witness box?

9 COMSR: Yes.

10 MR SMITH: I can indicate on behalf of Mr Abbott,  
11 who has made it plain to me, that he has no questions of  
12 Mr Hemming, although he was in the middle of his  
13 examination.

14 WITNESS STEVEN JOHN HEMMING CONTINUING  
15 RE-EXAMINATION BY MR SMITH

16 Q. Mr Hemming, looking at document 181, in the DOSSA  
17 documents, the two large volumes. It is the Department  
18 of State Aboriginal Affairs documents, two volumes of  
19 them. It is the second volume. I refer you, Mr  
20 Hemming, to a letter of the Department of State  
21 Aboriginal Affairs, dated 9 June 1995. You see there,  
22 that is a copy letter of reply, from David Rathman, the  
23 Chief Executive Officer of the department, to Miss  
24 Sandra Saunders of the Aboriginal Legal Rights Movement.  
25 He says in the second para. 'Mrs Kartinyeri initiated  
26 the meeting.' It is the meeting of 13 April 1994. 'To  
27 advise of her concerns in respect of two matters.  
28 First being Hindmarsh Island, second being  
29 Greenfields.' I think you know something about  
30 Greenfields, don't you.

31 A. I know a bit, yes, yes. I haven't actually been there.

32 Q. Was that a situation where, a midden was discovered  
33 and, in particular, some human Aboriginal remains  
34 discovered, in a suburban backyard, as it were, in the  
35 Salisbury area.

36 A. In that area, but I don't think it is a suburban  
37 backyard. It was more of a - I think it was somebody's  
38 business site, in a car park.

- 1 Q. That is Kaurna country, is it not.  
2 A. Yes.  
3 Q. I think you had some involvement in that matter with  
4 Doreen, didn't you.  
5 A. I actually never visited that site.  
6 Q. Doreen did though.  
7 A. I had had discussions with Doreen over the matter at  
8 times.  
9 Q. Doreen went to the site, didn't she, to your knowledge.  
10 A. Yes, she did, as far as I know, yes.  
11 Q. And involved herself in that.  
12 A. She had some views on what was going on there.  
13 Q. She, in fact, had some dealings with Dr Draper in  
14 respect of what ought to be done out there. That's the  
15 case, isn't it.  
16 A. As far as I know, from conversations, yes.  
17 Q. Did you involve Doreen in that Mr Hemming.  
18 A. No. I think - lets see if I can remember what was going  
19 on.  
20 Q. You advised her of the discovery, did you not.  
21 A. I'm not sure about that actually. I think it might have  
22 been Pearl Nam who actually told her about that.  
23 Q. Why was Doreen - why did Doreen get involved in the  
24 Greenfields matter.  
25 A. I think she had a particular view of the relationship  
26 between human remains and Aboriginal people and she  
27 wasn't very happy with the idea of, I think it was,  
28 younger people and Aboriginal people in general, having  
29 actual contact with human remains, so she had a pretty  
30 strong view on that.  
31 Q. But, Doreen was essentially, a family historian at the  
32 museum, wasn't she.  
33 A. Yes, yes.  
34 Q. In fact, because my question is directed to you on the  
35 topic of whether Doreen Kartinyeri was rather an  
36 activist in these areas. Would you agree that she was  
37 an activist and she is an activist.  
38 A. Well, I think I have said before, that it was more of a

- 1 rare occasion that she got involved in things. I think  
2 certainly Greenfields she did have an opinion on that,  
3 but, I think that she was particularly speaking to Neale  
4 Draper about that situation. I don't know whether she  
5 was very active.
- 6 Q. She is not Kaurna is she. She is not a Kaurna person.
- 7 A. Well, she actually - in doing - when Tandanya was opened  
8 the Tandanya Centre, she was involved in putting  
9 together a souvenir book, booklet or small leaflet that  
10 was put together and she conducted quite a bit of  
11 research into Kaurna ancestry and, during that period,  
12 it was fairly obvious that, from her genealogy, there  
13 was a good chance she had connections with that area.  
14 That's about as far as I could say. So, certainly, I  
15 think she had genealogical connections with the area in  
16 the sort of, I think, Clare region, maybe just outside  
17 of Kaurna or just inside, similar to the Adams family I  
18 think.
- 19 Q. I only asked you that question Mr Hemming because, you  
20 asserted in questions asked of you by Ms Pyke, that in  
21 your view, Doreen wasn't an activist.
- 22 A. Yes, I said that.
- 23 Q. Is that still your position.
- 24 A. Well, after this particular event, I don't think you  
25 could say that, but, I was talking about her past  
26 position I guess, involvement and my knowledge of it.
- 27 Q. Just coming back to yourself. I think, in August of  
28 1984, you were involved in assisting, to some extent, at  
29 least, with a claim by Veronica Brodie, in connection  
30 with the CSR factory site at Glanville.
- 31 A. 1984?
- 32 Q. About 1984.
- 33 A. No.
- 34 Q. August '94.
- 35 A. No, I was actually involved in gathering information in  
36 terms of the history, the oral history and background on  
37 that particular issue.
- 38 Q. Did that bring you into conflict with the director at

- 1 the museum, Mr Anderson.
- 2 A. No, no, I have a memo that I wrote. I think we were  
3 talking about people's involvement in those sorts of  
4 issues and, once that issue started to look like it was  
5 going to become an issue that drew the group who were  
6 involved into some sort of conflict with Government, I  
7 think myself and Dianne Hanschant pulled out of that  
8 particular project formally, so I wouldn't say there was  
9 any conflict.
- 10 Q. Were you put under pressure from -
- 11 A. No, that was my decision certainly.
- 12 Q. The Mount Lofty Summit, you were also involved in work  
13 in connection with the Mount Lofty Summit, weren't you,  
14 in 1995.
- 15 A. I put together some background, a background report,  
16 which was really just, a very brief report, which was  
17 going to be used by the committee, as some information  
18 to put together a submission. As far as I know that  
19 report was never actually used in that capacity. It  
20 arrived - it didn't arrive in time. So, I put something  
21 together, but it wasn't actually used, it was a small  
22 scale consultancy I guess.
- 23 Q. Well, at that stage, there was a development proposed  
24 for the Mount Lofty Summit, wasn't there.
- 25 A. There were plans in that direction, I think.
- 26 Q. You were engaged to consult with an Aboriginal group.  
27 That's right.
- 28 A. No, I was engaged by the Aboriginal people on that  
29 committee, just to provide some background notes on any  
30 Aboriginal significance in the historic record that I  
31 could find.
- 32 Q. Did you advise the Director that you were so involved.
- 33 A. I actually advised the head of division that I was so  
34 involved, which is the normal process in a meeting,  
35 which is documented in a series of memos.
- 36 Q. Isn't it the case, that you, your view about the Mount  
37 Lofty Summit was, it was a sacred site and you reported  
38 that view to your Aboriginal client, to this

- 1 Aboriginal -
- 2 A. No.
- 3 Q. To this Aboriginal group you were working for.
- 4 A. Not at all, no. It certainly wasn't a sacred site. My
- 5 view was, in the report, and it was a very basic outline
- 6 of historic connections significance, religious
- 7 significance possibly of the Mount, but not a sacred
- 8 site, certainly not.
- 9 Q. Not possibly religious significance.
- 10 A. I think there is clear indication that the site had
- 11 religious significance certainly. A sacred site is a
- 12 different kettle of fish.
- 13 Q. Isn't it the case that, you acted contrary to the
- 14 protocols of the museum and forwarded your views to the
- 15 Aboriginal group, without first clearing it through the
- 16 director.
- 17 A. No. What I did actually was, go and see the head of
- 18 division, who told me to spend just a very brief period
- 19 of time on it, which I did. He was away at the time
- 20 when it was completed and I sent that particular thing
- 21 off. There is a long set of correspondence on that.
- 22 Q. There were some difficulties at the museum because of
- 23 this work you did on the Mount Lofty Summit, weren't
- 24 there.
- 25 A. Well there was certainly disagreement in terms of the
- 26 content of my report, between myself, Phillip Clarke
- 27 initially, and then Phillip Jones became involved in
- 28 that discussion.
- 29 Q. I put all that to you because, is it not the case, that
- 30 by about April, May and onward, into 1994, you were
- 31 actively assisting Doreen Kartinyeri, above and beyond
- 32 the protocols that existed at the museum.
- 33 A. No, certainly not, certainly not.
- 34 Q. You agree, do you, that in April, mid May 1994, you made
- 35 a request for data, from Phillip Clarke.
- 36 A. I made a request from Phillip Clarke the night before,
- 37 which would have been May 11 I guess.
- 38 Q. Did you convey, to Phillip Clarke, in the context of

- 1 that request, that Doreen had demanded your special  
2 assistance in interpreting information.
- 3 A. No.
- 4 Q. Had she.
- 5 A. No, she didn't demand special assistance in interpreting  
6 information. She was asking me for any information that  
7 I might have to be brought in the following day, which  
8 is different.
- 9 Q. You agree you made arrangements for Franchesca Alberts  
10 to take some material for Doreen.
- 11 A. Yes, I approached Franchesca to see if she could.
- 12 Q. That was in about May, April, May 1995.
- 13 A. Not May. It was at least the day after the letter was  
14 sent to Tickner, so it would have been, May 13, 14  
15 after that period.
- 16 Q. You agree that you assisted and I am not - I am not  
17 providing any particulars, you assisted Doreen  
18 Kartinyeri compose the museum letter of 12 May, 1995 or  
19 the letter to Mr Tickner.
- 20 A. No, I typed it out.
- 21 OBJECTION Ms Nelson objects.
- 22 MS NELSON: What does my friend mean by 'the  
23 museum letter.' Is he suggesting it is a letter under  
24 the auspices of the museum? No-one is suggesting  
25 that.
- 26 REXN
- 27 A. I typed a letter out.
- 28 Q. I will be a bit more particular about that. Looking at  
29 MFI 204, which we have been calling the museum letter.
- 30 A. But it is not on museum letterhead.
- 31 Q. You agree that you gave some assistance to Doreen in  
32 respect of that letter, is that right.
- 33 A. Yes, I typed it out and as I said, I may have changed  
34 some grammar.
- 35 Q. Did you subsequent to that, to the 12th of May 1995,  
36 have a conversation with Phillip - 1994 I am sorry -  
37 have a conversation with Phillip Clarke, wherein you  
38 said, words to the effect, that you felt justified in

1 backing efforts to stop the bridge.

2 A. No, I said, as far as I can recollect, was more along  
3 the lines, that I felt justified in supporting Doreen  
4 to have her say and express her view.

5 Q. Well, indeed, Mr Hemming, is it the case, however, that  
6 at that time, you felt justified in backing any efforts  
7 to stop the bridge.

8 A. No, no, I wasn't backing efforts to stop the bridge. I  
9 was discussing the issue with Phillip Clarke. I was  
10 discussing an issue with Phillip Clarke.

11 Q. Is it in the context of these events, that is, the  
12 events that I have just put, some of which you have  
13 agreed with; commenced in April 1994, that you had  
14 conversations and arguments, if you like, with Phillip  
15 Jones and Phillip Clarke, about the evidence of the  
16 landscape in Hindmarsh Island and its environs being  
17 invocative of a women's body.

18 OBJECTION Miss Nelson objects.

19 MISS NELSON: The question presupposes there is  
20 evidence of discussions and arguments on that topic.  
21 The evidence quite clearly is, that it was raised in the  
22 course of a discussion between Jones, Clarke and this  
23 witness, about another topic on one occasion and both Mr  
24 Jones and Dr Clarke say that.

25 QUESTION WITHDRAWN

26 Q. There were discussions between you and Phillip Jones and  
27 Phillip Clarke, about the landscape of Hindmarsh Island  
28 and its environs being invocative of a women's body,  
29 were there not.

30 A. There was a discussion, between myself and Phillip  
31 Clarke and Phillip Jones, which was part of a meeting in  
32 relation to putting together a native title document on  
33 the Murray River, where I suggested that I had heard  
34 Ronald Berndt mention, that he was thinking there may be  
35 some female connection or feminine significance to that  
36 region, that's -

37 Q. You say there were no ongoing discussions in the museum,  
38 between you and Phillip Clarke and Phillip Jones, about



1 this topic.

2 A. Not that particular topic. I think in terms of  
3 Hindmarsh Island in general there were discussions but,  
4 not very often, I wouldn't think, at all, between  
5 myself, Phillip Jones and Phillip Clarke. It would be  
6 more an occasion of Phillip Clarke and myself.

7 Q. Phillip Clarke. Were there ongoing discussions or  
8 perhaps I won't use the word 'ongoing.' Were there  
9 discussions where you and Phillip Clarke, disagreed  
10 about some aspect of the significance of Hindmarsh  
11 Island or the mainland.

12 A. I think we disagreed more on the basis of, first of all,  
13 my support of Doreen to have her view, and also, my  
14 belief that there was a possibility that there was some  
15 women's knowledge significant to Hindmarsh Island.

16 COMSR

17 Q. Why did you consider it necessary to support the notion  
18 that Doreen have her view.

19 A. Well, usually because, I was being challenged or  
20 questioned on it. I mean, these conversations were  
21 being initiated by Phillip Clarke, in terms of a  
22 questioning of the actual issue itself, so I would be  
23 responding in that sense and I don't know whether - I am  
24 not sure how many conversations took place but -

25 REXN

26 Q. Did you tell Doreen Kartinyeri that the lakes and the  
27 Murray Mouth were invocative mythologically of a women's  
28 internal organs.

29 A. No.

30 Q. Did you discuss that topic with Doreen Kartinyeri at  
31 all.

32 A. I think quite a long time after the letter had been sent  
33 to Tickner. I would have mentioned the fact that I had  
34 heard Ronald Berndt talk about the feminine significance  
35 of the region, but that was a much later date.

36 Certainly not women's reproductive organs or anything  
37 like that.

38 Q. What provoked that conversation, with Doreen Kartinyeri.

- 1 A. That would have be after the issue had become public and  
2 the significance of the region had become public through  
3 various media articles.
- 4 Q. So, you were offering some solace to Doreen Kartinyeri  
5 in her position, were you.
- 6 A. No, I was probably just commenting on that particular  
7 experience.
- 8 Q. In your statement Exhibit 19, at p.23, you have resort  
9 to or at least cite Allison Harvey as supportive of your  
10 view, that there is at least a possibility, of there  
11 being secret women's knowledge.
- 12 CONTINUED

- 1 A. What I actually do with the Alison Harvey example -  
2 Q. Isn't that capable of a short answer.  
3 A. No, I think it is a little bit - the way that I put it  
4 in there is the fact that we have a notebook from Alison  
5 Harvey, which had a section in it that had 'secret'  
6 written alongside of 'birth'. Now that is a significant  
7 thing to point out. Now we have discovered the reasons  
8 behind that since this Commission has started, but I  
9 certainly wasn't aware of the explanation, at that  
10 stage. And I thought it was a fairly significant thing  
11 to actually indicate it was worth looking at. And I  
12 tried to provide an explanation of it.  
13 Q. You put this under the heading of evidence, as it were,  
14 that supports your notion, isn't that why it is there.  
15 A. Sure and my notion is a possibility.  
16 Q. But then when Ms Pyke was asking you questions you, I  
17 suggest, having heard the evidence of Alison Harvey,  
18 dismiss her as - her position as being at all, if you  
19 like, of weight.  
20 A. I don't think I understand that question.  
21 Q. Let me put it again to you: I think in answer to a  
22 question from Ms Pyke you agreed with her suggestion  
23 that Alison Harvey with two afternoons of time with  
24 Pinkie Mack could not possibly have been in a position  
25 to receive any secret women's knowledge.  
26 A. No, I found it was a very short-term period of field  
27 work and it was more in terms of commenting on the fact  
28 that people had said there had been a lot of female  
29 researchers in the region working as anthropologists.  
30 Q. Can we take it from that then that you put aside Alison  
31 Harvey as being supportive of your position.  
32 A. What I found, as I have said I think in my evidence,  
33 interesting from the Alison Harvey evidence was the fact  
34 that Mountford and Tindale seemed to think that there  
35 was - it was worthy of her trip to the region to  
36 investigate the possibility of secret - or not so much  
37 secret necessarily, but specific women's knowledge. And  
38 I felt that was fairly significant given the fact that

- 1 certainly Tindale had been working in the region for at  
2 least ten years and he felt that this was very - it  
3 well-worthwhile sending a female researcher into that  
4 area to talk to a woman like Pinkie Mack that he felt  
5 was a source of knowledge. That was what I think I  
6 found interesting from Alison Harvey's evidence and I  
7 did say that.
- 8 Q. Looking at p.23, you found something a bit more  
9 interesting there, didn't you.
- 10 A. That is before I heard the evidence. That is just based  
11 on seeing her notebook and seeing the publication from  
12 Mountford.
- 13 Q. You say, over on p.24, 'It appears that Harvey,  
14 operating as a lone female researcher, was exposed to  
15 restricted women's knowledge known by Pinkie Mack',  
16 don't you.
- 17 A. Yes, that is on the basis of just a couple of things in  
18 her notebook that seemed inexplicable, but they have  
19 been explained since.
- 20 Q. Can you explain to the Commissioner why in answer to Ms  
21 Pyke's question you suggested that Ms Alison Harvey is  
22 not a very valuable source of support, because she spent  
23 such a small amount of time with Pinkie Mack.
- 24 A. I don't think the two go together, actually.
- 25 Q. I suppose I will put it to you, because it might be  
26 suggested in addresses to this Commission that, having  
27 heard Alison Harvey discount the significance of the  
28 word 'secret' in her evidence you, in effect, abandoned  
29 her when you were questioned by Ms Pyke.
- 30 A. Certainly she explained the use of the word 'secret' and  
31 that's there on the record, but I don't know about  
32 abandoning her. As I say, I found some interesting  
33 comments in her evidence.
- 34 Q. You also, in answer to questions by Ms Pyke, agreed to  
35 her suggestion and correct me if I am wrong that  
36 Aboriginal women are under-represented in committees and  
37 bodies that have to do with the discovery of Aboriginal  
38 remains and that sort of thing.

- 1 A. That was in a particular period within the heritage type  
2 committees from my sort of experience I thought they  
3 were. I talked about councils like Point McLeay Council  
4 or Raukkan Council and they do have women on those  
5 committees and have done since their inception.
- 6 Q. In November 1990 there was an occasion when personnel  
7 from the museum met with the Lower Murray Aboriginal  
8 Heritage Committee in connection with some skeletal  
9 remains held by the museum.
- 10 A. Whereabouts?
- 11 Q. Looking at the bundle of documents produced to you, just  
12 to describe them generally they are accounts of a  
13 meeting held between the officers of the South  
14 Australian Museum and the Lower Murray Aboriginal  
15 Heritage Committee at Murray Bridge, a meeting held on  
16 12 November 1990.
- 17 A. Yes.
- 18 Q. They are accounts given by a range of museum officers to  
19 the director of the museum, are they not.
- 20 A. Yes.
- 21 Q. I don't want to go into them in great detail, but you  
22 attended this meeting, did you not.
- 23 A. Yes.
- 24 Q. You are named there and the Committee, the Lower Murray  
25 Aboriginal Heritage Committee, was represented by Mr  
26 Wilson. Victor Wilson, I take it.
- 27 A. That's right, yes.
- 28 Q. Douglas Milera.
- 29 A. Yes.
- 30 Q. Leah Rankine.
- 31 A. Yes.
- 32 Q. She is now deceased, isn't she.
- 33 A. Yes.
- 34 Q. And she was an elderly Aboriginal lady.
- 35 A. She was, at that time, middle aged.
- 36 Q. Henry Rankine.
- 37 A. Yes.
- 38 Q. And Edie Rigney.

- 1 A. Yes.
- 2 Q. One of the so-called informants.
- 3 A. Yes.
- 4 Q. In connection with Hindmarsh Island.
- 5 A. Yes.
- 6 Q. And Laura Winslow.
- 7 A. Yes.
- 8 Q. Director of the Lower Murray Nungas Club, is that
- 9 correct.
- 10 A. That's right, yes.
- 11 Q. It is the case, isn't it, that these ladies - and I am
- 12 referring to Leah Rankine, Laura Winslow and Edie Rigney
- 13 - had vigorous input into this meeting along with the
- 14 men.
- 15 A. I would have to look back at my notes there, but I think
- 16 a number of the men took the lead in conversations from
- 17 memory.
- 18 EXHIBIT 251 South Australian Museum memoranda
- 19 tendered by Mr Smith. Admitted.
- 20 MISS NELSON: On what basis are these documents
- 21 tendered?
- 22 COMSR: On the basis of demonstrating that there
- 23 was a representation of women on the Committee in
- 24 response to the witness's evidence, as I understand it,
- 25 that there was an under-representation of women.
- 26 MISS NELSON: They are two totally different concepts.
- 27 It is not as though this witness has said there was no
- 28 representation by women.
- 29 COMSR: No, he is saying there was
- 30 under-representation.
- 31 MISS NELSON: Why I ask about the status of these
- 32 documents is because, if you read on, proportionally
- 33 there were two women as opposed to a large number of men
- 34 on this Committee. I would call that
- 35 under-representation. So, I think it needs to be made
- 36 perfectly plain on what basis these documents are being
- 37 tendered and received.
- 38 COMSR: I understood that was the basis of it,

1 was it Mr Smith?

2 MR SMITH: Indeed.

3 XXN

4 Q. One last topic: I think you were involved in consulting  
5 at least with Philip Clarke in respect of problems which  
6 arose in connection with the towers that were being  
7 constructed on the Mount Barker Summit, is that correct.

8 OBJECTION Ms Nelson objects.

9 MISS NELSON: I object to this. It doesn't seem to me  
10 that this is at all relevant to the line of enquiry, nor  
11 is it proper re-examination. My friend has covered a  
12 lot of topics that weren't introduced by him in  
13 examination-in-chief, if one can call it that. It  
14 sounded like cross-examination to me. They weren't  
15 introduced by Mr Abbott. They weren't introduced by me  
16 or any other counsel. They are irrelevant and they  
17 haven't been addressed before. In fact, a lot of  
18 matters have been put to this witness that weren't  
19 canvassed before and they are matters on which I will  
20 have to take some instructions in due course, but I  
21 object to this line of questioning. It is not relevant  
22 to you. It is not helpful to you. Mount Lofty has got  
23 nothing to do with Hindmarsh Island, on the face of it,  
24 anyway.

25 MR SMITH: Relevance is not a term that is  
26 appropriate to this investigation, for a start. These  
27 questions that I am about to embark upon won't take any  
28 time. They are relevant in this sense: that the  
29 questions about the Mount Barker matter will disclose  
30 that the Trevorrow's, for instance, were involved in  
31 dealings with Dr Neale Draper, with the museum in  
32 connection with a claim in respect of a sacred site at  
33 the summit at Mount Barker. The fact that there has  
34 been a case made out in respect of the Hindmarsh Island  
35 bridge that the late emergence of the women's business  
36 was due to the fact that women were never consulted.

37 Now, is that good enough so far?

38 MISS NELSON: In response to that, whatever happened

- 1 in relation to Mount Barker with the Trevorrows or  
2 anyone else for that matter is of no consequence to this  
3 Inquiry. It is really like saying that if someone kicks  
4 their cat they are likely to have murdered their wife.  
5 You can't make a quantum leap from what happened in one  
6 situation to what happened in a totally separate  
7 situation with separate issues and at a separate time.
- 8 COMSR: I think that the purport of it could  
9 probably take it no further than this, it is to show a  
10 relationship between the pre-existing sort of  
11 relationship between -
- 12 MISS NELSON: Between whom?
- 13 COMSR: The witness, Dr Draper and the  
14 Trevorrows.
- 15 MISS NELSON: It is not suggested, as I understand it,  
16 that the witness was involved in it. That, as it is  
17 put, it is suggested it establishes some relationship  
18 between the Trevorrows and Dr Draper. It is not  
19 suggested my client is privy to it. So I say it  
20 shouldn't be put to him.
- 21 COMSR: It shouldn't be put in through him is  
22 what you are saying.
- 23 MISS NELSON: And, even if he was, there has to be  
24 some aspects of relevance to this Inquiry. And, indeed,  
25 you have stopped people asking questions on the basis  
26 that it is not going to help you.
- 27 COMSR: Yes, I have, from time to time.
- 28 MR SMITH: I have contended that it is relevant for  
29 the reason that it tends to throw some light on the  
30 question of whether one of the reasons for the late  
31 emergence of women's business was the absence of  
32 Aboriginal ladies involved in, if you like, claims for  
33 sacred sites or whatever in the area of the Ngarrindjeri  
34 people. So, it has that value.  
35 Can I proceed?
- 36 COMSR: I suppose, on that basis, if that's all  
37 that is going to be made of it, Miss Nelson, it could  
38 show that.



- 1 MISS NELSON: I object to it. I think it really is,  
2 to borrow one of Mr Jones's expressions, drawing a very  
3 long bow.
- 4 COMSR: It is an Inquiry and not a trial.
- 5 MISS NELSON: I know that has been said, but I often  
6 think it really depends who has been asking the  
7 questions. I know it is an Inquiry and I know that you  
8 don't have the same considerations of rules of evidence  
9 that you would in a trial. All the same, there is a  
10 matter of procedural fairness and this is  
11 re-examination.
- 12 MR SMITH: No, it isn't. It is not re-examination.  
13 I can just ask any questions I like at the end of  
14 examination by everybody else.
- 15 MISS NELSON: But it has to be in a context of  
16 procedural fairness. And, if it is not something which  
17 has previously been examined with a witness, then it  
18 really should not be raised as a new topic when no-one  
19 has an opportunity to clarify at the end. There is  
20 plenty of authority on that.
- 21 COMSR: Yes, in the context of a hearing, I  
22 doubt whether that is quite the case, that counsel can't  
23 raise it. It may well be a matter of whether you think  
24 it is worthwhile addressing it, Miss Nelson.
- 25 MR SMITH: Perhaps if you let me proceed and if  
26 there are any real difficulties about it Miss Nelson can  
27 reserve her position to take some instructions and deal  
28 with it. It is relatively innocuous. I am just going  
29 to ask Mr Hemming - if I can flag the question - he  
30 along with Philip Clarke and the museum having some  
31 involvement in the Mount Barker Summit disputes knew  
32 that certain people from the Aboriginal community were  
33 also involved.  
34 That is the extent of it.
- 35 MISS NELSON: I don't object to that if that is the  
36 extent of it.
- 37 XXN
- 38 Q. It is the case, is it not, that the Mount Barker Summit

- 1 issue arose in two steps I think in 1984 and 1987, is  
2 that right.
- 3 A. I remember there were two separate occasions, yes.
- 4 Q. You had some involvement in respect of both those steps,  
5 1984 and 1987.
- 6 A. I can't really recall having any formal involvement in  
7 1984. You might be able to remind me, but I remember  
8 Neale Draper writing his reports and actually not having  
9 any involvement at all in that period, except for  
10 general interest.
- 11 Q. Can I ask you then to go to 1987. You had some  
12 involvement then.
- 13 A. I have a vague recollection of a couple of pieces of  
14 involvement, but -
- 15 Q. I hesitate to suggest to you, were you possibly  
16 involved.
- 17 A. No, I think I was asked - I was asked to be involved in  
18 some way. What I think it was, though, was more in  
19 terms of advising that - I think people were looking for  
20 genealogies and I think Doreen Kartinyeri was engaged to  
21 put together genealogies, but that is very much on the  
22 basis of a very fuzzy memory, so if you can put it.
- 23 Q. Was Mrs Daisy Rankine one of the Aboriginal people that  
24 voiced concern in respect of the Mount Barker Summit  
25 development.
- 26 A. I have a memory of seeing something in the newspaper in  
27 relation to that.
- 28 Q. George and Ellen Trevorrow.
- 29 A. Had an interest, yes.
- 30 Q. Victor Wilson.
- 31 A. Yes, he was certainly involved.
- 32 MR SMITH: I have no further questions of Mr  
33 Hemming. Subject to that matter which I accept as new,  
34 I ask that he be released.
- 35 MISS NELSON: That is not the only new matter. The  
36 question of the Mount Lofty Summit and a couple of other  
37 topics were pretty new. I don't think, on the face of  
38 it, that anything turns on any of it. But as a matter

1 of caution I would like to reserve my position to take  
2 some instructions.  
3 COMSR: All right, subject to that, the witness  
4 can be released.  
5 MISS NELSON: Subject to that may the witness be  
6 released?  
7 MR SMITH: I can indicate for Miss Nelson's benefit  
8 that unless something extraordinary happens the  
9 Commission would accept the answers of Mr Hemming in  
10 respect of the Mount Lofty and the CSR Glanville site  
11 questions.  
12 MISS NELSON: That is helpful.  
13 NO FURTHER QUESTIONS  
14 WITNESS RELEASED

- 1 COMSR: Do you recall Dr Fergie?
- 2 MR ABBOTT: Yes, could I ask for production of the
- 3 copy of her field notes of June 1994, consisting of six
- 4 pages, being document number 12, in Exhibit 243.
- 5 WITNESS D.J. FERGIE, CROSS-EXAMINATION BY MR ABBOTT
- 6 CONTINUING
- 7 Q. Do you have these field notes.
- 8 A. I am not well-organised yet.
- 9 CONTINUED

- 1 Q. The first page which has a number 4 - is that right.  
2 A. Yes, it does.  
3 Q. Is referable to Friday, 17 June 1994.  
4 A. No, I don't believe it is.  
5 Q. What date do you think it is referable to.  
6 A. I think it is most probably referable to the Saturday.  
7 Q. What, the reference down the bottom 'Tim Wooley rang me  
8 at work, left message to see if I was interested' not  
9 referable to Friday, 17 June.  
10 A. I thought you were asking me in relation to the entirety  
11 of the page.  
12 Q. So it is referable to Saturday, 18 June.  
13 A. No, the notes were made - these notes, insofar as I can  
14 tell, were made on the Saturday, and at the bottom of  
15 the page were -  
16 Q. You have recorded something to do with 18 June.  
17 A. I beg your pardon.  
18 Q. At the bottom of the page you recorded things to do with  
19 17 June.  
20 A. That's right.  
21 Q. The page numbered 5 is a reconstruction of your  
22 conversation that took place on 17 June written out by  
23 you on 18 June.  
24 A. Insofar as I can recall, that's the case.  
25 Q. Why didn't you write it at the time.  
26 A. On the Friday?  
27 Q. Yes.  
28 A. Because my parents had just arrived from Canberra when I  
29 had these conversations.  
30 Q. That goes on through page 6, that is, your account of  
31 your first contact with Wooley.  
32 A. Yes.  
33 Q. And onto p.7, it is still what happened on Friday, 17  
34 June.  
35 A. Yes.  
36 Q. The reference to ringing Cheryl Saunders on p.8, what  
37 date was that.  
38 A. Friday afternoon.

- 1 MR ABBOTT: I take it these are an exhibit, being  
2 part of Exhibit 243.
- 3 MS PYKE: They are marked for identification, as I  
4 understand it.
- 5 COMSR: They are marked for identification, yes.  
6 I think the reason it was marked for identification was  
7 to allow representations as to whether legal  
8 professional privilege applied or was claimed for in  
9 respect of any of the documents. I understand the  
10 situation is that there is no legal professional  
11 privilege claimed on the documents.
- 12 XXN
- 13 Q. May we take it that the rest of your notebook continues  
14 in the same vein, your two field notebooks that ALRM  
15 have.
- 16 A. No.
- 17 Q. No.
- 18 A. No.
- 19 Q. Why not.
- 20 A. Why don't they continue in the same vein?
- 21 Q. This is a fair standard - this is a fair representation  
22 of a standard of your noting, isn't it.
- 23 A. No, this isn't a noting. This is a reconstruction. My  
24 normal notes are better represented. The kind of notes  
25 that you would find in this kind of a notebook of mine  
26 are better represented than you would see in the other  
27 notebook that's handed up.
- 28 Q. So what we can't see is probably a better standard than  
29 this that we can see.
- 30 A. It depends how you understand it. The notes that I make  
31 when people are actually talking to me, are notes that,  
32 you know, as closely as I can -
- 33 Q. Have you asked ALRM for your notebook back.
- 34 A. I'm not clear. We have asked for several things from  
35 the ALRM of late, including permission to speak on  
36 matters in the secret envelopes. I wouldn't be at all  
37 surprised if we have asked for them back, but I can't  
38 say with any certainty whether we have or we haven't.

- 1 Q. You can't say whether you have asked for them back at  
2 all, can you.
- 3 A. Not with any certainty. That doesn't mean we haven't.
- 4 Q. It doesn't mean you have.
- 5 A. That's right.
- 6 Q. Looking at document 243(23), the typed part consists of  
7 the agenda for the Ngarrindjeri Action Group meeting of  
8 27 June 1994, and on the back of it you have written  
9 down some notes which you took at that meeting.
- 10 A. Yes, both at - yes, I explained, I think, when this was  
11 handed up.
- 12 Q. Just yes or no. We will get onto the next question  
13 quicker that way. Do you agree.
- 14 A. Fine.
- 15 Q. One of the notes that you've written down is under  
16 `Significance'. You see `Significance.'
- 17 A. Yes.
- 18 Q. You have got `W' and then a plus sign `sites'.
- 19 A. Yes, that means women's sites. It's my shorthand.
- 20 Q. So the significance in relation to women's sites was  
21 mentioned at the Ngarrindjeri Action Group meeting.
- 22 A. No, I don't think you can draw that conclusion from that  
23 note at all.
- 24 Q. Why would you write a note at the Ngarrindjeri Action  
25 Group meeting if it wasn't mentioned.
- 26 A. What actually happened is that I had been invited to  
27 this meeting, and I don't know whether I'd been told  
28 immediately before going in, but certainly I saw on the  
29 agenda that I was down on the agenda to give a report,  
30 which I was in no way prepared to give, and I jotted  
31 some notes for a discussion for me to say, at the point  
32 when they got to that in the agenda, that I was just  
33 going to outline what I was doing and so on, and the  
34 notes to which you refer are my notes in a shorthand -
- 35 Q. Of what you were going to report.
- 36 A. Well, I certainly didn't see it as a report, frankly. I  
37 just saw it as a way of telling them what I was doing,

1 and that my brief had changed, as you will see on the  
2 right-hand side -

3 Q. I just want to go very quickly through this document.  
4 We have limited time. Do I take it you were going to  
5 talk to them, and did talk to them on orientation, under  
6 two headings 'holistic' and 'bridge corridor.'

7 A. Yes. I would have mentioned there were two dimensions  
8 to my orientation. What I have referred to here is  
9 holistic, which I think is - I later - whether I find it  
10 in my report - that kind of dimension of the  
11 relationship between Hindmarsh Island as a whole, I  
12 called, I think, significance of the localised area; and  
13 the focus on the corridor.

14 Q. And the next subject you spoke on was the political  
15 saleability of your report.

16 A. I didn't see it as political saleability. I think what  
17 I was referring to -

18 Q. That's what your note says. You say you didn't see it  
19 as political saleability. That's what you have written  
20 down.

21 A. I know I have written that down -

22 MS PYKE: Let her answer the question without  
23 interruption.

24 XXN

25 A. Well, insofar as I can reconstruct this event, what I  
26 imagine that I was talking about was that, for the  
27 Minister to make a decision - in a sense, I was trying  
28 to give some information in the way in which this  
29 process might go. There was the issue of the  
30 significance of the area in Aboriginal tradition, and I  
31 was pointing out that this is - that any decision would  
32 be, in effect, a political decision, and it would be on  
33 Mr Tickner's assessment of his sense of, what I have  
34 called here, the political saleability. Anybody who has  
35 any understanding of these processes understands that  
36 one can document an Aboriginal tradition well, and the  
37 government and a Minister will decide whether or not,  
38 for his purposes, at this particular moment, it suits



- 1 his political purposes to act on that or not.
- 2 Q. The next topic that you spoke about at the NAG meeting
- 3 was the significance of the tradition and its
- 4 relationship to women's sites.
- 5 A. I have written down here 'women's sites'. How I would
- 6 have expressed that, I'm not clear.
- 7 Q. We have some difficulty since there were, like most
- 8 committees, mainly men.
- 9 A. There was actually a lot of women at this thing. I
- 10 certainly wouldn't have given any account of the larger
- 11 tradition, and at that point I didn't have it.
- 12 Q. What, on 27 June.
- 13 A. Well, I'd had discussions with Doreen Kartinyeri, but I
- 14 didn't have the text which became appendix 2 at that
- 15 point.
- 16 Q. But it is obvious that you spoke on the significance of
- 17 the area with particular reference to women's sites to a
- 18 mixed meeting -
- 19 A. Yes, clearly I was -
- 20 Q. That is, in terms of gender.
- 21 A. My brief really had to focus on the dimension of this in
- 22 terms of women's stuff, because that's all, at that
- 23 point - and it was clearly - you will see in the next
- 24 column I have actually got jottings of dates, and I was
- 25 clearly trying to point out that I was working within a
- 26 very narrow time frame. And what I'm really letting
- 27 people know is that the particular focus of my work was
- 28 on women's issues, and I have made a jotting 'women's
- 29 sites', it is a shorthand, and I don't know that you
- 30 should read it as literally as you appear to have wanted
- 31 to.
- 32 Q. You have just committed the sin of what you have
- 33 described in your report as textual slippage.
- 34 A. It wasn't a text - I think you need to understand the
- 35 difference between -
- 36 Q. You went from 'women's stuff' in your answer, to deal
- 37 with a note which refers to 'women's sites'. I'm asking

1 you whether or not you told the meeting what was written  
2 down here, namely, about women's sites plural.

3 A. Clearly I haven't got sufficient recollection of that,  
4 but I would like to make a particular point about the  
5 way in which an anthropologist like me might talk, and,  
6 on the one hand, there is my report, a report which I  
7 would see as a technical report in terms of my capacity  
8 as a -

9 COMSR

10 Q. Are you saying that this is what you remember doing, or  
11 this is possibly what you might have done.

12 A. All I can say is this is possibly what I may have done.

13 Q. I don't know that is going to help me.

14 A. Okay.

15 XXN

16 Q. Onto the next. You also spoke to them about your  
17 authority for this oral tradition, namely, Doreen  
18 Kartinyeri and her experience.

19 A. No, not Doreen. It is not the experience - the  
20 experience -

21 Q. Is Sarah.

22 A. I would imagine that Sarah is -

23 Q. The experience.

24 A. I imagine that that's what I was referring to there,  
25 yes.

26 Q. So the authority for the tradition was twofold: the oral  
27 tradition, Doreen at that stage, 27 June; and what you  
28 have called, in anthro-speak, contemporary experiential  
29 authority, which you have shortened to 'experience'  
30 here, with Sarah.

31 A. No, I think you misunderstand. What I am talking about  
32 here is two kinds of authority within Aboriginal  
33 tradition, an oral tradition, in which case, in this  
34 case, Doreen was clearly the person who was - had both  
35 spoken to Professor Saunders and was, I hoped, going to  
36 continue to speak to me; and an experiential thing  
37 which, in my report, indeed, I have written as a  
38 contemporary experiential authority, so what I am

- 1 distinguishing between there, I would imagine, is two  
2 kinds of authority within Aboriginal tradition.
- 3 COMSR
- 4 Q. Again, when you say you would imagine, can you remember  
5 doing it or -
- 6 A. What I can say is that the formulation that Mr Abbott  
7 put to me is not a formulation that I would myself put,  
8 so I am giving an alternative interpretation of it.
- 9 XXN
- 10 Q. The oral tradition that Doreen had told you about up  
11 till this point in time was one she claimed had been  
12 handed down for centuries.
- 13 A. Which she claimed had been handed to her from antecedent  
14 generations.
- 15 Q. Over centuries.
- 16 A. No. She claimed that she could tell me who had told  
17 her, and she claimed that her understanding was that  
18 this had gone between generations.
- 19 Q. How many generations.
- 20 A. She didn't specify.
- 21 Q. Did she ever specify.
- 22 A. No.
- 23 Q. Did she ever make a claim.
- 24 A. Not to me.
- 25 Q. Did she ever claim that this tradition had been handed  
26 down for centuries.
- 27 A. Not to me.
- 28 Q. I would like you to look at her letter that her  
29 solicitor wrote. This is a letter dated 24 October  
30 1995. I only draw your attention to one passage `Dr  
31 Kartinyeri wishes to assure the commission that  
32 Ngarrindjeri women's business exists and has existed for  
33 centuries'. That is not a claim she ever made to you.
- 34 A. I don't believe so.
- 35 EXHIBIT 252 Letter from Doreen Kartinyeri's  
36 solicitor dated 24 October 1994 tendered  
37 by Mr Abbott. Admitted.

- 1 Q. Back to document (23), your next heading is  
2 `reluctance'. We know what that's about, so I won't ask  
3 you. You spoke about the reluctance of the women.  
4 A. It is not clear to me what that's about here, but it  
5 might have been part of it.  
6 Q. Then you have got `injury, desecration'.  
7 A. Yes, it is a reference to the Act.  
8 Q. And you have got `barrages', is that right.  
9 A. Yes.  
10 Q. And that's `noose'. Is that the next word, or perhaps  
11 `moose'.  
12 A. I puzzled over that myself. It would appear to be so,  
13 but I have no sense of what it might mean.  
14 Q. And `history'.  
15 A. Yes.  
16 Q. Then you have got `cultural revivalists'.  
17 A. No. `injury and desecration', those three words under  
18 there - `barrages', what appears to be `noose', and  
19 `history' - are in a square, so they are clearly part of  
20 the same thing. And there is another point, and that's  
21 an abbreviation by me which I would normally read as  
22 `cultural revitalisation'.  
23 Q. So you covered that topic as well.  
24 A. Clearly. It's in my notes.  
25 Q. Then `weighing up'. Presumably that's a drawing  
26 together of strands.  
27 A. I presume that refers to what I see my role as, which  
28 was to weigh up and assess.  
29 Q. Then you have got `ties - Hal Wooton'.  
30 A. `Ties', yes.  
31 Q. That's the reference as to Hal Wooton in your report, or  
32 Hal Wooton is written of.  
33 A. I don't know that that's the case, but it might be.  
34 Q. Then you have got at the bottom, in your handwriting  
35 `Some things you can't erase' exclamation mark. What  
36 does that refer to.  
37 A. I think it refers to the name in the top right-hand  
38 corner, Patrick Byrt, who was one of the speakers at the

1 meeting, who I have never seen before and whose manner  
2 of speech I found -

3 Q. Offensive.

4 A. No, peculiar. And I asked somebody who that was - and  
5 this is a reconstruction, but I think that that's what  
6 this relates to - they wrote his name on their piece of  
7 paper, I wrote it on mine just to remind myself of who  
8 this person was, and then that person tried to score out  
9 the name on their piece of paper, and I just wrote, as a  
10 kind of light relief 'Some things you just can't erase'  
11 back, to indicate that they -

12 Q. You don't have to go into that. We will leave Mr Byrt.

13 A. At the time it seemed funny.

14 Q. You have got there 'Problems of the process', then your  
15 hieroglyphics and 'Alice Springs Dam'.

16 A. No, before that is a dollar sign, a 5 and a 'K', which I  
17 presume is my abbreviation for \$5,000, which I suspect -  
18 well, it doesn't matter. Ask me what you want to ask  
19 me.

20 Q. You were working on the basis that that's what it cost  
21 for the information in relation to the Alice Springs  
22 Dam.

23 A. No. That was my understanding of the entirety of the  
24 amount that had been budgeted by ATSIC for the funding  
25 of the Hindmarsh Island meetings with -

26 MS PYKE: At this stage, what is the relevance?

27 If Mr Abbott has a question to put about anything in  
28 particular on this page, can he put it? Otherwise, are  
29 we going to have to go through each sentence that the  
30 witness has written on all of her documents, fishing  
31 around for something that is not there? Put a question  
32 by all means.

33 MR ABBOTT: Yes. I have been putting several  
34 questions.

35 MS PYKE: Relevant questions.

36 XXN

37 Q. Other than these notes, can you assist us in any way as  
38 to what you said.

- 1 A. No. These are the only notes that I have about what I  
2 said at that meeting.
- 3 Q. And your recollection does not permit you to add  
4 anything to these notes, in effect.
- 5 A. I don't believe so. I mean, it was my intention to just  
6 basically outline what my role in the process was, to  
7 give people a sense of it, to also invite any kind of  
8 contributions that people were able to do, and, in a  
9 sense, given the way - I think this small note over here  
10 about the future was to highlight some things that NAG  
11 might like to take up in the future, one of which was  
12 that there were problems with this process in terms of,  
13 in my view at that stage, the allocation of money for  
14 them, the amount of time made available, the change in  
15 my brief, and the involvement in women in the process.
- 16 Q. It is all right. You have answered my question already.  
17 EXHIBIT 243(23) Document marked 243(23) for  
18 identification tendered by Mr Abbott.  
19 Admitted.
- 20 Q. Looking at document (25), that is a note for Cheryl  
21 Saunders.
- 22 A. No, it's not.
- 23 CONTINUED

- 1 Q. It's a note of discussions with Cheryl Saunders.  
2 A. It's a note that was given to me as such, but I wasn't  
3 present for the discussions.  
4 Q. I understand it was given to you by either Shirley  
5 Peisley or Vi Deuschler, was it not.  
6 A. As I recall.  
7 Q. It was given to you on or about 20 June.  
8 A. That is what my comment over to Monday morning, that's  
9 the day at the point this was given to me.  
10 Q. Who gave it to you.  
11 A. One of those women.  
12 Q. Whereabouts.  
13 A. Honanda.  
14 Q. Did you have a discussion about this note.  
15 A. No, we didn't.  
16 Q. Not at all.  
17 A. I don't believe so.  
18 Q. When you saw in this note that Shirley Peisley or Vi  
19 Deuschler, or both, were asserting as a result of a  
20 discussion with Cheryl Saunders, 'Professor Saunders  
21 will only pass on what we feel comfortable about',  
22 didn't that make the hairs on your neck stand up.  
23 A. No.  
24 Q. I mean, here was the person charged with a Federal  
25 investigation, the s.10 report, apparently having been  
26 spoken to by Cheryl Saunders and Vi Deuschler.  
27 OBJECTION Miss Pyke objects to the question on  
28 the ground of relevance.  
29 MR ABBOTT: It is relevant to her anthropological  
30 examination when she was given information of this sort  
31 that she does or does not ask any questions.  
32 COMSR: The question is 'You have seen this  
33 comment, did you then do something'.  
34 MR ABBOTT: Yes, that is exactly.  
35 MS PYKE: Did your hair stand up on end.  
36 MR ABBOTT: I'll rephrase it.  
37 QUESTION REPHRASED  
38

1 XXN

2 Q. When you got the note, which you understood to be a note  
3 of discussions with Cheryl Saunders, between Professor  
4 Cheryl Saunders and with or without her assistant Ann  
5 Mullins and either Shirley Peisley or Vi Deuschler, or  
6 both, when you found out -

7 A. I don't know if you are aware that this was purported to  
8 be notes at the meeting at Graham's Castle?

9 Q. I'm not aware of that. You didn't say so. This is a  
10 meeting, these are notes of the meeting at Graham's  
11 Castle.

12 A. That's what I was told.

13 Q. On Monday, the 20th.

14 A. Yes.

15 Q. Of June 1994.

16 A. As I understand it.

17 Q. According to this note which was handed to you,  
18 Professor Saunders has specified the view to the  
19 Ngarrindjeri women she met that she will only pass on  
20 what they feel comfortable about.

21 A. Yes. I presume that related to secret matters and that  
22 they could decide with the ambit of how much, what - how  
23 much secrecy goes with it and as to what their decision  
24 will be as to what to disclose and what not to disclose.  
25 That was their decision.

26 Q. According to this note, Sarah gave the explanation of  
27 women's business.

28 A. Sarah gave - in so far as I wasn't there, I can only  
29 reflect on what is in front of me. It would appear  
30 there is a go-ahead.

31 Q. You never asked any question about this note.

32 A. No. In fact, I mean, if you recall -

33 Q. The answer is, no, you didn't ask questions about the  
34 note and you didn't have to ask questions.

35 A. I, obviously in some way or another, ascertained to what  
36 it referred.

37 Q. Apart from that, you didn't ask any questions of anyone  
38 about what happened at the meeting with Professor



- 1 Saunders, that is because you were reading your material  
2 and arrived late.
- 3 A. And I thought it was very important that I did not - in  
4 fact, Professor Saunders had been very concerned that  
5 she arrive at her decision in some independence from me;  
6 and, no, I didn't see it as appropriate that I question  
7 a process that she had actually the conduct of herself.
- 8 MR ABBOTT: I tender the note.
- 9 MR MEYER: Can I clarify who wrote that note?
- 10 MR ABBOTT: Shirley Piesley or Vi Deuschler.
- 11 COMSR
- 12 Q. It was a note handed to you there.
- 13 A. Yes. I can't vouch for who wrote it.
- 14 EXHIBIT 254(25) Document marked MFI 243(25) for  
15 identification now tendered by Mr  
16 Abbott. Admitted.
- 17 MR MEYER: It's not the first time I'm confused.  
18 Is there any reason why MFI 243 just cannot be tendered?
- 19 COMSR: Is there some reason it cannot be  
20 tendered in its entirety at this stage?
- 21 MR SMITH: There isn't any problem with the  
22 wholesale tender of it. The submissions of Mr Stratford  
23 only went so far as to say that if there was any  
24 exploration of some of the documents, it would be likely  
25 to get - some of the documents would be likely to get  
26 into the area of legal professional privilege and he  
27 would like to be heard. No-one is going to do that. I  
28 think it could be tendered.
- 29 EXHIBIT 243 Documents marked MFI 243 for  
30 identification and separately marked  
31 from no.1 to no.65 now tendered by Mr  
32 Smith. Admitted.
- 33 MR MEYER: Does that mean that the previously  
34 excluded documents are going to be admitted?
- 35 COMSR: They are admitted as Exhibit 243.
- 36 MR SMITH: In case anyone looks for the document  
37 marked 62 in this exhibit, that is actually not there.  
38 Although it was on the index, it's actually not handed

- 1 up. It's lost somewhere.
- 2 MR MEYER: It's a tendered non-Exhibit.
- 3 MR SMITH: It's occurred on the list and has not  
4 found its way into the records.
- 5 MR TILMOUTH: Can I rise in the absence of Mr  
6 Stratford. I think he was concerned about a conference  
7 that was held between Dr Fergie and Mr Wooley in the  
8 ALRM, which was a conference about, if I recollect it  
9 correctly, after O'Loughlin J handed down his judgment  
10 in the Federal Court. That was clearly a privileged  
11 situation. If I'm correct, that was the note 36 which  
12 is headed 'Note, Tim Wooley'. Could I suggest that  
13 that be excised from that material?
- 14 COMSR: We will exclude it at present from those  
15 admitted and leave it marked.
- 16 MR TILMOUTH: I think that's the right one.
- 17 COMSR: MFI 243(3) will be left marked as an  
18 MFI.
- 19 MR TILMOUTH: I know Mr Stratford had a particular  
20 concern about that.
- 21 XXN
- 22 Q. Would you look at this document produced. You describe  
23 Exhibit 243(26), I think, as being compiled by you in  
24 the week which ended on 1 July.
- 25 A. Yes. In so far as I can recall, that is the case.
- 26 Q. These were some notes that you made.
- 27 A. Yes, they're my handwriting.
- 28 Q. It looks as though you have gone through Jenkins' book.
- 29 A. It's the way to account for - this piece of paper is,  
30 the top part of the paper, I'm clearly jotting notes to  
31 myself on the topic of history of Ngarrindjeri people  
32 and I've jotted the notes to myself from Jenkins in the  
33 bottom.
- 34 Q. Above the note from Jenkins, on the note Jenkins, you  
35 have a reference to p.18.
- 36 A. That's right.
- 37 Q. Menstruation.
- 38 A. That's right.

- 1 Q. That seemed to be relevant to you in your inquiry.  
2 A. It did.  
3 Q. Because of what Doreen had told you.  
4 A. Yes.  
5 Q. Above that note it appears the notes 'No cars. No  
6 transport. Wouldn't even see it, how would they even  
7 know.' Who said that to you.  
8 A. I don't know that's in any way something - that's not  
9 anything to report on. That's a note that I'm writing  
10 to myself.  
11 Q. What does it relate to.  
12 A. I don't know. I mean, it could well be Hindmarsh Island  
13 itself. I don't know.  
14 Q. What's the next line say.  
15 A. Well, the first word is 'initiation' and the second word  
16 is what looks like 'whoring', but I can't imagine under  
17 what context I would have written that word. So, it may  
18 well be that it's not clearly written. I can't imagine  
19 under what - I can't think of anything that - I can't  
20 recall in relation to that matter or imagine why  
21 something like that would have been relevant to me at  
22 all.  
23 Q. You can't.  
24 A. No.  
25 Q. The expression 'No cars. No transport. Wouldn't even  
26 see it, how would they even know' - 'initiation',  
27 'Leading to whoring', is that all referable to the  
28 concept that you were having of disempowerment of  
29 Aboriginal people.  
30 A. No reasonable -  
31 Q. 'Initiation', that goes on with disempowerment.  
32 A. I can't imagine what the heck I was on about with the  
33 whoring stuff. Reading that did have to do with  
34 disempowerment of the Aboriginal people.  
35 Q. I suggest that all this page up to the reference to  
36 Jenkins' role deals with disempowerment. You start off  
37 at the top of the page -  
38 A. No, that was explained where I have Jenkins. Jenkins

- 1 was primarily a work of history. So, clearly, a  
2 possible explanation for this page of notes is I was  
3 making a series of notes about disempowerment and went  
4 to Jenkens and, in the context of Jenkens, made a number  
5 of things that were relevant. And these matters of  
6 relevance are in a broader sense and these are not  
7 relevant, it seems to me, in respect of the  
8 disempowerment, they are relevant to the broader issues  
9 that I was dealing with. And if you look at the context  
10 of my report, the issue of 'footpaths', for example, is  
11 something that was relevant to me in my broader report.
- 12 Q. Isn't the expression 'No choices, no political origins';  
13 is that right.
- 14 A. 'Organisations'.
- 15 Q. 'No economic erosion, traditional structures, no  
16 political opposition'; is that right.
- 17 A. Could be.
- 18 Q. 'No mobility'. Born on the mission. Low point in  
19 Aboriginal political power'.
- 20 A. And I wanted to - to introduce the idea that Mr Abbott  
21 has gone from a column of words on one side of the page  
22 to a column on the other side lower down. They are not  
23 part of a run in that obvious sense.
- 24 Q. Whatever submission I make on this page, you cannot  
25 assist us any further with what the arrow leading to the  
26 words 'Wouldn't even see it, how would they even know',  
27 came about, came to be written by you.
- 28 A. Well, not with any explicit, may have made a comment on  
29 what it possibly might be, but further from that I  
30 really - it's absolute speculation.
- 31 Q. The diagram on the bottom right-hand corner, what does  
32 that refer to.
- 33 A. Well, again, I can only speculate. It looks to me like  
34 I might have been just, you know, making a jotting of  
35 what a bridge would look like. I don't know.
- 36 Q. Not women's reproductive organs.
- 37 A. Absolutely not.
- 38 Q. But it might be a bridge, you say.

- 1 A. Yes. It wouldn't be, there is no way I would draw  
2 women's reproductive organs. Anyway, I am a bit better  
3 of a drawer than that.
- 4 Q. It might be a pretty bad drawing of a bridge.
- 5 A. It would be a very bad drawing of a bridge. It would be  
6 a doodle.
- 7 Q. Document 28, would you look at document 28 produced.  
8 These were said to be your notes of the meaning of  
9 relevance of the Act in the planning process.
- 10 A. No, I don't think I said that. That is what it is.  
11 These are notes I made to myself in the run-up to  
12 preparing my report and they are just, yes, they are  
13 notes.
- 14 Q. These were some draft notes on which to base your  
15 report.
- 16 A. No, I don't think so. These are just notes to toy with  
17 things.
- 18 Q. Toy with.
- 19 A. Yes.
- 20 Q. On the page headed `Barrages`.
- 21 A. Yes.
- 22 Q. `D' and then `Body of traditions, observances, customs  
23 and beliefs', refer back to the Act.
- 24 A. Yes.
- 25 Q. You deal with the barrages, do you not.
- 26 A. I then say `barrage', that's right.
- 27 Q. This is your page in which you attempt to rationalise  
28 the barrages with the claims that are made by Doreen; in  
29 particular, that a bridge is somehow different from a  
30 barrage in its effect in linking the island to the  
31 mainland, don't you.
- 32 A. No. What actually happened is that I'm the one who put  
33 the barrages to Doreen in an attempt to basically  
34 explore the logical of what was being presented to me  
35 because, on the face of it, it seemed to me that a  
36 barrage didn't make clear sense of what was being told  
37 to me. In a sense, what I was doing was putting the  
38 barrages to her in order to - I mean, sometimes you will

- 1 get something that looks like an anomaly, an apparent  
2 logical anomaly, in the context that you elicit very  
3 interesting kinds of issues. But, clearly in my  
4 assessment, the fact that there was a barrage there and  
5 people are saying that they couldn't build a bridge, was  
6 a very important issue which I needed to deal with. And  
7 I put it to Doreen and my recollection is I also put it  
8 to Sarah and to Vi and Shirley, the other women that I  
9 talked to in that period, about this apparent logical  
10 inconsistency.
- 11 Q. You never got a logical answer.
- 12 A. What I got was very clear -
- 13 Q. Did you get a logical answer.
- 14 MS PYKE: Let the witness complete her answer.
- 15 MR ABBOTT: The question is whether she got a  
16 logical answer.
- 17 MS PYKE: Mr Abbott's logic might be different  
18 from the rest of us.
- 19 MR ABBOTT: The witness can answer that she made a  
20 distinction between the people saying what they believed  
21 and I don't want a dissipation in that area that we have  
22 gone through.
- 23 A. I got a logical answer in the Ngarrindjeri cultural  
24 logic, yes.
- 25 Q. What was the explanation in Ngarrindjeri cultural logic  
26 then.
- 27 A. There are barrages and a bridge is different.
- 28 Q. In what way.
- 29 A. In every context in which I proposed that.
- 30 Q. Tell us the ways.
- 31 A. Reference was made to the way in which the barrage is,  
32 in effect, mediated by the water in the same way that it  
33 sits in a medium of water.
- 34 Q. It sits in a medium of water.
- 35 A. In effect.
- 36 Q. How does it do that distinctly from a bridge.
- 37 A. That the bridge goes above the water. I continued on in  
38 effect.

- 1 Q. I want you to tell us the Ngarrindjeri logic you said  
2 you got. In terms of the Ngarrindjeri logic, the  
3 barrages sit on the water and the bridge doesn't.  
4 A. In the same terms.  
5 Q. What is the logic.  
6 A. That is the critical part.  
7 Q. That is the bit of logic. Any other bits of logic,  
8 Ngarrindjeri or otherwise. Any other logic.  
9 A. Clear distinction was made between the relationship of  
10 the barrage to two points of land and of the  
11 relationship of a bridge to two points of land.  
12 Q. What is the distinction, logical or not, with  
13 Ngarrindjeri logic.  
14 A. No, the logic that was put to me was that barrages sit  
15 in water.  
16 Q. What is the distinction about the connection with two  
17 bits of land.  
18 A. In so far as they connect, they connect in a medium of  
19 water and the distinction was made between a structure  
20 in a medium of water and that structure which is not in  
21 a medium of water.  
22 Q. We can have an underwater bridge, but not one above the  
23 water.  
24 A. That is quite possible. That is quite possible to take  
25 that logic, but when you are questioning the Aboriginal  
26 people, you may not get that answer to your question,  
27 But -  
28 Q. Or a pontoon bridge. That would be all right on that  
29 logic.  
30 A. I actually - I think what you are proposing and which  
31 reflects a response of the Chapmans very soon after  
32 that, it's a real pity that such a question wasn't put  
33 to Aboriginal people before the matter got to this  
34 stage, I often thought.  
35 Q. Any other points of logic.  
36 A. That is the central one.  
37 Q. Are there any others.  
38 A. Well, under here, I've got a series of question marks.

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D.J. FERGIE XXN (MR ABBOTT)

- 1 Q. Are there any others.
- 2 A. I'm looking at my notes in order to respond to you.
- 3 Q. Take as long as you like, subject to the Commissioner's
- 4 views.
- 5 CONTINUED



- 1 A. Well, yes what I am doing here is actually writing a  
2 series of questions to myself, which is, in a way, I  
3 suppose, you are getting some kind of an indication of  
4 matters I was thinking about in my assessment process on  
5 this page. I don't think it is exclusive and I don't  
6 think it is general, but it is obviously things in a way  
7 I was putting to myself, jotting notes of responses to  
8 myself and, kind of, thinking through matters, with, at  
9 points, my pen on paper.
- 10 Q. The next page that I have is one headed, 'barrages,  
11 vagueness and Henry and Jean.' Do you have that.
- 12 A. Yes, I do.
- 13 Q. You have got on that page, 'not dreaming it is  
14 reality.' Is that a phrase from Doreen.
- 15 A. Yes, that's a phrase from Doreen.
- 16 Q. Did you ask her what she meant by that.
- 17 A. I had an explanation.
- 18 Q. Can you answer 'yes' or 'no'. Did you ask her is the  
19 question.
- 20 A. The answer is no.
- 21 Q. Did she ever tell you what she meant by that.
- 22 A. Yes, Doreen elaborated on that statement.
- 23 Q. When.
- 24 A. I'm not clear on exactly when, but at some stage during  
25 that period.
- 26 Q. What did she say.
- 27 A. In a sense, well, my understanding of what she said and  
28 I can't remember her exact words, was that, in a sense,  
29 people - that this wasn't simply a dreaming, that this  
30 is a lived reality that people lived, that dreamings are  
31 not just an abstraction about history. This is about  
32 people's lived reality.
- 33 Q. What was the lived reality.
- 34 A. That this tradition is real.
- 35 Q. But, I thought you weren't concerned with that. I  
36 thought it didn't matter to you if it was real or not  
37 real.
- 38 A. It matters to me that Doreen Kartinyeri -

- 1 OBJECTION Ms Pyke objects.
- 2 MS PYKE: Mr Abbott asked a question about what  
3 Doreen said, he gets the answer and it is not what the  
4 witness has thought or asked. What is the relevance of  
5 all of this?
- 6 MR ABBOTT: I will rephrase it, because the witness  
7 has probably forgotten the question.
- 8 XXN
- 9 Q. When Doreen claimed that the tradition was a lived  
10 reality, did you ever take any steps to ascertain  
11 whether that claim was true.
- 12 A. It was evident in what she was saying that it was true  
13 to her.
- 14 Q. I know that. Did you take any steps to see that there  
15 was any contemporary experiential authority for the  
16 claim that it was a lived reality.
- 17 A. Doreen was evidence that it was a reality, at least to  
18 her, in those terms.
- 19 Q. But, anyone else, any other investigation, any other  
20 shred of evidence.
- 21 OBJECTION Ms Pyke objects.
- 22 MS PYKE: We have been through this time and  
23 time again.
- 24 MR ABBOTT: Not that it was a lived reality.
- 25 XXN
- 26 A. A dimension of lived reality. A dimension of the lived  
27 reality. In other words, it is real to the people  
28 here and now.
- 29 Q. Real to Doreen.
- 30 A. Yes.
- 31 Q. You never ascertained whether it was real to anyone  
32 else.
- 33 A. I had indications that other people felt the same way.
- 34 Q. I will leave that topic and go to something else. You  
35 went looking for traditional owners did you not, of  
36 Hindmarsh Island, in the area.
- 37 A. No.
- 38 Q. Did you ever find any traditional owners.

- 1 A. No. As I said earlier, it seemed to me that, in terms  
2 of my priorities for writing the report under the Act,  
3 that that was not a high priority.
- 4 Q. Did you ever attempt to find out whether there were any  
5 traditional owners.
- 6 A. I knew from my husband's work that that was - that would  
7 be a long and difficult task and no, I did not.
- 8 Q. Well, were you ever aware that the Campbells claim to be  
9 the traditional owners of Hindmarsh Island.
- 10 A. Not in this period I was not.
- 11 Q. You see, you never asked anyone.
- 12 A. It wasn't relevant.
- 13 Q. But, you didn't know that it wasn't relevant at the  
14 beginning of your enquiry, did you.
- 15 A. I certainly did. I understood what was necessary under  
16 the Act.
- 17 COMSR: The witness has said that there are  
18 certain things that she didn't get round to doing  
19 because of the limitations on time and I understand her  
20 explanation is that this is one area.
- 21 XXN
- 22 A. Yes and it is not a requirement under the Act. So it  
23 was clearly not a matter of any high priority to me,  
24 although, if I had been doing this work under a  
25 different context it may well have been a high priority.  
26 But, in the context of this Act, within those time  
27 frames, it certainly was not.
- 28 Q. You gave evidence, that, on the 20th, that is when  
29 Tim Wooley rang you, on 17 June, he asked you to, or  
30 said something about getting the traditional owners.
- 31 A. No, that relates to traditional owners to get, to have  
32 permission to read the Draper report and that's because  
33 the Draper report was - what's the word - expressed  
34 under the State Act which does have reference to  
35 traditional owners and it has reference to the  
36 traditional owners of information, and not -
- 37 MS PYKE: If the witness could finish answering  
38 the question.

1 XXN

2 Q. You finish.

3 A. My understanding is that, what Tim was suggesting I do,  
4 was get permission from a traditional owner of the  
5 knowledge that had been given to Mr Draper, for  
6 permission to read his report.

7 Q. Did you do that.

8 A. I did.

9 Q. How did you go about the process of finding out who were  
10 the traditional owners.

11 A. I asked him who he suggested.

12 Q. Asked Tim.

13 A. Yes.

14 Q. And he told you.

15 A. And he suggested that Sarah Milera would be sufficient  
16 for the purpose.

17 Q. Did you ever ask her whether she considered herself  
18 to be a traditional owner.

19 A. In the sense that I, well, in the sense that I said, 'I  
20 need permission from a traditional owner to have access  
21 to the Draper report' I presume that I did, yes.

22 Q. What, you recall having asked her the question, 'I need  
23 permission from a traditional owner and that's  
24 why I am asking you.'

25 A. I imagine that is how I would have put the question.

26 Q. You see, it may well be that you never asked her  
27 anything about whether she claimed to be a traditional  
28 owner, that's equally possible, isn't it.

29 OBJECTION Ms Pyke objects.

30 MS PYKE: The traditional owner of the information  
31 that was given to Neale Draper.

32 XXN

33 Q. The traditional owner of anything. You never asked  
34 Sarah Milera a question, I suggest, about whether she  
35 was a traditional owner of anything.

36 COMSR: I think the witness has made it clear,  
37 that the report that she was preparing was not a full  
38 report in the usual sense, because she was aware of the

- 1 fact that, she had no prior expertise in the area of  
2 Ngarrindjeri culture and that she really didn't see her  
3 role, initially, as being that in the report writer.  
4 XXN  
5 Q. I think it is clear from your report, that one of the  
6 aspects of this tradition, or your interpretation of it,  
7 is that, an interference with the landscape such as that  
8 proposed by this by the building of the bridge, would  
9 ultimately render all Ngarrindjeri women sterile.  
10 That's a fair summary of one aspect.  
11 A. Within that tradition.  
12 Q. That's a fair summary of one aspect of that tradition.  
13 A. Within that tradition, that was the understanding.  
14 Q. I suggest to you, that no-one told you or claimed that  
15 it would render them sterile.  
16 A. You're wrong.  
17 Q. Who did.  
18 A. Doreen Kartinyeri.  
19 Q. Anyone else.  
20 A. Sarah Milera may have.  
21 Q. You can't recall Sarah Miller saying that, that's a  
22 guess, isn't it.  
23 A. Yes.  
24 Q. Well, how did Sarah - how did Doreen Kartinyeri, in  
25 Ngarrindjeri logic, or any other form of logic, go from  
26 the proposition, that here's a tradition and if a bridge  
27 is erected, it will render me sterile.  
28 A. She did so in appendix 2.  
29 Q. Sorry.  
30 A. She did so, in part, in appendix 2.  
31 Q. Maybe she did, but, you tell me. Maybe take it then  
32 before 29 June, when you had your three hour note taking  
33 from her and compiled appendix 2, she never made the  
34 claim of sterility.  
35 A. I think there is a fair chance she was, she would have  
36 said such a thing to me on the drive from Kadina.  
37 Q. How did she claim - what is the logic between an  
38 interference with tradition and sterility.

- 1 A. It is a very similar logic to tubal ligation.  
2 Q. Tubal ligation.  
3 A. Well, it is a facetious remark. I withdraw it. I  
4 withdraw it.  
5 Q. I am interested in exploring it. I think I see what you  
6 are getting at.  
7 A. I think that, any reasonable answer to this can only be  
8 done with direct reference to appendix 2.  
9 Q. I want to know. I mean, Doreen may have claimed it will  
10 render her sterile. I mean, if she believed that, but,  
11 you knew, that wasn't much of a claim, didn't you.  
12 A. I think Mr Abbott, you continue to miss the point, that  
13 there are -  
14 Q. You knew that wasn't much of a claim to you.  
15 A. What I understand what you are saying -  
16 COMSR  
17 Q. Was there a conversation between yourself and Doreen  
18 Kartinyeri, in which the relationship between the island  
19 and/or the building of a bridge and sterility was  
20 discussed.  
21 A. Sterility amongst Ngarrindjeri women, yes.  
22 XXN  
23 Q. Doreen Kartinyeri, you told me, claimed, that the  
24 building of the bridge would render her sterile.  
25 A. Yes.  
26 Q. But, you knew she was already sterile.  
27 A. No, I didn't and I think actually you may have your  
28 chronology out Mr Abbott. I mean, not that I think that  
29 it is critical to the discussion, but I think Doreen's  
30 - I don't actually think it is proper to talk about  
31 this.  
32 Q. Did she claim that not only would it render her sterile  
33 but all other Ngarrindjeri women.  
34 A. Yes.  
35 Q. Even those that took the opposite view to Doreen.  
36 A. That was the implication.  
37 COMSR: I think that Mr Abbott, what you were  
38 saying, she did explain whether there was any

1 connection, what was the link from the building of the  
2 bridge.

3 XXN

4 A. It is something I think I can't explain fully without  
5 reference to appendix 2 and its contents.

6 COMSR

7 Q. You see, you might have had a number of discussions with  
8 Dr Kartinyeri about a number of things, not all of which  
9 found their way into your report I understand.

10 A. Yes.

11 Q. So that, it doesn't necessarily indicate that something  
12 is in your report simply because you had a discussion  
13 about it.

14 A. No, but, in order to explain the logic of this that Mr  
15 Abbott is asking me, I would have to actually disclose  
16 something that is in the appendix it seems to me. I  
17 think it is.

18 XXN

19 Q. You make the claim a number of times in your report,  
20 Professor Saunders picks it up, and endorses your claim.  
21 Are you telling us, that no-one can ever subject that  
22 claim to any analysis, because to do so will mean that  
23 - you can't tell us anything about the steps by which  
24 you arrived at that conclusion.

25 OBJECTION Ms Pyke objects.

26 MS PYKE: She is not saying that. She is saying  
27 she cannot answer the question on account it will  
28 require her to reveal the matters in the sealed  
29 envelopes, which you have given a direction.

30 COMSR: I know.

31 MS PYKE: Mr Abbott is being most improper  
32 and unfair, in putting that proposition to the witness.

33 COMSR: I am exploring the reason why it is  
34 difficult to discuss that process without having to  
35 reveal what is in the envelopes.

36 COMSR

37 Q. Is this the situation, that no explanation was given  
38 during the course of your discussions and the

- 1 explanation that appears is something that you have  
2 written into the appendix.
- 3 A. Yes.
- 4 XXN
- 5 Q. Can you explain to me then, if Doreen Kartinyeri is  
6 claiming that the construction of the bridge would  
7 render all Ngarrindjeri women sterile, how that could  
8 ever be so, when none of the other Ngarrindjeri women  
9 were ever told of that fact, since it apparently wasn't  
10 mentioned, in your hearing, to any other Ngarrindjeri  
11 woman.
- 12 A. Yes, but by analogy, none of your clients were ever  
13 told they were going to menstruate and they did. Yes, I  
14 am -
- 15 Q. Dr Fergie.
- 16 A. Well, I am sorry, I don't think what you are suggesting  
17 follows in logic.
- 18 Q. All I am saying is, your evidence so far is this, that,  
19 it is all in Doreen Kartinyeri's mind, it is not  
20 something that -
- 21 A. A tradition is. Where do you think tradition exists?
- 22 Q. But, the claim of the bridge, rendering all Ngarrindjeri  
23 women sterile, is not something that is known to any  
24 other Ngarrindjeri woman, that you know of.
- 25 A. Yes, I believe that it is known to other Ngarrindjeri  
26 women. The question is, when did I come to know that?
- 27 Q. You believe it is, but, you never heard Doreen or any  
28 other woman, in the presence of Doreen, mention it, did  
29 you.
- 30 A. Yes, but I don't understand what you are -
- 31 Q. The contemporary experiential authority that your  
32 process indicates convincingly, I suggest that no-one  
33 else knew of this claim; that building a bridge would  
34 render all Ngarrindjeri women sterile, except Doreen  
35 Kartinyeri.
- 36 A. Well, if you want me to go, Mr Abbott, again over the  
37 notion of spokespersons in Aboriginal culture I will do  
38 it, but it seems to me that it is a waste of everybody's



1 time for me to do so. If people would like me to do  
2 that I am quite happy to do that.

3 COMSR

4 Q. You did so on the basis that she was spokeswoman.

5 A. Yes. She had been authorized to speak about tradition  
6 and that, in effect, the kind of knowledge that we're  
7 talking about is not knowledge, Mr Abbott, that one  
8 would expect in all Aboriginal cultures to be generally  
9 known. It is not, as it seems to me that you are trying  
10 to propose, flimsy evidence at all, to have an account  
11 from a single knowledgeable and acknowledged informant.

12 XXN

13 Q. I just want to highlight what I would suggest is the  
14 nonsense of this view, that, if Dr Doreen Kartinyeri  
15 genuinely believed that Ngarrindjeri tradition was such,  
16 and it was as powerful a secret as the atomic bomb, that  
17 the construction of the bridge would render all  
18 Ngarrindjeri women sterile, that its absolutely  
19 ridiculous that you can provide no evidence that any  
20 other Ngarrindjeri women was aware of this startling  
21 secret.

22 A. I don't think that's the point and I think what you are  
23 demonstrating is, this is highlighting your failure to  
24 understand the nature of Aboriginal tradition and I  
25 really - you know, I am quite happy to go through it  
26 again, but I can't see that there is anything to gain  
27 by that.

28 COMSR: You don't have to go through it again.

29 Perhaps we can get on to another topic

30 COMSR

31 Q. Perhaps I will just clarify something with the witness  
32 which goes to your report in the appendix, when you  
33 first put it in, your report, you had 1 appendix to it  
34 did you not.

35 A. Not it had two. It had appendix 1, which is actually a  
36 list of who I spoke to.

37 Q. And that wasn't a sealed one.

38 A. No.

- 1 Q. So it had two appendices.  
2 A. And one sealed.  
3 Q. As you understand it, it complied of what your brief had  
4 been, in the way of writing the report at the time you  
5 put it in.  
6 A. Yes, but I was acutely aware of the kind of pressure  
7 that the document had produced.  
8 Q. I appreciate that, but, as far as you were concerned,  
9 you had provided a report in the limited terms in which  
10 you had offered to write it.  
11 A. I guess in the limited time I guess. What happened is  
12 that, when, in fact, my mother said do me, 'you can't  
13 have these typos there forever' because they were all  
14 full. It occurred to me, if I did typos that I could  
15 actually do something else that had been worrying me  
16 during the day, which I would normally have put in and  
17 hadn't and hadn't had time to write in fact, and that  
18 was what became appendix 3.  
19 XXN  
20 Q. Doreen Kartinyeri was your informant, your major  
21 informant. There were other so-called custodians.  
22 A. That's right.  
23 Q. That you mentioned.  
24 A. Yes.  
25 Q. Three in number, Edie Rigney, Connie Roberts and Maggie  
26 Jacobs.  
27 A. That's right.  
28 Q. We had from your information, that Doreen Kartinyeri  
29 told you who had passed on from at least two generations  
30 this position to her and she mentioned her Auntie Rose.  
31 A. Yes.  
32 Q. She mentioned, the daughter of Pinkie Mack.  
33 A. I don't believe she did at that stage, but I can't be  
34 certain of that.  
35 Q. No, you said she didn't, she mentioned, Grandma Sally,  
36 Auntie Rose and you are not sure, you don't think she  
37 mentioned the daughter of Pinkie Mack. That was your  
38 evidence I think.

- 1 A. That's my recollection.
- 2 Q. Did the other custodians site the persons who had handed
- 3 on the knowledge to them.
- 4 A. Not that I can recollect.
- 5 Q. It is just that you said the exact opposite in your
- 6 statement at p.85. You said that she and the other
- 7 custodians do cite their antecedents who transmitted
- 8 this to them.
- 9 A. What page.
- 10 Q. P.85.
- 11 A. I have no p.85.
- 12 CONTINUED

- 1 Q. Of your statement. I have got a p.85 of your statement.  
2 A. I am quite happy to stand to be corrected.  
3 Q. I would like to know who, or whether this statement in  
4 your -  
5 A. Can you tell me where?  
6 Q. Yes, first line on p.85. It begins on p.84 'Doreen made  
7 it clear that this is a tradition which she does indeed  
8 understand to have been handed down from generation to  
9 generation. And she and other custodians cite their  
10 antecedents who transmitted this knowledge to them.'  
11 A. Yes.  
12 Q. Who are the antecedents whom the other custodians cited.  
13 A. Connie Roberts cites - sorry, Rhonda Agius, who is now  
14 understood to be a custodian and who I -  
15 Q. Who is now a custodian.  
16 A. Well, yes. Who I didn't understand was so, at the time.  
17 Actually I can't remember clearly. Basically in the  
18 cases that I can recall the interesting thing is that  
19 people actually most frequently cite their grandmother.  
20 Q. No, we just want to know, of Edie Rigney, Connie Roberts  
21 and Maggie Jacobs, who were their antecedents who were  
22 cited to you, or whether that statement is just not true  
23 in your statement.  
24 A. No, I don't believe it isn't true. What I am just  
25 puzzling about is it is ambiguous to me actually.  
26 Q. It is, what, ambiguous.  
27 A. Yes, because what I do know is that I have come to know  
28 the antecedents of some of these women since the time  
29 and what I am trying to do is to - I mean, it actually  
30 looks as if - I can't say with any certainty whether I  
31 knew Doreen's antecedents, at the time that I wrote the  
32 report. I certainly have heard of the antecedents of  
33 others since and I am reading this sentence and it is  
34 ambiguous to me whether - well, it is clear that I am  
35 talking about that - I am using the present tense Doreen  
36 - no, that is a past tense.  
37 Q. You are in past tense in reference to your report.  
38 A. Can I just think it through? Yes, but I am using - I am

- 1 saying other custodians and not all other custodians and  
2 I am using the present tense in relation to the others.
- 3 Q. Rather than have your processes, can I just ask, will  
4 you agree with this proposition: that you have  
5 over-egged the pudding on p.85.
- 6 A. I don't know that I have over-egged the pudding, but it  
7 certainly is an ambiguous sentence as I read it now.
- 8 MR ABBOTT: I will pass on to something else.  
9 XXN
- 10 Q. The incident where Amelia Campbell was excluded from the  
11 meeting at Rocky Marshall's house. I just want to ask  
12 you -
- 13 A. I have said I don't believe that that was an unequivocal  
14 exclusion.
- 15 Q. The Commissioner has received evidence about this  
16 incident from the various participants there. You  
17 certainly appreciated that Amelia Campbell's presence  
18 and her departure raised an issue which needed to be  
19 investigated by you.
- 20 A. Yes.
- 21 Q. You chose not to investigate that from Amelia Campbell's  
22 point of view by asking her.
- 23 A. That's true. I didn't know how to contact Amelia.
- 24 Q. Nor did you take any steps to find out how you might. I  
25 mean, you never asked Doreen 'How do I contact Amelia?'
- 26 A. I may well have done that at the museum meeting I had  
27 with her before she saw Professor Saunders, because I  
28 certainly remember making some detailed enquiries from  
29 her about Amelia, which included taking jottings of  
30 Amelia's genealogy and asking her in detail what was  
31 going on. I may have asked her how to get in contact.
- 32 Q. Where is that.
- 33 A. Those are with the notes at the ALRM.
- 34 Q. In your field books.
- 35 A. Yes.
- 36 Q. We can't get to them.
- 37 A. I would be very happy if you could get to them, yes.
- 38 Q. Can we have your signed assurance to the ALRM that we

- 1 can.  
2 A. Certainly.  
3 OBJECTION Ms Pyke objects.  
4 MS PYKE: I can assure you a letter has been sent  
5 to them requesting them.  
6 MR ABBOTT: When?  
7 MS PYKE: When we were served with the summons.  
8 MR ABBOTT: Don't keep it a secret from counsel  
9 assisting. Let him have a copy.  
10 MS PYKE: I am happy to provide a copy.  
11 COMSR: Can we get on with it?  
12 XXN  
13 Q. You have never had any idea of what number of  
14 Ngarrindjeri women Amelia Campbell represented, have  
15 you.  
16 A. No.  
17 Q. You don't know whether she spoke for 35 or 50 or 100.  
18 A. No, she didn't purport to do so, though.  
19 Q. But you never enquired.  
20 A. No.  
21 Q. Here was a woman who had a contrary point of view,  
22 apparently.  
23 A. No, it wasn't apparent that it was a contrary point of  
24 view. What was apparent was that she was very nicked  
25 off at not being funded. She was very upset at not being  
26 an invited participant of the Graham's Castle meeting.  
27 COMSR: We have gone through this.  
28 MR ABBOTT: Yes, I don't want to ask any more  
29 questions on that topic.  
30 XXN  
31 Q. The claim by you that Sarah Milera - that your attempt I  
32 suggest to justify Sarah Milera's claim that she  
33 lectured in law at the university - let me put it in  
34 context. Do you know Kathy O'Shea.  
35 A. Yes.  
36 Q. Is she a woman you spoke to.  
37 A. Yes, she is.  
38 Q. You learnt from her that Sarah commentated or was a

- 1 commentator at one meeting called Defending the  
2 Environment, did you not.
- 3 A. No, I didn't know that.
- 4 Q. And that that was the only contact, one commentary at  
5 one meeting at the university.
- 6 A. No, my recollection is that Kathy said to me that Sarah  
7 had been and spoken in there at the Centre.
- 8 Q. Once.
- 9 A. I don't think she specified that.
- 10 Q. You didn't ask.
- 11 A. No, because at that point it was a curiosity. I mean, I  
12 actually don't - I think it is really - I think what  
13 needs to be said is that in my statement where I talk  
14 about Sarah having made those claims, it is a report of  
15 something that was said to me. I didn't actually feel  
16 any necessity to defend it, except when - in fact, I  
17 don't see any necessity to defend it now. I did however  
18 in response to a question from Mr Meyer note when he was  
19 suggesting that Sarah was prone to - I can't remember  
20 the expression that he used. That I actually said in  
21 this particular case that I had had some indication from  
22 somebody that she had indeed been at the Centre for  
23 Environmental Law, or whatever it is called, at the  
24 university and she had indeed spoken. So, I wasn't  
25 proposing that she taught. Although it seems to me that  
26 it depends on your definition of teaching, whether that  
27 constitutes teaching.
- 28 MR ABBOTT: I didn't ask for this long answer.
- 29 OBJECTION Ms Pyke objects.
- 30 MS PYKE: If he asks a question that requires a  
31 long answer, then he is stuck with it.
- 32 COMSR: I don't know that there was a question.
- 33 MR ABBOTT: We will go on to something else. I was  
34 able to look up my next reference in the time.
- 35 XXN
- 36 Q. Can we go to just a couple of matters in the media.
- 37 COMSR: Mr Abbott, will we be through by this  
38 evening?

- 1 MR ABBOTT: Yes, I will be finishing very shortly.  
2 I have only got a couple of matters in the media to put  
3 to this witness now.  
4 XXN  
5 Q. I'm not sure whether this is already in, but I will read  
6 it out. It is The Australian of 18 March 1995. It a  
7 report of an interview with Doreen Kartinyeri and museum  
8 anthropologist Dr Chris Anderson, or the museum's  
9 director of anthropology. I hand up a copy for you to  
10 look at. The interesting part is at the end, the last  
11 column. We read after the comments there about Dr  
12 Anderson 'Last night an anthropologist who advised the  
13 ALRM and Professor Saunders, Dr Deane Fergie, disputed  
14 Dr Anderson's claim that Professor Saunders had not  
15 taken into account the museum records.' Did you do  
16 that.  
17 A. I disputed that. This is not my expression by any  
18 means.  
19 Q. No, but that is the effect of what you were doing, isn't  
20 it.  
21 A. No, the effect is to say that archival references, and  
22 including those from the museum, were taken into account  
23 in this process in so far certainly that I actually took  
24 into account my husband's report on this matter, which  
25 certainly had canvassed those records. And I think  
26 that's what it goes on to say in the next paragraph.  
27 Q. You may have taken into account your husband's  
28 references, but the complaint that the director of the  
29 museum, Dr Chris Anderson, was making was that Professor  
30 Saunders had never bothered to come to the museum or  
31 Investigate the museum records.  
32 A. That may not have been what was put to me by this  
33 reporter.  
34 Q. But you are stated as having, in essence, disputed Dr  
35 Chris Anderson's claim.  
36 A. The one thing that I have learned throughout this  
37 process is what one says and what the media reports one  
38 to have said can be completely different matters.



- 1 MR ABBOTT: I tender that.  
2 OBJECTION Ms Pyke objects to tendering of document  
3 by Mr Abbott.  
4 MS PYKE: The witness hasn't agreed that that is  
5 what she said. And, if you are going to be consistent,  
6 I recall putting something to Mrs Dorothy Wilson that  
7 she didn't agree she said and you didn't accept it.  
8 MR ABBOTT: It was.  
9 MS PYKE: It wasn't.  
10 MR ABBOTT: In the end it was accepted.  
11 COMSR: The witness has explained to what extent  
12 she does accept what is in here.  
13 MR ABBOTT: Yes, I tender it.  
14 EXHIBIT 253 Article from The Australian, dated 18  
15 March 1995, tendered by Mr Abbott.  
16 Admitted.  
17 COMSR: It is in an exhibit now which contains  
18 the newspaper cuttings.  
19 MR ABBOTT: Yes.  
20 XXN  
21 Q. In what has been referred to as the Mouth House letter,  
22 which is marked for identification 206, now before you -  
23 MR TILMOUTH: Could you just note my continuing  
24 objection to indirect evidence about this letter? I  
25 made this point -  
26 MR ABBOTT: This will be direct evidence.  
27 MR TILMOUTH: No, but I object to proving this letter  
28 indirectly. I have maintained this objection all along.  
29 I am asking you to note the objection I made months  
30 ago.  
31 COMSR: All right.  
32 XXN  
33 Q. Have you seen this letter before.  
34 A. Never.  
35 Q. Not even during the course of this Commission.  
36 A. I have seen it passed back and forth, but this is the  
37 first time I have sat and looked at the face of it.  
38 Q. I don't ask you about the first 15 lines or so. This is

- 1 a letter of some sensitivity, so I ask you about the  
2 lines which begin 'The Mundoo Island'. Do you see that,  
3 about 15 lines down.
- 4 A. Which handwriting is it in, in the first lot or the  
5 second?
- 6 Q. In the first lot of handwriting.
- 7 A. Okay, right.
- 8 Q. The sentence beginning 'The Mundoo Island' and the next  
9 sentence beginning 'Where'.
- 10 A. Yes.
- 11 Q. Have you read those.
- 12 A. Yes.
- 13 Q. Was that claim ever made to you.
- 14 A. No.
- 15 Q. Three lines further down -
- 16 A. Certainly not in that form anyway.
- 17 Q. Look, anything like it made to you.
- 18 A. In the sense that a reference was made to Mundoo Island  
19 and death I suppose that there is a relationship between  
20 those, but it really comes down to a question of what  
21 you understand to be 'or anything like that'.
- 22 Q. But was there anything more specific than death and  
23 Mundoo Island made to you.
- 24 A. Yes, and body smoking.
- 25 Q. Body smoking.
- 26 A. Yes.
- 27 Q. By Doreen Kartinyeri.
- 28 A. Yes, my recollection is that there was a general  
29 discussion of that as well.
- 30 Q. The claim here, in fact, about Mundoo Island was  
31 essentially the same as the claim that was ventilated on  
32 the night of 19 June 1994 at Graham's Castle when the  
33 postcard from the museum with the elevated burial was  
34 handed around.
- 35 A. I think that is putting it too strongly.
- 36 Q. Substantially similar claim.
- 37 A. No, I - reading what I am reading here and what I heard  
38 there it seemed to me to - that's putting it too

- 1 strongly.
- 2 Q. How.
- 3 A. Mention was made of Mundoo as a place where bodies were
- 4 smoked.
- 5 Q. Where bodies were prepared for burial.
- 6 A. No, those words I don't recollect being used.
- 7 Q. No, I am not asking whether the words were used, I am
- 8 asking whether that is the sense that Mundoo Island was
- 9 mentioned.
- 10 A. No, I didn't get that sense, at the time, I don't
- 11 believe.
- 12 Q. What did you understand by `smoking'.
- 13 A. What I had read in the literature. I just - as a gloss
- 14 for - well, and also there was the postcard thing, which
- 15 actually had a body on it.
- 16 Q. You understood that is not preparation for burial, that
- 17 is burial.
- 18 A. It is a stage in it. No, I don't know that burial is
- 19 quite the right word, but anyway. In fact, it is the
- 20 contrary of burial, in fact.
- 21 Q. I know what you are getting at. Three lines below that
- 22 we read `Kumarangk is the Aboriginal word for fertile
- 23 (pregnancy).'
- 24 A. Yes.
- 25 Q. Anyone ever make that claim to you.
- 26 A. A claim was made that Kumarangk was a Ngarrindjeri word.
- 27 Q. Kumarangk was a Ngarrindjeri word.
- 28 A. Yes.
- 29 Q. For fertile.
- 30 A. No, I don't believe it was made like that, no.
- 31 Q. Again, any similar claim that Kumarangk or any spelling
- 32 like it -
- 33 A. That's not the problem. The problem is fertility and
- 34 pregnancy. And I am not sure that I have a sufficient
- 35 recollection to say that those - that's the reference
- 36 that was made in relation to Kumarangk.
- 37 Q. Did someone make a claim that the word Kumarangk meant
- 38 something.

- 1 A. Yes.
- 2 Q. Who.
- 3 A. I think it was being used generally, so I suppose you  
4 could say the meeting was using it in a particular way,  
5 as I recollect.
- 6 Q. Of 19 June.
- 7 A. I think so.
- 8 Q. What was the claim that was being made generally at the  
9 meeting about the name Kumarangk.
- 10 A. It wasn't presented as a claim. I think it was  
11 presented as a meaning and my -
- 12 Q. What was the meaning.
- 13 A. I am not - I am not really clear, in fact.
- 14 Q. You see, I suggest you are just making it up as you go  
15 along and nothing was mentioned about Kumarangk and it  
16 meaning anything, is that possible.
- 17 A. No, that's not possible. Kumarangk was given a meaning.  
18 What I am not absolutely clear on any more is precisely  
19 what that meaning was said to be.
- 20 Q. What was the general meaning said to be.
- 21 A. It had to do with matters to do with fertility and  
22 pregnancy, but I don't know that that is the translation  
23 that was given to me.
- 24 Q. Did you make any note of it.
- 25 A. No, of course, I have said in this place before that I  
26 took no notes.
- 27 Q. Did you ever make any note of it.
- 28 A. I may well have done so, but I -
- 29 Q. But, you see, there is no note that we have seen that  
30 makes any reference to this. And, yet, this was an  
31 important matter which I suggest is absent from your  
32 report. That the very word `Kumarangk' was a  
33 Ngarrindjeri word meaning, at its least, something to do  
34 with fertility and pregnancy. Why is that missing from  
35 your report.
- 36 A. I clearly didn't see it as important as you do, for the  
37 - in that context. I suppose it suggests pretty  
38 strongly that I hadn't seen this letter and that I

- 1 wasn't writing my report in anyway in relation to this  
2 kind of a letter.
- 3 Q. It suggests pretty strongly that it wasn't mentioned at  
4 Graham's Castle on 19 June. Otherwise when you came to  
5 write your report and particularly appendix 3 which  
6 deals with the place of fertility and the Ngarrindjeri  
7 cosmology and Hindmarsh Island, in particular, you don't  
8 allude to the fact that Kumarangk is the Ngarrindjeri  
9 word for something related to fertility and pregnancy.
- 10 A. I don't think it suggests anything of the sort.
- 11 Q. When I say `your report', I am referring to appendices 2  
12 and 3. You are not suggesting it is in there either,  
13 are you.
- 14 A. I don't recall whether it is or it isn't. It may be.
- 15 CONTINUED

- 1 Q. Everything is possible, but you don't assert that it is.  
2 A. And I don't assert that it's not.  
3 Q. Did Doreen ever tell you that she always knew of the  
4 stories, but never knew what they related to.  
5 A. No.  
6 Q. I want to ask you about another reference, and that is  
7 the `Who Magazine' article.  
8 COMSR: Hasn't the witness been asked about  
9 this?  
10 MR ABBOTT: Yes.  
11 MR SMITH: Exhibit 67.  
12 COMSR  
13 Q. This article has been put to you previously.  
14 A. Yes, it has.  
15 MR ABBOTT: That's my recollection, too. I want to  
16 ask her about another place in it.  
17 XXN  
18 Q. It leads off with `When 19 year old Doreen Kartinyeri  
19 glimpsed a map of Adelaide's Hindmarsh Island for the  
20 first time one afternoon in December 1954' I am leaving  
21 out four words `she was paralysed with excitement'. Did  
22 she ever tell you anything like that.  
23 A. She did not.  
24 Q. She said to this reporter apparently `She has a clear  
25 vision of the day when she first saw the map, whose  
26 contours, she says, mirror the shape of the female  
27 reproductive system'. Mr Smith took you through about  
28 the claim of the contours mirroring the shape of the  
29 female reproductive system. Did she ever tell you that  
30 she had a clear vision of the day when she first saw the  
31 map.  
32 A. No, she did not.  
33 Q. Did she mention anything about that, the day when she  
34 first saw the map.  
35 A. She did not.  
36 Q. The article goes on to say, at the last line on p.3  
37 `Several years later' this is apropos of Doreen `after  
38 returning to Point McLeay, Kartinyeri moved to Point

- 1 Pearce Mission, another Ngarrindjeri settlement, 250 km  
2 away on the Yorke Peninsula, and married there'. You  
3 have always heard that, have you, that Yorke Peninsula  
4 is a Ngarrindjeri settlement, Point Pearce.
- 5 A. No.
- 6 Q. No.
- 7 A. No.
- 8 Q. It doesn't accord with your recollection.
- 9 A. No.
- 10 Q. Just on that, you regard Point Pearce not as  
11 Ngarrindjeri, from what you have been told, don't you.
- 12 A. I don't think I am in a position to make any comment  
13 about that.
- 14 Q. The article asserts that Doreen said 'Her aunt Rose  
15 Kropinyeri and uncle Nat lived on the outskirts of the  
16 settlement. Kartinyeri explains that Rose and Nat chose  
17 to live off the mission because they preferred their  
18 tribal ways to Christianity'. Did Doreen make any claim  
19 to you to that effect.
- 20 A. She did not.
- 21 Q. The article continues 'It was in this idyllic setting,  
22 says Kartinyeri, that her Auntie Rose explained to her  
23 the secrets of Hindmarsh Island'. Did Doreen make any  
24 claim that the Point Pearce Mission on the Yorke  
25 Peninsula was the place where her Auntie Rose had  
26 explained to her the secrets of Hindmarsh Island.
- 27 A. She did not.
- 28 Q. Did she make any claim about her Auntie Rose being a  
29 midwife.
- 30 A. She may have done. I can't recollect.
- 31 Q. The article continues 'Doreen Kartinyeri is quoted as  
32 saying "We knew Hindmarsh was sacred to the older  
33 people". Then it says 'It was sacred to them because  
34 of their spiritual beliefs, because the whole waters  
35 around there represent the womb and all that'. Did she  
36 ever make that claim to you, that the waters represented  
37 the womb.
- 38 A. She didn't make the claim there, no, she did not.

1 Q. Did she ever make a claim to you that the waters around  
2 this area represented the womb.

3 A. I don't believe she did.

4 Q. In the next column, as justification for what she says,  
5 in contradistinction to what was being asserted by my  
6 clients, that she had made it up, Doreen Kartinyeri is  
7 quoted as saying these words `But Kartinyeri says her  
8 tribal sisters were denied the secrets because, unlike  
9 her Auntie Rose, their mothers were Christians'.

10 A. I don't know where that is.

11 Q. Column 2 on p.27.

12 A. Yes, I see. Yes.

13 Q. Did Doreen ever make that comment to you.

14 A. She did not.

15 Q. Doreen is quoted as saying `She believes they' that is  
16 the mothers of my clients `were probably forbidden from  
17 passing on traditional stories under "threat of having  
18 their children taken away" by the missionaries'. Did  
19 she ever make that claim to you.

20 A. She did not.

21 Q. This suggestion that Auntie Rose and Uncle Nat were not  
22 part of the mission community, lived off the mission,  
23 and preferred tribal ways to Christianity, Doreen  
24 Kartinyeri never made that suggestion to you, did she.

25 A. She did not.

26 Q. Did anyone else make it to you.

27 A. Not that I'm aware of.

28 Q. Did you ever make it.

29 A. I can't recall. The expression that Doreen used to her  
30 was that her grandmother never went in.

31 COMSR

32 Q. Never went where.

33 A. `In' is my recollection.

34 XXN

35 Q. If you would look at `The Age' of 25 May 1995.

36 A. What is the title?

37 Q. It is the `Melbourne Age' of 25 May 1995. I will hand  
38 up my copy. This is an interview with you in the -



- 1 A. Could you wait until I have it. I don't have it before  
2 me. Could we have a short intermission while Mr Abbott  
3 finds it?
- 4 Q. I have got it here unless you would like a short break.  
5 A. I would like a short break.
- 6 ADJOURNED 4.24 P.M.  
7 RESUMING 4.31 P.M.
- 8 MR ABBOTT: I am just waiting for a photocopy of the  
9 page.  
10 COMSR
- 11 Q. I understand that you have told me that in the sealed  
12 appendix number 2, that what appeared in there was what  
13 Doreen, in effect, dictated to you and you copied out.  
14 A. Typed.
- 15 Q. So it is really Doreen's effort, contribution, if I can  
16 put it that way.  
17 A. Yes.
- 18 Q. And she seemed fairly clear, did she, as to what she was  
19 saying. No reason to believe you would misunderstand  
20 anything she was putting to you.  
21 A. No, I don't think so.
- 22 Q. Because, in fact, we have some evidence from another  
23 source as to what Doreen told that person was in that  
24 appendix, but from what I have understood you to say,  
25 the matters that were discussed at the Mouth House, just  
26 form a fragment of a bit of what was in there.  
27 A. Yes.
- 28 Q. Have you any reason to believe that Doreen wouldn't  
29 remember what she had told you to put in that report.  
30 A. I don't think she remembers it certainly in the way in  
31 which she gave it to me, that's certain, but, I mean,  
32 there are a variety of ways in which you could think  
33 about this, which is that what you are actually seeing  
34 is just, you know, a process of somebody, in effect,  
35 giving another - I mean - yes, giving another version of  
36 stuff. I mean, I don't - I know what you are saying,  
37 there is not a lot of accord between reports of what  
38 Doreen says are there, and what my recollection of -

- 1 Q. What you say -  
2 A. What my recollection is, what is there is there. I  
3 mean, part of what she's said in some press statements  
4 of fragments of what are there with elaborations that  
5 are certainly not there, I don't know, or -  
6 Q. As you understand it.  
7 A. Certainly in my recollection are not there anyway.  
8 Q. They are not in your recollection now. I suppose close  
9 to the events, you would have had a better recollection.  
10 A. I think that is probably true too.  
11 Q. I dare say closer to the event, Doreen could have said  
12 that.  
13 A. I think that is correct too.  
14 XXN  
15 Q. Could I show you a copy of an article in the Melbourne  
16 Age dated 25 May 1995. Were you interviewed for the  
17 Melbourne Age by Brad Collis.  
18 A. I recall that interview, yes. It might have been over  
19 the phone - no, I think he came to my house.  
20 Q. You are quoted in the third column from the right-hand  
21 side at the bottom of the column in these terms: `Yet,  
22 Dr Fergie, who has come to know the Ngarrindjeri women  
23 well during her study of their claims, says the story of  
24 the Hindmarsh Island site has survived because  
25 Aboriginal women kept having babies and Aboriginal women  
26 kept delivering them'. You said that.  
27 A. I may have said that.  
28 Q. You go on to say: `Quite simply, the practices that  
29 relate to the beliefs have never ceased. There has been  
30 a continuum'.  
31 A. I might have said that.  
32 Q. Further: `Added to this, there are also Aboriginal  
33 families in South Australia that never joined a mission  
34 community. They kept their separateness and today are a  
35 deep font of knowledge for the others.' Did you say  
36 that.  
37 A. I might have said that. That sounds like I might have  
38 said that.

- 1 Q. That was the suggestion that I put to you which you said  
2 that Doreen Kartinyeri had never said to you.
- 3 A. No, you put a very specific proposition to me about  
4 Auntie Sally and Uncle Nat.
- 5 Q. No, I didn't. I suggest that she had never suggested  
6 about living off the mission and -
- 7 A. And you make an assertion of spirituality that doesn't  
8 appear here; and the statement that I say just doesn't  
9 relate to Doreen and her kin, it relates, in part, to  
10 Connie Roberts as I recall.
- 11 Q. Where did you get the information that there are  
12 Aboriginies in South Australia that have never joined a  
13 mission community.
- 14 A. Connie Roberts actually suggested to me that her family  
15 was one such family.
- 16 Q. You say: 'There are also Aboriginal families in South  
17 Australia that never joined a mission community. They  
18 kept their separateness and today are a deep font of  
19 knowledge for the others'.
- 20 A. That particular formulation, I don't think is how I  
21 would have formulated something - like what would have  
22 been in my mind at the time is Doreen's comments, her  
23 grandmother never went into the mission and Connie  
24 Roberts' and Rhonda Agius' comments that her family,  
25 that the family of Connie Roberts has not gone into a  
26 mission either.
- 27 Q. Into a mission.
- 28 A. Yes.
- 29 Q. Did you ever test that claim that her grandmother had  
30 never gone into a mission.
- 31 A. Who, Doreen's?
- 32 Q. Yes.
- 33 A. No, I didn't.
- 34 Q. You didn't know that she was raised at Poonindie, a  
35 mission.
- 36 A. You're asserting this to me.
- 37 Q. It's in the book that Doreen published. I have it here.
- 38 A. It's not clear to me that we are talking about the same

- 1 grandmother.
- 2 Q. I think we are talking about Grandmother Sally, who is  
3 her reference. I will show it to you. It's entitled  
4 'Poonindie, The Rise and Destruction' -
- 5 A. Which is whose reference? The statement Doreen showed  
6 me 'My grandmother never went into', didn't say 'My  
7 Grandmother Sally never went into'.
- 8 Q. I put it to you that if she said that, that it's just  
9 not borne out by Doreen Kartinyeri's other published  
10 statement. I want you to look at the book 'Poonindie,  
11 The Rise and Destruction of an Aboriginal Agricultural  
12 Community'. That has already been referred to as Peggy  
13 Brock's and Doreen Kartinyeri's publication.
- 14 MR SMITH: That has been referred to, but I don't  
15 think that's in.
- 16 MR ABBOTT: Mr Hemming referred to it. Perhaps we  
17 will continue with the article.
- 18 COMSR: I'm very keen to get through your  
19 examination.
- 20 MR ABBOTT: So am I. I will only be very briefly  
21 speaking on this.
- 22 Q. You go on to say that 'Dr Fergie says some of the women  
23 who were involved in stopping the bridge do, indeed,  
24 have an unbroken' - 'Dr Fergie says some of the women  
25 who were involved in stopping the bridge do, indeed,  
26 have an unbroken connection with their traditions and  
27 beliefs'. Did you say something to that effect.
- 28 A. I may have said something to that effect.
- 29 Q. Whom were you referring to.
- 30 A. Connie Roberts.
- 31 Q. No-one else.
- 32 A. Connie Roberts.
- 33 Q. Anyone else.
- 34 A. Well, I think there is - I don't think that would have  
35 been my formulation in this kind of a way, but my  
36 understanding of tradition is that, in fact, all of  
37 these women have an unbroken connection with their  
38 traditions and beliefs.

1 Q. All of these women.

2 A. Yes.

3 Q. What, Dorothy Wilson.

4 A. Yes. I'm sure that Dorothy Wilson has an unbroken  
5 connection. She is part of a tradition where she is a  
6 particular dimension of what is possible with  
7 Ngarrindjeri tradition.

8 Q. All my clients, you say, have an unbroken connection  
9 with their traditions and beliefs; you accept that.

10 A. Yes. Not necessarily to the tradition that I have been  
11 referring to, but I -

12 Q. Their traditions and beliefs. They have an unbroken  
13 connection; do you agree with that.

14 A. Yes.

15 Q. Then, you go on to - I don't need to go through the rest  
16 of it. You, in essence, rather stridently are  
17 supporting the women for whom you were the advocate in  
18 your report.

19 A. No. What I'm stridently saying is that it seems to me  
20 this is a particular view of the importance of heritage  
21 to Australians and that Aboriginal heritage is part of  
22 that heritage.

23 Q. The rest of it, you accept that is your views, these are  
24 your views as reported.

25 A. Well, no. I need to read through the whole of the  
26 article to do that.

27 Q. I would rather that you read it through rather than to  
28 ask you line by line. I only ask whether these are your  
29 views in the last three columns.

30 WITNESS READS ARTICLE

31 COMSR

32 Q. Have you managed to scan it.

33 A. I actually wouldn't be happy for it to go in as a  
34 representation of my views in any sort of  
35 straightforward way, no.

36 XXN

37 Q. That suffers from the same textual slippage that we find  
38 has occurred time and time again with anthropologists

1 dealing with the press.

2 A. Well, it suffers from the slippage that happens in the  
3 context of the press.

4 EXHIBIT 254 Article headed `Bridge over Troubled  
5 Waters' published in the Melbourne Age  
6 on 25 May 1995 tendered by Mr Abbott.  
7 Admitted.

8 XXN

9 Q. You told this Commission that you asked Doreen  
10 Kartinyeri whether she, or you were asked whether Doreen  
11 Kartinyeri revealed from whom she learnt this women's  
12 knowledge on which your report is based, and you told  
13 this Commission that she referred to her Grandmother  
14 Sally and her Auntie Rosy; do you remember giving that  
15 evidence.

16 A. I don't, but.

17 Q. It was yesterday. In any event that accords with your  
18 recollection of what Doreen Kartinyeri told you.

19 A. It does.

20 Q. She also told you apparently that grandmother, her  
21 grandmother - and I invite you to infer she was  
22 referring to her Grandmother Sally - never went in -  
23 which I won't recite to you - never joined a mission.  
24 That is how you understood it, isn't it.

25 A. Yes. I don't know that I necessarily understood it by  
26 her `Grandmother Sally'. I certainly recollect noting  
27 that Doreen said that her grandmother never went in,  
28 yes.

29 Q. What other grandmother did she talk about other than  
30 Grandmother Sally; the answer to that is `no other  
31 grandmother'.

32 A. Nobody's answered that. What you are asking me to do is  
33 a great deal of fine-tuned recollection and at some  
34 distance and I'm endeavouring to do that.

35 Q. I wonder whether she ever mentioned any other  
36 grandmother, apart from her Grandmother Sally.

37 A. She may well.

38 Q. Anything is possible.

- 1 A. That's right.
- 2 Q. You can't recall that she did.
- 3 A. I can't recall that she did.
- 4 Q. I show you the article which Doreen wrote on Poonindie,  
5 produced. Have you seen this book `Poonindie, The Rise  
6 and Destruction of an Aboriginal Agricultural  
7 Community'.
- 8 A. I've seen a copy.
- 9 Q. Do you have a copy of it.
- 10 A. I don't.
- 11 Q. Does your husband have a copy.
- 12 A. Not that I recall. Maybe he does. Not that I've noted.
- 13 Q. The preface states: `Doreen Kartinyeri has, since a  
14 young girl, had a keen interest in family history.  
15 Although she was born and grew up at Point McLeay, her  
16 grandmother was born at Poonindie and was sent with her  
17 family, the Varcoes, to Point McLeay when the mission  
18 closed in 1894.' Do you see that.
- 19 A. Yes, I see it.
- 20 Q. Did Doreen Kartinyeri ever give you any hint that she  
21 was connected through her grandmother at Poonindie.
- 22 A. She did not.
- 23 Q. Do you know where Poonindie is.
- 24 A. No.
- 25 Q. Or was.
- 26 A. I've got a vague sense of where it is, but, no, I  
27 haven't got any precise -
- 28 Q. Where do you think it was.
- 29 A. Somewhere up the Murray.
- 30 Q. You tell us it's in the opposite direction. It's  
31 actually at Port Lincoln.
- 32 A. That's fine. My South Australian geography is not as  
33 good as yours.
- 34 Q. Doreen Kartinyeri wrote two pages in this book, amongst  
35 others pages, pp.85 and 86, with reference to her  
36 Grandmother Sally. Do you know the maiden name of her  
37 grandmother.
- 38 A. Kropinyeri, as I recall. `Kropinyeri', Doreen told me.

1 I have a vague recollection of Kropinyeri, but I stand  
2 to be corrected.

3 Q. I suggest she told you that her married, her  
4 grandmother's married name was Kartinyeri, the same as  
5 Doreen's, and that if she told you anything, it wouldn't  
6 be that Sally's, her Grandmother Sally's maiden name was  
7 Kropinyeri because Doreen knew very well that  
8 Grandmother Sally's maiden name is Varcoe, would have  
9 mentioned the name Varcoe.

10 A. Not that I recall.

11 Q. She says this of her Grandmother Sally: 'The one who  
12 never went in' -

13 A. Well you assert 'The one that never went in'.

14 Q. She says: 'She said we were better off than she had been  
15 as a child living at Poonindie. She had very strong  
16 religious beliefs and said she was always brought up  
17 that way. She always went to church and read her Bible  
18 every night by candlelight.' Is that the sort of person  
19 that you referred to when you said in this article:  
20 'Aboriginal families who never joined a mission  
21 community, keeping their separateness'.  
22 CONTINUED



- 1 A. I don't know that I said keeping their separateness  
2 and I would point it out, I don't see it as a logical  
3 inconsistency to be Christians and to hold these  
4 traditions either. I don't see it as a logical  
5 contradiction at all. And, in fact, I would suggest  
6 that Mrs Maggie Jacobs is somebody whose Christian  
7 beliefs are dearly held and who also clearly holds  
8 to this tradition. And I think the suggestion that  
9 there in a contradictory position has no necessity.
- 10 MR ABBOTT: I tender the Poonindie book. The  
11 counsel assisting has it somewhere.
- 12 COMSR: We haven't got it in yet as an exhibit?
- 13 A. Could I make another point about the bit that Mr -
- 14 MR ABBOTT: I am dealing with tendering an exhibit.  
15 EXHIBIT 255 Poonindie book tendered by Mr Abbott.  
16 Admitted.
- 17 MR ABBOTT: I tender the sheets on the basis we will  
18 provide a full copy in due course.
- 19 MR MEYER: I have already cross-examined this  
20 witness and I assume that somebody in the row behind is  
21 next, but arising out of Mr Abbott's cross-examination,  
22 there are two or three questions that I would like to  
23 put. I do it before Ms Pyke cross-examines, rather than  
24 doing it afterwards, because then she can traverse the  
25 matter. The issue I wish to ask questions on arises out  
26 of some answers this afternoon, in connection with the  
27 pontoon bridge, which is previously unmentioned and was  
28 something that I didn't think that this witness would  
29 have any knowledge of, but clearly she did. I can deal  
30 with it before the clock, I think, gets to five to since  
31 there are only two or three questions. I seek leave to  
32 reopen my cross-examination for that purpose.
- 33 COMSR: Limited to the issue of the bridge?
- 34 MR MEYER: Questions in relation to the pontoon  
35 bridge. The answer which was given was that something  
36 to the effect that, she was aware that there had been  
37 the suggestion of a pontoon bridge, and it was a pity  
38 that it hadn't been asked about earlier, and gave the

- 1 impression that a pontoon bridge would be an acceptable  
2 proposition.
- 3 COMSR: Let me just see.
- 4 I take it there is no-one else who could utilise the  
5 five minutes before? Ms Pyke, you wouldn't want to  
6 commence for five minutes, I take it, tonight?
- 7 MS PYKE: No and I think Mr Tilmouth has some  
8 questions.
- 9 COMSR: I propose to let Mr Meyer reopen for  
10 this purpose of just clarifying the issue of the  
11 pontoon.
- 12 MR ABBOTT: I thought Mr Tilmouth had had his go.
- 13 MR TILMOUTH: No, not at all.
- 14 MR ABBOTT: I understood Mr Tilmouth said he didn't  
15 want to ask any questions?
- 16 MR TILMOUTH: I have sat here patiently for two days  
17 waiting, but I just understood Mr Kenny to say, that it  
18 would take more than five minutes.
- 19 MR TILMOUTH: Yes, but not much longer, but, I think  
20 it should be left.
- 21 FURTHER CROSS-EXAMINATION BY MR MEYER
- 22 Q. Do you remember this afternoon you were asked a question  
23 about an pontoon bridge and you answered in some way  
24 that, yes, you had heard a suggestion about a pontoon  
25 bridge and words to the effect that it was a pity that  
26 it wasn't put earlier.
- 27 A. Yes.
- 28 Q. Do I understand you to say by that, that you may  
29 consider that there is no objection to a pontoon bridge.
- 30 A. No, that's not what I mean, but I think it would have  
31 been a very interesting question for me to put in the  
32 same way as I put the issue of barrages to the women.  
33 Since it didn't occur to me, it's not a question that I  
34 put to them, in terms of a possibility in the system  
35 and I certainly can't speak on their account.
- 36 Q. Because, a pontoon bridge would be mediated by water,  
37 just as the barrage is, wouldn't it.
- 38 A. Insofar as - look we're both talking hypotheticals.

- 1 Q. Not quite because, the proposition was put, that's the  
2 Next thing I want to put to you. Nothing hypothetical  
3 about it at all. In relation to a pontoon bridge, it is  
4 mediated by water, as the barrage is.
- 5 A. Well, not as the barrage is. I mean, you would have to  
6 see a plan, clearly.
- 7 Q. And secondly, a pontoon bridge, by its very nature isn't  
8 attached or doesn't have pylons going to the bottom and  
9 therefore doesn't have the difficulty of the piercing  
10 or wounding by pylons, i.e. isn't attached as a bridge  
11 or a barrage is.
- 12 A. That's apparently so, but, I mean -
- 13 Q. When did you learn that there had been a proposition  
14 put, to build a barrage, a pontoon bridge.
- 15 A. After the Minister's declaration. I don't know how I  
16 heard. It may actually - I think it is after the  
17 Minister's declaration. I think Mrs Chapman was -
- 18 Q. How soon after.
- 19 A. I don't know.
- 20 Q. I put to you that, in July, the suggestion to build a  
21 pontoon bridge was put, and that it was put to  
22 representatives of the ALRM, amongst others.
- 23 OBJECTION Ms Pyke objects.
- 24 A. I don't know if that's the case.
- 25 MS PYKE: It's all very well to put it. What is  
26 the source of it? How can this witness comment on it,  
27 if it was put to ALRM by somebody else?
- 28 COMSR: How would this witness know?
- 29 MR MEYER: There had been discussions between this  
30 witness and ALRM, she can say 'I don't know'.
- 31 XXN
- 32 A. I don't know, if that's the case.
- 33 COMSR: She said she doesn't know.
- 34 XXN
- 35 Q. Is a pontoon bridge something that you would consider.
- 36 A. Well, it is not up to me, but if - certainly it is  
37 something, if I was in this position again and it had  
38 been proposed to me, I would certainly put it to the

1 Aboriginal women, and, yes, I certainly would have put  
2 it to them.

3 Q. Given the information that you have collected, and the  
4 conclusions that you would form, I take it that your  
5 view would be, that you would expect the Aboriginal  
6 women not to have a problem with a pontoon bridge, just  
7 as they don't have a problem with a barrage.

8 A. No, I think it would have to be put to them and a very  
9 specific proposal would have to be put to them and we  
10 would have to see what eventuated about it. We're  
11 talking about an absolute hypothetical, only you  
12 know which has some important differences from the  
13 proposal which was put to them, and I think it would be  
14 a possibility that would be worthwhile putting to them.

15 COMSR: I take it Mr Tilmouth you don't wish to  
16 commence now.

17 MR TILMOUTH: I prefer not. I think it has been a  
18 long day, if that's convenient. I can indicate I won't  
19 be anymore than 10 minutes.

20 MR SMITH: We will recall Dr Draper. He is here  
21 and I mean, I suppose I hope that we can finish Dr  
22 Draper tomorrow. Is that possible?

23 MS PYKE: Well, I mean, I would imagine. I will  
24 obviously have some things to put. I don't know what  
25 counsel assisting plans are. Obviously this witness has  
26 got to conclude. She has been going for days now.

27 COMSR: And I understand that Dr Fergie is  
28 not feeling all that well, so I would be hoping that we  
29 could release her.

30 MS PYKE: I don't know how much longer is left  
31 for Dr Draper. I am anxious that Dr Fergie's evidence  
32 conclude.

33 COMSR: Could we conclude it tomorrow morning?

34 MS PYKE: Yes.

35 COMSR: It is just so you will know your  
36 situation Dr Fergie.

37 ADJOURNED 4.58 P.M. TO FRIDAY 3 NOVEMBER 1995 AT 9.30 A.M.

1 COMSR STEVENS

2

3 HINDMARSH ISLAND BRIDGE ROYAL COMMISSION

4

5 FRIDAY, 3 NOVEMBER 1995

6

7 RESUMING 9.34 A.M.

8 COMSR: I think, Mr Tilmouth, you wanted to  
9 raise some questions?

10 MR TILMOUTH: Thank you. As promised yesterday, I  
11 won't be long, five minutes.

12 WITNESS DEANE J. FERGIE

13 CROSS-EXAMINATION BY MR TILMOUTH

14 Q. Just to introduce us, if I may, since it's first thing  
15 in the morning; you've given a lot of evidence in the  
16 last few days about the things that Doreen Kartinyeri  
17 had said to you, and what you'd overheard her saying at  
18 Graham's Castle.

19 A. Yes.

20 Q. I'm just bringing you back to what Doreen Kartinyeri had  
21 said. Am I wrong in my understanding or otherwise in  
22 thinking that she said things to the women at Graham's  
23 Castle, but in terms of the ultimate disclosure to you,  
24 what was said at Graham's Castle was much the smaller  
25 fraction of the total amount of the information she  
26 eventually revealed to you.

27 A. That's right.

28 Q. Those words are mine, of course, but are they generally  
29 accurate for your purposes.

30 A. Yes, they are.

31 Q. Am I right in thinking that the next disclosure in  
32 sequence of time was the car trip, in which you and she  
33 only were present, between Kadina and Adelaide. Did  
34 that come before or after Graham's Castle.

35 A. No, it came after, and I believe that that's the next  
36 time, yes.

37 Q. I rather gather from your evidence that she expanded  
38 considerably on what she was apparently prepared to tell

- 1 the group of women at Graham's Castle.
- 2 A. That's so.
- 3 Q. We have probably had this evidence, but could you remind  
4 the Commissioner approximately how many women were  
5 present at the Graham's Castle occasion.
- 6 A. 35.
- 7 Q. Is it right to think, from the effect of your evidence,  
8 that the greatest amount of information you received,  
9 both in terms of the time it took and in content, was  
10 that telephone call you had with her shortly before  
11 completing your report.
- 12 A. Yes, on the 29th and the 30th, yes.
- 13 Q. I'd just like to be sure that my question is entirely  
14 accurate. The length of that call, was it about three  
15 hours.
- 16 A. The first of them I think was, yes. I think I've put it  
17 in my statement.
- 18 Q. In that call, did she reveal substantially more  
19 information to you than she had done in the car on the  
20 trip to Kadina, or back from Kadina. The emphasis there  
21 is on new information rather than anything else.
- 22 A. She certainly put it in a different way, and there was  
23 some new information.
- 24 Q. So, to go backwards in relation to that, there was new  
25 information, and do I gather an elaboration and an  
26 expansion of information she had already revealed to  
27 you.
- 28 A. Yes, and the placing of it in particular form.
- 29 Q. In the sum total of those three occasions, and the  
30 importance of that is to divorce anything that you might  
31 have heard from her after writing your report, and  
32 divorcing also anything you might have heard Doreen  
33 Kartinyeri say to the press or anybody else, I just want  
34 to ask you about what Doreen Kartinyeri told you up to  
35 and including the time of writing your report but  
36 cutting off there, do you understand the time sequence.
- 37 A. Yes, I do.
- 38 Q. The importance of cutting it there is this; when she

- 1 told you these things, particularly on these three  
2 outstanding occasions, was there anything she said to  
3 you which conveyed to you the knowledge that what she  
4 was talking about was recently acquired by her or  
5 otherwise.
- 6 A. She conveyed to me that it was not recently acquired,  
7 but had in fact derived from, in a sense, earlier  
8 generations, and that specific people from those  
9 generations had told her, starting effectively in her  
10 late teens.
- 11 Q. In her late teens.
- 12 A. Yes.
- 13 Q. Again, trying to divorce all the subsequent material  
14 you've had put to you, and there's been a lot of it, I  
15 know, but doing your best to divorce that post-Dr Fergie  
16 report material, are you able to be any more specific  
17 with the Commissioner other than 'late teens'.
- 18 A. I do recall Doreen mentioned to me the age of 17 as a  
19 context in which certainly parts of this information  
20 were conveyed to her.
- 21 Q. You do specifically recall her mentioning in this  
22 context about the age of 17.
- 23 A. I do.
- 24 Q. Can you help the Commissioner with this much; did you  
25 understand from what Doreen had told you, again on  
26 pre-Fergie Report disclosures, whether it was an  
27 instantaneous disclosure from those people, or was it  
28 something acquired from what she told you over a period  
29 of time.
- 30 A. My understanding was that it was information that, in a  
31 sense, had been conveyed to her over a period of time.
- 32 Q. Commencing, do we correctly understand it, from either  
33 late teens or around the age of 17.
- 34 A. That was my understanding.
- 35 Q. Would it therefore be correct to say, from your  
36 understanding, that on any view what Doreen Kartinyeri  
37 had told you was not recently acquired by her, that is  
38 to say 'recently' in terms of weeks or months.

- 1 A. Can you just restate that?  
2 Q. I will rephrase it.  
3 A. Just restate it.  
4 Q. I will put it this way; there had been allegations, more  
5 particularly in relation to analogies that may or may  
6 not be drawn between the Hindmarsh Island and  
7 surrounding areas with women's anatomy.  
8 A. Yes.  
9 Q. That Doreen Kartinyeri first received that idea only in  
10 early May 1994. Now is that assumption consistent or  
11 inconsistent with what she had later told you.  
12 A. It's inconsistent with what she told me.  
13 Q. Again, you're confining that to pre your report  
14 material.  
15 A. That's right.  
16 Q. There had been some questions of you as well in relation  
17 to Mrs Dorothy Wilson. I will just introduce her as the  
18 subject matter to you.  
19 A. Yes.  
20 Q. She gave evidence that on 9 May 1994 she was present at  
21 the Mouth House, which you know, of course, in which  
22 certain things were said to her by certain men. Are you  
23 aware of that evidence. Did you read it.  
24 A. Yes, I'm aware of that evidence.  
25 Q. Did you sit in on that evidence that she gave.  
26 A. Yes, I believe I did.  
27 Q. Have you read it as well.  
28 A. Yes, I have.  
29 Q. So I can use that as my reference, then, as your source  
30 of knowledge of that material. You will remember, I  
31 think, that when Mr Stratford cross-examined her, he  
32 cross-examined her in relation to an interview which she  
33 gave, and she admitted, with Prue Goward, a journalist  
34 on Radio National. Were you present during that.  
35 A. Yes. I won't claim to have a detailed recollection of  
36 it, but I was there.  
37 Q. I will introduce it this way -  
38 OBJECTION Mrs Shaw objects.



## D.J. FERGIE XXN (MR TILMOUTH)

- 1 MRS SHAW: My memory of her evidence is that she  
2 didn't actually admit that interview was accurate as to  
3 what she had said to Prue Goward. One of the  
4 difficulties about transcripts is that they are often a  
5 compilation of things she said on other occasions. I  
6 thought she didn't actually remember speaking to Prue  
7 Goward.
- 8 MR TILMOUTH: There might have been a reservation  
9 about remembering speaking to Prue Goward, but my  
10 distinct recollection is that she admitted the truth of  
11 what was said, whoever it was said to.
- 12 COMSR: There is only one way to deal with this,  
13 to look at the transcript. Do you have it?
- 14 MR TILMOUTH: We're digging it up now.
- 15 COMSR: What page are we looking at.
- 16 MR TILMOUTH: I haven't got the page out yet, I was  
17 looking at the original exhibit. It's about 3500.
- 18 COMSR: It's the later -
- 19 MR TILMOUTH: Yes, that's right. I just can't put my  
20 finger on the precise pages.
- 21 COMSR: Prue Goward.
- 22 MR TILMOUTH: Page 3504.
- 23 COMSR: Page 3501 'I can't remember talking -'
- 24 MR TILMOUTH: If you go to 3504, line 10, Mr Stratford  
25 is showing the interview which, by the way, is Exhibit  
26 207, and at line 10 he says 'I don't want to take you  
27 through the remainder of that interview chapter and  
28 verse, but I ask you to look at it, and I ask you to say  
29 generally whether or not the contents of that particular  
30 document accord with your present recollection of what  
31 occurred at the Mouth House', answer 'Yes, it does'. So  
32 irrespective of the occasion, she adopted the truth of  
33 the content. I'm happy to delete references to Radio  
34 National and Prue Goward. At the bottom of 3503 as well  
35 she adopts the specific passage I'm about to read to Dr  
36 Fergie.
- 37 COMSR: The first three pages where it's  
38 accepted as an exhibit.

1 MR TILMOUTH: That's right. I will rephrase the  
2 question anyway which might avoid this problem. I don't  
3 see it as a problem, with respect, but I will reword it.

4 QUESTION REPHRASED

5 XXN

6 Q. Could I just read a passage, and just assume that it's  
7 been attributed to Dorothy Wilson. Don't worry about to  
8 whom or the publication. This is a statement said to be  
9 made by her in relation to the very Mouth House event  
10 that I was asking you about a few minutes ago. She said  
11 this; this is p.2 of Exhibit 207, 'At the shack and  
12 where the lawyer was, we showed the letter to the  
13 lawyer. He said in his opinion he didn't think that was  
14 enough to stop the bridge. The men spoke, asked us to  
15 have a look at the map on the wall, and I want to make  
16 it quite clear the lawyer was in no way involved in  
17 telling us to look at the map on the wall like it's been  
18 suggested. The men from the heritage committee asked us  
19 to look at that map, look at the map on the wall, and  
20 suggested to us that that map looked like a woman's  
21 private, and that's the way they put it to us'. Then  
22 she went on a little later, 'I believe that I never once  
23 said that I did not believe about the abortions. I  
24 believe that happened all over Australia. What I'm  
25 concerned about is that I was told that it was put into  
26 the secret envelope about the map - and this is the only  
27 thing that I'm disputing, is that it was put into the  
28 secret envelope about the map - and it was said that  
29 that map was handed down through the women. Now that's  
30 not so. That thing about the map was handed to us by  
31 men, not women, and this is the only thing that I'm  
32 disputing'. Okay.

33 A. Yes.

34 Q. I just want you to hold that in your mind, if you can,  
35 and ask you this question on that background, bearing in  
36 mind also the Commissioner has said that we may ask  
37 questions about secret appendices or envelopes. In the  
38 secret appendices, either two or three that you

- 1 prepared for your report, was there a map in that  
2 material.
- 3 A. There was not.
- 4 Q. Was there an aerial photograph of any kind in that  
5 material.
- 6 A. There was not.
- 7 Q. Was there a diagram of any kind of the Murray Mouth area  
8 or Hindmarsh Island and the surrounding waters.
- 9 A. There was not.
- 10 Q. If I ask you those three questions in succession again  
11 regarding the secret envelopes that ultimately  
12 apparently went to Mr Tickner, would your answer be the  
13 same.
- 14 A. I would. Only I hope they didn't go exactly to Mr  
15 Tickner.
- 16 Q. In your knowledge of looking at them, those answers are  
17 good for both appendices and the secret envelopes that  
18 went to Tickner.
- 19 A. That's true.
- 20 Q. No maps, no diagrams, no colour photographs or  
21 geographical representations of this area.
- 22 A. That's correct.
- 23 Q. Nothing like what is on the wall behind you in these two  
24 maps that are on the wall.
- 25 A. Nothing at all like that.
- 26 MR TILMOUTH: May the transcript show that the witness  
27 has indicated to me Exhibit 80.
- 28 XXN
- 29 Q. Can I finally ask you this; is there in your opinion, as  
30 a general matter, putting aside Hindmarsh Island, a  
31 situation where the Ngarrindjeri people, like other  
32 Australian Aboriginal tribes, where there are at times  
33 separations between women's and men's knowledge.
- 34 A. I believe that there were areas where there was  
35 separation of women's and men's knowledge. There is  
36 also quite clearly areas of a high degree of what you  
37 might called complementarity.
- 38 Q. Would you agree or otherwise that that is a common

1 feature of Australian Aboriginal cultures and societies.

2 A. It's clear the Ngarrindjeri has a very specific  
3 configuration - well, yes, I will leave it at that.

4 Q. Indeed the evidence has been, I think, by Mr Clarke in  
5 particular, in very simple terms in this respect, the  
6 Ngarrindjeri people were the loan exception. Are you  
7 able to comment on that, comment on the likelihood of  
8 there being one exception in over 300 tribes. OBJECTION  
9 Mr Smith objects.

10 MR SMITH: I don't know whether he actually said  
11 that. I think people alluded, for instance, to the  
12 Tiwi.

13 MR TILMOUTH: I was trying to be general rather than  
14 specific.

15 A. I think there is always a problem between the specific  
16 ethnographic context, and what you're finding is that  
17 people are making generalisations about Aboriginal  
18 culture in a general sense, and they are also making -  
19 they are trying to, in a sense, talk about what is  
20 specific to any particular culture, or you might call  
21 them ethnographic areas, and in respect of - I mean  
22 people have drawn parallels between Ngarrindjeri and  
23 Tiwi, in which clearly there is some resemblance and  
24 there is clearly some particularity and distinctness in  
25 terms of whether the question of whether all Aboriginal  
26 cultures have, in a sense, domains of interest of women  
27 and domains of interest of men, however that is  
28 configured. I think the answer is yes.

29 Q. Let me put it this way to allay Mr Smith in case I've  
30 been a trifle incorrect. If there was no specific  
31 knowledge in the Ngarrindjeri people, that would be very  
32 much the exception rather than the rule.

33 A. That's correct.

34 Q. Assume for a moment, just for a moment, that the men, in  
35 fact, tried to convince the women, the Ngarrindjeri  
36 women, of some aspects of what was called secret women's  
37 knowledge or business. In your opinion, even had the  
38 men attempted to do so, do you think the women would

1 have accepted that, coming from men.  
2 OBJECTION Mrs Shaw objects.  
3 MRS SHAW: That's not an appropriate question of  
4 this witness.  
5 COMSR: How is that within the witness' area of  
6 expertise?  
7 MR TILMOUTH: I don't want to say a lot because I  
8 don't want to be seen as suggesting, but in my  
9 submission it's a very important question, because the  
10 question of the likelihood of women accepting what men  
11 tell them about purported women's business in my  
12 submission is a very important issue.  
13 CONTINUED

- 1 COMSR: Yes, it may be an important issue, but  
2 is it -
- 3 MR TILMOUTH: Why wouldn't it be within the general  
4 purview view of an anthropologist's expertise?
- 5 COMSR: I take it that is the basis of the  
6 objection?
- 7 MS SHAW: Not only that. This witness has said  
8 she is not an expert on Ngarrindjeri culture. She  
9 obviously doesn't know these men. She has spoken to  
10 Doreen and, of the 30 women or so at the meeting, she  
11 has spoken to possibly three or four. And, in terms of  
12 the meeting at the Mouth House, this witness doesn't  
13 know the terms of it.
- 14 MR TILMOUTH: That only goes to weight not  
15 admissibility.
- 16 MS SHAW: How can she comment on how that group of  
17 men may influence this group of women?
- 18 MR TILMOUTH: The proposition is far more general than  
19 that.
- 20 COMSR: Perhaps if you frame it in a more  
21 general way.
- 22 QUESTION REPHRASED  
23 XXN
- 24 Q. I will put it this way and we will just return to the  
25 gender specific knowledge. In that context, in your  
26 opinion, is it likely that Aboriginal men could suggest  
27 to Aboriginal women the content of what was said to be  
28 secret women's business or knowledge.
- 29 OBJECTION Ms Pyke objects.
- 30 MS SHAW: Again, I object to that, because that  
31 goes to the very heart of what this Commission is all  
32 about.
- 33 MR TILMOUTH: That is why it is being asked. Nobody  
34 has asked it so far and that makes it highly relevant.
- 35 MS SHAW: To ask this witness what a group of  
36 Aboriginal men might say obviously divorces from the  
37 question matters such as money, politics, family  
38 relationships. All sorts of other motivations as to why

1 people might accept a false premise to join in some  
2 fabricated women's business. But this witness, as an  
3 anthropologist, in terms of her own qualifications says  
4 she is not even a person who is an expert in  
5 Ngarrindjeri culture. And at least we have got  
6 Ngarrindjeri people here. And, at the very least, any  
7 expertise that she has, she must have some familiarity  
8 with Ngarrindjeri people.

9 COMSR: Yes, I think, if I understand the intent  
10 of Mr Tilmouth's question, he has broadened it now and  
11 broadened it to the whole of the Aboriginal population.  
12 We are not now talking about the Ngarrindjeri culture.  
13 But, as I understand it, he is putting to the witness,  
14 based on her knowledge of the whole of Aboriginal  
15 culture, is it likely that a group of Aboriginal men  
16 could suggest to Aboriginal women some aspect of their  
17 business and have it accepted by them.

18 Is that your question in a broader context?

19 MR TILMOUTH: Yes, it was.

20 MS SHAW: I have a separate objection to that  
21 question, because the concept of Aboriginal culture as a  
22 generalisation is a misnomer.

23 Firstly, this witness, I think, has had experience  
24 in the Lake Eyre basin. The rest of her expertise is, I  
25 understand, from reading. And, in any event, there  
26 isn't a concept of Aboriginal culture, as such, that  
27 could possibly be the basis for a question like this.  
28 We know that from the evidence you have heard about the  
29 differences between the cultures. The western desert  
30 cultures and so on. So, to ask to generalise the entire  
31 Aboriginal culture all over Australia and say that is of  
32 some relevance to this Commission is a nonsense.

33 MR TILMOUTH: The context is assuming a gender  
34 specific area of knowledge.

35 COMSR: Yes, I think that the basis of the  
36 objection is that it will vary from place to place and  
37 to ask a general question might -

38 MR TILMOUTH: But that is rather a comment of weight

D.J. FERGIE XXN (MR TILMOUTH)  
(MS PYKE)

1 and Dr Fergie has been allowed to give evidence over  
2 several days, including in this general area, without  
3 any difficulty or objection and including in this  
4 general area under cross-examination by Mr Abbott. I am  
5 just asking a more specific question in the area that  
6 has already been well and truly opened up.

7 COMSR: I don't know whether it has been opened  
8 up in this way, but I will allow a general question.  
9 The witness I think has already told me that she lays no  
10 claim to having made a particular study or being any  
11 part of her specific expertise.

12 WITNESS: It certainly has since these proceedings  
13 began.

14 COMSR

15 Q. You have done some field work in other -

16 A. No, I mean, I am certainly broadening my understanding  
17 of Ngarrindjeri cultures since these events.

18 COMSR: I think a question that is nonspecific  
19 to the group -

20 MR TILMOUTH: I think my question was.

21 XXN

22 Q. Just assume, for the moment, that we are talking about  
23 an Australian Aboriginal culture which has, as part of  
24 its structure, gender specific knowledge.

25 A. Yes.

26 Q. That is meaningful enough to you so far, is it.

27 A. Certainly.

28 Q. Assuming that state of affairs, can you offer any  
29 opinion as to whether or not women would allow men to  
30 describe or dictate to them the content even in part of  
31 women's knowledge.

32 A. I think it is highly improbable.

33 MR TILMOUTH: That is all I have got.

34 CROSS-EXAMINATION BY MS PYKE

35 Q. Shortly after you were advised that you may or that  
36 indeed it was intended to subpoena you to give evidence  
37 before this Royal Commission, did you instruct your  
38 solicitors to write to the Aboriginal Legal Rights



- 1 Movement seeking certain authorities and seeking the  
2 release of your notes.
- 3 A. I did.
- 4 Q. After you caused your solicitors to write to the  
5 Aboriginal Legal Rights Movement, did you instruct your  
6 solicitors to write to the Commission in respect of  
7 those notes.
- 8 A. I did.
- 9 Q. Did you request this Commission to do certain things to  
10 pursue your field notes in that correspondence.
- 11 A. I did.
- 12 MR SMITH: I agree to the tender of those two  
13 letters.
- 14 COMSR: Perhaps you could identify them by date?
- 15 MS PYKE: Yes.
- 16 XXN
- 17 Q. Looking at that letter, dated 13 October 1995, is that  
18 your correspondence to the Aboriginal Legal Rights  
19 Movement where, amongst other things, you seek or you  
20 say this 'In order to prepare her statement to the Royal  
21 Commission and in order to be in a position to give  
22 evidence on both, my client will need to review those  
23 notes. She will also need to review the confidential  
24 annexures. Could you please make arrangements for these  
25 documents to be released to my client.' Your  
26 instructing solicitors wrote that in anticipation that a  
27 summons would be served upon you.
- 28 A. That's correct.
- 29 Q. Looking at this letter, now before you, dated 19 October  
30 1995, addressed to the Royal Commission.
- 31 A. Yes.
- 32 Q. 'Attention: Mr Smith', that was sent on your  
33 instructions.
- 34 A. That's right.
- 35 Q. In that letter this appears 'I ask you to make every  
36 effort to remove Dr Fergie's field notes as part of  
37 that file.' The ALRM file. 'This is to assist her in  
38 giving evidence.'

- 1 A. That's right.
- 2 EXHIBIT 256 Two letters, dated 13 October 1995 and  
3 29 October 1995, tendered by Ms Pyke.  
4 Admitted.
- 5 Q. You are a Fellow of the Australian Anthropological  
6 Society.
- 7 A. I am.
- 8 Q. That society has a constitution and code of ethics.
- 9 A. It does.
- 10 Q. You consider yourself to be bound by the code of ethics  
11 in relation to that society.
- 12 A. I do.
- 13 Q. Looking at this document, now before you, is that the  
14 constitution and code of ethics of the Australian  
15 Anthropological Society.
- 16 A. It is.
- 17 EXHIBIT 257 Constitution and code of ethics of the  
18 Australian Anthropological Society  
19 tendered by Ms Pyke. Admitted
- 20 COMSR
- 21 Q. That code of ethics has been in effect for sometime, has  
22 it.
- 23 A. Yes, the code of ethics came into effect several years  
24 ago, yes. I think it was initially adopted as an  
25 interim code of ethics and then adopted more fully after  
26 a trial period, or a period of consideration by the  
27 society.
- 28 XXN
- 29 Q. You have referred in your statement to a number of  
30 articles that were not annexed to your statement.
- 31 A. That's so.
- 32 Q. Have you had copies made of the relevant articles and  
33 pages.
- 34 A. I have.
- 35 Q. They are Catherine Berndt in 'Women The Gatherer',  
36 frances Dahlberg's volume.
- 37 A. Yes.
- 38 Q. That is cited in your statement at pp.57, 71 and 72.

- 1 A. I trust.
- 2 Q. You have done your best to pick out the references to  
3 it. There is Catherine Berndt 1964, The Role of Native  
4 Doctors. And that is from a volume `Magic, Faith and  
5 Healing Studies in Primitive Psychiatry'.  
6 A. That's so. By Kiev.  
7 Q. R.E. Kiev, editor.  
8 A. That's right.  
9 Q. That appears at pp.77 and 78 of your statement.  
10 A. I trust.  
11 Q. There is an article by Simon Harrison 1995 `Anthropology  
12 Today: Anthropological Perspective on the Management of  
13 Knowledge', and that is cited at p.87 of your statement.  
14 A. Yes.  
15 Q. There is an article by Gillian Cowlishaw `Australian  
16 Aboriginal Knowledge: The Anthropologists' Accounts'.  
17 A. That's right. De Lapervanch and Bottomley, editors.  
18 Q. That is referred to at p.13 of your statement as you  
19 have been able to locate it.  
20 A. Yes.  
21 Q. There is an article by Eric Michaels `Constraints on  
22 Knowledge in an Economy of Oral Information'.  
23 A. Yes.  
24 Q. And that appears -  
25 A. In `Current Anthropology'.  
26 Q. `Current Anthropology'.  
27 A. Yes.  
28 EXHIBIT 258 Articles tendered by Ms Pyke. Admitted.  
29 Q. You have had referred to you Tony Swain's publication  
30 `A Place for Strangers: Towards a History of Australian  
31 Aboriginal Beings'.  
32 A. I think actually an article which preceded that volume  
33 where the views are in accord with that volume has been  
34 discussed, that is my recollection.  
35 Q. You have been referring to the article which is partly  
36 representational of what is in the volume.  
37 A. Yes.  
38 Q. You have located two reviews of Tony Swain's

- 1 perspective, if I can put it that way, and they are  
2 reviews of John Moreton.
- 3 A. That's right. In 'Oceania'.
- 4 Q. In 'Oceania' and also Lynette Russell.
- 5 A. Yes, I think in 'Current Anthropology'.
- 6 Q. And that is in 'Oceania', as well.
- 7 A. 'Oceania'? I think it may be 'Current Anthropology'.
- 8 Q. You are quite right, 'Current Anthropology'. And would  
9 you agree that, by looking at those reviews, one clearly  
10 can see that the views of Mr Tony Swain are contentious.
- 11 A. Highly contentious. And they have a view of a kind of a  
12 panAboriginality that a great number of anthropologists  
13 would find highly problematic.
- 14 Q. Indeed, Lynette Russell says this '... this contrived  
15 pan-Aboriginality becomes a central problematic.'
- 16 A. Yes.
- 17 Q. In essence.
- 18 A. Certainly that is my reading of what she says.
- 19 Q. Do you agree, generally speaking, with the views of John  
20 Moreton and Lynette Russell about the Tony Swain  
21 approach.
- 22 A. Yes, I think that there is serious questions about the -  
23 most particularly about the panAboriginality. His  
24 propositions about the nature of aboriginality in what  
25 we might call a global sense, in an Australian sense,  
26 yes.
- 27 EXHIBIT 259 Two articles, one by John Moreton in  
28 'Oceania' and one by Lynette Russell in  
29 'Current Anthropology', tendered by Ms  
30 Pyke. Admitted.
- 31 Q. Just on that, anthropology, it is not a science, is it.
- 32 A. Certainly not in the sense that people here are using  
33 that term, no, it is not.
- 34 Q. Is it the fact that many issues and concepts in relation  
35 to anthropology are the subject of substantial debate  
36 amongst anthropologists.
- 37 A. Yes, indeed many anthropologists, if they were asked to  
38 describe what the discipline is, would actually describe

1 the discipline as one which takes a critical view of  
2 taking for granted assumptions. Both in other cultures  
3 and in our own. And that reflects itself in a higher  
4 level of critical discussion and debate within the  
5 discipline.  
6 CONTINUED

- 1 Q. In fact, this very issue surrounding the various claims  
2 and counterclaims, the proponents, the dissident women,  
3 the processes, are now the subject of anthropological  
4 debate, aren't they.
- 5 A. Indeed.
- 6 Q. To your knowledge, do you know who at the moment has  
7 been the contributors to that debate by anthropologists.
- 8 A. Yes. I mean, recently, the Australian Anthropological  
9 Society held its meeting in Adelaide, in fact - quite  
10 coincidentally. Whilst I wasn't at all of the days of  
11 the meeting, it was very clear there was a number of  
12 papers which, in fact, were making reference to this  
13 issue and the way in - and to the political dimension of  
14 the ethnographic dimension of it. And whilst there were  
15 no specific papers addressed to that issue, there was  
16 also obviously - there was a paper by Ron Brundon, who  
17 is well known by anthropologists in Australia, and that  
18 was the subject of discussion in that context.
- 19 Q. Do you recall any particular contributors to the debate.
- 20 A. I only actually went there on the last day and I recall  
21 I think that Mary Edmunds, in a broader paper, made  
22 reference to this case.
- 23 OBJECTION Mr Smith objects.
- 24 MR SMITH: We are now going to have in this  
25 Commission some secondhand evidence from the  
26 anthropologists who are commenting on this Commission.
- 27 MS PYKE: I'm not endeavouring to get that in the  
28 evidence.
- 29 COMSR: The fact of the debate -
- 30 MS PYKE: All I am wanting this witness to say is  
31 that there is, indeed, academic debate about this issue  
32 along with much other evidence which is anthropological.
- 33 MR SMITH: Why are we doing this? There are  
34 debates in the papers, on the television about it.
- 35 COMSR: The fact of debate perhaps is, but to go  
36 into -
- 37 MS PYKE: I'm not purporting -
- 38 COMSR: I think the witness has said there is a

1 debate about the matter.

2 WITNESS: Yes. I think very clearly that has  
3 begun and it's very clear it's building up in momentum.

4 XXN

5 Q. Do you perceive there to be serious anthropological  
6 debate, if I could put it that way.

7 A. Absolutely.

8 Q. As part of the annexure to your statement is the media  
9 release from the Australian Anthropological Society  
10 which annexed the statement from their annual general  
11 meeting, I want to put a couple of pieces from this  
12 statement.

13 COMSR: What are we going into?

14 MS PYKE: There's a media release that forms part  
15 of the annexures to the witness's statement that has  
16 been tendered and I want this witness to comment on a  
17 couple of sections from the Australian Anthropological  
18 Society.

19 MR MEYER: Now we are in the area where Mr Smith  
20 objects.

21 MS PYKE: There are numerous bits of media  
22 releases that have been put into this arena which are  
23 third, fourth, fifth, and sixth-hand information that  
24 are relevant. This is not the criteria. I think it's  
25 a very fair thing for this witness, who comes along as a  
26 professional anthropologist, to answer questions put to  
27 her from a release from a professional society that she  
28 is a member of pertaining to the issue.

29 MR SMITH: If the professional society wants to be  
30 heard about their attitudes of what is being debated  
31 here, they should come in here and give evidence. A lot  
32 of the attachments to Dr Fergie's statement I would  
33 theoretically take objection to. We didn't do this. If  
34 we are going to go into some of these documents which  
35 are political anthropological assertions, we are going  
36 to be hear all day.

37 MS PYKE: We are not. I'm going to ask the  
38 witness if she agrees or not with that release.

- 1 Numerous witnesses have been asked if they agree with  
2 statements made in the media. This is the media's  
3 release in the same way as a newspaper article.
- 4 MR SMITH: The newspaper articles and the material  
5 that you received from the journalists have been  
6 material which has been released and which involved the  
7 on-going evolution of this dispute, not commentaries  
8 after the events. Perhaps I will let my learned friend  
9 get to her question and let us see.
- 10 COMSR: A lot of media releases have gone in to  
11 demonstrate what is in the public arena, or to prove  
12 that a person made a particular assertion at a  
13 particular time.
- 14 MR MEYER: One of the assertions is that Dr Fergie  
15 is wrong in the conclusions she had reached. Now, I  
16 think it's a fair and reasonable thing to put to her  
17 that there is genuine anthropological debate and to put  
18 to her a particular element of the debate and ask her  
19 whether she agrees or disagrees. If she disagrees, that  
20 is the end of it.
- 21 COMSR: Frame the question then.
- 22 XXN
- 23 Q. The release says this in the first paragraph -
- 24 MR SMITH: Can we identify what we are looking at?
- 25 MS PYKE: The first paragraph of the media release  
26 which is an annexure F to the statement.
- 27 XXN
- 28 Q. Looking at the first page.
- 29 OBJECTION Mr Smith objects.
- 30 MR SMITH: I object to any questions about this.
- 31 COMSR: Is this a media release?
- 32 MS PYKE: It's the annual general meeting of the  
33 society relating to a statement. If you look at the  
34 media release, that statement is attached to the media  
35 release.
- 36 MR SMITH: We were asking Professor Dianne  
37 Austin-Broos to give evidence in this Commission. I  
38 object to this. It's bad enough that that is in the



- 1 statement and in evidence already. I object to any  
2 lengthy evidence about it.
- 3 MS PYKE: I'm not proposing to call any lengthy  
4 evidence.
- 5 MR SMITH: Well, any evidence at all that is self-  
6 corroborating.
- 7 MS PYKE: I think it's appropriate for this  
8 Commission to hear that there is a degree of healthy  
9 debate, anthropological debate, that is confronting the  
10 issue.
- 11 COMSR: I think I can accept that there is  
12 anthropological debate about the matter. What are you  
13 wanting to put to the witness, which section?
- 14 MS PYKE: I will read what it says: 'Conflicting  
15 knowledge claims have been crudely represented as  
16 conflict between truth and lies. Traditions and matters  
17 of cultural significance are being seen erroneously as  
18 static dogma. Politicians, journalists and even the  
19 courts seem to lack sufficient appreciation of the  
20 complexity of living traditions and the way in which  
21 they change over time'. I simply wanted to put to the  
22 witness this: 'Do you agree that the conflicts,  
23 conflicting claims in relation to knowledge is not  
24 simply a matter between truth and lies'.
- 25 COMSR: I think I can allow that question.
- 26 QUESTION ALLOWED
- 27 A. That's right.
- 28 XXN
- 29 Q. And, indeed, they -
- 30 COMSR: But not where it goes into political  
31 claims.
- 32 MS PYKE: No.
- 33 MR SMITH: What has that to do with the media  
34 release, that question?
- 35 XXN
- 36 Q. That traditions are matters of cultural significance are  
37 not static dogma.
- 38 A. That's right.

1 COMSR

2 Q. I think you have made that quite clear in your prior  
3 evidence.

4 A. Yes.

5 XXN

6 Q. That matters of tradition and culture are emotionally  
7 and symbolically laden and can elicit community conflict

8 -

9 COMSR: Well, that is more in the realm of a  
10 psychologist, isn't it?

11 A. No. No, there is, in fact, growing anthropological  
12 literature on precisely the kind of conflicts within a  
13 community we are seeing here in other contexts. And, in  
14 fact, I think earlier we referred to the way in which  
15 there is now a growing literature in the anthropological  
16 area about the way in which these conflicts are  
17 developing with specific reference to native title  
18 legislation, and so on.

19 XXN

20 Q. Where it says 'Conflict between different accounts of  
21 the mythic significance of a place, object or event  
22 usually indicates that more complex social forces are at  
23 work'.

24 A. That's right.

25 Q. There is appended to your statement copies of 'Land,  
26 Rights, Laws: Issues of Native Title', a publication of  
27 the Native Titles Research Unit.

28 A. At the Australian Institute of Aboriginal and Torres  
29 Strait Islander Studies, yes.

30 Q. You have, I think, referred to the article by Mary  
31 Edmunds in your statement the article by Deborah Bird  
32 Rose. Have you got that in front of you.

33 A. No, but I will find it.

34 Q. Again, that is appended to the statement.

35 A. That is about in the middle and looks like this. It's  
36 got a heading like this. (INDICATES).

37 Q. It's in the bundle of documents about the third one. In  
38 that article - you have read that article.

1 A. Yes.

2 Q. Dr Bird Rose talks about the difficulties of women in  
3 providing information about the secret sacred, or  
4 knowledge.

5 A. She does.

6 Q. Do you, generally speaking, agree with the matters set  
7 out by Deborah Bird Rose in that article.

8 A. Yes. I think it's a very incisive piece of work, yes.

9 Q. She says this - and unfortunately mine seems to be p.4,  
10 although there is not a number at the bottom of my page:  
11 `A strict identification of women's law with the total  
12 exclusion of men, however, overlooks the complex  
13 gradation of secrecy in Aboriginal people's skilled and  
14 subtle management of knowledge. The facile contention  
15 that if it is not totally secret then it must be totally  
16 public has disadvantaged women disgracefully. What  
17 matters in land claims, I contend, is not whether women  
18 reveal secrets. The important issue is whether women  
19 have opportunities fully and freely to give their  
20 evidence'.

21 A. Yes.

22 Q. There are two parts to that. The concept that it's not  
23 totally secret, then it must be totally public. Do you  
24 agree there has been a tendency to fall into that error,  
25 if I could put it that way.

26 A. Yes, absolutely.

27 Q. Do you think that error is one that permeated some  
28 evidence before this Commission.

29 A. Yes. I think what is frequently not understood is the  
30 way in a sense there are gradations of secrecy,  
31 gradations of openness in Aboriginal tradition and  
32 knowledge, and often we are thinking about it we  
33 actually use our own cultural dichotomy of being  
34 disclosed in private, it's either public or it's  
35 private. It's either disclosed to the public or, you  
36 know, confidentiality is understood in those cases. For  
37 Aboriginal people, the situation is - and this is a  
38 clear type of example of somebody who is coming from the

1 same gradation of secrecy and, indeed, I don't know, but  
2 it's quite - also quite clear that the status of bits in  
3 that gradation can change over time, just as in the  
4 sense of details of something. So that something can be  
5 highly secret in one context of a hundred years later  
6 and the relationship between that was highly open and  
7 what was highly secret may have changed over time.

8 COMSR

9 Q. It can change overnight such as if the person who is the  
10 custodian of the secret tells the world.

11 A. It might.

12 XXN

13 Q. In the circumstance where it might change over night is  
14 the case where there might be a threat to a particular  
15 site.

16 A. Yes, absolutely.

17 Q. Is that a classic example.

18 A. Yes. And, in fact, there is - in fact, I can think of  
19 another article that I don't know is tendered. There is  
20 an article that I think we intend to put into evidence  
21 anyway by Leslie Mearns.

22 Q. We will get to her in a moment. Indeed, we may as well  
23 do that now. Indeed, that was handed up as part of  
24 that. That was part of the bundle of documents that was  
25 handed up. That is Leslie Mearns, the front piece of  
26 'The Key Issue of Hunter-Gatherer Research' by Ernest S  
27 Burch Jr and Linda J Ellanna.

28 A. I think it's one of the annexures. It's the last  
29 annexure on my statement and it looks like this.  
30 (INDICATES).

31 COMSR

32 Q. It's several pages.

33 A. That's right. I think it's very close to the end, if  
34 not the last one.

35 Q. Leslie Mearns.

36 A. That's right, M-E-A-R-N-S.

37 XXN

38 Q. Looking at that article, are you able to tell us by

1 reference to that article the way in which it confirms  
2 and, indeed, it provides understandings of tradition.  
3 It refers to, specifically, to a fabrication example;  
4 doesn't it.

5 A. It does. That is one of the interesting things about  
6 that article. On the one hand, it talks of the  
7 characterisation of the divisions in the literature and,  
8 at the same time, it actually gives an example of a  
9 particular case in which Leslie Mearns was engaged where  
10 she had been just now working - from my recollection, if  
11 you go to p.276.

12 Q. At pp.276, 277, Leslie Mearns sets out almost a replica  
13 of what has unfolded here. And perhaps if you read it -  
14 I'll read it out perhaps. She is talking about research  
15 that she did and said this: `Having completed a  
16 documentation of the site that had be damaged, and  
17 having been told a coherent story that was commensurate  
18 with previous documentation in the area, I was surprised  
19 the next morning just half an hour before the mining  
20 company representative arrived to be told by the wife of  
21 this man that the story had been a complete fabrication  
22 and that there was no women's site there. This  
23 immediately created an argument between the women  
24 present, an argument that I needed to resolve quickly,  
25 as I had asked the company representative to make a very  
26 long journey to attend the meeting.

27 CONTINUED

1 I noted that the woman who had made the statement seemed  
2 to get no support from the other women present and my  
3 decision finally was made, at least in the short term,  
4 on the basis of the quiet insistence of the most senior  
5 woman present (who had distanced herself from the  
6 considerable heat generated by the fracas)  
7 that everything they had told me previously about the  
8 site had been true.' That was a classic example, wasn't  
9 it.

10 A. That's right.

11 Q. Of people with knowledge and people without knowledge  
12 and allegations of fabrication, by those without.

13 A. That's right.

14 Q. There are some other comments you want to make about  
15 that article, in the issue of tradition and modernity.

16 A. Yes, I think one of the easy - what's the word -  
17 misunderstandings that can arise in a context like this  
18 is that, in fact, a distinction between tradition and  
19 traditional is not maintained. And that, in  
20 understanding tradition, a kind of a dichotomy that we  
21 have in our cultural heads, between tradition and  
22 modernity, creeps in, whereas from an anthropologist's -  
23 from many anthropologists' perspectives, not all  
24 anthropologists, this is part of our debate whether, in  
25 fact, a tradition should be understood in terms of  
26 modernity and therefore anybody who is modern, in a  
27 sense, can have no traditions, or an alternative view,  
28 which is the view I hold, which is that, traditions are,  
29 in fact, a dynamic feature of human life, that,  
30 understanding tradition needs no consideration of a  
31 dichotomy between modernity and tradition. And that, in  
32 that context, it is in that context where an  
33 understanding of tradition, as a dynamic process that,  
34 in fact, we're all engaged in, you and I, as much as  
35 Aboriginal people in this kind of a context, we're part  
36 of it, as it were, a dynamic tradition, not for the  
37 purpose of the Act, but in terms of, you know, the  
38 placement of culture and how we come to understand

- 1 ourselves in the world, but, in respect of Aboriginal  
2 people - for example, there is often an assumption that  
3 when the word `tradition' is used it implies a notion  
4 of traditional, which seems to me more appropriate to  
5 understand as more of an orientation to the past, as  
6 opposed to tradition which is effectively an orientation  
7 in the present, which may well have reference to the  
8 past.
- 9 COMSR
- 10 Q. I am just trying to follow that. Let us assume that  
11 something comes to be accepted, where previously there  
12 is no prior history of it, but it comes to be accepted  
13 because a new generation, as it were, introduced it and  
14 accepts it. Does that then become part of Aboriginal  
15 tradition.
- 16 A. It might, although I need to make the distinction  
17 between how I understood this case, where it seems to me  
18 it was presented to me.
- 19 Q. I am putting a different situation.
- 20 A. Yes.
- 21 Q. I am putting a situation where, it could become part of  
22 Aboriginal - something to become part of a particular  
23 tradition, because it is accepted by a sufficient number  
24 of persons, as being a part of the tradition.
- 25 A. Yes, an example is, the Aboriginal people become  
26 Christians and they might understand Warundi in terms of  
27 the Christian God and vice versa. That the way we live  
28 in the world is interpretive and we bring to bear  
29 on it our experience in that sense, yes.
- 30 XXN
- 31 Q. What the Commissioner is getting at is this; if a group  
32 of Aboriginal women now believe, for example, issues to  
33 do with secret sacred women's business, is that a  
34 tradition.
- 35 A. It has become a tradition, yes.
- 36 Q. Leslie Mearns says, this in her article that -
- 37 A. Sorry, I actually should clarify; I mean, the situation  
38 we're presented with now, is that, it is certainly a

- 1 dimension of people's belief and I am not being very  
2 clear - just a minute. Let me leave the answer where I  
3 left it.
- 4 Q. Because the reality is that, Aboriginal tradition is not  
5 set in a point of time, is it, it is constantly  
6 changing and evolving, like European culture and  
7 tradition.
- 8 A. Indeed.
- 9 Q. That is why it is important to maintain the distinction  
10 between tradition and traditional.
- 11 A. Exactly.
- 12 Q. Miss Mearns, Leslie Mearns, at p.268 of her article says  
13 this. 'The absence of a written tradition in  
14 Aboriginal society greatly facilitates the rapid merger  
15 of the present with the past, a past that fades into  
16 uniformity beyond living memory.' If something is an  
17 oral tradition, is it the situation, that it is more  
18 likely to change more rapidly than something that is a  
19 written tradition.
- 20 A. It has that capacity. I mean, I think you can draw a  
21 parallel actually, since we have been talking so much  
22 about Christianity, about what happened in the - we can  
23 clearly see that in the Christian tradition, there was  
24 no puritan on Christian traditions or Zoroastrians, at  
25 that point. In a sense, the Bible became a text. A  
26 disputation about what it meant didn't stop.  
27 But, in fact, what you then have is a constancy which  
28 previously wasn't there in the oral tradition. So that,  
29 when you don't have that fixed point of a text, you  
30 have an enormous amount of flexibility, and whilst we  
31 have clear huge theological debate about the meaning of  
32 that text, at least we're debating something that is  
33 relatively stable. Whereas when knowledge is passed  
34 orally, you don't have that moment of fixedness  
35 in the same kind of way.
- 36 COMSR
- 37 Q. I am trying to see where this is taking us. If, for  
38 instance, at a given time, a certain group of people



- 1 become convinced that something is part of their  
2 tradition, they accept it as such, but there is another  
3 group which sees, in effect, that, you know, they don't  
4 accept it, don't believe it, on what you have put, does  
5 it still become part of tradition, Aboriginal tradition  
6 despite that conflict.
- 7 A. Yes. Actually, part of what we're being hung up, I have  
8 just realized in a sense that, what it is that we're all  
9 agreed about is the same for everyone. Yes, we can have  
10 conflict, but even when you were proposing to me, if a  
11 group agrees this is tradition and that they believe it,  
12 the point is, they are actually coming at it from a  
13 whole variety of perspectives. It is not an exact, you  
14 know, everybody doesn't have a facsimile the same,  
15 everybody has got their own interpretive understanding  
16 of that.
- 17 XXN
- 18 Q. For something to be a Ngarrindjeri tradition, it does  
19 not have to be believed by each and every person in the  
20 Ngarrindjeri community.
- 21 A. That's so.
- 22 Q. For something to be an Ngarrindjeri woman's tradition,  
23 be it secret or otherwise, it does not have to be  
24 something that is accepted by every Ngarrindjeri woman.
- 25 A. That's so.
- 26 Q. It is the same in our same European society, different  
27 Christian beliefs for example, or different religious  
28 beliefs.
- 29 A. We call them different traditions, indeed.
- 30 Q. The fact that some Europeans might believe one  
31 particular belief system in relation to religion,  
32 doesn't mean that it is not valid for them, but it  
33 doesn't mean that every other European person has to  
34 believe the same thing.
- 35 A. That's so and we just have to think about the Catholic  
36 tradition and the Protestant tradition and not all  
37 Catholics have exactly the - they agree on central  
38 tenants, but they don't have exactly facsimile replica

1 beliefs.

2 Q. There is nothing in the concept of tradition that  
3 requires the tradition to be believed by each and every  
4 member of the community.

5 A. That's so.

6 Q. Nothing under the Act to which you were addressing your  
7 report that required that.

8 A. That's so.

9 Q. So, the fact that, only some of Ngarrindjeri women may  
10 believe in secret women's knowledge, or have that  
11 knowledge, does not in any way detract from its  
12 status, as a belief and tradition.

13 A. That's right.

14 Q. Any other comment that you wanted to make about Leslie  
15 Mearns' article.

16 A. No. Except that, I point out that she again, and it is  
17 a theme that comes up often in the literature  
18 reference in a sense, not just in a sense; reference  
19 quite directly to the particular way in which these  
20 kinds of processes, the land right processes,  
21 the heritage processes are, in fact, male biased. I  
22 think, just going back to Debbie Bird Rose, she makes  
23 the point, that all the lawyers in all land claim cases  
24 have been men and that almost all the anthropologists  
25 have been men and that the process, actually  
26 the process of deciding these things, a profound  
27 orientation, I think all the Commissioners and Judges  
28 who have heard those claims, have been men too. The  
29 management of women's knowledge is more difficult and  
30 Leslie Mearns herself, and Deborah Bird Rose and Leslie  
31 Mearns, are just two of a large number who make this  
32 point in the literature. In fact I think, a woman  
33 called Meredith Role -

34 Q. Stopping there. Is it your view, having read the  
35 literature that relates to Ngarrindjeri women and your  
36 discussions with them, that that has been the same  
37 difficulty in the Ngarrindjeri community.

38 A. That's my view.

- 1 Q. The same difficulty with the composition overall, of  
2 representational bodies.
- 3 A. It is certainly in relation to the process of this  
4 particular case. The way in which this - the Hindmarsh  
5 Island marina and bridge issue was and the consultative  
6 processes to do with that, were profoundly male managed,  
7 I might say, until more recently.
- 8 Q. There is an article by Francesca Merlin.  
9 A. Yes.
- 10 Q. Called 'The Limits of Cultural Constructionism in the  
11 Case of Coronation Hill.'
- 12 A. It is annexed to my statement.
- 13 Q. That again is an article that addresses the concept of  
14 tradition and modernity again.
- 15 A. It does and I think the other thing that it does, is  
16 draw a very interesting parallel between the course of  
17 the debate about Coronation Hill and in that case,  
18 Noonkanbah and I have actually heard more recently  
19 anthropologists draw Noonkanbah, Coronation Hill and  
20 Hindmarsh Island.
- 21 MS PYKE: This is the fourth article in the bundle  
22 my instructor tells me.
- 23 A. Annexed to my statement.
- 24 MS PYKE: It is a bundle not annexed to the  
25 statement. You might remember that there were some  
26 documents that went up that were part of the statement,  
27 then there was a separate bundle that was tendered. My  
28 instructor tells me it is in the separate bundle,  
29 document number 3.
- 30 COMSR: Yes, I have got it now.  
31 XXN
- 32 Q. Francesca Merlin in that article, embraces the  
33 difficulties of tradition and modern life.
- 34 A. She runs a critique of the view of the notion of  
35 tradition as a part of necessary dichotomy with  
36 modernity, yes.
- 37 Q. Do you have a comment to make about that article.  
38 A. Well, I think it actually demonstrates the way in which,

1 in the context of these kinds of processes, this is a  
2 keen issue in anthropology. Yes, and Francesca, who  
3 was involved in the Coronation Hill issue, is actually  
4 running a critique of the way in which that particular  
5 debate was proceeded. And, in particular, she has drawn  
6 out this logic of the way in which some critiques,  
7 critics of the Coronation Hill proposal, configured the  
8 notion of tradition and she was, in a sense, running a  
9 really strong critique of a statement. I am just  
10 looking at the bottom of p.349. She tests tradition in  
11 that critical view of the Coronation Hill claim. It was  
12 that, 'tradition is acceptable as such, only if it can  
13 be shown to be completely unchanging over a long period  
14 of contact with settler society.' And she, in this  
15 context, once again, as many anthropologists have done,  
16 has run a serious critique of that proposal. In a  
17 sense, that's an understanding of tradition that is out  
18 there in the public, but it is not a concept of  
19 tradition that the majority of anthropologists would  
20 accept, in the contemporary sense.

21 Q. There is a further article that you have located, by Ian  
22 Keen, 'Knowledge and Secrecy and Aboriginal Religion.'

23 A. That is an introduction to a book.

24 COMSR

25 Q. Who was the author of it.

26 A. Ian Keen.

27 EXHIBIT 260 Article by Ian Keen tendered by Ms Pyke.

28 Admitted.

29 XXN

30 Q. That article squarely addresses, doesn't it, the issues  
31 of secrecy and the economy of knowledge about  
32 secret traditions and practices.

33 A. It does and it does so, I think, in a very important way  
34 as well, because, before Keen gets to the issue of  
35 religious secrecy, he actually deals with, what we call,  
36 - well, what he calls - I am trying think - an issue  
37 about whether cultures and traditions are homogeneous,  
38 equally shared by everybody, who is, in a sense, a part

- 1 of them, or whether in a sense, culture and tradition is  
2 more heterogeneous and differently shared.
- 3 Q. That goes back to the point you were making earlier.
- 4 A. It does and I think he makes some really important  
5 points. For example, I am just picking one up on p.7  
6 he says, for example, that, his ethnographic experience  
7 and field work experience has made him realize, people  
8 of different groups, or even on the same group, had very  
9 different perspectives on social reality as a kind that  
10 are concealed in most ethnographic representations  
11 He has quite an extended discussion about the way in  
12 which people, the way in which culture, the field of  
13 culture and tradition is variously and heterogenously  
14 shared. And he is addressing a theoretical question,  
15 which is, if there is that level of - just to give it a  
16 crude gloss, disagreement or failure of commonality,  
17 how, in a sense, does culture exist. That is the issue  
18 that he addresses his book to. But, in respect of  
19 religious secrecy, I think it is very important to  
20 recognise, that he makes a specific contribution to a  
21 growing body of material on the way in which knowledge  
22 in its differential sharedness, in other words, that  
23 people have given bits of it, becomes, in effect, like  
24 an economy, that can be used, in a sense, in an  
25 economic kind of a way that people - secrecy is a way in  
26 fact of heightening, in fact, in a sense, the cultural  
27 value of knowledge.
- 28 CONTINUED

## D.J. FERGIE XXN (MS PYKE)

- 1 I think he makes a couple of other really important  
2 points, for example on p.21 he says 'The constitution of  
3 guarded religious knowledge was founded in ambiguity'.  
4 I'm just trying to think - that whole section which  
5 begins on p.20, when he is talking about religious  
6 secrecy, relates very clearly and can be clearly related  
7 to a discussion that I've referred to from both Eric  
8 Michael's 1985 article, and it's been more recently  
9 taken up not specifically just about Aboriginal people,  
10 but by Simon Harrison in 'Anthropology Today', which  
11 just came out a couple of weeks ago. What  
12 anthropologists have been recently exploring is, in  
13 effect, that there are gradations of openness and  
14 closedness of knowledge, and the way in which culturally  
15 that knowledge and openness and closedness is managed,  
16 and the way in which many people are talking about it in  
17 the present knowledge. That knowledge is an economy,  
18 that there is an economy of knowledge.
- 19 Q. How do you relate that to the issues before the  
20 commission.
- 21 A. I think that can be related in a number of ways. It can  
22 be related in terms of the way in which certain  
23 fragments of this knowledge have been placed in a public  
24 context and others maintained in a guarded way, the way  
25 in which knowledge was transmitted to the women who have  
26 it presently - maybe I should go chronologically.
- 27 Q. Just give us a general -
- 28 A. In order to understand what is happening here, or one  
29 way of understanding what is happening here in a variety  
30 of its dimensions, in fact we can get a great deal of  
31 insight into them if we take an economy of knowledge  
32 kind of perspective to them - both who got knowledge and  
33 who didn't can be understood in that way - that the way  
34 in which this tradition that's been brought to bear  
35 under the Federal Act in this context has, in  
36 fragmentary ways, been made public in some contexts, and  
37 ambiguously made public in some contexts, and other  
38 dimensions held absolutely guardedly secret seems to me

1 to be understood from that perspective.

2 Q. Is the situation this; what is happening here and what  
3 you've observed and reported in relation to the  
4 transmission and otherwise of knowledge amongst the  
5 Ngarrindjeri women - we'll deal speak specifically with  
6 what's happened here - is that entirely consistent with  
7 what other writers have said has happened in other areas  
8 with other Aboriginal people.

9 A. Yes.

10 Q. So there is nothing inconsistent or out of the ordinary  
11 in terms of what is happening here with what has  
12 happened in the broader Aboriginal community.

13 A. No. I think what has actually happened here in part is  
14 a very normal political process to do with the economy  
15 of knowledge being played out in an extraordinary  
16 context, but it's -

17 COMSR

18 Q. I suppose the question before me is not who shared the  
19 knowledge, but whether there was any knowledge to share.

20 A. I presume that is your question.

21 XXN

22 Q. Just on that topic, was there anything in the  
23 presentation to you of either Dr Kartinyeri or any of  
24 the other women that in any way caused you to think that  
25 what you were being told wasn't genuinely held and  
26 believed knowledge.

27 A. No.

28 Q. Was there any suggestion or hint to you that any of the  
29 women had received this knowledge or information  
30 recently.

31 A. There was none.

32 Q. That they had received this information from men.

33 A. There was no such evidence.

34 Q. In terms of what was presented to you, did you have any  
35 doubts that what you were being presented with was an  
36 Aboriginal tradition of some standing.

37 A. By the time I had finished my assessment process, that  
38 was clearly my view.

- 1 Q. Has anything you've heard here in this commission caused  
2 you to change your view about that.
- 3 A. No.
- 4 Q. Has anything you've heard here in this commission caused  
5 you to strengthen or maintain your view.
- 6 A. I think it's fair to say -
- 7 OBJECTION Mr Meyer objects.
- 8 MR MEYER: That's a double-barrelled question. You  
9 can't have one or the other.
- 10 MS PYKE: Let's put it this way -
- 11 COMSR: What has been the effect, is that it?
- 12 MS PYKE: Yes.
- 13 XXN
- 14 Q. What has been the effect upon your view - and you've sat  
15 through and read most of the evidence that has been  
16 given in this commission - what's been the impact upon  
17 you in terms of views that you've formed.
- 18 A. I think that it would be fair to say that in fact, in  
19 some respects, I've been much relieved, and that my  
20 views in some respects have firmed, I think, as a  
21 consequence of what I've heard.
- 22 Q. Can I put some particular things to you; you observed  
23 Betty Fisher give her evidence.
- 24 A. I did.
- 25 Q. You saw certain things on the television monitor and in  
26 certain transcripts.
- 27 A. I did.
- 28 Q. Did Betty Fisher and her evidence have any impact on  
29 your views, or what do you say about it in terms of your  
30 views.
- 31 A. Yes, it did, and in fact the bits of her notes that I  
32 could see on the screen in fact resonated with my  
33 understanding of this tradition and yes, I was quite -
- 34 COMSR
- 35 Q. I suppose I was going to ask you what in particular did  
36 you see on the screen that assisted you in that respect.
- 37 A. Actually, I need to see it again. The way in which the  
38 references to Hindmarsh Island, the way in which it was



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1 - I actually haven't got sufficient memory, but I  
2 remember just sitting there thinking 'My goodness, it  
3 looks to me that' - my general impression from that was  
4 'I'd really like to see these two things lined up,  
5 because I think there is an indication here that there  
6 is a remarkable similarity'.

7 Q. As a piece of anthropological data, what weight did you  
8 place on that evidence of Betty Fisher.

9 MS PYKE: Are you talking about now as she was  
10 giving the evidence? It clearly wasn't at the time of  
11 her report.

12 COMSR

13 Q. Well, now that you have seen it.

14 A. I think it's one of a variety of things that - I mean it  
15 does suggest to me, and certainly at the time, you know,  
16 I was very concerned that there had been a recent  
17 fabrication, and the fact that there is something with  
18 the kind of resonance that I picked up, both in terms of  
19 what I saw flashed up on the screen, but also in terms  
20 of the way in which Betty Fisher described Rebecca  
21 Wilson's demeanour, just an extraordinarily striking  
22 parallel between her description - and I never talked to  
23 her about this - and my experience of the demeanour of  
24 Doreen Kartinyeri was just striking. So what I'm saying  
25 is that, in effect, it seems to me that the Betty Fisher  
26 evidence that we had before us suggests to me that,  
27 certainly in 1967, there was something like the  
28 tradition that was revealed to me around and, you know,  
29 that gives me some sense of reassurance. I'm not  
30 suggesting that Betty Fisher is an anthropologist by any  
31 means but, as we have seen in this commission, as it  
32 were, the kind of evidence one can have historically is  
33 almost by chance, and it seems to me that almost by  
34 chance we have, you know, some evidence in support of  
35 this claim.

36 XXN

37 Q. The way Betty Fisher dealt with the information that she  
38 had and her reluctance to disclose it, as an

- 1 anthropologist do you have any comment on the way she  
2 presented, her demeanour, her reluctance to disclose.
- 3 A. Yes. Of course I thought that was actually quite  
4 important in the sense that the question I have  
5 addressed myself to in my statement is 'Under what  
6 circumstances would people reveal this knowledge', and I  
7 thought what was very striking about Betty Fisher was  
8 that she had an uncharacteristic, for many white people,  
9 understanding of and display of respect in relation to  
10 Aboriginal people and Aboriginal knowledge, that it  
11 struck me was the kind of -
- 12 OBJECTION Mr Smith objects.
- 13 MR SMITH: Really, the witness is now commenting on  
14 the demeanour of a witness before you.
- 15 MS PYKE: From an anthropologist's perspective.
- 16 MR SMITH: It's a matter for you. It's not open to  
17 this witness to give you any assistance with how you  
18 should receive the demeanour of a witness.
- 19 COMSR: I think it is bordering into that area.
- 20 MR KENNY: I rise to support my friend. This is an  
21 area that I think is particularly important. I think  
22 what this witness is trying to explain to you is that  
23 the respect that Betty Fisher has shown to the  
24 Aboriginal culture which -
- 25 COMSR: That's a matter, I suppose, on which  
26 I'll have to make an assessment on what she's told me,  
27 but I don't know that the -
- 28 MS PYKE: I'm just asking this witness, from an  
29 anthropologist's point of view, as to whether really the  
30 manner of disclosure, whether it effects, from an  
31 anthropologist's point of view -
- 32 COMSR: The manner of the disclosure to Betty  
33 Fisher?
- 34 MS PYKE: And Betty Fisher's disclosure to the  
35 court. I mean we have - you will, putting it bluntly,  
36 assess Betty Fisher in terms of the evidence before the  
37 court which maybe a professional, an expert  
38 anthropologist might, given the nature of the material

## D.J. FERGIE XXN (MS PYKE)

- 1 that we're dealing with, have a view that you can take  
2 into account. It's your assessment that would count,  
3 but I'm simply asking this witness, not as a lay person,  
4 but as an anthropologist -
- 5 COMSR: Whether there is anything of particular  
6 anthropological significance in the way -
- 7 MS PYKE: Betty Fisher disclosed and didn't  
8 disclose, and indeed received the information -
- 9 COMSR: Well, that might - I don't know that it  
10 is going to be of any significance to me.
- 11 MS PYKE: I would have thought, from the whole  
12 array of evidence that we have heard, that this sort of  
13 evidence might be relevant, that an anthropologist  
14 finds, for example, Betty Fisher's reluctance to talk  
15 about information quite consistent with the  
16 anthropologists own reluctance to disclose.
- 17 COMSR: It could be consistent with a number of  
18 things.
- 19 MS PYKE: It could be, and you will have to make  
20 up your mind, but we have here an anthropologist who I  
21 say to you can certainly give you a perspective which  
22 you can weigh up with whatever else you wish to weigh  
23 up.
- 24 COMSR: It seems to me that it goes more to the  
25 area of psychology than it goes to the area of  
26 anthropology, the demeanour of a witness.
- 27 XXN
- 28 Q. Let me put it this way; a reluctance to disclose  
29 information told confidentially, told in the position of  
30 confidence, do you have any comment to make about that  
31 to the extent that Betty Fisher seemed to have a  
32 reluctance.
- 33 OBJECTION Mr Smith objects.
- 34 MR SMITH: This could never end. We might get Dr  
35 Clarke to comment on the demeanour of Dr Fergie. You  
36 wouldn't allow that. You wouldn't allow a psychologist  
37 to give evidence of the demeanour of witnesses unless it  
38 was an insanity case. This is impermissible

## D.J. FERGIE XXN (MS PYKE)

1 examination. Ms Pyke should know that and should get on  
2 to another topic.

3 MS PYKE: I'm grateful to Mr Smith telling me what  
4 I should and shouldn't know, but I'm trying to assist  
5 the Commissioner. I say it's of relevance, and if you  
6 could make a ruling - I'm not proposing to spend all  
7 morning on it but that's the question I want to ask. I  
8 would have thought it was relevant.

9 COMSR: Not in that form. If you want to ask  
10 the witness whether the reluctance to disclose  
11 information in any way throws any light on, I suppose,  
12 the genuineness or otherwise of the -

13 XXN

14 Q. Perhaps answer the Commissioner's question.

15 A. For me, the issue of watching Betty Fisher was actually  
16 to address myself to the question of 'Under what  
17 circumstances do I think this person is likely to have  
18 had this knowledge disclosed to them' and, I don't know  
19 if this is - tell me if I'm saying something that goes  
20 beyond what you want here - but her demeanour in that  
21 context suggested to me that she was not an unlikely  
22 person -

23 OBJECTION Mr Smith objects.

24 COMSR: I don't think it will be any good to me,  
25 that we have seen Mrs Fisher as she is today compared  
26 with a divulgence which she says was made to her in  
27 1960.

28 MS PYKE: We have heard evidence, over objection I  
29 might say, of what people's opinions were about whether  
30 Rebecca Wilson would have disclosed. You've heard - I  
31 can go through the witnesses from whom you have accepted  
32 that evidence.

33 COMSR: Yes, I must admit we have had evidence.

34 MR KENNY: I remind you of my objection, I think it  
35 was Sue Lawrie who gave evidence of whether she thought  
36 -

37 MR SMITH: How can Mr Kenny deal with this? I  
38 object to Mr Kenny discussing this matter with you. On

## D.J. FERGIE XXN (MS PYKE)

1 what basis does he rise to enter this debate?

2 MR KENNY: I rise to enter this debate on the basis  
3 that I don't think Ms Pyke was here during Ms Lawrie's  
4 evidence, and you may recall that I objected to Ms  
5 Lawrie giving evidence of what her school teachers,  
6 primary -

7 COMSR: This witness has already told me the use  
8 that she made of that evidence, of Mrs Fisher's  
9 evidence, from listening to her in the witness box. She  
10 is now going to tell me that from her demeanour, as seen  
11 in the witness box, she is able to draw some inferences  
12 as to the likelihood that back in 1967, or whenever it  
13 was, she was likely to have been the recipient of the  
14 information.

15 A. Yes, whether it's credible from my perspective.

16 COMSR: So what I'm saying is that really that  
17 can't assist me because the contemporary impression  
18 might have nothing to do with what happened in 1967.

19 MS PYKE: I say it's relevant, if not more  
20 relevant, than the other witnesses we have heard explain  
21 - I just make it clear, it seems to me there are  
22 sometimes two rules; there is one rule that pertains to  
23 the evidence given by the proponents -

24 COMSR: The witness has explained that she is  
25 trying to draw inferences in 1995 as to something that  
26 was likely to have occurred in 1967, and I say that that  
27 must be going too far.

28 XXN

29 Q. You had certain things put to you by Mr Abbott as to  
30 what Dr Kartinyeri is reported as having said in the  
31 media.

32 A. Yes.

33 Q. Taking those matters into account, assuming - and we  
34 don't know for a moment whether what Dr Kartinyeri is  
35 reported as saying is indeed accurate - let's assume  
36 that what she is reported as saying is accurate as put  
37 to you by Mr Abbott during his cross-examination, was  
38 there anything that you heard that caused you to rethink

1 your opinion and conclusions.

2 A. There was not.

3 Q. Was there anything that Dr Kartinyeri was reported as  
4 saying that you considered to be discordant or not  
5 resonant with what she has told you.

6 A. Certainly not that I can recall.

7 Q. I think you want to have a look at the Poonindie article  
8 again. That relates to Doreen's grandmother.

9 A. Yes.

10 Q. Looking at Exhibit 255, I think there was just something  
11 you wanted to check for yourself as to -

12 A. There was. I just wasn't sure whether, on the face of  
13 it, this paragraph supported what Mr Abbott put to me,  
14 and I'm still not sure that it supports what Mr Abbott  
15 put to me.

16 Q. Can you read to us the paragraph that you're having  
17 difficulty with.

18 A. `Doreen has, since a young girl, had a keen interest in  
19 family history. Although she was born and grew up at  
20 Point McLeay, her grandmother was born at Poonindie and  
21 was sent with her family, the Varcoes, to Point McLeay  
22 when the mission closed in 1894'. My recollection is  
23 that Mr Abbott was trying to put to me that this  
24 paragraph, on the face of it, demonstrated that Grandma  
25 Sally had, in fact, been in the mission. I don't know  
26 that it actually does that in any equivocal way at all.

27 OBJECTION Mrs Shaw objects.

28 MRS SHAW: Obviously Dr Fergie's lack of knowledge  
29 of the Poonindie mission is contributing to this answer  
30 but, in any event, it's clear from what appears in the  
31 article and the evidence of her  
32 great-great-granddaughter, Rebecca Wilson, that she went  
33 from Poonindie to the Point McLeay mission.

34 CONTINUED

1 And lived next door to Bertha Gollan on the mission.

2 WITNESS: After it closed in 1894.

3 MS SHAW: Poonindie closed. Poonindie was a  
4 mission run by a very religious man.

5 MS PYKE: I don't really know that we need  
6 evidence from Ms Shaw. The witness is giving her  
7 evidence and she just wanted to clarify something by  
8 reference to the article.

9 If Ms Shaw wants to give evidence, that's fine.

10 MS SHAW: I am objecting, because my learned  
11 friend is putting to the witness something on the  
12 premise that Mr Abbott put and the premise is baseless.

13 COMSR: I think that the difficulty here also is  
14 that the witness can't exactly remember what it was that  
15 was being debated, at the time.

16 WITNESS: No, but the reason I asked to have this  
17 brought up was, in fact, Mr Abbott threw that at me, let  
18 me read it and then went on. And, in fact, I had made a  
19 note to myself to actually come back and say that I  
20 didn't see that that paragraph - I didn't think it was  
21 as clear as he was suggesting to me. And I didn't get  
22 that chance. So, I just wanted to get it clear that, if  
23 there was an inference, that I was clear in my response  
24 to him on that proposition that I wasn't.

25 MS PYKE: I am talking about this witness's  
26 evidence. She is just simply saying, as put to her and  
27 on her reading of the article, it is not a clear, for  
28 instance -

29 COMSR: There is a bit of confusion in her mind,  
30 which is not yet revealed.

31 WITNESS: Yes, that's right.

32 MS PYKE: Yes, that is all I am wanting to put.

33 XXN

34 Q. There was some evidence given by Clare Campbell to this  
35 Commission that related to secret women's business  
36 pertaining to a site which was secret and that she  
37 didn't wish to give information to this Commission about  
38 that or expand upon it. Do you have a comment about

- 1 that, in terms of the views that you have formed.
- 2 OBJECTION Mr Smith objects.
- 3 MR SMITH: I object to this. Is the witness now
- 4 re-evaluating the evidence that has been given in the
- 5 Commission?
- 6 MS PYKE: I am just asking whether it affects her
- 7 view.
- 8 COMSR: What affects her view? The fact that
- 9 this was an instance in which -
- 10 MS PYKE: An example of a woman coming to this
- 11 Commission and saying that there was secret women's
- 12 business relating to a site that was sacred.
- 13 COMSR: I think what you are putting is, is this
- 14 another example of an area of confidential knowledge or
- 15 something of that sort.
- 16 Is that what you are putting to the witness?
- 17 MS PYKE: Or whether it affects her view. She
- 18 might say that this is another example, or really it
- 19 doesn't make any difference.
- 20 COMSR
- 21 Q. Do you know what the question is.
- 22 A. Yes, I think I do. I think that my answer is that, in
- 23 some respects, Clara Campbell's evidence is a comfort to
- 24 me, in the sense that she seems to be giving more weight
- 25 to the view that there were areas of specific women's
- 26 knowledge that was confidential in Ngarrindjeri culture.
- 27 Although it is different in important respects from the
- 28 tradition that was disclosed to me.
- 29 XXN
- 30 Q. There has been some questioning of you about the
- 31 veracity, if I can put it that way, or whether you
- 32 tested the veracity of Dr Kartinyeri's claim to do with
- 33 the abortion of white fetuses on Hindmarsh Island.
- 34 A. Yes.
- 35 Q. There is certainly reference in Berndt and Berndt, isn't
- 36 there, to Ngarrindjeri women carrying out abortions.
- 37 A. There is.
- 38 Q. This is at pp.138 and 139 of the book. And there is



1 certainly references to the killing of children born of  
2 association with Europeans.

3 A. Yes, there is.

4 Q. Indeed, infanticide generally.

5 A. Yes, there is.

6 Q. Would it surprise you, indeed, a concept of abortion of  
7 white foetuses, given that reading in Berndt and Berndt.

8 A. It would -

9 OBJECTION Ms Shaw objects.

10 MS SHAW: May I again object to this?

11 That totally distorts what Mr Abbott was putting to  
12 the witness and challenges the historical concept. The  
13 issue that was put to her was relating to Hindmarsh  
14 Island. Mr Abbott went through those texts with Mr  
15 Clarke.

16 MS PYKE: I think I can put the general. And,  
17 given that there is no particular location or locale or  
18 any further description in Berndt and Berndt, I just  
19 want to put -

20 MS SHAW: No, what Mr Abbott was putting is that  
21 Berndt and Berndt specifically stated that women would  
22 go away from their camp a short distance and be  
23 accompanied by midwives and so on. They didn't go to a  
24 far away place.

25 MS PYKE: He didn't put that to the witness.

26 MS SHAW: Dr Fergie was here for that part of Dr  
27 Clarke's cross-examination.

28 MS PYKE: I am not talking about Dr Clarke.

29 MS SHAW: No, but the issue that she was  
30 challenged on was support for the notion of Aboriginal  
31 women leaving their clans, going to a far away place,  
32 having abortions, accompanied by midwives and returning  
33 and there not being a note anywhere in the historical  
34 literature of any such event happening, irrespective of  
35 the purposes of the journeys. And that is the challenge  
36 that has been inconsistent with what is in the  
37 literature.

38 MS PYKE: That wasn't put by Mr Abbott to this

- 1 witness. Mr Abbott put a proposition in relation to  
2 aborting foetuses and Hindmarsh Island. I suggest to  
3 you, given the nature of that proposition, certainly I  
4 am able to ask this witness questions about the fact  
5 that there certainly is reference to abortions and  
6 infanticide of white babies.
- 7 COMSR: I can't see any objection to it. The  
8 book speaks for itself, so I can see no objection to the  
9 question being asked.
- 10 XXN
- 11 Q. What I am putting to you is this: given those references  
12 in Berndt and Berndt, do you have any difficulty with a  
13 notion that there may have been abortions of white  
14 foetuses.
- 15 A. I do not.
- 16 Q. And that it might have been carried out in a particular  
17 place.
- 18 A. I do not.
- 19 Q. Amongst other places.
- 20 A. Yes, I do not.
- 21 Q. Your conversation with Dr Clarke.
- 22 A. Yes.
- 23 Q. Do you recall your conversation with Dr Clarke shortly  
24 after you had provided your report to Professor  
25 Saunders, or the ALRM.
- 26 A. Yes.
- 27 Q. Firstly, can you tell us what that conversation was and  
28 the demeanour of Dr Clarke during the course of that  
29 conversation.
- 30 A. Yes, as best I can recollect, I was trying - I think the  
31 reason that Philip and I found ourselves on the phone to  
32 each other was that I was actually trying to ring Doreen  
33 Kartinyeri, hadn't been able to get through, and had  
34 actually rung another - I had either gone to the switch  
35 and asked for Kate Alport's number, or had had it  
36 somewhere myself. In any case, I was surprised that  
37 Philip Clarke answered the phone and I said to him  
38 immediately, you know, 'Oh, hi, Philip. I was actually

1 trying to get you last week. And couldn't.' And what  
2 then happened was extraordinary - that Philip just  
3 launched in and, to me, launched into a tirade. Saying  
4 that, you know, that this claim was a recent invention.  
5 Very aggressively. And I was stunned, in fact, because  
6 I was completely stunned by his response to the phone  
7 call.

8 Q. Was there any reference to the western desert.

9 A. I don't actually recall that reference, in fact.

10 Certainly Mr Clarke - yes, he was Mr Clarke, at the time  
11 - Mr Clarke put to me that this was a recent invention.  
12 He put to me that - something to the effect that 'We  
13 know that it is a recent invention, because we know of  
14 specific conversations that demonstrated that it was.'  
15 I don't recall that he put to me what they were. He  
16 said, you know, 'You're just going on Doreen. We know  
17 the conversations in which she got this idea.' I said  
18 that I wasn't just going on Doreen. That Doreen, in  
19 fact, was a spokesperson who had been authorised by a  
20 meeting of 35 women as their spokesperson on this  
21 matter. And I noted to him that I didn't understand her  
22 to be the only custodian of this knowledge, that there  
23 were other women who were custodians. I mentioned  
24 Connie Roberts and my recollection is that Philip Clarke  
25 said to me that 'Well, there you are. Doreen and  
26 Connie - ' you know, words to the effect that 'They  
27 don't get on. They are in different positions and  
28 Connie Roberts doesn't talk to anthropologists anyway.  
29 We have been trying to get her to talk to us for  
30 sometime.' I recall that I said 'Well, you know, the  
31 fact that there was this - people who are unlikely to  
32 have been allies together was actually support for my  
33 view that Doreen was a spokesperson for this group.'  
34 And that this was indeed a tradition. I do recall that  
35 he also put to me women who had worked in the area.  
36 What struck me at the time was that Philip hadn't  
37 realised - I mean, Philip was actually talking to me as  
38 if I was going to be doing this for the rest of my life,

- 1     whereas, at that point, my understanding was that my  
2     involvement in this process had finished. In fact,  
3     there was no point in telling me things to do now,  
4     because my report was written. It was in. I certainly  
5     didn't see myself, at that point, as having an on-going  
6     involvement in this issue.
- 7     Q. You had him using the word `we'. Did he tell you who  
8     the `we' was. You know, `We know that - '  
9     A. I don't believe he did.
- 10    Q. Anything else in that conversation that you can recall.  
11    A. No, we did talk about the issue of, you know, the  
12    invention of tradition and so on and I recall telling  
13    him that I didn't believe that this was an invented  
14    tradition. I don't know if we said Hobsbaum and Ranger,  
15    but that was certainly my understanding of what he was  
16    referring to. And my recollection is that I did say  
17    that I didn't believe it was a recent invention of the  
18    Hobsbaum and Ranger kind. I don't believe we mentioned  
19    the book at all.
- 20    Q. Was there any mention of feminist anthropology.  
21    A. Not in my recollection. And certainly the phrase that  
22    Philip has used in his evidence is a phrase that I  
23    certainly wouldn't use myself. I don't believe I have  
24    ever used that phrase and I am much more likely to have  
25    talked about male bias. And certainly the topic of male  
26    bias in the literature was a topic of that conversation.  
27    But, I mean, my general - I was just completely taken  
28    aback by the aggression that - and the immediacy of  
29    Philip's - I mean, when I got off the phone, I was  
30    thinking, you know, `Where did that come from?' Is is  
31    just - I was actually really stunned and I just went  
32    into the kitchen and sat, because I was stunned by the  
33    ferocity, at the immediacy of it. Because my  
34    recollection is that Philip didn't enquire of me what  
35    had happened. He just launched into this tirade about  
36    the fact that I was wrong. And that he knew I was  
37    wrong.
- 38    Q. Did he tell you, at that stage, whether he had read your

1 report.

2 A. He did not.

3 Q. Or where this information was coming from.

4 A. No.

5 Q. Just on that topic: prior to your engagement by the  
6 Aboriginal Legal Rights Movement to work as a  
7 facilitator, had you had any approach from Dr Kartinyeri  
8 to assist or liaise with her in relation to Hindmarsh  
9 Island.

10 A. No.

11 Q. Or did you do any researches for her.

12 A. I did not.

13 COMSR

14 Q. This constitution and the code of ethics, I suppose you  
15 have put it forward as the basis on which members of the  
16 Australian Anthropological Society accept their work,  
17 have you.

18 A. Yes. And, in fact, the people who are specifically  
19 bound by the code of ethics are actually fellows. So,  
20 there is a distinction within the society between  
21 fellows and members. And, to be a member, you actually  
22 require I think from recollection the equivalent of an  
23 honours in anthropology. Whereas, to be a fellow, you  
24 have to have demonstrable research experience. And that  
25 is, in the first instance, measured against a research  
26 of high degree or its equivalent.

27 Q. I have been looking through it. It says 'Members should  
28 not accept anthropological work which they are  
29 insufficiently qualified to do, whether by way of  
30 training or experience.' Did you have some reservations  
31 in view of the fact that you had no experience in this.

32 A. No, what I have got is a wealth of ethnographic  
33 experience.

34 Q. You have told me, as far as the Ngarrindjeri culture was  
35 concerned, that you had had no previous experience or  
36 field work.

37 A. Yes, it is a common thing nowadays with consulting  
38 anthropology that a group that employs you has two

1 choices. One is to get somebody who has got extensive  
2 field work in this area. In this case, that wasn't an  
3 option, because there is no woman with that experience  
4 and they could have got any number of women. And my  
5 understanding is they did try to get other women who  
6 have had no more experience in Ngarrindjeri culture than  
7 I. The experience that one looks for in this context is  
8 somebody with relevant ethnographic experience. And my  
9 - as somebody who has done ethnographic research in  
10 South Australia, I was as qualified as anybody, I would  
11 suggest, to undertake that work.

12 XXN

13 Q. Did you have any concerns whatsoever that you were not  
14 appropriately professionally qualified in terms of  
15 academic qualifications and your work experience to do  
16 that consultancy.

17 A. No, and I think the other thing to bear in mind is - I  
18 don't believe so, at all, but I think that position is  
19 strengthened when it is recalled that my initial  
20 involvement was as a facilitator rather than as a -

21 COMSR

22 Q. Yes, and I think you have given me to understand that  
23 that was a pretty ambiguous sort of a brief for you, in  
24 this case.

25 A. It was, but you would have - no matter who had taken the  
26 brief. Suppose there had been a brief of writing a  
27 report about this and it had been conducted in the way  
28 one might have hoped, so that the person was employed  
29 from the very beginning, it would have been a person  
30 with my kind of experience. Because, in fact, you  
31 couldn't have found a woman with better experience, as  
32 it were, to undertake this.

33 Q. Yes, I have just been browsing through these. It says  
34 `Members should come to explicitly contractual  
35 arrangements with sponsors before commencing work,  
36 specifying the tasks to be done, rights and  
37 responsibilities, nature of reportage, agreement with  
38 those studied and gatekeepers, copyright and access

D.J. FERGIE XXN (MS PYKE)  
REXN (MR SMITH)

- 1 conditions, and rates of remuneration and costs.' It is  
2 just that I have got the impression, from what you told  
3 me, that you a had a little bit of difficulty of  
4 knowing.
- 5 A. Certainly, and that's why I wrote down on my field  
6 notebook and went back to Tim Wooley on a number of  
7 occasions and said 'This does not involve a report.'  
8 So, in a sense, I sought to clarify that very precisely  
9 what that was. And my understanding as a consequence of  
10 those enquires was that I was a safety net adviser in  
11 the facilitation process, yes.
- 12 XXN
- 13 Q. When your function changed, did you seek clarification  
14 of that.
- 15 A. I did.
- 16 MS PYKE: I have got no further questions.
- 17 RE-EXAMINATION BY MR SMITH
- 18 Q. The article you referred to of Lesley Mearns, I take you  
19 to that, it is an attachment to your statement.
- 20 A. Yes.
- 21 Q. I take you to the bottom of p.276. Have you got that,  
22 the article.
- 23 A. Yes.
- 24 Q. The author there says 'Having completed a documentation  
25 of the site that had been damaged and having been told a  
26 coherent story that was commensurate with previous  
27 documentation in the area.'
- 28 A. Yes.
- 29 Q. That rather distinguishes that case from this one,  
30 doesn't it.
- 31 A. Not at all. I had material that was commensurate with  
32 the previous documentation in the area. Absolutely. I  
33 think maybe I need to return to the issue of the  
34 conceptualisation of this culture, because it seems to  
35 me that -
- 36 Q. No, just answer my questions.
- 37 OBJECTION Ms Pyke objects.
- 38 MS PYKE: The witness is endeavouring to answer.

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D.J. FERGIE REXN (MR SMITH)

1 And I think, if a question is asked, the witness must be  
2 given a proper opportunity to answer it.

3 WITNESS: It remains my view that the analysis  
4 that I have done is commensurate with the existing  
5 literature on this area.

6 COMSR

7 Q. Yes, I gathered that that was what you were saying.

8 CONTINUED



1 REXN

2 Q. The literature that you assembled here in the attachment  
3 to your statement and referred to as additional  
4 exhibits, you have assembled that in the time since  
5 reporting on 4 July, have you.

6 A. I've assembled that since I was subpoenaed, yes.

7 Q. Can I take you, just to clarify some of the evidence you  
8 have given over the last two days. As I understand your  
9 evidence, there were three major events where you had  
10 conveyed to you secret knowledge of women or some hybrid  
11 of that - 19 June 1994 - Monday, 19 June 1994 - when  
12 Doreen addressed the meeting at Graham's Castle.

13 A. I think that's the Sunday.

14 Q. Is that Sunday, is it.

15 A. That's my recollection.

16 Q. It's the Sunday. Is that the first occasion.

17 A. Yes.

18 Q. Is not the second occasion Friday, 24 June, when you  
19 were driving Doreen back to Adelaide from Kadina.

20 A. Yes.

21 Q. Is the third occasion Wednesday, 29 June 1994, the  
22 telephone calls with Doreen which led to the compilation  
23 of your, of the secret confidential appendix two.

24 A. That phone call, as it were, went over two days.

25 Q. That was on the 29th and the 30th, was it.

26 A. To the best of my recollection that is the case, but I'm  
27 quite happy to check it. Can I have the little pages of  
28 my diary if I could?

29 Q. Yes. Looking at your diary, document 11 of Exhibit 243.

30 A. The other one that might help is there are three pages  
31 called 'Notes in method', which, I think -

32 Q. That is 65(b) of Exhibit 243. Looking at that produced  
33 also. Am I correct that the three focal points are  
34 those dates, which are 24 June, and 29 June - and you  
35 are just checking up on the 29th.

36 A. I said from my 'Notes to method', I think that the  
37 initial phone calls took place on the 29th. That there  
38 was a checking phone call on the 30th and the final

- 1 comment this morning I take to be 1 July.
- 2 Q. The final honing down of the material, was it.
- 3 A. I think what that suggests I did was read the entire
- 4 text again to her to make sure that it was exactly as
- 5 she wanted it. That I read through these 'Notes to
- 6 method' so that she knew exactly what I had said on that
- 7 and then quite clearly it says I asked her if there were
- 8 specific passages and phrases from that that I could use
- 9 in the main body of my report, and I got her agreement
- 10 to that.
- 11 Q. The telephone conversations of the 29th, 30th June and
- 12 1st July really focused on the material that you put in
- 13 confidential appendix two; is that correct.
- 14 A. And three, yes.
- 15 Q. Can I take it, going back to the three incidents, that
- 16 the Commissioner can take it from you that strands of
- 17 what was said, or aspects of it, or themes, or whatever
- 18 of what was said to you on 19 June and 24 June also
- 19 found their way into the confidential appendix two and,
- 20 to some extent, confidential appendix 3; is that what
- 21 you were conveying to Mr Abbott yesterday.
- 22 A. Yes, as fragments. Fragments or bits, yes.
- 23 Q. Fragments, bits whatever.
- 24 A. Yes.
- 25 Q. You made the point yesterday that you were not really
- 26 checking what Doreen related to you as being an
- 27 historical fact or otherwise, but you, as an
- 28 ethnographer, were ensuring that Doreen truly believed
- 29 what she was saying to you.
- 30 A. No. I was taking, I said, internal adherents. There
- 31 are a couple of dimensions to this which is: first, on
- 32 the one hand, I was checking that in a sense that the
- 33 account had an internal logic; and, on the other hand,
- 34 that it was clear on the other hand that it was
- 35 commensurate resonant with the broader literature.
- 36 Q. You did say very early in your evidence that if Doreen
- 37 said to you - and did you use this phrase 'I've been
- 38 reeling you in', for example, or something like that,

- 1 that if Doreen had used that phrase, that would've  
2 caused you some disquiet.
- 3 A. It certainly would.
- 4 Q. So, the veracity of what is said to you in terms of  
5 whether it's a truly held belief by the person informing  
6 you is something you have regard to.
- 7 A. Absolutely.
- 8 Q. Putting it theoretically to you, would you agree that  
9 the options in this situation, in terms of the belief,  
10 are these: That, it did not exist at all - and I'm not  
11 relating this to the case at bar at the moment. I will  
12 put the three propositions to you: Did not exist at  
13 all, that is, the belief in sacred women's business;  
14 that it existed but has been lost as a result of the  
15 destruction of the culture; thirdly, that it has always  
16 existed, but has been hidden away from chroniclers and  
17 many Ngarrindjeri women until 1994. Do you agree that  
18 they're the considerations which arise.
- 19 A. I think the way in which you have conceived of those  
20 options I would disagree with. For example, the idea  
21 that it's been hidden away would suggest that Aboriginal  
22 people were - you know, that the processes was simply a  
23 hugging to oneself, a very conscious process, where the  
24 process - it seems what one has to be absolutely  
25 conscious of the point is that outsiders didn't clearly  
26 have it disclosed to them that exists in the documentary  
27 evidence that was available to us in 1994.
- 28 Q. But option three is the option you choose, however,  
29 whatever issue you take with the language I've used.
- 30 A. `It does not exist at all'? I was - prima facie had a  
31 proposal been put to me something existed, but I mean I  
32 don't think we need to get into that -
- 33 Q. That is begging the question. I'm putting to you that  
34 if you - you said to Mr Abbott that, despite the way in  
35 which you embarked on your report, you really did report  
36 on the existence or not of secret sacred women's  
37 business.
- 38 A. What I said in my statement is that by the time I was

- 1 asked to write a report, I had formed a preliminary  
2 view.
- 3 Q. So, you formed a preliminary view that it existed, this  
4 notion of sacred women's knowledge.
- 5 A. I formed a preliminary view there was a case with some  
6 merit that needed further assessment.
- 7 COMSR
- 8 Q. I'm not sure what that means `formed the view that was  
9 the case with some merit'. In other words, that you  
10 wouldn't dismiss it, but thought that it should be  
11 investigated.
- 12 A. Precisely.
- 13 REXN
- 14 Q. I'm only trying to sort of hone down the process. You  
15 would reject the notion that it did not exist at all, of  
16 course.
- 17 A. At this point. It's my view that - well, I mean, look,  
18 anybody in my position - let me say it again because,  
19 you know, I'm not going to believe - what we are dealing  
20 with is judgments. Anybody can change a judgment if  
21 contrary evidence is produced to them. I'm such a  
22 person. It is my view, however, that such contrary  
23 evidence, such compelling contrary evidence, has not  
24 been given to me. I'm not saying that forever and ever  
25 I will be held to that view, I'm not saying that.
- 26 Q. The thrust of what I'm putting to you, because of those  
27 options, if Doreen is found, by reason of other  
28 evidence, to be not a reliable conveyor of this belief  
29 to you, that would give you concern, bearing in mind  
30 your conclusions.
- 31 A. Clearly it would. I would - I mean, the thing is the  
32 points to be made, it would have to be my assessment if  
33 that were the case, certainly. That you believe that,  
34 Mr Smith, doesn't necessarily mean that I ought to.
- 35 Q. No, but if the evidence pointed to the fact that Doreen  
36 had been reeling you in.
- 37 A. I would consider it very seriously.
- 38 Q. Can I take you to Exhibit 243, p.28, that's the bundle -

- 1 it's document 28 of the bundle of documents Exhibit 243.  
2 A. Can I have a five minute break, if that is okay?  
3 ADJOURNED 11.46 A.M.  
4 RESUMING 11.50 A.M.  
5 REXN  
6 Q. I think you have in front of you now, I think, document  
7 no.28 of Exhibit 243.  
8 A. Yes, that's right.  
9 Q. You see there the phrase `Not dreaming, it's reality'.  
10 A. Yes.  
11 Q. Whose words are they.  
12 A. They're a paraphrase of Doreen Kartinyeri's words.  
13 Q. If I take you then to Professor Saunders' report, which  
14 is Exhibit 17 - and it's either p.28 or p.31 - it's p.31  
15 - produced. I think there's a reference there by  
16 Professor Saunders to just that phrase `In the words of  
17 Doreen Kartinyeri, this is not just a dreaming, it's a  
18 reality'.  
19 A. Yes.  
20 Q. Did you convey that phraseology to Professor Saunders on  
21 behalf of Doreen Kartinyeri; that is, that Doreen said  
22 that to you.  
23 A. It may be that. I can't answer that question without  
24 reference to that appendix 2, but I think it's highly  
25 likely that I conveyed it to her.  
26 Q. Is that a phrase that you suggested to Doreen  
27 Kartinyeri.  
28 A. Absolutely not.  
29 Q. Was that not the subject of an essay presented to you by  
30 Dr Philip Clarke when he was your student.  
31 A. God knows. God doesn't even know. I have no idea.  
32 Q. It's certainly a well-known anthropological concept,  
33 isn't it.  
34 A. Well, I'm not sure that that is the case.  
35 Q. There's -  
36 A. Listen, I must say really quickly that I have no memory  
37 of Philip as my student. If he is a face - I mean, I  
38 had been reminded in this Commission that he was one of

- 1 my students. It's hardly unlikely I would remember any  
2 one of his essays amongst the hundreds and thousands  
3 that I marked.
- 4 Q. Are you familiar with any works by Stanner.
- 5 A. Yes. W.E.H. are his initials.
- 6 Q. Could I show you something in Dr Clarke's thesis,  
7 Exhibit 3, produced.
- 8 A. While that is coming, I actually don't refer quotes to  
9 my informants, I taking them down.
- 10 Q. Would you turn to p.104 of Exhibit 3.
- 11 A. Yes.
- 12 Q. You see there, there's a section of Dr Clarke's thesis  
13 which is headed - can I read it to you `Dreaming as  
14 Reality'.
- 15 A. Yes.
- 16 Q. His major source in the material under that paragraph is  
17 Stanner.
- 18 A. Is that an Aboriginal religious -
- 19 Q. No, you look at the reference.
- 20 A. I will check the reference.
- 21 Q. The reference is `Stanner, 1953, 1979, "The dreaming in  
22 whiteman got no dream".'
- 23 A. That public lecture, yes. Hang on - that's a Boyer  
24 lecture is my recollection.
- 25 Q. That's an ANU press in Canberra publication.
- 26 A. Yes, I think that is one place that it's published.
- 27 Q. And the article `To dream is the dreaming being the  
28 poetic key to reality'.
- 29 A. In my recollection. It is a long time that I've read  
30 that booklet.
- 31 Q. My question to you really is: That phraseology  
32 concerning that topic of dreaming and dreaming being a  
33 reality, did you imbue that in some way to Doreen  
34 Kartinyeri.
- 35 A. Absolutely not. In fact, I would have preferred she  
36 didn't say it because it makes the issue of dreaming and  
37 reality ambiguous. I certainly did not. I think, I  
38 mean - there is no point, but I mean the fact that

- 1 anthropologists pick up on themes in Aboriginal culture  
2 is hardly surprising. But I certainly in no way  
3 suggested that to Doreen.
- 4 Q. You wouldn't suggest - you are not suggesting that  
5 Doreen is an anthropologist.
- 6 A. I'm not suggesting that. That's part of the problem in  
7 this Commission that it's put ambiguously. She has, on  
8 the one hand, been held to account as an expert and on  
9 the other hand said in a way it diminishes her  
10 Aboriginality. There is no point in me saying that.
- 11 Q. I suggest to you that you suggested that phraseology to  
12 Doreen Kartinyeri and that is how its found its way into  
13 Professor Saunders' report from her lips.
- 14 A. I happily deny that.
- 15 OBJECTION Ms Pyke objects.
- 16 MS PYKE: Unless counsel assisting is going to  
17 lead evidence that that has happened, that statement is  
18 without foundation.
- 19 A. Can I say that because of what Philip Clarke's said and,  
20 therefore, if you hadn't read the thesis, would you  
21 accuse him of the same thing and put the same question  
22 to him -
- 23 REXN
- 24 Q. I produce to you a copy of the Hansard of 21 March 1995.  
25 There are two sheets. There are two sections of  
26 Hansard, the first dated Tuesday, 21 March 1995 and then  
27 Thursday, 23 March 1995. I want to direct you to the  
28 section on that and I hand out to my learned friend  
29 copies of those two sheets.
- 30 CONTINUED

- 1 Perhaps just to put it in perspective, on Tuesday 21  
2 March, the member of Parliament, Mr Lewis, tabled in  
3 Parliament, what has been called here, 'the letter  
4 alleged to have been written by the daughter of Pinkie  
5 Mack.'
- 6 A. Yes.
- 7 Q. I think on the left-hand bottom column, of p.2034 of  
8 Hansard, for Tuesday 21 March 1995, we see that set out.  
9 But, I am drawing your attention to the fourth para., on  
10 the right-hand side, of p.2034, of Tuesday 21 March.
- 11 A. Yes.
- 12 Q. I am not going to read it all out to you, but, Mr Lewis,  
13 there tells Parliament that, 'The construction of a  
14 bridge across the Murray River at that point -' being  
15 across the channel from Hindmarsh Island to the Goolwa  
16 township. I will quote from what he said to Parliament.  
17 'That the construction of a bridge across the Murray  
18 River, at that point, would represent, in its effect on  
19 the so-called spiritual values, an IUD.' You see  
20 that.
- 21 A. Yes, I see that.
- 22 Q. Anything like that said to you in the course of those  
23 meetings with the ladies at Graham's Castle and Doreen  
24 Kartinyeri.
- 25 A. No, nobody mentioned an IUD.
- 26 Q. Anybody mention anything akin to that.
- 27 A. When?
- 28 Q. In the course of your consultancy or your facilitation.
- 29 A. Many things are akin to an IUD.
- 30 Q. Such as. I am trying to identify whether anything like  
31 that was said to you. If there is something akin to it  
32 would you identify it for us.
- 33 A. I don't believe I can without reference to appendix 2.
- 34 Q. Can I take you then to Exhibit 243, document 28.
- 35 MS PYKE: Can I ask if Mr Lewis is going to be  
36 subpoenaed to this Commission as to the source of his  
37 learning of these matters?
- 38 INTERJECTOR: From McLachlan.



- 1 MS PYKE: It seems to me that, we have someone  
2 here who might be able to shed information for us in  
3 this Commission. I just rise to enquire as to whether  
4 there is going to be a summons issued to Mr Lewis.
- 5 MR SMITH: Could I get on with the questioning?
- 6 MS PYKE: I wouldn't mind an answer.
- 7 REXN
- 8 Q. I think, just to complete the Hansard for the moment,  
9 you have got those two sheets of Hansard in front of  
10 you. The second sheet, would you please look at it. I  
11 just want to show it to you. It includes a letter of  
12 response from Doreen Kartinyeri to what was said by Mr  
13 Lewis, doesn't it.
- 14 A. I actually haven't read this letter before.
- 15 Q. You see there, Doreen Kartinyeri says, amongst other  
16 things, if you accept that it is her letter, 'Mr Lewis  
17 discussing Aboriginal women's business, as he did in  
18 the speech, has totally offended me and Aboriginal  
19 women.'
- 20 A. Where's that?
- 21 Q. See that.
- 22 A. No, I haven't got there yet. Which paragraph?
- 23 Q. It is the bottom of the second para.
- 24 A. Yes, I see it.
- 25 EXHIBIT 261 P.2034 of Hansard, dated 21  
26 March 1995 and p.2141 of Hansard dated  
27 23 March 1995 tendered by Mr Smith.  
28 Admitted.
- 29 Q. I take you to Exhibit 243 again, and p.28,  
30 which is headed, 'Body of traditions, observance,  
31 customs and beliefs.'
- 32 A. Yes.
- 33 Q. They are your notes of course.
- 34 A. They were.
- 35 Q. They are your notes taken when. Can you tell us again.
- 36 A. No, I can't tell you precisely. Taken in the week that  
37 - I would say, probably towards the end of the week, in  
38 which I wrote my report.

- 1 Q. About .5 of the page, under the heading `physical  
2 structure' you have a series of question marks.  
3 A. That's right.  
4 Q. And you have the word, `contracept versus radical  
5 hysterectomy.'  
6 A. That's right.  
7 Q. Who said that to you.  
8 A. Nobody, that's my questioning. That's my concept and my  
9 writing.  
10 Q. Where you have `contracept' you have got it in inverted  
11 commas. Does that mean contraception.  
12 A. It is not an inverted comma, it is my way in which I do  
13 abbreviation `ion' yes, so, it is contraception.  
14 Q. We can read that as `contraception versus radical  
15 hysterectomy.'  
16 A. With the question mark in front, is me making a query,  
17 is this?  
18 Q. Can you explain that to us. What did you mean. You  
19 know, what was it that you were grappling with when you  
20 wrote down that phrase.  
21 A. I am unable to answer that without reference to appendix  
22 2.  
23 COMSR  
24 Q. I mean, what you were grappling with, why aren't you  
25 able to explain what you were grappling with.  
26 A. Because the details of why I came to be grappling with  
27 that are held in appendix 2 and what was the nature of  
28 what was in my mind at the time.  
29 Q. You could have answered the question without revealing  
30 that it had anything to do with appendix 2, could you  
31 not.  
32 A. Sorry, tell me how and I will quite happily -  
33 Q. You say that, to do so would reveal the contents of what  
34 was in appendix 2, but had you just dealt with the  
35 concept and made no reference to appendix 2, no-one  
36 would have had any reason to know.  
37 A. But, I don't know how to explain why I was thinking  
38 about the difference between the two or why even such a

- 1 concept - well, yes, you're right.
- 2 REXN
- 3 Q. I didn't hear what you just said.
- 4 A. The Commissioner is right, I could have answered that
- 5 much better.
- 6 Q. Will you have another go at it for us then.
- 7 A. I was thinking about the issue of, the proposition that,
- 8 the bridge would cause the cosmos to become sterile and
- 9 I was thinking about dimensions, ways in which that
- 10 might have been conceived and I was exploring, you know,
- 11 exploring what it actually meant in that cultural logic.
- 12 Q. Whether it was, whether the bridge constituted a
- 13 contraceptive device, as opposed to a radical
- 14 hysterectomy.
- 15 A. Now that you say that, I am actually not sure that's
- 16 what I was thinking of again. It might have been that I
- 17 was actually thinking about the barrages actually, and
- 18 in fact, when I think about what is at the top of the
- 19 page, that is probably right.
- 20 Q. What, it might be, is that, you were trying to come to
- 21 grips with what significance the barrages had.
- 22 A. Yes, I think that's a likely answer, yes. In fact, when
- 23 I look at the whole of the page, I think that this is me
- 24 thinking through what is the implications of the
- 25 existence of the barrages and I am just asking myself a
- 26 question, well, I am just, I guess - what I am quite
- 27 clearly doing here is, sort of making notes in which I
- 28 am going through, you know, a set of ideas,
- 29 thinking about in relation to my assessment.
- 30 Q. If that answer is correct, and it relates to the
- 31 barrages, then, you wouldn't have any trouble with
- 32 appendix 2, would you, in terms of answering that
- 33 question. The question relating to what you were
- 34 grappling with, when you wrote down the phrase,
- 35 'contraceptions versus radical hysterectomy.'
- 36 A. I might do.
- 37 Q. You might do.
- 38 A. Yes.

- 1 Q. Does it involve appendix 2, or not.
- 2 A. Well, it depends what you ask me I think.
- 3 Q. Did you regard the barrages, as in cultural or
- 4 mythological terms, or whatever, somehow synonymous with
- 5 a radical hysterectomy, or somehow synonymous with some
- 6 form of contraception.
- 7 A. No, but I don't and I didn't and I clearly considered
- 8 whether they might be.
- 9 Q. As opposed to, perhaps, on one other hand, being a
- 10 pacemaker.
- 11 A. That's right.
- 12 Q. You know, of course, that the barrages are, shall I say,
- 13 a substantial obstruction across the channel, the river
- 14 channel.
- 15 A. I certainly do now, yes.
- 16 Q. Much more substantial, for instance, than the bridge -
- 17 in terms of.
- 18 A. Certainly, but, yes, certainly and yes - well, I mean,
- 19 there they are different from a bridge and they were
- 20 clearly an issue that I, because of their existence,
- 21 thought about and questioned about, yes.
- 22 COMSR
- 23 Q. As at the time you wrote your report, you were aware
- 24 what the extent of the barrages were.
- 25 A. Yes, because I had discussions with Mr Tuckwell of
- 26 Signal Point. I rang him up, somewhere in here are
- 27 notes I made, either in the context of that phone call
- 28 or after it, and he actually undertook to send me a
- 29 whole package of materials about the barrages, which he
- 30 did, and which I received, and which I certainly looked
- 31 at, you know, I wouldn't say with any enormous attention
- 32 but I certainly looked at it, read it through before I
- 33 wrote my report, yes. And I had certainly addressed,
- 34 with the women, the issue of the barrages, with Doreen
- 35 and Sarah and, as I recall, Vi and Shirley and my
- 36 recollection is that, it is something I think I also
- 37 brought up at the meeting.
- 38 Q. Could you look further into that bundle. You actually

- 1 have included in that bundle -
- 2 A. Actually on this page there is a reference to Frank  
3 Tuckwell and his telephone number, in fact.
- 4 Q. Look at document 57, there are photographs of, amongst  
5 other things, the Goolwa barrage construction. Have you  
6 got that in front of you.
- 7 A. No.
- 8 Q. That is a document provided to you by Frank Tuckwell, as  
9 the signature indicates, on 27 June 1994.
- 10 A. If that's correct that's so, yes.
- 11 Q. Well, doesn't that - you're looking at a copy of a  
12 photograph of the Goolwa barrage construction.
- 13 A. That's right.
- 14 Q. As taken from the Victor Harbor Times on 11 May 1983.
- 15 A. That's right.
- 16 Q. There is a little note on the side, 'Signed by Frank  
17 Tuckwell' is there not.
- 18 A. Yes.
- 19 Q. 27 June 1994.
- 20 A. Yes, he actually, in his phone call to me, described how  
21 they had tried to - this is my recollection, that they  
22 tried to - well, that they couldn't get the kind of  
23 solidness or anchorage that they would normally do. As  
24 he described it, they made a raft, the barrage was built  
25 on a raft.
- 26 Q. He did a little diagram for you of the construction  
27 there, just before his signature.
- 28 A. He does.
- 29 Q. Indicating, pylons driven down into the riverbed. Is  
30 that how you read that.
- 31 A. No, it is not. I got the impression that they had sort  
32 of gone into slush and it was an attempt to kind of  
33 make things stable, so I don't think - I don't know that  
34 it is of any real consequence in fact.
- 35 Q. The note, the caption shows, photo shows, how pylons  
36 were driven into a riverbed of mud to provide a stable  
37 raft onto which to build the barrage structure.
- 38 A. Yes, that's right and that's pretty much what he had

1 said to me on the telephone, yes.

2 Q. And, there is no doubt about it, in your mind, that the  
3 barrage has the capacity to completely stem the flow of  
4 the river and separate the salt water from the fresh  
5 water.

6 A. I think what - as an anthropologist, what I know of that  
7 and what it means, in my cultural logic, I clearly  
8 distinguish what Aboriginals know and what it means in  
9 their cultural logic.

10 COMSR

11 Q. To your knowledge about the barrage, had that anything  
12 to do with your note, about contraception and radical  
13 hysterectomy.

14 A. What I had sought was to get Aboriginal people's  
15 understanding, my informants' understanding, of what  
16 this was. It appeared to be something that - often an  
17 anthropologist will use something as disconfirming  
18 evidence in order to elicit a much fuller understanding  
19 of, you know, what I have been calling here, a cultural  
20 logic. Yes, on the surface, this appeared to be such  
21 disconfirming evidence and I certainly pursued it. Not  
22 in a sense of getting to the veracity, the truth or  
23 falsity of these women's claims, but, in a sense, as a  
24 context in which, in a sense, a further elaboration.  
25 Precisely, because it appears, you know, as a problem  
26 would be likely to happen. So, I mean, the problem with  
27 that kind of evidence is that, we get into that problem;  
28 can you disconfirm a belief? If I quote evolution  
29 to my mum will it stop her believing in creation? And  
30 I wasn't using it in that sense. I wasn't using it in  
31 that sense. On the other hand, to say to my mum, 'Look,  
32 let me tell you about chimpanzees' may elicit from her a  
33 dimension of her understanding and her belief which for  
34 me, as an anthropologist, is very useful in assessing  
35 such, the significance of such a belief under an Act  
36 such as this, if there was one to do with Christianity.

37 XXN

38 Q. Or testing the veracity of the belief.

- 1 A. Well, your view of what I should do in the testing, in a  
2 testing process and my views, as an anthropologist are,  
3 I think, quite different.
- 4 Q. Let's explore that for a minute. The barrages, put  
5 aside cultural logic, that is, the logic that you  
6 discerned as an anthropologist, that the Ngarrindjeri  
7 people or Ngarrindjeri women have. Is that what you  
8 mean by cultural logic.
- 9 A. I think we need before you ask your question -
- 10 Q. I will come back to that, can I.
- 11 A. Sure.
- 12 Q. The barrages, on the face of it, that is, the existence  
13 of that substantial permanent link, between the mainland  
14 and the island, were, on the face of it, inconsistent  
15 with the objection to a bridge. Do you agree with  
16 that.
- 17 A. From a western perspective, from a western perspective.  
18 In other words, from an ethnocentric position, bringing  
19 the knowledge of western science to bear on it, it would  
20 appear to be so. So, therefore, it was a useful point  
21 of questioning.
- 22 Q. You tried to grapple with that in your report, didn't  
23 you.
- 24 A. I did.
- 25 Q. And you talked about concepts such as, Doreen's view,  
26 that this would constitute a pacemaker.
- 27 A. Yes. They were the kind of responses I got. Well, that  
28 was one of the responses I got to in my enquiries along  
29 this line.
- 30 Q. Did you take pacemaker to mean, that as recounted to you  
31 by Doreen, that somehow or other the barrage, the  
32 barrages have sorted assisted in the flow of the  
33 channel.
- 34 A. Doreen's account was that, that the barrage - there was  
35 no question that the barrages, in this system, was a  
36 foreign body, and that, that it hadn't already caused  
37 injury to Ngarrindjeri tradition. What Doreen did when  
38 I pushed her on the matter was to say, look this is a

1 foreign body, which isn't deadly. She used two examples  
2 that I think I have quoted in my report; one was the one  
3 of the example of a pacemaker and I think I also used  
4 another example she gave to me, a piece of glass in your  
5 foot. In both cases they have in common, they are  
6 foreign bodies. On the one hand, the pacemaker example,  
7 when she talked about that, said that this is a foreign  
8 body that happens to assist the functioning of a human  
9 body, whereas, if you think about what a piece of glass  
10 is, it is the contrary, it doesn't assist in the  
11 functioning of the human body at all. Both are foreign  
12 bodies.

13 Q. But, Dr Fergie, you expressed this cultural belief, you  
14 characterized it as being such that, a permanent link by  
15 means of a bridge, from the Hindmarsh Island to Goolwa,  
16 would constitute the sterilisation, such a significant  
17 matter, that it would render sterile the Ngarrindjeri  
18 people.

19 A. Which is not the same thing as to say sterilisation in  
20 the way you have.

21 CONTINUED



- 1 Q. `Render sterile and destroy the culture', that's what  
2 you said in your reported.
- 3 A. As a consequence.
- 4 Q. Why isn't it that the barrages have not already achieved  
5 that.
- 6 A. That was precisely the question I put to those  
7 Aboriginal women, `Why hasn't this happened', and their  
8 responses were as injurious as the barrages were as  
9 foreign a body, as foreign an introduction to that  
10 environment, that they hadn't been in that - they hadn't  
11 been a fatal blow, and there was a distinction between a  
12 barrage and a bridge that made their assessment of the  
13 fatal consequences of a bridge different.
- 14 COMSR
- 15 Q. Sorry, to which women did you put this.
- 16 A. I put this to basically all the women, as I recall, all  
17 the women that I talked to after I was asked to make a  
18 report, so -
- 19 Q. Which was Doreen Kartinyeri.
- 20 A. Sarah Milera, Vi Deuschle and Shirley Piersley, and I  
21 would imagine that I talked with people, the NAG people  
22 about it too, but I can't specifically recall those  
23 conversations, but certainly it was something in my mind  
24 for pretty much the whole of that assessment period  
25 leading to the writing of my report.
- 26 REXN
- 27 Q. How did the characterisation of the barrages, in  
28 particular the Goolwa barrage, as a pacemaker fit into  
29 cultural logic, bearing in mind that a pacemaker is a  
30 man-made artificial device.
- 31 A. As is a barrage.
- 32 Q. Yes, but how did that fit into what you say is the  
33 cultural logic of the Ngarrindjeri people.
- 34 A. In precisely that way, we're talking about man-made  
35 impositions on a natural - not on a natural, on an  
36 environment, which is artificial in that it is an  
37 artifice of culture as well, yes, that's exactly how.
- 38 Q. Can I ask you this question, then; confronted with that,

- 1 you may say European inconsistency, that is the -  
2 A. It's a scientific inconsistency, the inconsistency of an  
3 empiricist.  
4 Q. Did that bring to your mind at least a consideration of  
5 the question of whether this belief about the impact of  
6 the bridge was genuine and valid as conveyed to you by  
7 Doreen Kartinyeri.  
8 A. You need to run that by me again, please. What are you  
9 trying to get at.  
10 Q. That you had difficulty, as your report discloses and as  
11 you've explained to us yesterday, in rationalising the  
12 existence of the barrage with the potential desecration,  
13 if you like, feared as being constituted by the bridge.  
14 I don't think actually that's what my report said, I  
15 think I used the barrages as a way of elaborating that  
16 logic, and that's precisely how an anthropologist might  
17 - maybe if I could just go back and check, but my  
18 recollection is that when I talk about the barrage, I  
19 actually -  
20 Q. But you accepted what Mr Abbott said yesterday, that the  
21 paragraph dealing with the barrages and the Mundoo  
22 channel and all that sort of thing, to use your words,  
23 'It might appear to be nonsense', that's what you -  
24 A. I'd like to see - let me see my words and let me then -  
25 in my report I say there is a second dimension to my  
26 informants' understanding of the threat of the  
27 desecration of their traditions, and that it became  
28 evident in my questioning of the women, and I go on to  
29 say that their responses are insightful, so in fact I'm  
30 not presenting their responses as a difficulty, I'm  
31 actually presenting this as my elicitation to responses  
32 as, in fact, providing further insights, and that's  
33 quite often an approach an anthropologist will take to  
34 put something like this, and what you actually get is a  
35 very specific kind of elaboration which assists in  
36 gaining insight into what is going on, and to the  
37 beliefs that are being held.  
38 Q. Have you got Professor Saunders report in front of you.

1 A. Yes.

2 Q. Can you go to page, it might be 41, it's a quote by  
3 Professor Saunders out of your report, 'A critical point  
4 may be'. Have you got that.

5 A. No. Is it a heading?

6 Q. Sorry, it's p.42. That's a quoted section of your  
7 report dealing with the position, you know, the question  
8 of the barrages, isn't it, amongst other things.

9 A. Yes.

10 Q. You suggested, I think, to Mr Abbott, that looking at  
11 that in a strict, literal way, it could appear to be  
12 nonsense. Do you agree with that.

13 A. I'd like to see the transcript, the context in which I  
14 said that.

15 Q. What do you say about that. I'm looking at para.2 which  
16 reads 'Whenever women were called upon to explain what  
17 was different about the barrages and the proposed  
18 bridge, they referred to the water in some way. It  
19 occurs to me that it may well be that what the women  
20 haven't been able to articulate clearly is that the  
21 problem with linking Kumarangk and the mainland together  
22 by a bridge is precisely that a bridge goes above the  
23 water, it is a shore to shore, direct and permanent  
24 link. It would be make that link, unlike the barge or a  
25 ferry cable, unremediated by water. It would make the  
26 system sterile and barren'. Can you explain that, what  
27 you mean by that.

28 A. In relation to what?

29 Q. Well, in relation to it. Can you explain what you mean  
30 by that. What is the essential difference between the  
31 what makes the bridge worse than the barge, in effect.

32 A. The essential, I mean what you're drawing my attention  
33 to is not what it seems to be was the main intent of  
34 that paragraph which was, in fact, the women's  
35 reference, and what I remember as and what it seems from  
36 what I'm saying here to be a constant referent to the  
37 relationship between water and a barrage and water and a  
38 bridge and, if you think about it, the barrage, however

- 1 permanent and direct it is, in these women's  
2 understanding, sits in a medium of water. What a  
3 bridge, the bridge that was proposed wouldn't do is sit  
4 in a medium of water, it would go above the water from  
5 shore to shore.
- 6 Q. Sitting on pylons.
- 7 A. Yes, that's right.
- 8 Q. That are in the water.
- 9 A. Yes, and they are clearly making a distinction between a  
10 construction that, as it were, sits in a medium of  
11 water, and one that, as it were, stands above it, even  
12 if its pylons go into the water. I mean actually they  
13 had a problem with pylons in another way, but the point  
14 is what in the cultural logic is having the attention  
15 drawn to is the relation of how the object, as it were,  
16 relates to the water.
- 17 Q. If that appears to be illogical and an inconsistent  
18 position, you would say `Well, you need to understand  
19 the cultural logic of the Ngarrindjeri women'.
- 20 A. That's what I would say.
- 21 Q. Do you accept the proposition that you must reach a  
22 stage, as an anthropologist, of asking yourself whether  
23 the position taken in connection with a belief is so  
24 unacceptable, inconsistent and illogical, that it is not  
25 credible.
- 26 A. Your position is an anathema to the position of most  
27 anthropologists, what you're putting to me.
- 28 Q. Does that mean that an anthropologist - just consider  
29 this in isolation and hypothetically - necessarily is  
30 not involved in testing the veracity or the genuineness  
31 of what is said.
- 32 A. Yes, but the tests are different from what you're  
33 proposing now.
- 34 OBJECTION Ms Pyke objects.
- 35 MS PYKE: We've been over this time and time  
36 again. Perhaps counsel assisting has not really  
37 understood, even after the many times we have gone over  
38 it, that there is a difference between belief and fact

1 and the question of belief.

2 MR SMITH: It's not been answered, and I ask you  
3 not to make a speech to the witness during my  
4 cross-examination.

5 MS PYKE: I am addressing it to the Commissioner.

6 COMSR: We have been over this area before, is  
7 what you're putting to me. I think witness has answered  
8 the question already, though.

9 MR SMITH: I will move on to some other topic.

10 REXN

11 Q. You make in your statement, and in your evidence, much  
12 of the fact that participant observation was really the  
13 key to anthropological work.

14 A. To ethnography.

15 Q. You would accept that you didn't do this, you didn't  
16 have the luxury, can I say, of participant observation  
17 in connection with this report of 4 July, did you.

18 A. Well, in the sense that I sat in a meeting, I was both a  
19 participant observer of that meeting but, in the classic  
20 sense that it's used in anthropology, that's so, but  
21 I've drawn attention in my statement to the difference  
22 between ethnography as an anthropologist would normally  
23 understand it, and what is entailed in resultant  
24 anthropology, and what I did was in absolute conformity  
25 with that.

26 Q. Would you agree that the Berndts were participant  
27 observers at least in so far as their work in connection  
28 with 'Black to White in South Australia' is concerned.

29 A. Yes, but they make a clear distinction between the work,  
30 and in parts it's their own orientation to the notion of  
31 tradition, that they were living for periods, and in  
32 fact the longest period that they were at Murray Bridge  
33 on my reading is six months at a time, so it doesn't  
34 conform in the strict sense, so I'm quite happy to say  
35 that the Berndts sat down and lived in amongst a  
36 community of Aboriginal people. They had two projects  
37 going at the same time, one was a project oriented  
38 towards understanding acculturation, which resulted in

- 1 the publishing of the book 'Black to White in South  
2 Australia', the other they claimed to be work being, on  
3 the one hand, a memory culture, work in the memory  
4 culture and the practices associated with that memory  
5 culture which were no longer taking place before them,  
6 and they also, I think, in the introduction to their  
7 work, talk about it as a work of oral history. They saw  
8 themselves as being two different things, one in which  
9 they were actually watching the lived reality of that  
10 project in the context of acculturation, and the other  
11 where they understood to be hearing people's  
12 representations of things, but not being able to observe  
13 it in practice. So the work that led to 'A World That  
14 Was', the Berndts would consider not an ethnography in  
15 the classic sense, and I think they make that clear, and  
16 I think it's made clear by Tonkinson in his forward to  
17 the volume.
- 18 Q. There's been a bit of a debate going on in this  
19 Commission as to whether Pinkie Mack merely forgot, by  
20 the time she had given details to the Berndts, had  
21 forgotten the songs, or whether she had, as it were,  
22 deliberately failed to disclose the existence of a whole  
23 area of Ngarrindjeri knowledge and practice. That's  
24 correct, isn't it.
- 25 A. No, I think that's a fairly crude characterisation of  
26 the debate. The debate is -
- 27 Q. That's similar to the heading in your statement, p.82.  
28 I'm just trying to introduce the topic.
- 29 A. Don't ask me to agree with it in that way.
- 30 Q. You say that your view is there's a what, a possibility,  
31 likelihood, what, that Pinkie Mack was not merely  
32 forgetful, but had deliberately withheld, is that what  
33 you say.
- 34 A. In the context of my understand of this invention of  
35 tradition and my understanding of its relationship to  
36 knowledge, that particularly relates to the domain of  
37 putari, which is very, well, which is introduced very  
38 clearly in the Berndts' work. Given what I know is the

## D.J. FERGIE REXN (MR SMITH)

- 1 contents of the secret envelope, and given my reading of  
2 Berndt and Berndt, I give a high level of significance  
3 to points at which Pinkie Mack, who was a very  
4 experienced midwife on the one hand, who was a very  
5 experienced and renowned songster who had undergone the  
6 first stage of initiation herself, in other words it was  
7 part of her experience, I find it highly significant  
8 that when we're talking about the domain of women's  
9 ritual, and when we're talking about esoteric dimensions  
10 of women's knowledge and the meaning of songs in  
11 addition, that the only time that the Berndts record  
12 Pinkie Mack to have forgotten anything is several times  
13 in relation to specific women's knowledge, and once in  
14 relation to male initiation, and at every other point in  
15 this book, the Berndts celebrate the extraordinary  
16 memory of songs and detail by Pinkie Mack, so yes, I  
17 find it highly significant.
- 18 Q. How old was Pinkie Mack when she was giving this detail  
19 to the Berndts.
- 20 A. She was in her 80s.
- 21 Q. These songs, some of them, she would have learned when  
22 she was a teenager.
- 23 A. Yes, and we know from a whole series of ways that old  
24 people's long-term memory is a hell of a lot better than  
25 their short-term memory.
- 26 Q. What do you say.
- 27 A. I think it's inconsistent.
- 28 Q. Do you say that it's possible that she has withheld  
29 this, or it's probable, or certain that she has.
- 30 A. I think on an ordinary reading you would think it is  
31 possible. Given what I also know, I think it is  
32 probable, I think it is highly probable, that Pinkie  
33 Mack made a choice not to disclose.
- 34 Q. You've stepped up a bit from your statement, haven't  
35 you. Look at your statement p.82. You say 'It's a real  
36 possibility' in the heading.
- 37 A. Sorry, p.82?
- 38 Q. Page 82, the heading at .6 suggests 'The real

- 1 possibility that Pinkie Mack', agreed. You say it's now  
2 highly probable.
- 3 A. I think the real possibility is that it's one way of  
4 saying that kind of stuff.
- 5 Q. You've been suggesting to us for the last three days  
6 that we ought to be more precise about our language.
- 7 A. Fine. I think that it's highly probably that Pinkie  
8 Mack decided not to disclose the meaning of those songs  
9 to the Berndts.
- 10 Q. So you'd make a slight adjustment to the last paragraph  
11 on p.83 too, wouldn't you then.
- 12 COMSR: We might be talking about two different  
13 things. The witness said she thinks it high probable  
14 that Pinkie Mack decided not to tell the Berndts about  
15 the significance of the songs, whereas I understand what  
16 we were talking about previously was her failure to be  
17 able to recall words of the songs.
- 18 MR SMITH: I think we are talking about the same  
19 thing.
- 20 REXN
- 21 Q. Aren't we talking about the same thing. We're talking  
22 about the possibility, probability or whatever of Pinkie  
23 Mack deliberately withholding secret information from  
24 the Berndts. That's what we are talking about, isn't  
25 it.
- 26 A. Yes.
- 27 Q. You say it's a high probability that she did that.
- 28 A. I think it's very likely.
- 29 Q. You agree, then, that you'd make some slight adjustment  
30 in language to the second sentence in the bottom  
31 paragraph on p.83, wouldn't you, where you say 'It is  
32 likely, I suggest'.
- 33 A. Given time, I will refine my writing often. I mean I  
34 don't really see it as - I mean I'm not quite clear why  
35 you're asking me. I'm always happy to adjust my writing  
36 to a more precise rendition of my conclusion.
- 37 Q. Do you see at pp.84 and 85, you deal with the problem of  
38 tradition invention etc., mother earth. That's occupied



- 1 much of the evidence, that topic, in this commission,  
2 hasn't it.
- 3 A. Well, some of it.
- 4 Q. You dismiss it there without any elaboration or any  
5 reference to articles. You just say there's been no  
6 recent invention in your view in this case.
- 7 A. That's my view.
- 8 Q. You have elaborated on it today with references to  
9 articles that you've gathered, but -
- 10 A. I certainly had no - there was nothing in the material  
11 that was put to me by Aboriginal women which, in fact,  
12 introduced this as a specific problem for me.
- 13 Q. No, except you would accept that by the time you went  
14 down there in June of 1994, that this question of the  
15 bridge and the question of Aboriginal objection,  
16 conservation objection, union objection and that sort of  
17 thing, bearing all that in mind, it was a highly  
18 politicised situation that you went into, wasn't it.
- 19 A. Yes, but I've also said in evidence that the extent of  
20 that politicisation is something that I was by no means  
21 fully aware of, for example -
- 22 Q. You weren't aware of it, but do you accept that it's  
23 relevant to your considerations.
- 24 A. No, I don't accept it.
- 25 Q. There might be other agendas operating here that you  
26 need to recognise.
- 27 INTERJECTOR: They're yours, dear.
- 28 MR SMITH: I didn't make that up.
- 29 COMSR
- 30 Q. Would that be a relevant consideration for you to  
31 concern yourself with.
- 32 A. Give me two ticks to think this through. I have no  
33 doubt that if I - and I don't know that I would have the  
34 stomach to do it - but just suppose I tried to make an  
35 analysis of this issue in a much fuller sense. There is  
36 no doubt that that's the kind of issue which would be of  
37 clear relevance to me. It's an area in which I,  
38 academically, have a great deal of interest, but in

1     respect of this particular reporting project, it seems  
2     to me that there was nothing in that which was presented  
3     to me by those Aboriginal women, or in my presence,  
4     which in any way suggested that it was an issue that I  
5     needed to take account of in that way.  
6     CONTINUED

1 And nor was it a requirement of a report within the  
2 ambit of that Act.

3 REXN

4 Q. If there were other influences playing a part in what  
5 the Aboriginal women and, in particular, Doreen  
6 Kartinyeri related to you, surely you would need to take  
7 that into account.

8 A. But what your question is framed around is a kind of a  
9 pristine - you have been trying to address a pristine  
10 view of a culture or a person so that you can identify  
11 a person or influences in a particular kind of a way.  
12 Doreen Kartinyeri and Dorothy Wilson and any number of  
13 these women have a biography which has brought them into  
14 contact with a variety of interests. Just as your  
15 biography and my biography would show. Nothing in what  
16 I saw suggested that I was being presented with a hoax,  
17 or a fabrication, as the term is being used here.

18 Q. Is your answer to that then 'I wasn't aware of the  
19 politics in which this situation arose and, in any  
20 event, even if I had been, it wouldn't have made any  
21 difference to my final view.' Is that what you are  
22 saying.

23 A. For the report under this Act. I mean, clearly if  
24 something had arisen and, you know, it had been evident  
25 to me in some way, I mean, that these women were putting  
26 other than their own views, I clearly would have been  
27 concerned. There was no - I had no reason to think they  
28 were putting anything other than their own views and  
29 they were putting them very fulsomely.

30 Q. Aren't the outside influences capable of distorting  
31 whether the views put to you by the women are truly  
32 held.

33 A. I mean, I don't want to appear - look, we might ask that  
34 of the dissident women as well. I actually think we  
35 could say, you know, people have had conspiracy theories  
36 about this case from the beginning. I actually find  
37 them not as compelling as you, I think. On both sides  
38 everybody is supposed to be in a conspiracy. I haven't

1 seen any compelling evidence of - I mean, although there  
2 are clearly involvements, on the one hand, from the  
3 Liberal Party, I don't think they amount to a conspiracy  
4 of the sort that some people would propose. And, given  
5 that people are making this proposition, I have - I  
6 myself see no compelling evidence that we have got  
7 conspiracies of that order and that organisation going  
8 on here. I think we have, you know, equivalent  
9 political influences. I should stop, but I just - I  
10 reject what you are putting to me.

11 COMSR

12 Q. So that I am clear, what you are saying is that, as at  
13 the time you prepared this report, you didn't give any  
14 consideration to matters of that sort.

15 A. In the sense that I was looking to confirm that, in a  
16 sense, this wasn't a put-up meeting. And it is clear  
17 that I did pursue that issue, you know, in an inchoate  
18 sense, it was a question that I addressed myself to.  
19 But I certainly didn't say to myself - I don't know that  
20 I was aware - I didn't say to myself 'Oh, gosh. Are the  
21 unions getting to people here? Is the Liberal Party?'  
22 I mean, I wasn't asking questions of that nature, but I  
23 was addressing myself to the issue of whether this was  
24 in some - you know, in a more general sense a put-up  
25 job. And that's when I pursued the issue of were  
26 particular people - you know, was this a convenient  
27 group of Aboriginal women. And my view was that it  
28 wasn't.

29 REXN

30 Q. Your report or your view about the existence of secret  
31 women's knowledge hinges to some extent on midwifery,  
32 the putari and that sort of thing, doesn't it.

33 A. Could you say the question again?

34 Q. Yes, you have suggested to us, I think in the last  
35 couple of days, that it is the area of midwifery and the  
36 putari which is significant in this matter in terms of  
37 secret women's knowledge, is that right.

38 A. Yes, it is that general domain. I have called it a

- 1 specialist domain, yes.
- 2 Q. Is it correct that the question of midwifery and putari  
3 does not feature in your report.
- 4 A. That's correct. Midwifery does.
- 5 Q. Can you direct us to it.
- 6 A. I am afraid I can't.
- 7 Q. Why is it that there is no mention of the putari in your  
8 report.
- 9 A. I had a very limited time in which to write this report.  
10 I also had a very limited time in which to do the  
11 investigations. As you will have seen from my  
12 statement, the documentation of the relationship between  
13 the literature and the tradition that was disclosed to  
14 me is actually a lengthy job. It was one that, in fact,  
15 was not on in the time. But it is not to say and I am  
16 very clear in my mind that at the point at which I was  
17 doing the assessment, I was reading with great  
18 significance and a sense of relevance the material in  
19 Berndt and Berndt on that domain. And as you see from  
20 my notes here, I was actually taking from Jenken, as  
21 somebody pointed out to me yesterday, notes on  
22 menstruation, for example, which, if you go back and  
23 look at Berndt and Berndt is clearly an issue of  
24 relevance to the specialist domain of putari.
- 25 Q. Can I take you to one other topic: you in February of  
26 1995 went down to Goolwa with a group of women and  
27 negotiated with Telecom officials for the laying of a  
28 cable across the river.
- 29 A. I didn't. They were briefed by Telecom people and they  
30 had discussions following those briefings.
- 31 Q. But you were in attendance at those meetings, weren't  
32 you.
- 33 A. I was.
- 34 Q. You were retained as a consultant in relation to that,  
35 weren't you.
- 36 A. I was.
- 37 Q. You were paid by Telecom for it.
- 38 A. I was paid by ALRM.

1 Q. You understood however that Telecom were financing the  
2 investigation of whether a cable could be laid across  
3 the river.

4 A. That's probable.

5 Q. I think there was a meeting with two Telecom officials,  
6 on 7 February 1995, in connection with the laying of  
7 cable across the river approximately near the bridge  
8 corridor.

9 A. Yes, I am not absolutely certain if it was the 6th or  
10 the 7th, but if you say that, certainly.

11 Q. You would accept that, though.

12 A. Yes.

13 Q. I ask you to go to p.23 of your own report, Exhibit 5.  
14 Do you have that. Talking of the bridge you have said  
15 there in the middle of the last paragraph 'It has the  
16 potential to destroy her traditions by making a physical  
17 link between two parts of a territory which would, in  
18 accordance with Ngarrindjeri tradition, render the  
19 cosmos and human beings within it sterile and unable to  
20 reproduce.'

21 A. That's right.

22 Q. The laying of a cable across the river would constitute  
23 such a link, would it not.

24 A. Given that you have made reference to other parts of my  
25 report where I actually talk about the difference  
26 between barrages and a bridge, for example, and the way  
27 in which they are mediated by water, it should be clear  
28 to you that it is not simply the physical link that is  
29 important, but the particular way in which that link is  
30 made. So what you are proposing to me doesn't follow,  
31 necessarily.

32 Q. What, are you saying a bridge going above the water,  
33 albeit supported by pylons, is more offensive than a  
34 cable laying in the water across the river bed.

35 A. It would appear so.

36 Q. You asserted in your statement and I think it was put  
37 vigorously to Dr Clarke in his evidence that he - or you  
38 tell us: is it your position that he could not be a

- 1 member of the Australian Anthropological Society.
- 2 A. It is my view that there would be a debate about it. It  
3 would be an issue for discussion. It would be an issue.  
4 It wouldn't be an automatic - he wouldn't be an  
5 automatic admission under my understanding of the rules.
- 6 Q. Based on what. Why would it not be automatic.
- 7 A. Because the initial requirement for admission as member,  
8 which is, as it were, the lower level of membership, is  
9 an honours degree in anthropology. Mr Clarke does not  
10 have an honours degree or its equivalent in  
11 anthropology. He has a masters qualificaiton in  
12 geography. In addition his thesis, although supervised  
13 by people in both the Anthropology Department and the  
14 Geography Department, in fact, very explicitly says  
15 words to the effect that this is an exercise in cultural  
16 geography. It borrows concepts from anthropology and  
17 geography. In other words, on the basis of if the  
18 thesis does not propose to present itself as a thesis in  
19 anthropology, it presents itself as a thesis in cultural  
20 geography which draws on techniques and definitions and  
21 concepts from anthropology, but it doesn't purport to be  
22 a thesis in anthropology.
- 23 Q. Isn't it the case, however, that Dr Clarke's PhD is more  
24 properly described as a PhD in social anthropology and  
25 cultural geography.
- 26 A. No, maybe I need to talk about, my husband is actually  
27 enrolled for a PhD in the Department of Psychiatry -  
28 this will demonstrate the point very well - at the  
29 University of Adelaide. When he gets his degree, he  
30 will not be understood by anyone as having a  
31 qualification in psychiatry.
- 32 Q. Do you know that Dr Clarke has been a member of the  
33 society.
- 34 A. Yes.
- 35 Q. And has just allowed his membership to lapse.
- 36 A. Yes, and the society in that time has actually  
37 transformed itself. It has actually undergone  
38 incorporation and has now devised itself as a

- 1 professional body. And there was a huge debate about it  
2 in the past. It understood itself as a learned society  
3 to place it in a comparable position with the  
4 Anthropological Society of South Australia, where  
5 interested persons - there is no educational,  
6 experience, no prequalifications for membership. And  
7 when Mr Clarke - I mean, if he was, and I am sure that  
8 he was, when Mr Clarke was a member, there is no doubt  
9 that it was a learned society. He would now have to  
10 reapply and he would have to satisfy the criterion of  
11 membership for the society to gain admission at either  
12 level of membership or fellowship.
- 13 Q. You don't assert that he wouldn't satisfy the criteria  
14 now, do you.
- 15 A. I assert that there would be great questioning of it. I  
16 have heard people say that.
- 17 Q. You have made enquiries about this, have you.
- 18 A. No, people have just said it to me.
- 19 Q. Have you made enquiries about it.
- 20 A. I have not.
- 21 Q. You don't have an honours degree yourself, do you.
- 22 A. I have got a masters qualification, which is an honours  
23 equivalent in anthropology.
- 24 Q. You have a BA as a basic degree in anthropology, history  
25 and sociology, that's right, isn't it.
- 26 A. The Department in which I undertook that was the  
27 Department -
- 28 Q. That's what you said to me the other day, isn't it.
- 29 A. Anthropology and sociology, and history.
- 30 Q. Are you aware that Philip Clark has a basic degree, a  
31 Bachelor of Science with a first year study of  
32 anthropology.
- 33 A. I am.
- 34 Q. Are you aware that he has then a second degree, a  
35 Bachelor of Arts with a double major in anthropology,  
36 which consumed all of his third year. (NOT ANSWERED)
- 37 Q. Are you aware of that.
- 38 A. I take - I mean, I haven't gone back and checked the



1 records, but I accept that.

2 Q. You will accept that.

3 A. I will.

4 Q. Like you he did an MA qualifying, which is the  
5 equivalent to honours in geography.

6 A. Yes, and the difference is he did his in geography and I  
7 did mine in anthropology.

8 Q. And he says and I put it to you that his PhD is in  
9 social anthropology and cultural geography.

10 A. As somebody who has read his thesis, I would say that  
11 that is not evident in the thesis.

12 Q. You read his thesis in the context of this Inquiry,  
13 didn't you.

14 A. Yes, I did.

15 Q. And you read his thesis in the context of him being  
16 implacably opposed to your views in there matters,  
17 didn't you.

18 A. I think you are actually trying to set up an opposition  
19 between Philip and I that I trust won't transpire as the  
20 nature of our relations after this.

21 COMSR: And I suppose I won't be able to make  
22 any assessment, in any event, of these.

23 REXN

24 Q. I show you an application.

25 MR SMITH: I don't want to carry on too much about  
26 this, but it was dealt with rather stringently in Dr  
27 Fergie's statement.

28 WITNESS: That is only because, in fact, we had  
29 cross-examination -

30 REXN

31 Q. No, I am explaining to her Honour. You will see there  
32 the criteria set out is, first of all, 'They have  
33 successfully completed a postgraduate research

34 degree in anthropology at a recognised institution; or

35 B. They have engaged in research, teaching, writing or  
36 other professional activities which are deemed to be  
37 equivalent to A.'

38 A. That's right.

- 1 Q. You wouldn't contend that Dr Clarke wouldn't eminently  
2 qualify under at least Part B of that, would you.
- 3 A. I think it is a case that would have to be made out and  
4 I don't think it would be automatically accepted, by any  
5 means.
- 6 Q. Are you on the accreditation committee.
- 7 A. I am not.
- 8 EXHIBIT 262 Application for membership form tendered  
9 by Mr Smith. Admitted.
- 10 MR SMITH: I have no further questions of Dr Fergie  
11 and I think she can therefore be released.
- 12 NO FURTHER QUESTIONS
- 13 WITNESS RELEASED
- 14 ADJOURNED 12.55 P.M.

- 1 RESUMING 2.20 P.M.  
2 WITNESS NEALE DRAPER CONTINUING  
3 CROSS-EXAMINATION BY MR ABBOTT  
4 Q. I refer to your notes of 8 September 1994 of your  
5 discussions with Tim Wooley at the Aboriginal Legal  
6 Rights Movement. I suggest that now you have had a  
7 chance to consider them, you may want to change some of  
8 the evidence you gave and I give you this opportunity in  
9 case you do. I want to point out a couple of answers  
10 to see whether you adhere to the answers you gave. You  
11 said that these notes represented an immediate reaction  
12 to information you received by telephone, that you had  
13 never seen the reports to which these notes refer; that  
14 is, the Lindy Warrell's, the anthropologist's two  
15 reports commenting on the Fergie report, and the Vanessa  
16 Edmonds report. Do you agree you said that. Do you  
17 want to change that.  
18 A. I cannot recall seeing those reports.  
19 Q. Ever.  
20 A. No.  
21 Q. You said that appropos of these notes that - this is at  
22 page - they didn't represent your expressed or  
23 considered views, they were your immediate views.  
24 A. Yes.  
25 Q. I want to suggest to you that that comment, at least,  
26 was wrong. You will see in these notes of 8 September,  
27 the first line says: 'Warrell, re Fergie', then you  
28 have 'x 2 reports'. You are referring to the two  
29 reports that you had been told Lindy Warrell had written  
30 in relation to Dr Fergie's report, I think.  
31 A. I think so, yes.  
32 Q. The reference to 'July and later' is a reference to the  
33 two dates of the two Lindy Warrell reports.  
34 A. It could. I can't recall specifically.  
35 Q. Then you said 'Doesn't have a sufficient level of  
36 knowledge to understand the context, issues or  
37 anthropological' - and you have crossed out 'analysis'  
38 and put 'assessment'. See that.

- 1 A. Yes, I can see that.
- 2 Q. That was a comment you were making on how you thought  
3 about Lindy Warrell, wasn't it.
- 4 A. It's not a comment about Lindy Warrell, it's -
- 5 Q. A comment about Fergie then.
- 6 A. No. It's an impression I formed at that time, at that  
7 moment about what I had been told was in that report,  
8 which, as I said to you before, I took no further notice  
9 of.
- 10 Q. The expression 'Doesn't have a sufficient level of  
11 knowledge to understand the context, issues or  
12 anthropological analysis' is a reference to a person.  
13 It's she doesn't have a sufficient level of knowledge.
- 14 COMSR: Do we have, do these reports form any  
15 part -
- 16 MR ABBOTT: Yes, they are before you.
- 17 XXN
- 18 Q. It's not that the report doesn't have a sufficient level  
19 of knowledge, it's Miss Lindy Warrell doesn't have a  
20 sufficient level of knowledge, does it.
- 21 A. The comments are made with reference to a report. It's  
22 - the comments are made in the context of that report  
23 rather than the person in general. There is a specific  
24 context.
- 25 Q. I suggest this is an entirely, a personal comment by you  
26 about a person -
- 27 A. I reject your assertion.
- 28 Q. With reference to her report, you are saying she doesn't  
29 have a sufficient level of knowledge to understand the  
30 context, issues or anthropological analysis.
- 31 COMSR: You have put that question to the  
32 witness and he answered it.
- 33 MR ABBOTT: I don't think he has.
- 34 COMSR: He might not have given the answer that  
35 you wanted.
- 36 MR ABBOTT: He side-stepped it.
- 37 COMSR: I don't think so.
- 38 MR ABBOTT: I press an answer to that question, the

- 1 last question.
- 2 MR STEELE: I think you just ruled. I might draw  
3 attention to the fact we have been dealing with this  
4 issue since p.5114. There are about 20 pages of this.
- 5 MR ABBOTT: No, 20 pages of Mr Steele's objections.
- 6 COMSR: The witness has given his answer in  
7 respect of it.
- 8 MR ABBOTT: Ma'am I haven't explored this fully and  
9 I wanted to contrast the first sentence. Do you have  
10 this document before you?
- 11 COMSR: Not now.
- 12 MR ABBOTT: Can I give you a photocopy of it. You  
13 will have to ignore the underlining because -
- 14 DOCUMENT HANDED TO COMMISSIONER
- 15 COMSR: Why is it of any great moment, what this  
16 witness's initial reaction is to some report?
- 17 MR ABBOTT: I suggest his initial reaction is to  
18 engage in personal criticism of Dr Warrell and that it  
19 shows that far from being an independent, unbiased,  
20 impartial anthropologist in this matter, he is partisan  
21 to a very great degree.
- 22 COMSR: Yes, well, he has given his  
23 explanations.
- 24 MR ABBOTT: He hasn't. I haven't finished  
25 contrasting the two portions of his comments in relation  
26 to Dr Warrell. I contrast the first.
- 27 MR STEELE: Before Mr Abbott is insisting on going  
28 on with the question, it seems to me that you ruled  
29 against him on the issue and, in any event, in seeking  
30 to cajole you out of that ruling, he has now put a  
31 document before you, and now, while you are reading it,  
32 he is trying to put another question to the witness.  
33 That is not fair.
- 34 COMSR: I mean, the witness has explained last  
35 time he was questioned in here that these were, as it  
36 were, not his considered -
- 37 MR ABBOTT: I don't accept his explanations and I'm  
38 testing that.

1 COMSR: That is his explanation.

2 MR ABBOTT: So far, and I want to see if he will  
3 change it when I put to him a few internal  
4 inconsistencies of the document. That is a perfectly  
5 legitimate course of cross-examination. I'm not obliged  
6 to accept Dr Draper's first attempt to explain away this  
7 document - and I don't.

8 MR STEELE: On that point, this is not his first  
9 attempt. He said on about three or four occasions  
10 exactly what he said again this morning. I do submit to  
11 you that cross-examination, as to an issue of credit,  
12 can go so far. How helpful it is for you to know what  
13 Dr Draper's initial response is to be told on the  
14 evidence or to be given or has been given on Dr Warrell  
15 and Miss Edwards is, I cannot imagine, in terms of the  
16 overall context of this Commission and of this witness's  
17 contribution to this Commission, monumentally slight. I  
18 submit to you that you should put this line of  
19 cross-examination to an end.

20 MR ABBOTT: I want to ask about what I perceived as  
21 an internal inconsistency in the first sense in that  
22 report - and I submit I'm attempting to put the  
23 question.

24 COMSR: Can you put it straight to the witness,  
25 that internal part of it?

26 MR ABBOTT: I will come straight to the matter.

27 XXN

28 Q. In the first reference to Dr Warrell's two reports in  
29 relation to Dr Fergie, I suggest that the comment that  
30 you make 'Doesn't have a sufficient level of knowledge  
31 to understand the context, issues or anthropological  
32 analysis' and you have crossed that out and put  
33 'assessment', 'Or the cultural matters being discussed  
34 doesn't come to grips with it', is a direct personal  
35 comment by you on Dr Warrell herself. That the second,  
36 in contradistinction to the next three lines, which I  
37 suggest is a criticism by you of Dr Warrell's reports,  
38 i.e., not of Dr Warrell personally but of Dr Warrell's

1 reports, and that is where you said: 'Critique of  
2 Fergie's reports is confused, inaccurate, unwarranted  
3 and displays an overwhelming lack of comprehension of  
4 the nature of the situation'. I suggest that is a  
5 comment, as you would have the first part be, on her  
6 work, but the first comment you make is in  
7 contradistinction with what so far is claimed as  
8 comments on her personally.

9 A. No.

10 Q. What do you say the first -

11 COMSR: We have got -

12 MR ABBOTT: Well, all I can do is comment on it in  
13 my submissions then. The document will obviously speak  
14 for itself.

15 COMSR: The document will speak for itself.

16 XXN

17 Q. You go on to say 'N.b., the problem of Warrell (1),  
18 firstly, providing an incompetent report and (2),  
19 providing a commercial report of this nature, contra' -  
20 which I assume means against - 'Traditional owners for a  
21 court challenge by developers, against traditional  
22 owners that is proposed, prepared to challenge the  
23 traditional owners of matters of cultural business.'  
24 What is that a reference to. What is that problem.

25 A. To the degree that I can recollect - and I remind you  
26 that this is not my, a published document, this is  
27 barely a document -

28 Q. That is your personal view.

29 A. No, it doesn't even get that far. It's something I  
30 wrote down and discarded and haven't seen since of. To  
31 the degree that I can recall, it is a comment on the  
32 fact -

33 Q. You didn't discuss it -

34 OBJECTION Mr Steele objects on the ground that  
35 the witness must be allowed to finish  
36 his answer uninterrupted.

37 MR ABBOTT: That was stuck inside the back part of  
38 his diary.

- 1 MR STEELE: He must be allowed to finish  
2 uninterrupted.
- 3 A. To the degree that I recall, it is a comment that it was  
4 my understanding, on the information provided, that a  
5 detailed critique had been made of the cultural beliefs  
6 and perspectives of those traditional owners, without  
7 having worked with those traditional owners, on that  
8 matter, or having had access to the confidential reports  
9 that had come from that work. So that it was not based  
10 on research conducted with those people by that  
11 anthropologist. Simple as that.
- 12 XXN
- 13 Q. The next section deals with Vanessa Edmonds' report.  
14 She gave evidence - did you hear her evidence.
- 15 A. Yes, I did.
- 16 Q. Your comments to Vanessa Edmonds are: 'Cannot' or 'Can't  
17 find any archeology about "rich corridor", but did not  
18 deal with the relevant larger site areas. Did not  
19 consult Aboriginal people. Would not work with a  
20 Binalong consultant or conduct relevant archival  
21 research'. Then appears in quotes - is that 'No  
22 anthropist' or 'No anthropologist', or what - 'wife' you  
23 have got.
- 24 A. Yes, I do.
- 25 Q. What is that referable to.
- 26 A. We have an abbreviation for 'no anthropologist' in  
27 inverted commas. We have then a dash and the word  
28 'wife'. I presume this has something to do with Vanessa  
29 Edmonds' criticism of the involvement of my ex-wife in  
30 this project. But, beyond that, I have no idea.
- 31 Q. You then go on to say 'Claims, n.b.' What is 'n.b.'.
- 32 A. 'Note well'. It's a Latin term, I believe.
- 33 Q. 'Obstructed her attempts to work for Chapmans. Admits  
34 Ngarrindjeri wouldn't work with her. Ignores Act.  
35 Takes' - is that 'A highly inaccurate summary of  
36 conversations' or is that 'A false or highly  
37 inaccurate'.
- 38 A. I believe that is the case.



- 1 Q. That `A false or highly inaccurate summary of  
2 conversation'. That is your view about what Dr Edmonds  
3 had written in her report about the contact with you.  
4 A. It appears so.  
5 Q. States that - is that `SH'.  
6 A. Yes, it is.  
7 Q. Who is that a reference to, or what is that a reference  
8 to.  
9 COMSR: Haven't we gone through all of that?  
10 MR ABBOTT: No, we haven't gone through it line by  
11 line.  
12 XXN  
13 Q. `Steve Hemming' isn't it.  
14 A. No, I don't think so. I believe, recollecting Vanessa  
15 Edmonds here, that it would be a reference to Suzie  
16 Hutching.  
17 Q. So, states that `Suzie Hutching told her I was trashing  
18 her work on that HM' - is that Hindmarsh, or somewhere  
19 else.  
20 A. I would presume it's Hindmarsh Island.  
21 Q. `Vanessa Edmonds told me she had come over for this  
22 reason, but told by' - is that `WC' - Wendy Chapman.  
23 A. I believe so.  
24 Q. Then, you have `Possible defamation'.  
25 A. Yes.  
26 Q. What is that a reference to.  
27 A. I don't recall.  
28 Q. You have got a star and `Possible defamation re JK and  
29 other reported conversations'. What does the `JK' stand  
30 for.  
31 A. James Knight.  
32 Q. Who is James Knight.  
33 A. James Knight is an archaeologist employed by the  
34 Department of State Aboriginal Affairs.  
35 Q. The other comment in the court deposition where you have  
36 `Obscene, irrelevant, racist, inaccurate, misled and,  
37 n.b. defam. ND', that is reference to defamation of you.  
38 A. It appears to be so, yes.

- 1 Q. `Went to great length to keep work secret and exclude' -  
2 who is `BM'.
- 3 A. I don't know. I wrote this and didn't look at it again,  
4 didn't consider it again. I do not remember.
- 5 Q. Then, you have written `Explained to MAA'. What is  
6 `MAA'.
- 7 A. That would be the Minister of Aboriginal Affairs, I  
8 presume; that's the standard abbreviation.
- 9 Q. Then, you have `Repeated in summons'; is that right.
- 10 A. The last word?
- 11 Q. Yes.
- 12 A. The last word may be `summons'. It's scrawled and I  
13 can't be certain. It could well be.
- 14 Q. Why would you be saying all of these things to Mr  
15 Wooley, or discussing these matters with Mr Wooley.
- 16 A. I didn't discuss these matters with Mr Wooley.
- 17 Q. He didn't get any of this stuff on the note.
- 18 A. As I said to you, these are some off-the-cuff notes I  
19 made following advice from Mr Wooley that these reports  
20 existed. And to the degree that I was named in various  
21 ways in these reports, it was mentioned to me. I did  
22 not become involved in the matter, I did not take the  
23 matter any further and I have not, until it turned up  
24 here, seen this note since the day it was written.
- 25 Q. Let's put it away then. We will go to your proofing  
26 paper. You told us on the previous occasion when I was  
27 asking you questions that Sarah spoke to you on your  
28 own; that is, Sarah on her own spoke to you on your own  
29 - or perhaps with your wife there - on more than one  
30 occasion in the first period of investigation which  
31 lasted from October to December 1993. Remember giving  
32 that evidence.
- 33 A. Yes. The survey period was mid-November until  
34 mid-December.
- 35 CONTINUED

- 1 Q. You were claiming and have always claimed and in your -  
2 at least from the time you prepared your statement for  
3 this Royal Commission, that there was a specific  
4 conveyance of information from Sarah Milera to you.
- 5 A. Yes.
- 6 Q. That, I suggest, is not a matter that appears in the  
7 proofing notes and is something you have recently  
8 invented.
- 9 A. I have invented nothing. But, which briefing notes are  
10 you referring to please?
- 11 Q. The proofing notes that were taken, Exhibit 233A.  
12 They're annexed to your statement.
- 13 A. I have a copy of that document, yes.
- 14 Q. You spent four days with the Crown Law Department,  
15 telling them of your involvement in the Hindmarsh Island  
16 bridge matter, didn't you.
- 17 A. There were parts of four days involved.
- 18 Q. Do you accept that there is no reference to the claim  
19 you make now, that in the period from November to  
20 December, 1993, Sarah Milera approached you and that she  
21 personally conveyed information to you, as you now  
22 detail in your statement.
- 23 A. I would have to peruse the document. I will if you  
24 wish. I would note that, during that time, I answered  
25 questions put to me by Crown Law and they produced this  
26 document. So, if they asked me about something then it  
27 may appear here, if they chose to summarize it here. If  
28 they did not ask me or they did not choose to summarize  
29 it, then it would not be here. But I will have a look  
30 through it if you like.
- 31 Q. Are you suggesting, you went to and spent the better  
32 part of four days, with the Crown Law Department and  
33 that all you proffered was only answers in respect to  
34 questions they put and that they never asked for you to  
35 tell them what you knew about the Hindmarsh Island  
36 matter.
- 37 A. That was not the purpose of the exercise Mr Abbott. I  
38 was -

- 1 Q. You are suggesting what then.
- 2 A. I was summoned to Crown Law to answer questions which  
3 were of particular interest to them, presumably by  
4 direction of the Attorney-General.
- 5 Q. So, if there is no reference to this claim that you now  
6 make, of Sarah having spoken to you, in 1993, such as is  
7 now in your statement at p.37, then you attribute its  
8 absence, not to the recent invention by you of that  
9 occasion, but they never actually asked the question.
- 10 A. I do not know offhand whether there is a reference  
11 in here or not. I would have to look through the  
12 document.
- 13 Q. I tell you there is not. But, on that assumption, you  
14 would attribute its absence to that fact, would you.
- 15 A. It would be due to that fact. It would certainly not be  
16 due to any invention by me.
- 17 Q. How would they know to ask you whether Sarah Milera  
18 had spoken to you, in the period of 1993, if you didn't  
19 volunteer it.
- 20 A. My limited understanding of the matter is that, Crown  
21 Law had been asked to proof certain people, certain  
22 departments, certain documents, on some specific  
23 questions handed down by the Attorney-General. Beyond  
24 that and beyond my compliance with that direction by my  
25 chief executive officer and Crown Law, I don't know  
26 what their motives were or why they did things in a  
27 certain way.
- 28 Q. You claim now, to have spoken to the women separately,  
29 throughout this period, from October 1993, through April  
30 1994, don't you, on occasions. Well, there is Sarah,  
31 you spoke to her separately.
- 32 A. I spoke to Sarah on those two occasions we have  
33 discussed, yes.
- 34 Q. 15 April, there was a separate meeting with you and the  
35 women.
- 36 A. There was a brief separate discussion on that occasion.
- 37 Q. Between you and the women. And, any other occasion,  
38 when you spoke to Sarah or any woman alone.

- 1 A. In a general context I have no idea, it is quite  
2 possible. If you mean, was there any time during that  
3 period I spoke to a Ngarrindjeri woman out of the  
4 earshot of other people, it is quite probable. About  
5 anything significant to do with this matter, not that I  
6 recall.
- 7 Q. I meant my question to - I accept it was too wide and I  
8 should have confined it to in the way in which you have  
9 answered it. But, you see, I suggest that, one thing is  
10 clear from the proofing notes, is that, you have never  
11 claimed, in the proofing that was conducted of you by  
12 the Crown Law Department, that you ever spoke separately  
13 to women, that is, in the absence of men, in relation to  
14 this matter.
- 15 A. Again, without going through the document, I have no  
16 idea, but, as I have said to you, this document is not  
17 me telling a story or making any sorts of claims, it is  
18 about a matter of me attending the Crown Solicitor's  
19 office, as required by them and answering their  
20 questions, conveying documents to them from the  
21 department, as required by them. Perhaps you should be  
22 asking them this question.
- 23 MR ABBOTT: We may need to call who interviewed you  
24 to have their side.
- 25 MR SMITH: Could I interrupt Mr Abbott for a  
26 minute? You were contemplating making an order, I  
27 think, for the release of the transcript. The media  
28 have asked -
- 29 COMSR: You mean -
- 30 MR SMITH: Of two days ago.
- 31 COMSR: Two days ago, yes.
- 32 MR SMITH: As I understand it, you considered the  
33 matter and you have released some of the transcript.  
34 That which is released is available at the desk is it?  
35 Isn't that the position?
- 36 COMSR: Yes. I haven't formally released it. I  
37 have marked the ones but, yes, I propose to release it,  
38 other than the pages and the excerpts that still remain

- 1 suppressed, I propose to release it. I don't know that  
2 I formally made any ruling as to that, but I do so now.  
3 I just don't have my copies of the transcript available  
4 to be able to tell you what the actual pages are. But,  
5 I don't know if anyone had anything in particular they  
6 wanted to say, counsel had any particular  
7 representations in respect of that?
- 8 MR TILMOUTH: I just wanted to repeat the submissions  
9 I put to you about the Rocky Marshall matter.
- 10 COMSR: I think this covers that.
- 11 MR TILMOUTH: Thank you, I am obliged.
- 12 MR SMITH: Can the media take it, what is available  
13 for them at the desk?
- 14 COMSR: I can't nominate the pages.
- 15 MR SMITH: Which is not suppressed.
- 16 COMSR: I don't happen to have those pages noted  
17 here.
- 18 MR SMITH: Whatever is available to them is  
19 publishable, is that the position?
- 20 COMSR: That is the position, yes.
- 21 XXN
- 22 Q. Dr Draper, in your statement, you spoke of Robert Day  
23 and Sarah Milera, being authorized to speak in relation  
24 to women's business. This is on the Anzac Day weekend.  
25 Do you remember telling us about that.
- 26 A. Yes.
- 27 Q. You told us that they did speak to you, together, of  
28 what we have been calling, women's business. You said,  
29 at p.51 one of your statement, down the bottom, that,  
30 your purpose - this is eight lines from the bottom:  
31 `The purpose was to concentrate on the areas to which I  
32 was specifically directed by the Minister and also to  
33 try and resolve the issues raised by the men in their  
34 discussion with me at the conclusion of that meeting, on  
35 the 15th April, namely, those matters which were of  
36 cultural significance to the women.' Because, as you  
37 will remember, you told us that it was the men who said,  
38 `There is something to do with the women.'

- 1 A. Yes. The women had said that 'The men are going to  
2 speak to you about something of concern to us' and then  
3 the men spoke to me about that, yes.
- 4 Q. But, it is stated in your proofing notes to be in these  
5 terms, 'After the meeting Dr Draper was cornered by a  
6 group of men from the Lower Murray Aboriginal Heritage  
7 Committee.' Is that true.
- 8 A. It is perhaps a colourful phrase.
- 9 Q. True.
- 10 A. But generally, yes.
- 11 Q. 'They indicated' that's the men indicated 'to Dr Draper,  
12 that the imminent recording of sites had now become  
13 urgent.' True.
- 14 A. Yes.
- 15 Q. 'They were extremely distressed that this aspect had not  
16 been completed.' True.
- 17 A. Yes.
- 18 Q. 'They' that's the men, 'believed that there was a lack  
19 of knowledge in relation to the importance of Aboriginal  
20 sites in the area.' True.
- 21 A. Yes.
- 22 Q. 'They' that's the men 'indicated to Dr Draper that there  
23 was some issues that they were concerned about, which  
24 included the channel area of the river, which was highly  
25 significant to the Aboriginal community, including the  
26 women.' True.
- 27 A. It is a generally accurate summary Mr Abbott. It is a  
28 summary made by Crown Law.
- 29 Q. I know that.
- 30 A. I did not write this document, so it is a generally  
31 accurate, though not very detailed, summary.
- 32 Q. You see, that would appear to indicate, that what the  
33 men told you, on the 15th of April, was that they, the  
34 men, were concerned about issues which included the  
35 channel area of the river, which was highly significant  
36 to the Aboriginal community, men and women, community as  
37 a whole. True.
- 38 A. In a sense, yes.

- 1 Q. Is that what the men said they were concerned about,  
2 issues including the channel area of the river, which  
3 was of significance to the Aboriginal, the Ngarrindjeri  
4 Aboriginal community, both men and women.
- 5 A. Yes, in the sense that, what was of great concern to the  
6 women was, by extension, of great concern to their men  
7 folk and as they expressed it, to the community in  
8 general.
- 9 Q. You see, 'significant to the Aboriginal community,  
10 including the women' means, in one sense, its primary  
11 significance was to the community as a whole. Is that  
12 how they put it.
- 13 A. Mr Abbott, I am not responsible as to how Crown Law  
14 summarizes my statements in their proofing documents,  
15 a detailed textual analysis.
- 16 Q. It is their words and not yours.
- 17 A. Yes.
- 18 Q. What about p.47 of your statement, where you say  
19 exactly that. Are they your words in your statement,  
20 p.47.
- 21 A. Yes, they are.
- 22 Q. Read out the top of p.47 will you please, the first two  
23 lines. Just read it out.
- 24 A. We start -
- 25 Q. First two lines.
- 26 A. We start in a sentence -
- 27 Q. 'Included'.
- 28 A. 'Included the channel area of the river which was  
29 highly significant to the Aboriginal community,  
30 including the women.' Is that all you wanted?
- 31 Q. Yes. Are those your words.
- 32 A. Yes, they are my words.
- 33 Q. Not the Crown Solicitor's words.
- 34 A. No.
- 35 Q. Now, is that the truth in your statement.
- 36 A. Yes, it is.
- 37 Q. I will move on to another topic. We will go on to the  
38 occasion of the Anzac Day weekend, when you were told by



- 1 Robert and Sarah. You deal with this at p.51. The  
2 information came largely from Sarah Milera with the  
3 support from her brother Robert Day. Now, at all  
4 times, when Sarah Milera spoke to you on the Anzac Day  
5 weekend, Robert was there. You have never suggested  
6 that Robert was not, have you.
- 7 A. In the sessions where we sat down to talk about the  
8 matter of recording this site, to the best of my  
9 recollection, Robert was present with Sarah, whenever it  
10 was discussed.
- 11 Q. I say it again; you have never suggested that, in the  
12 course of the Anzac Day long weekend, that you had any  
13 relevant discussion with Sarah Milera in the absence of  
14 Robert Day, have you.
- 15 A. No, not to my recollection.
- 16 Q. So, Sarah was able to discuss the women's business, as  
17 She told you, in the presence of a male.
- 18 A. Well, in the presence of two males, I was there as well.
- 19 Q. Of course. You accepted what she told you was true or  
20 likely to be true, in part, because of her genealogy,  
21 didn't you.
- 22 A. I recorded the information provided to me directly by  
23 Sarah, because the Lower Murray Aboriginal Heritage  
24 Committee had indicated that -
- 25 Q. These would be your informants.
- 26 A. That these were the people who would provide the  
27 information to be recorded.
- 28 Q. But, Dr Draper, just because Vic Wilson and his mates  
29 suggest someone, and they suggest that they might be  
30 useful people to speak to, doesn't mean to say you have  
31 to form the same view, does it.
- 32 A. Mr Abbott I think your characterization of the group of  
33 Ngarrindjeri Elders on 15 April, as `Vic Wilson and his  
34 mates' is inaccurate and highly offensive and doesn't  
35 describe the situation very appropriately at all.
- 36 Q. I will quote. `I had been told by the senior active  
37 members of the Lower Murray Aboriginal Heritage  
38 Committee' who were the senior - we know it has been

- 1 changed - who were the senior active members.
- 2 A. The people who were present at the meeting of 15 April.
- 3 Q. The names of the senior active members of the Lower
- 4 Aboriginal Heritage Committee who you refer to at p.51.
- 5 A. I have actually recorded them in this statement, those
- 6 specific people that I recall, and I can refer you to
- 7 that I am sure and repeat the names for you. The men
- 8 that I recall being present from that committee at the
- 9 time, are at the bottom of p.46, included: Victor
- 10 Wilson, George Trevorrow, Henry Rankine, Doug Milera,
- 11 Robert Day, and as I have noted there, there may have
- 12 been others present as well. With respect to the women.
- 13 Q. Yes, go on if you will.
- 14 A. I recall at that meeting Jean Rankine, Sarah Milera - I
- 15 am also aware that Val Power was there, I think that
- 16 Shirley Trevorrow was there and again there may have
- 17 been others.
- 18 Q. You say at p.52, 'I had no difficulty getting
- 19 information as to the genealogical structure, which
- 20 placed Sarah and placed Robert and traced them back to
- 21 King Peter.' Where are your notes of that information.
- 22 A. I do have a note, recorded at that time, here with me I
- 23 believe, which I can show you.
- 24 Q. In your field notebook.
- 25 A. No, it is not in the actual field notebook.
- 26 Q. Have we seen it before.
- 27 A. I don't think so.
- 28 Q. What is the note you have in your left hand at present.
- 29 A. Well, this is the only written record - well, this is my
- 30 written record, that I can find of that, which I have
- 31 rerecorded and the date here is 25 May 1994, but it
- 32 records that information.
- 33 Q. 25 May.
- 34 A. Yes, that's what it says.
- 35 Q. When was this note written, the note which you are
- 36 currently holding in your hands.
- 37 A. That's what I just said.
- 38 Q. On 25 May.

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N. DRAPER XXN (MR ABBOTT)

- 1 A. On 25 May, this note.
- 2 Q. Could I have a look at it please.
- 3 DOCUMENT PRODUCED
- 4 CONTINUED

- 1 Q. Why haven't you produced this note before.  
2 A. No-one has asked for it before.  
3 Q. Counsel assisting hasn't asked you to produce your  
4 notes.  
5 A. I have not been asked to produce that particular note.  
6 I've been asked to produce specific documents to the  
7 commission.  
8 Q. Could I make an ambit claim for you to produce all your  
9 notes in this matter, just in case there are other notes  
10 and documents which no-one has specifically asked for.  
11 Do you have any other notes that relate to the Hindmarsh  
12 Island bridge matter and the existence or otherwise of  
13 women's business.  
14 A. I certainly have notes relating to the Hindmarsh Island  
15 Aboriginal heritage survey. I am, after all, apart from  
16 this commission, trying to write a survey report on the  
17 matter. With respect to any written information with  
18 respect to Aboriginal women's cultural traditions and  
19 Hindmarsh Island, I do not have any other written notes.  
20 Q. Except this one.  
21 A. That is not - that is a note about someone's family  
22 history. It's not a note about women's cultural  
23 traditions.  
24 Q. But it's a note of the genealogical structure which you  
25 got from Sarah Milera and Robert Day on 25 May 1994.  
26 A. Yes.  
27 Q. And on which you relied, because of what they claim to  
28 be their genealogy, that you gave some credence or  
29 additional credence to their claims.  
30 A. It was relevant information. It is not what I relied  
31 upon, it was said by them to be relevant to why they  
32 were speaking to me about the matter on behalf of the  
33 Lower Murray Aboriginal Heritage Committee, and I  
34 recorded the information that was offered on that  
35 occasion as they considered it relevant.  
36 Q. Did you ever check it.  
37 A. I have had no opportunity to compare it to the Tindale  
38 genealogies or to question other Ngarrindjeri people

- 1 about it to date, as I have not prepared that part of  
2 the survey report as yet.
- 3 Q. Well you see I suggest that this note is your made up  
4 note of genealogy, and is not - you're claiming this was  
5 made at the time, on 25 May.
- 6 A. It was made - well, that note was made on that date,  
7 yes.
- 8 Q. Well you see you claim, in your statement, that Sarah  
9 Milera and Robert Day are two of the descendants of  
10 Reuben Walker, don't you.
- 11 A. That is what I've been told by them, yes.
- 12 Q. Well, you state it. You don't say 'I've been told by  
13 them', 'Sarah Milera and Robert Day are two of his  
14 descendants', p.226 your statement.
- 15 A. Yes.
- 16 Q. Where do we get that from this.
- 17 A. I didn't get that from this. This is a piece of paper  
18 about their descent from King Peter, which was the point  
19 they were making at the time, which was related to me on  
20 that day and, as you can see, recorded by me here in  
21 writing on the 25th of the 5th.
- 22 Q. When did they tell you that they were descendant from  
23 Reuben Walker.
- 24 A. I was told that on a number of occasions during the  
25 survey work. It was corroborated by certainly, or at  
26 least not disagreed with, by the other Ngarrindjeri  
27 people working on the survey, on various occasions when  
28 we recorded the location of Reuben Walker's camp at  
29 Goolwa, when we recorded the presence of a member of the  
30 Walker clan on the Anzac monument at Goolwa, those sorts  
31 of occasions.
- 32 Q. Sarah Milera was Sarah Day and her brother is Robert  
33 Day.
- 34 A. Yes.
- 35 Q. You're working that out from this.
- 36 A. Yes.
- 37 Q. Sarah's mother was Margaret.
- 38 A. Yes.

## N. DRAPER XXN (MR ABBOTT)

- 1 Q. Margaret who, Koolmatrie. Have you got that down there.  
2 A. Yes.  
3 Q. You know that Rocky Koolmatrie, a witness, a client for  
4 whom I act, is Sarah's cousin.  
5 A. I was not aware of that.  
6 Q. Margaret Koolmatrie was the daughter of Rachel Walker  
7 and I think it's Ernest Koolmatrie.  
8 A. That's what I've recorded from them, yes.  
9 Q. How does that lead to King Peter Pulami, or King Pulami.  
10 A. From the note I have here, it goes to the parents of  
11 Ernest Koolmatrie, if I've recorded this correctly, that  
12 his mother, it's got here 'First wife Mary', so I'm not  
13 sure if that's - that would need further checking, but  
14 it says here 'Father, King Peter Pulami'.  
15 Q. What, the father of Ernest Koolmatrie.  
16 A. That's all I can see there at the moment. I have not  
17 completed the work on this. All I have is that note so  
18 far.  
19 Q. Well, I tell you that King Peter Pulami was three  
20 generations back from that. (NOT ANSWERED)  
21 COMSR: The witness has said he has only  
22 recorded information given to him, not that he is  
23 vouching for the accuracy of the information.  
24 XXN  
25 Q. Providing it's clear, you're neither vouching for the  
26 accuracy nor asserting that you ever checked it.  
27 A. I have not completed that work yet. I'm not up to that  
28 bit yet.  
29 Q. You haven't gone to Berndt and Berndt and checked the  
30 genealogies in Berndt and Berndt to see whether any of  
31 this claim stacks up.  
32 A. I just answered that.  
33 COMSR: I think the witness has just answered  
34 that.  
35 MR ABBOTT: I will deal with this in due course, but  
36 it may be of passing significance that you appreciate  
37 the emphasis which this witness places on traditional  
38 ownership, and the number of pages of his statement in

- 1 which he carries on - sorry, states, refers to  
2 traditional owners.  
3 XXN
- 4 Q. Do you accept that Sarah Milera and Robert day were  
5 claiming to be traditional owners of Hindmarsh Island,  
6 or somewhere in that area.
- 7 A. In that locality, yes, I think that is the case.
- 8 Q. So it was important for you to check on whether their  
9 claim to be traditional owners was correct, wasn't it.
- 10 A. It was not the first priority in that time in the way  
11 that you stated. You're substantially misstating the  
12 situation, circumstances and task, I think.
- 13 Q. Look, at p.5 of your statement, you tell this  
14 Commissioner and us, at the commission, 'I had no  
15 difficulty getting information', this is in April 1994,  
16 'As to the genealogical structure which placed Sarah and  
17 placed Robert and traced them back to King Peter'. Now  
18 I suggest to you that the information you obtained does  
19 not trace them back to King Peter. What you got was  
20 some information about their immediate relatives, and  
21 then there was a bald assertion that they were in some  
22 way related to King Peter. Is that a fair comment.
- 23 A. No, it's not a fair comment. That is not how the  
24 information was presented, and if you read the entire  
25 paragraph there on p.52, I mention that matter at all  
26 only to contrast the ease with which they would speak of  
27 that matter, as opposed to the difficulty of then moving  
28 on to providing details for the site recording. That's  
29 the context in which it's mentioned at all.
- 30 Q. If that is the truth, why did you say this to Mr Smith  
31 at p.4926, 'Moving to p.52, the second paragraph on that  
32 page, you obtained information, did you, as to the  
33 genealogy of Sarah Milera, is that right', answer  
34 'That's correct. I was given a genealogy sketch, if you  
35 like'. Question 'By whom', answer 'By Robert and Sarah,  
36 of their direct line of descent back to the Walker clan,  
37 to Reuben Walker for instance, who was a well-known  
38 senior cultural figure'. Is that true.

## N. DRAPER XXN (MR ABBOTT)

- 1 A. You have just read it from the transcript, so I assume  
2 it is, yes.
- 3 Q. Reuben Walker doesn't feature on that note, does he.
- 4 A. Reuben's name is not mentioned there; his line obviously  
5 is because we go back through Margaret Koolmatrie to  
6 Rachel Walker to Joseph Walker -
- 7 Q. To old Paddy Smith if you read Berndt and Berndt, not to  
8 Reuben Walker. Did you know Reuben Walker came from  
9 Port Lincoln, that he was not Ngarrindjeri. Are either  
10 of those two facts new to you, or both of them.
- 11 A. It's new to me, and I doubt very much that it's a fact.  
12 It certainly contradicts directly everything that Norman  
13 Tindale records and Milerum confirmed about Reuben  
14 Walker.
- 15 Q. You said at p.4926, apropos of this paragraph on p.52,  
16 `So it was not a full family tree it was, as I said, a  
17 genealogy sketch. Just a direct line back from the  
18 people I was talking to' that's Sarah and Robert, `To  
19 people who were considered by them, Reuben Walker, King  
20 Peter, to be traditional cultural leaders in their  
21 family line'. You were intending that we should learn  
22 from you that their genealogies, which they had given to  
23 you, led them right back to the cultural font of  
24 Ngarrindjeri culture, to Reuben Walker and to King  
25 Peter. That's what you were intending we should glean  
26 from what you're saying.
- 27 A. Those are your words, not mine. I don't think the words  
28 `cultural font' have been used by me.
- 29 Q. Do you agree with me.
- 30 A. I think it's a misrepresentation, a change in emphasis  
31 of what is being said. I have told the commission what  
32 I was told and in what context, simply that.
- 33 Q. Well, why did you tell the commissioner `I was talking  
34 to people who were considered by them, Reuben Walker,  
35 King Peter, to be traditional cultural leaders in their  
36 family line'.
- 37 A. Because that's how it was related to me.
- 38 Q. On the Anzac Day weekend by Robert Day and Sarah Milera.



1 A. Yes, and -

2 Q. But surprisingly there is no note of Reuben Walker in  
3 the genealogy.

4 A. What I believe was important to them at the time was to  
5 show a connection in family line to King Peter, missing  
6 generations or no, and through the Walker clan, which  
7 they did. I have not had an opportunity to crosscheck  
8 that or follow up with those informants.

9 Q. Well, if you haven't had an opportunity to crosscheck  
10 it, why assert that there was a `direct line of descent  
11 back through the Walker clan to Reuben Walker' on your  
12 evidence.

13 OBJECTION Mr Steele objects.

14 MR STEELE: This question has been put in three or  
15 four different ways over the last 10 minutes, and the  
16 witness has given the same answer. It really is highly  
17 unproductive. I do point out that this witness is in  
18 Adelaide for the fourth time on this matter from  
19 Queensland. It's highly disruptive of his life. He has  
20 been sitting around waiting now for several days, and we  
21 are pursuing rabbits which are really unhelpful.

22 MR ABBOTT: This is not unhelpful. When I come to  
23 the inconsistency on traditional owners -

24 COMSR: It has been asked and answered.

25 MR ABBOTT: I tender the note of his discussions on  
26 Robert Day and Sarah Milera's genealogy of 25 May, isn't  
27 it.

28 A. I believe that's the date on the top of the note, yes.

29 EXHIBIT 263 Dr Draper's note of genealogical  
30 discussions with Robert Day and Sarah  
31 Milera dated 25 May tendered by Mr  
32 Abbott. Admitted.

33 XXN

34 Q. Do you agree that the Hindmarsh Island affair  
35 demonstrates the need to carefully establish who are the  
36 traditional owners of the area.

37 A. Can you be more specific?

38 Q. Well, I'm just wondering whether you agree with the

1 proposition that the Hindmarsh Island affair  
2 demonstrates that careful efforts are needed to be made  
3 to establish who the traditional owners are.

4 A. To the degree that any cultural heritage dispute does  
5 then yes, it's an important factor.

6 Q. I mean I am quoting your words. You yourself said 'The  
7 Hindmarsh Island affair illustrates the careful efforts  
8 that are needed to identify traditional owners'. What  
9 careful efforts to you take to identify the traditional  
10 owners.

11 A. Could you indicate the source of the quote? It will  
12 help if I know the context.

13 Q. Yes, we're talking about a report of an interview,  
14 Exhibit 235 - perhaps it's easier to put this question  
15 to you. The context is this, from p.5002. Mr Meyer  
16 said, line 12, 'In relation to Hindmarsh Island itself,  
17 is it or is it not important to establish who the  
18 traditional owners are', answer 'Yes'. I ask you what  
19 steps did you take to establish who the traditional  
20 owners were.

21 OBJECTION Mr Steele objects.

22 MR STEELE: Before the witness answers, this has  
23 been extensively cross-examined on by Mr Meyer. It was  
24 led first by Mr Smith and cross-examined on by Mr Meyer,  
25 and the witness has repeatedly given answers as to the  
26 LMAHC in the context of traditional owners. Again I  
27 submit that we duplicating cross-examination which has  
28 already gone before.

29 COMSR: Yes, what new element is there.

30 MR ABBOTT: If Mr Steele will tell me where I can  
31 find, reading in the evidence, the care which this  
32 witness, or evidence of the care which this witness has  
33 taken to establish who the traditional owners are, and  
34 who he claims or has claimed are the traditional owners,  
35 I'll not proceed with this line of question.

36 MR STEELE: The witness has said, on a number of  
37 occasions, that the LMAHC was a body which was accepted  
38 by the government as representative of the traditional

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1 owners and, because he was a public servant, he was  
2 dealing with that body which was accepted by the  
3 government. He said that on any number of occasions.  
4 It's completely unhelpful for Mr Abbott to try and come  
5 in with some other nuances on what is essentially the  
6 same proposition. It has already been cross-examined on  
7 and I think, in the light of the time constraints that  
8 apply here, you should rule against Mr Abbott on this  
9 issue.

10 MR ABBOTT: Mr Steele either has not read or, if he  
11 heard, did not appreciate the witness' evidence which  
12 was to the effect that the Lower Murray Aboriginal  
13 Heritage Committee he regarded as representative of the  
14 region. I don't think he ascribed, or was willing to  
15 claim, that they were the traditional owners of the  
16 Hindmarsh Island/Goolwa area.

17 COMSR: The LMAHC?

18 MR STEELE: Page 5002, 'The Lower Murray Aboriginal  
19 Heritage Committee at that time we believed - I  
20 believed, the department believed - to have been  
21 representative of the traditional owners of that region.  
22 It is an organisation set up by Aboriginal people of the  
23 community for that purpose.'

24 MR ABBOTT: I'm not challenging that, I want to talk  
25 about Hindmarsh Island and Goolwa.

26 MR STEELE: This is a waste of time. I submit you  
27 should rule against it.

28 MR ABBOTT: I'm entitled to - we have had enough  
29 semantic boxing with the last witness.

30 COMSR: A straightforward question to the  
31 witness.

32 MR ABBOTT: I will put a straightforward question on  
33 the basis that I get a straightforward answer.

34 XXN

35 Q. Who, in your eyes, in 1994, were the traditional owners  
36 of Hindmarsh Island; let me put that first of all.

37 A. The Lower Murray Aboriginal Heritage Committee. That's  
38 not just my view, that was the view of the Government of

- 1 South Australia.
- 2 Q. Of Goolwa and the lakes shown on that map, including  
3 Mundoo, the Murray Mouth and Hindmarsh Island, again the  
4 Lower Murray Aboriginal Heritage Committee.
- 5 A. As the representative body for the traditional owners of  
6 that area, yes.
- 7 Q. No, not representing traditional owners, were  
8 traditional owners.
- 9 A. I said the representative body of traditional owners.  
10 That is the official position.
- 11 COMSR: The witness can take it no further than  
12 that.
- 13 MR ABBOTT: All right. Okay.
- 14 XXN
- 15 Q. Is this the situation, you never established who the  
16 traditional owners were, you were happy to accept the  
17 assurances from the Lower Murray Aboriginal Heritage  
18 Committee that they represented the traditional owners.
- 19 OBJECTION Mr Steele objects.
- 20 MR STEELE: That's absolutely not what the witness  
21 said.
- 22 COMSR: That's not what he said.
- 23 MR STEELE: If Mr Abbott says there is no other  
24 evidence, I will take you to page -
- 25 COMSR: I think we have taken this as far as we  
26 can.
- 27 CONTINUED

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- 1 MR ABBOTT: I take it your Honour is overruling that  
2 question?
- 3 COMSR: Yes.
- 4 MR ABBOTT: Because I would like to ask it. I think  
5 it is an important question.
- 6 COMSR: The witness has already explained how  
7 he -
- 8 MR ABBOTT: Dealing with anthropologists I say this  
9 not in criticism of Dr Draper alone, the need for, or to  
10 cover any what they refer to in their reports as textual  
11 slippage has become more and more apparent to me as the  
12 months have worn on.
- 13 COMSR: Yes, this is one aspect where I think he  
14 has been asked and answered this question on a number of  
15 occasions.
- 16 MR ABBOTT: All right. I, of course, accept your  
17 ruling and I will proceed to another question.
- 18 XXN
- 19 Q. You claim that, on 15 April, the women whom you saw came  
20 from different areas.
- 21 A. I don't recall any such claim. Your reference is  
22 unclear to me, I am sorry.
- 23 Q. I think you said that Sarah Milera - you were asked  
24 about whether this was a representative group. I don't  
25 have the page reference, but I can recall some questions  
26 being asked about whether - what you thought of the  
27 group of women who were there and you said Sarah Milera  
28 came from Goolwa and Jean Rankine came from Point  
29 McLeay. And I think you -
- 30 A. I don't recall this, I'm sorry.
- 31 Q. I won't pursue it if you can't recall it. I will wait  
32 until I find the reference. In your note of 24 April  
33 1994, that is, your field journal notes, I think it is  
34 p.99.
- 35 A. I have that page.
- 36 Q. Apropos of this exhibit, 25 April, the genealogy notes,  
37 do you remember me directing your attention to your  
38 notebook and observing that there were no notes for 25

- 1 April.
- 2 A. The note you are holding up is from 25 May not 25  
3 April.
- 4 Q. Yes, I know that. I am just asking whether there is  
5 any lose note perhaps for 25 April as there was for  
6 25 May.
- 7 A. No, there is not.
- 8 Q. At the bottom of the page, this is p.99 of your  
9 notebook, you have got 'Peter Yerves', it looks like '17  
10 Hutchinson Drive, Goolwa.' And then you have got  
11 'Truckload of ... ' something ` ... remains taken from  
12 marina for dumping.' That is at the bottom of p.99.  
13 Why would you record that sort of rumour as relevant  
14 when there is so much that was relevant you didn't  
15 record.
- 16 A. I take objection to the way your question is framed. I  
17 will answer the first part if you don't mind and ignore  
18 the second part. I made a note. My recollection of  
19 this particular note is that an allegation was made that  
20 skeletal remains had been uncovered on marina land  
21 during I think marina excavations and had been removed  
22 by a truck for dumping. As an inspector appointed under  
23 s.17 of the Aboriginal Heritage Act (1988), at that  
24 time, it was my duty to record and investigate claims of  
25 that nature. No corroborative information was  
26 forthcoming at all. And that was the end of the matter.
- 27 Q. So that is there in your capacity as an inspector,  
28 because, if you get claims albeit rumours made, you are  
29 appropriately bound to investigate them.
- 30 A. As circumstance, Department policy, resources allow,  
31 yes.
- 32 Q. Did you investigate this claim by interviewing the man  
33 who apparently was the author of this rumour.
- 34 A. It would appear that I interviewed him on Tuesday, 10  
35 May, I believe, if you turn to the next page, p.100 and  
36 following.
- 37 Q. Yes.
- 38 A. There are - on the couple of pages following, there are

1 some notes from an interview with Peter Yerves at Goolwa  
2 on that day.

3 Q. Don't read it out. What part at p.105 and p.106 do we  
4 look at to find out the results of your interview.

5 A. Correction, it is pp.100 to 102. And I interviewed him  
6 as an elderly resident of Goolwa who was said to have  
7 relevant historical information. And, of course, there  
8 was a note, which is unsourced, that you have referred  
9 to on p.99, that he had information on another matter  
10 with regard to skeletal remains, which he did have some  
11 useful historical information. He did not have relevant  
12 information about the other matter.

13 Q. That is, the rumour, if I can call it that. (NOT  
14 ANSWERED)

15 Q. Just dealing with one further question about your  
16 genealogy. Looking at Exhibit 263, do you have it in  
17 front of you.

18 A. Yes, I have it still.

19 Q. One of the things you were anxious to find out is  
20 whether Doug Milera had any connection to the area, was  
21 it not.

22 A. Not specifically. As I said, this is not a genealogy.  
23 It is a note I made of something relevant that was put  
24 to me by the informants in filling out a site card. The  
25 purpose for which I was there was site recording and, in  
26 that particular context for the Minister on a very, very  
27 strict brief on a very short time line.

28 Q. So you can't assist us with Doug Milera then and his  
29 association or lack of it with the area.

30 A. No, I can't, beyond what I have already said, that the  
31 people who talked to me about recording that culturally  
32 significant site were Sarah Milera with the moral  
33 support, if you like, of Robert Day.

34 Q. Were you aware that Sarah Milera and/or Doug Milera had  
35 only come to Hindmarsh Island sometime in 1993. That  
36 is, they had little or no connection with the island  
37 prior to that, in terms of physically visiting the  
38 place.

- 1 A. No, I was not aware of that specifically.
- 2 Q. Is today the first time you have heard that.
- 3 A. That I can recall.
- 4 Q. They never told you. That is, neither Robert Day, nor
- 5 Sarah Milera, nor Doug Milera ever told you that the
- 6 first time they had come to Hindmarsh Island, with
- 7 reference to ascertainment of sites or spirituality or
- 8 women's business, was in October 1993.
- 9 A. No, they didn't. I was site recording, not collecting
- 10 life histories.
- 11 Q. Yes, I know, but you were speaking with them as being
- 12 people who were put forward by the LMAHC as being
- 13 traditional owners. I just wondered whether you had
- 14 learnt from Sarah and Robert that they had only got
- 15 there from October 1993.
- 16 A. They were put forward on that occasion in late April as
- 17 the informants for producing a site record which they
- 18 had flagged to the Minister would be produced for his
- 19 consideration. I was not conducting an investigation
- 20 within the Ngarrindjeri people as to which particular
- 21 people might or might not be direct descendants from
- 22 Hindmarsh Island. There was no opportunity or brief for
- 23 such a task to me.
- 24 Q. In April 1994, Sarah and Doug were living at the Mouth
- 25 House. Do you agree with that.
- 26 A. Yes.
- 27 Q. That I think is a premises owned by a Ms Ann Lucas.
- 28 A. Yes.
- 29 Q. Did you rent it for Doug and Sarah.
- 30 A. No, the Department of State Aboriginal Affairs rented it
- 31 from I think it is Lucas Enterprises, I think is the -
- 32 Q. Let's not beat around the bush, when you say 'the
- 33 Department' I suggest to you you on behalf of the
- 34 Department rented it. You did the negotiations.
- 35 A. I don't do accounts. I did not do accounts in the
- 36 Department of State Aboriginal Affairs.
- 37 Q. No, I am just -
- 38 A. I was in the Heritage Branch.



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- 1 Q. I am just asking about the negotiations.  
2 A. There were no negotiations. We rented accommodation  
3 for field crew personnel on both surveyes. Who arranged  
4 it -  
5 OBJECTION Mr Steele objects.  
6 MR STEELE: How can this possibly be helpful to you?  
7 MR ABBOTT: The Mouth House has featured not once,  
8 but many times.  
9 MR STEELE: How can it possibly be helpful to you  
10 who rented it?  
11 MR ABBOTT: Can I finish? He has interrupted and he  
12 has posed the question how can this be helpful. It can  
13 be helpful because the information I have received is  
14 that whilst this witness, it is true, may not have  
15 actually paid the bills, this witness was the one who,  
16 as it were, arranged with Ann Lucas for Sarah and Doug  
17 Milera to live there from the period April to June 1994.  
18 COMSR: Can he be asked? Can you put that  
19 Question to him?  
20 MR ABBOTT: Certainly.  
21 XXN  
22 Q. What do you say to that.  
23 A. The shack at the Murray Mouth you refer to as the Mouth  
24 House was one of three rental properties at Hindmarsh  
25 Island and Goolwa that was rented by the Department of  
26 State Aboriginal Affairs for the period of the second  
27 half of the survey.  
28 Q. By you.  
29 A. Who made what phone call to confirm rental - one of them  
30 was done through Ann Lucas. The other two properties -  
31 Q. I am not asking about the other two.  
32 A. Were rented through a real estate agent at Goolwa.  
33 COMSR  
34 Q. I think the question is really this: did you play any  
35 part in making the arrangements that ended up with the  
36 Mileras living in the Mouth House.  
37 A. Yes, I was the supervisor of the field survey so I  
38 obviously had some role, but whether I, you know,

- 1 whether I made a certain phone call or someone in the  
2 Department did, I honestly don't remember. It was a  
3 very busy time and this is a very minor matter.  
4 XXN
- 5 Q. Would you go to your statement at p.3, you say `The  
6 aspects that I have highlighted are relevant  
7 anthropological field experience being anthropological  
8 and archaeological field work with senior Aboriginal  
9 tradition owners concerning identification and  
10 development impact assessment for Aboriginal heritage  
11 sites in situations where confidential information  
12 concerning cultural sites and associated traditions is  
13 involved and traditional owners are faced with the  
14 dilemma of revealing confidential information.' What  
15 sorts of traditional owners are you talking about.
- 16 A. I am talking about Aboriginal traditional owners in the  
17 commonly understood sense of the term and in the sense  
18 that it is defined, for instance, in the South  
19 Australian Aboriginal Heritage Act in general.
- 20 Q. Traditional owners of sites.
- 21 A. There is a little bit more to the definition, the  
22 general definition than that. It does include that  
23 aspect.
- 24 Q. When you talk about `traditional owners', traditional  
25 owners, it is true, are mentioned in the Heritage Act,  
26 but not defined I think.
- 27 A. I think you will find there is a set of definitions at  
28 the front of the Act.
- 29 Q. Yes.
- 30 A. For all of the - well, for the major terms used within  
31 the Act and I think you will find that there is a  
32 definition of Aboriginal tradition and there may even be  
33 a second one. I don't have it in front of me, but I can  
34 point it out for you if you wish.
- 35 COMSR
- 36 Q. Do you want it in front of you.
- 37 A. I am not sure.
- 38 MR ABBOTT: Here is the Act. I have a copy of it.

1 XXN

2 Q. Tradition owner is defined. Are you using the  
3 expression 'traditional owners' in this sense, that is,  
4 as set out in the Aboriginal Heritage Act (1988) as 'An  
5 Aboriginal person who, in accordance with Aboriginal  
6 tradition, has social, economic or spiritual  
7 affiliations with and responsibilities for the site or  
8 object.'

9 A. Yes.

10 Q. In the case of your statement, there were no objects,  
11 within the meaning of the Act. It is all sites, isn't  
12 it.

13 A. We are referring to places of cultural significance in  
14 this context, yes.

15 Q. You go on to say, at p.4, line 3 'The Heritage Act  
16 considers traditional owners the definitive experts on  
17 matters of significance concerning cultural tradition  
18 although the Minister makes the final decisions.' I  
19 don't want to ask you this as we go through, but where  
20 you have got 'traditional owners' we are talking about  
21 traditional owners as defined in this Act.

22 A. Yes.

23 Q. You say, at p.5, in the first second line beginning 'The  
24 Aboriginal traditional owners involved are always  
25 reluctant to divulge any more information than  
26 absolutely necessary.' This is your general experience,  
27 isn't it.

28 A. Yes. And, in fact, in the next sentence I say 'in my  
29 experience'.

30 Q. But it is your general experience not referable  
31 necessarily to Hindmarsh Island and the Hindmarsh Island  
32 bridge affair. You are calling on your general  
33 experience with the intention of perhaps applying it  
34 where appropriate to the matter before this Commission.

35 A. I am calling on my general experience and I would not  
36 have mentioned it in this context if I did not believe  
37 it to be relevant to this context.

38 Q. But we are still dealing with generalities at p.5,

- 1 aren't we.
- 2 A. It is a generalisation and a general point obviously,  
3 yes.
- 4 Q. Then you say in the middle of the page 'It is common for  
5 Aboriginal people to seek to protect culturally  
6 significant sites, first by reference to archaeological  
7 information and then only as necessary by disclosure of  
8 confidential cultural information.' That was a general  
9 observation which you have made in other contexts  
10 involving other Aboriginal communities.
- 11 A. And in this case, yes.
- 12 Q. Put this case aside, but that was a general comment in  
13 relation to the applicability to other Aboriginal  
14 communities with which you have been involved.
- 15 A. It was a general comment that included this case as  
16 well.
- 17 Q. And so you say, because you suggested it included this  
18 case, 'Thus, in the context of the Hindmarsh Island  
19 area, it is not surprising that archaeological  
20 information was disclosed first and confidential  
21 cultural information disclosed later.' Is that right.
- 22 A. That's what I have said, yes.
- 23 Q. Then you talk about your experience and that goes  
24 through to p.9, does it not. This is your general  
25 comments on experience.
- 26 A. Most of that part of the statement, in fact, concerns  
27 examples of the situations I am talking about.
- 28 Q. Your general experience in other areas.
- 29 A. My general experience with specific examples, yes.
- 30 Q. Then you come to p.10 and you go from the general to the  
31 particular. You say 'I understand that a number of  
32 so-called dissident women say that they were never  
33 taught the confidential cultural traditions held by  
34 women about the Hindmarsh Island area and that their  
35 relationships with the Elders was such that they would  
36 have been taught had such traditions existed. I dispute  
37 that.' Having thought about the matter, do you still  
38 dispute what they say.

- 1 A. I dispute the statement that I've said. I've disputed  
2 that particular people claim that they would necessarily  
3 have been chosen by other people to hold or receive  
4 particular information. It's not the kind of statement  
5 that one can make. It's like - I don't think of, I  
6 can't think of an example. That is what the passages  
7 said.
- 8 Q. That is like the Curate's egg: they might be right and  
9 they might be wrong. Is that right.
- 10 A. I was disputing that as a definitive statement about the  
11 existence of those cultural traditions on the basis of,  
12 if you like, 'If I wasn't told, it can't exist'.
- 13 Q. I want to measure that, at least test it. You would  
14 accept that in some circumstances if an elder Aboriginal  
15 lady says 'I wasn't told and I believe that if it had  
16 existed I would have been told', she may well be right.  
17 She may equally well be wrong.
- 18 A. On that information alone, that would be the case, of  
19 course.
- 20 Q. But how can you dispute then, since the probabilities  
21 are equally spaced, if she could be right or wrong, how  
22 can you dispute the claim.
- 23 A. That is not the sum total of the relevant information we  
24 have on that matter.
- 25 Q. You tell us, dealing with this, the so-called dissident  
26 women so say they were never taught the confidential  
27 cultural traditions and that their relationships with  
28 the elders were such that they would have been taught  
29 had such traditions existed. You say you dispute that.  
30 On what basis.
- 31 A. Two main points. One is we obviously have other women  
32 in the same community who say that they were told;  
33 therefore, the information does exist. So, those people  
34 say that they have some knowledge. Whereas, other  
35 people are arguing from the point of lack of knowledge.  
36 The second part of that -
- 37 Q. Pausing there. Do you accept that the people who  
38 claimed to have the knowledge might be making it up.

- 1 A. I consider that most unlikely.
- 2 Q. Why.
- 3 A. We are moving on having only half answered the previous  
4 question.
- 5 Q. You answer the question.
- 6 A. I'm sorry, that is as I recall. The other point is that  
7 I have worked in situations with other communities where  
8 there are people of equal age who have beards as long as  
9 one another, or as many grey hairs as one another, some  
10 of whom do have information about cultural matters and  
11 others who don't, and others who may have information  
12 which is different, or only overlaps to some degree.  
13 The second part of your previous answer - could you ask  
14 this question again now please?
- 15 Q. Let me clear the decks. I'm not suggesting that in some  
16 or perhaps in all of the Aboriginal communities -  
17 putting aside the Hindmarsh Island Bridge and  
18 Ngarrindjeri people - there are discrete conjures of  
19 information which are held by one or more people about  
20 various aspects of Aboriginal life. And I accept that  
21 you can look, you can see in Aboriginal communities two  
22 male Aboriginal elders with the same length of beard, as  
23 you put it, and of the same age and one may have  
24 information and knowledge that the other doesn't have.  
25 Now, that obviously must be the case and is the case, is  
26 it not, in many communities.
- 27 A. Yes, it is.
- 28 Q. That's not what I suggest is the issue in the Hindmarsh  
29 Island Bridge Royal Commission. What we are talking  
30 about here is not one Aboriginal man, if you like just  
31 an as an example, saying 'I have the information', and  
32 the other one saying 'I don't have that information'.  
33 We are talking about one group of women who claim they  
34 got the information and that they kept it secret until  
35 1994 when one of them revealed it to 35 others, for the  
36 first time to the 35 others, and another group of women  
37 who were not invited to the meeting - apart from Dorie  
38 Wilson - who say that this woman, Doreen Kartinyeri, who

- 1 claims that she had this information `We dispute that  
2 she's got it and has had it because we have never had  
3 it, and we know nothing about it. We are older. We are  
4 just as well connected in terms of family tradition and  
5 genealogy'. Now, how can you dispute that claim. You  
6 mean, you might say you don't agree with it, but you  
7 can't dispute, can't say `The dissident women are not  
8 saying what they believe to be true'.
- 9 A. I have not suggested that. I have disputed that it is  
10 definitive evidence of the non-existence of the  
11 tradition that some people say `I'm older or better  
12 connected than so and so and I don't know about it,  
13 therefore, it cannot exist', and that's where we come  
14 back to.
- 15 Q. So, in so far as they are trying to prove a negative, if  
16 that is what they are trying to prove by saying `I never  
17 knew about it, therefore, it doesn't exist', you say  
18 that is going too far.
- 19 A. Yes.
- 20 Q. You're saying a better position would be `I don't know  
21 about it, I've never heard of it. It may exist, or it  
22 may not'.
- 23 A. I think that is as far as one can take those facts.
- 24 Q. If that is the position, and all you can say about my  
25 clients is that, all they can say is they didn't have it  
26 and, therefore, they can't prove that it never existed,  
27 you then have to look at those who assert the knowledge  
28 to see whether or not there is anything inconsistent  
29 about the stance of those who assert the existence of  
30 the knowledge, don't you.
- 31 OBJECTION Mr Steele objects.
- 32 MR STEELE: The witness doesn't do that, you do  
33 that. It is a bit unhelpful for the witness to be  
34 pushed along this line.
- 35 MR ABBOTT: This witness from p.10 to p.20 has  
36 engaged in an argument in written form as to why he  
37 carries the torch for the proponent women and I -
- 38 MR STEELE: He does not do anything of that sort and

## N. DRAPER XXN (MR ABBOTT)

- 1 I object strongly to the use of that language. There is  
2 not the slightest suggestion that the witness is  
3 carrying a torch for anyone.
- 4 MR ABBOTT: And I want to shoot him down in flames.
- 5 COMSR: What you are saying is that he appears  
6 to favour one side of the argument.
- 7 MR ABBOTT: Yes, exactly.
- 8 MR STEELE: If that is what he wants to say, let him  
9 use the non-inflammatory language. Beat that.
- 10 COMSR: I will translate what Mr Abbott says  
11 into these terms.
- 12 XXN
- 13 Q. So you know where I'm going, I suggest that with your  
14 expression, after your expression 'I dispute that', far  
15 from you leaving it on the basis, well, the dissident  
16 women, by asserting they never knew about it, can't  
17 prove it never existed, thereafter, you switch from that  
18 middle position - if you ever held it - to saying 'All  
19 these matters that I'm now going to set out support the  
20 existence of secret women's business'. Do you agree  
21 that your statement from p.10 onwards takes that point.
- 22 A. No.
- 23 Q. You think you're still on the middle course:  
24 Non-partisan, unbiased, displaying a relevant perspective.
- 25 A. Yes. This is my professional opinion.
- 26 Q. Let's just, first of all - having read the next ten  
27 pages, is there anything in the next ten pages which is  
28 critical of the views of the so-called proponent women.
- 29 A. I'll have to flick through the next ten pages.
- 30 Q. If you would, because I'll suggest to you there is not  
31 one argument, not one assertion, not one fact, not one  
32 theory which is in any way critical or other than  
33 supportive of the proponent women. And that far from  
34 this being a rational balanced view, it is a bias,  
35 partial view.
- 36 OBJECTION Mr Steele objects.
- 37 MR STEELE: If Mr Abbott wants the witness to read  
38 these pages and answer the question, he should do so and



- 1 remain silent whilst he does.
- 2 MR ABBOTT: I will sit down.
- 3 WITNESS READS DOCUMENT
- 4 MR ABBOTT
- 5 Q. As you go through it, if you can point out anything -
- 6 MR STEELE: Please make Mr Abbott sit down whilst
- 7 the witness does what he is bidden to do.
- 8 A. I have perused pp.10 to 20 which sort of cross-cuts two
- 9 or three different sections of the report which are
- 10 clearly highlighted. I do not see, not surprisingly,
- 11 any particular criticism of the group of people you call
- 12 the proponent women.
- 13 XXN
- 14 Q. More importantly, I suggest there is none. There is no
- 15 criticism, no critical approach to the proponent women's
- 16 claims.
- 17 A. I suggest to you that the notions of criticism and
- 18 critical approach are two quite quite different things.
- 19 Q. We will take them one by one. You agree there is a
- 20 criticism in your report of the dissident women.
- 21 OBJECTION Mr Steele objects.
- 22 MR STEELE: There is no criticism. Mr Abbott has
- 23 put that quite several times.
- 24 COMSR: No, that was the proponent women.
- 25 MR STEELE: That this witness was making a criticism
- 26 of the dissident women when he talked about the phrase
- 27 'I dispute that'. The witness made it quite plain there
- 28 was no criticism of the dissident women in that remark.
- 29 MR ABBOTT: There is a criticism of the claims of
- 30 the dissident women.
- 31 MR STEELE: That is not so and the witness made that
- 32 quite plain.
- 33 MR ABBOTT: You tell him the questions and then you
- 34 ask the witness to answer them.
- 35 COMSR
- 36 Q. Just to clarify the point. Were you saying that there
- 37 is no criticism of the claims of the dissident women in
- 38 your report.

- 1 A. What I clearly say on p.10 is that a claim - that  
2 because an adult in an Aboriginal community does not  
3 possess knowledge is a necessary and sufficient proof  
4 that does such information does not exist, is  
5 insufficient. And then I go on to raise other  
6 considerations that are relevant in my experience and  
7 knowledge to that kind of situation.  
8 XXN
- 9 Q. They are examples of why you dispute what you perceive  
10 to be the claim of the so-called dissident women, are  
11 there, from pp.10 to 20.
- 12 A. No. In fact, immediately following your comment, I've  
13 raised some additional relevant considerations to that  
14 kind of situation. When we get to p.12, for instance,  
15 we are on to a different section within the report - and  
16 p.20, in fact, is yet another section, so it moves on a  
17 different topic.
- 18 Q. Where do you say that you dispute the claim of the  
19 so-called proponent women that secret women's business  
20 exists.
- 21 A. I do not say that in that report that I'm aware.
- 22 Q. Why not.
- 23 A. I have commented in this statement on those matters  
24 which I considered relevant of which I had knowledge.  
25 It is - it's a bit like the Berndt book. It isn't the  
26 sum total of everything that could be said about a topic  
27 by any person, it is what it is.
- 28 Q. My criticism is that you have said nothing that in any  
29 way adversely reflects on the claim of the proponent  
30 women, and I suggest that that is through a very careful  
31 choice. Do you agree.
- 32 COMSR: With that, that he said nothing or?
- 33 MR ABBOTT: Said nothing adverse about the claim of  
34 the proponent women.
- 35 A. In general, I would agree with that.
- 36 Q. Why haven't you considered they might be telling lies,  
37 they might have fabricated it. If you were proceeding  
38 as an honest, independent anthropologist, why haven't

1 you considered the other side of the argument.

2 A. I have.

3 Q. Where is your explanation as to possible factors that  
4 might tend to suggest that Doreen Kartinyeri's made it  
5 up.

6 A. My work in that matter did not involve work with Doreen  
7 Kartinyeri.

8 Q. Didn't involve work with my clients either.

9 A. That's correct.

10 Q. Why take pen to paper to dispute their claims and leave  
11 off the section in which you helped the Commissioner,  
12 perhaps, to decide whether Doreen Kartinyeri has  
13 fabricated this.

14 OBJECTION Mr Steele objects.

15 MR STEELE: This witness made it quite plain that he  
16 was not acting as an independent anthropologist and  
17 delving into what amounts to women's business, he was  
18 investigating the archaeological site from a  
19 professional point of view. A line of attack like this  
20 is completely inappropriate.

21 MR ABBOTT: If he is doing this in relation to his  
22 employment, I would not object.

23 MR STEELE: I'm making the objection. Would you  
24 please tell Mr Abbott to remain quiet while I do so. It  
25 is entirely inappropriate for Mr Abbott to pursue this  
26 line of cross-examination of this witness, given the  
27 context in which this witness was doing his work.

28 MR ABBOTT: I'm not objecting to this witness  
29 reporting on doing his work, I'm objecting to what he  
30 starts off at p.10 in doing; that is, saying this is the  
31 claim that is made by the so-called dissident women and  
32 I'm going to tell you, yes, I dispute their claim. I'm  
33 asking him to point out or tell us why there is no fair  
34 approach; in other words, that he also tells you why you  
35 might have reason to doubt the claim of the proponent  
36 women.

37 Q. Where is that section, Dr Draper.

38 OBJECTION Mr Steele objects.

## N. DRAPER XXN (MR ABBOTT)

- 1 MR STEELE: I rise again. Mr Abbott has completely  
2 and deliberately misinterpreted again the context of the  
3 report and I dispute that. Dr Draper has made it plain  
4 to you and Mr Abbott that he is not saying that he  
5 disputes the dissident women saying that 'I know nothing  
6 about it and I should have asked him about it', he is  
7 saying that it is commonplace that some people in the  
8 Aboriginal communities know and some do not. This is  
9 not an attack on Mr Abbott's clients.
- 10 MR ABBOTT: You could have fooled me.
- 11 MR STEELE: If Mr Abbott insists that that is an  
12 attack on his clients, that suits his purposes. That  
13 is not an attack on his clients.
- 14 MR ABBOTT: I submit that I'm entitled to ask the  
15 question that I asked and that is: Why didn't Dr Draper  
16 put in his report anything which is in any way critical  
17 of the claims of the so-called proponent women.
- 18 CONTINUED

- 1 COMSR: I am looking at the second para. on  
2 p.11. It doesn't specifically refer to the proponent  
3 women as such, but it does speak about the seriousness  
4 of speaking falsely about tradition. So, to say that  
5 there has been no consideration of it is perhaps not  
6 quite correct.
- 7 MR ABBOTT: Well, the only consideration is putting  
8 in something that will assist the case of the proponent  
9 women. He is inviting you to assume, that because it is  
10 a serious offence to reveal information, about  
11 Aboriginal tradition, and to speak falsely about it,  
12 then what has been said about it, by the proponent  
13 women, is more likely not to be true.
- 14 COMSR
- 15 Q. Did you give any consideration to the claim by the  
16 dissident women, insofar as it reflected on the  
17 proponent women's claim, as to the tradition being a  
18 genuine one.
- 19 A. Yes and we have just spent a rather lengthy amount of  
20 time discussing that very matter. I have tried to give  
21 you relevant information about that situation from my  
22 experience, not to do your deciding for you.
- 23 MR STEELE: Before Mr Abbott goes on, can I raise a  
24 matter which is of a little concern to me and my  
25 witness. As I have indicated before, this is the fourth  
26 time that he has come to give evidence.
- 27 COMSR: I appreciate the situation as far as you  
28 are concerned, but I had understood that we would be  
29 completed this afternoon.
- 30 MR ABBOTT: I have only got this section.
- 31 MR STEELE: I am conscious of the time.
- 32 MR ABBOTT: If Mr Steele sits down I can finish.
- 33 MR STEELE: I am quite happy to sit down on that  
34 understanding.
- 35 MR ABBOTT: Sit down and remain seated.
- 36 MR STEELE: I can't give that undertaking.
- 37 COMSR: If you proceed we might stand a good  
38 chance of finishing Dr Draper.

1 XXN

2 Q. On p.10, you go on to support your reasons for disputing  
3 the claim of the dissident women, by saying, 'The  
4 selection of candidates to receive confidential cultural  
5 knowledge and eventually to become the senior  
6 traditional owners for the next generation, usually  
7 involved age, gender, genealogy and cultural  
8 classification, e.g. Moiety, Totem, and also the  
9 perceived aptitude of the candidate to apprentice  
10 particular cultural roles.' That is something you have  
11 gleaned from other cultures, not the Ngarrindjeri  
12 culture, isn't it.

13 A. That is a general statement from my experience and  
14 knowledge relevant to that matter. It is a general  
15 statement. It doesn't specifically exclude the  
16 Ngarrindjeri people.

17 Q. But, did you conduct any investigation, as to whether  
18 the alleged traditional owners of knowledge, that is, in  
19 the main, Doreen Kartinyeri, was of the appropriate age,  
20 gender, genealogy and cultural classification.

21 A. I had nothing specifically to do with Doreen Kartinyeri  
22 at all in my investigations on this matter Mr Abbott.

23 Q. What you're saying to the Commissioner is that, one of  
24 the things she might look at, to see whether or not  
25 those who assert women's business is true, or whether it  
26 has been fabricated or not, is to look at those who  
27 assert the proponent women in terms of their age, their  
28 gender, their genealogy and their cultural  
29 classification and their aptitude to apprentice  
30 particular cultural roles, they are some factors you  
31 ought to consider.

32 A. No, I am suggesting that those are the factors that  
33 senior traditional owners, who are considering to whom  
34 they will pass on information, tend to consider. Unless  
35 her Honour can talk to those people and ask them how  
36 they have weighed those considerations, I am not sure  
37 what good it would do her to directly try - I am not  
38 sure on what basis her Honour could consider that.

- 1 Q. If all those traditional owners are dead we can forget  
2 about that passage, because the information, whilst  
3 useful, is of no use in these proceedings.
- 4 A. It would make it no less valid.
- 5 Q. Then you go on at p.11 to the passage the Commissioner  
6 has mentioned, 'To be weighed in the balance with all  
7 this' etc., those four lines. What is that a reference  
8 to. I don't see. You are talking about the  
9 dissident women or the proponent women or what, or  
10 cultural Aboriginal traditional owners.
- 11 A. It is a general statement, in exactly the same vein as  
12 the preceding and following statements.
- 13 Q. It may have no relevance to the case in this Commission.
- 14 A. It is a matter of general relevance in my experience and  
15 knowledge, to Aboriginal communities, with respect to  
16 the role and responsibilities of traditional owners in  
17 caring for, looking after, places of cultural  
18 significance and the cultural information relevant to  
19 those places.
- 20 Q. Okay. P.12, l.3, after talking about the dispersion  
21 of Aboriginal people and you say, 'Consequently, the  
22 reproduction of Aboriginal cultural traditions for many  
23 groups, including the Ngarrindjeri, has itself become  
24 fragmented to some degree, and is not as widespread or  
25 comprehensive in contemporary Aboriginal communities as  
26 it once was.' That is axiomatic, isn't it.
- 27 A. I think that it is a genuinely accurate and unarguable  
28 statement, yes.
- 29 Q. It is the next sentence that I am concerned about. You  
30 say, 'Nevertheless, these cultural traditions survive  
31 and form the hidden core of the continuing cultural  
32 identity and integrity of people such as the  
33 Ngarrindjeri because they concern the fundamental  
34 relationships between cultural landscape and  
35 custodians/inhabitants.' What cultural traditions, with  
36 which survived and which concern fundamental  
37 reference to the Ngarrindjeri, are you talking about  
38 relationships between cultural landscape and

- 1 custodians/inhabitants. Forget other cultures, just  
2 the Ngarrindjeri please.
- 3 A. I am referring to those cultural traditions which refer  
4 - which are held separately or jointly, by Ngarrindjeri  
5 - certainly some Ngarrindjeri men and women, as they  
6 say, according to their cultural traditions, which  
7 explain the creation and continuity of their traditional  
8 landscape, culture and traditional law.
- 9 Q. Which ones are you talking about. Which cultural  
10 traditions.
- 11 A. I believe that I have described the matter as  
12 specifically as I am able to without - what are you  
13 looking for?
- 14 Q. I am looking for 'the hidden core' as you describe it,  
15 the cultural traditions, which you claim have survived  
16 because they concern the fundamental relationships  
17 between cultural landscape and custodians/inhabitants.
- 18 A. Well, I have told you the nature of them. I cannot tell  
19 you the detail of them, because that would be a great  
20 breach of confidence.
- 21 Q. You know the details.
- 22 A. Of those people.
- 23 Q. You know the details.
- 24 A. I know a little.
- 25 Q. Are we talking about Ngurunderi.
- 26 A. Certainly Ngurunderi, is a consideration in some.
- 27 Q. Is that one of the cultural traditions that you are  
28 talking about here.
- 29 A. Some of the information of which I am aware, that is  
30 confidential, to Ngarrindjeri people, does involve the  
31 creation ancestor Ngurunderi.
- 32 Q. See, yet again, we have a bald assertion by you, that  
33 cultural traditions survive, because they concern the  
34 fundamental relationships between cultural landscapes  
35 and custodians/inhabitants, and you won't tell us what  
36 they are.
- 37 A. Mr Abbott, only those custodians can tell you those  
38 things. It would be a fundamental breach of faith and



1 dereliction of my professional duty if I were to  
2 attempt to do so and I cannot.

3 OBJECTION Mr Steele objects.

4 MR STEELE: Haven't you ruled on this?

5 XXN

6 Q. You assert they exist, but you can't tell us what they  
7 are.

8 COMSR: No, he can't. I think the witness is  
9 saying -

10 MR ABBOTT: Unable to.

11 COMSR: Yes, he is unable to because of  
12 considerations of confidentiality.

13 XXN

14 Q. You assert they exist but are unable to, because of  
15 reasons of confidentiality, to tell us what they are.

16 A. That is correct.

17 Q. Is the women's business, as you have heard it reported  
18 in the press, disseminated by Doreen Kartinyeri and  
19 others, one of these cultural traditions or anything  
20 like it.

21 A. It is certainly to some degree something like it, but, I  
22 do not have sufficient information to ascertain whether  
23 the degree to which the press information accurately  
24 reflects the confidential information, because my  
25 information and my understanding of the matters are  
26 limited.

27 Q. When you say, 'Nevertheless these cultural traditions  
28 survive, and form the hidden core of the continuing  
29 cultural identity and integrity of people such as the  
30 Ngarrindjeri' you are not including the assertions of  
31 the proponent women are you, as one of the cultural  
32 traditions. You are talking about other cultural  
33 traditions which are known to you and which you can't  
34 tell us about, because of the confidentiality  
35 restrictions.

36 A. The statement I make there, I believe certainly would  
37 include the cultural traditions spoken about by those  
38 women, yes.

1 Q. It would.

2 A. Yes.

3 Q. Well, you tell us, what are the cultural traditions  
4 which they told you about.

5 A. I am sorry, I can't help you with that, beyond what you  
6 have seen on the site cards and the information already.

7 Q. I am sorry, we're talking about the meeting of the  
8 waters, are we.

9 A. That is a part of it, yes.

10 Q. There is no other part of it. That's all you have got  
11 on your site card.

12 A. That is correct.

13 Q. So, the meeting of the waters, is an example of the  
14 cultural tradition that is referred to in this para.

15 A. That is a reference to that kind of cultural tradition,  
16 yes, and what is on that site card represents the  
17 limits of what I am able to speak to you about on that  
18 particular matter.

19 Q. Well, we know that the secret sacred women's business,  
20 that is the subject of this Royal Commission, was not  
21 the meeting of the waters, information as far as you  
22 have been able to reveal it. Are you aware of the  
23 published utterances of Doreen Kartinyeri in relation to  
24 the secret sacred women's business.

25 A. Not in any comprehensive way, no.

26 Q. I tell you that it is referable to the alleged  
27 correspondence between the Lower Murray area, the lakes  
28 and Hindmarsh Island and women's reproductive organs.

29 MR TILMOUTH: The witness can only deal with it on  
30 that assumption.

31 XXN

32 Q. I ask you to assume it is referable to an alleged  
33 correspondence between that area, and women's  
34 reproductive organs, and a claim that Hindmarsh Island  
35 was a place to which Aboriginal women resorted for the  
36 purpose of aborting the foetuses conceived after liaisons  
37 with white people. You don't include that as one of the  
38 cultural traditions in this statement.

- 1 A. I have no particular information on the second matter of  
2 which you speak, except that I have heard the statement.  
3 With respect to the first matter, I know little more  
4 beyond what I have recorded and the very general matter  
5 that you have spoken about. But, that is relevant to  
6 this statement.
- 7 Q. Relevant.
- 8 A. Yes.
- 9 Q. How.
- 10 A. Because Mr Abbott, at the risk of stating the obvious,  
11 those Ngarrindjeri women, who have those deeply held  
12 cultural beliefs and those Ngarrindjeri men who support  
13 those Ngarrindjeri women in that, have expressed, I  
14 think, quite definitely, that they are referring to  
15 confidential core cultural traditions which underwrite  
16 their view of their world and themselves, the core of  
17 their identity.
- 18 Q. Have you considered they might be making it up for  
19 political reasons.
- 20 A. To the degree that I have relevant information on the  
21 matter, I have considered that.
- 22 CONTINUED

1 Q. What's your conclusion about that.

2 A. I have found that there is considerable evidence to  
3 suggest that they are genuine, and I am not aware of any  
4 convincing evidence that they are not, and I also know  
5 those people from the Lower Murray Aboriginal Heritage  
6 Committee, with whom I have had dealings on and off in  
7 working for the State government over a number of years,  
8 to be people who are very proud about their culture,  
9 genuine about their culture and truthful about their  
10 culture.

11 MR STEELE: Whilst there is a slight lull, I rise  
12 again. It is not just Mr Abbott who needs to  
13 cross-examine this witness, Mr Tilmouth has a few  
14 questions, I've got a few questions, and I suggest Mr  
15 Smith does as well, and Mrs Eszenyi has questions too.

16 COMSR: Yes, and I note that it's 4.15.

17 MR ABBOTT: I just want to put a matter to this  
18 witness in answer to what he has just said.

19 COMSR: It doesn't leave much time as far as the  
20 other counsel are concerned.

21 MR ABBOTT: I'm sorry, but I have substantially  
22 curtailed my cross-examination to complete it this  
23 afternoon. I hope to do so in the next 10 minutes.

24 COMSR: That will leave - how much time, Mr  
25 Tilmouth.

26 MR TILMOUTH: 10 minutes I hope.

27 XXN

28 Q. The people you're talking about I take it are Vic  
29 Wilson, Tom Trevor, Ellen Trevor, Henry Rankine,  
30 Vi Deuschle, the Rigneys, Shirley Piersley, those sorts  
31 of people.

32 A. That group in general, but there are obviously specific  
33 people within that group with whom I've had more  
34 dealings in my work over the last decade than others.

35 Q. Were you aware that those people and others met on 30  
36 July 1994 and discussed, amongst other things, getting  
37 money from the Federal government to purchase Hindmarsh  
38 Island on the basis that the bridge dispute had devalued

- 1 the land values there.
- 2 A. No.
- 3 Q. You'd accept that's a political agenda.
- 4 A. I've never heard of the matter before. I have no
- 5 knowledge of it.
- 6 Q. You haven't had the opportunity of reading the minutes
- 7 of the Ngarrindjeri Action Group of 30 July 1994.
- 8 A. I don't believe I've ever read any minutes of that
- 9 group, or had any occasion to.
- 10 Q. Margaret Jacobs is known to you.
- 11 A. She is known to me.
- 12 Q. Leah Rankine.
- 13 A. Pardon? Was that Leah -?
- 14 Q. I musn't say her name, she's recently deceased.
- 15 A. Yes.
- 16 Q. Bruce Carter, Eileen McHughes.
- 17 A. The last two, I don't specifically recall, no.
- 18 Q. Do you know a Mr Byrt.
- 19 A. Do you have a full name?
- 20 Q. Only Patrick.
- 21 A. I've heard the name. I can't say more than that.
- 22 Q. In your statement - I've only got a couple more
- 23 questions - you talk about, at p.16, the Ngarrindjeri
- 24 community, line 4 `In my experience a smaller, core
- 25 group of middle-aged and elderly people have the
- 26 distinctive combination of community authority and
- 27 respect (though this is never universal), and detailed
- 28 genealogical, historical, cultural and often linguistic
- 29 knowledge which identifies them as senior traditional
- 30 owners'. Do you know my clients.
- 31 A. I don't believe that I know your clients particularly
- 32 well.
- 33 Q. Bertha Gollen, Dulcie Wilson.
- 34 A. No, I don't know them particularly well.
- 35 Q. You don't know if they fall into that group of
- 36 middle-aged and elderly having some community authority
- 37 and respect.
- 38 A. Obviously I can only make this statement with respect to

- 1 those people I do know, and the situation is, with  
2 respect to those people, I do not know them.
- 3 Q. You go on to say that the cultural information passed by  
4 Tindale to Milerum, or by Berndt to Karloan, was only a  
5 fragmentary part of the knowledge held by those  
6 informants'. That has to be a guess on your part,  
7 doesn't it.
- 8 A. No.
- 9 Q. Well, put it another way; if one accepts that it was  
10 only a fragmentary part of their knowledge, you cannot  
11 tell us what it was that they didn't impart, because you  
12 don't know that, do you.
- 13 A. Only in odd cases.
- 14 Q. But you see -
- 15 A. Where mention's been made of specific things that  
16 perhaps Tindale wasn't told, or that Tindale got wrong  
17 because he asked the wrong kind of questions, those  
18 kinds of situations.
- 19 Q. Can I just draw the threads together, since I said I'd  
20 only be a short time with you, under the heading from  
21 p.12 onwards, 'Anthropological Summary of Ngarrindjeri  
22 Cultural Perspective of This Issue', from p.12 onwards,  
23 you are putting forward this theory, or this thesis, and  
24 I ask that you listen to it and let me know whether you  
25 agree with it in whole or in part; there has always been  
26 a small group of, if you like, elders, whom you equate  
27 with senior traditional owners, in the Ngarrindjeri  
28 community. Do you agree with that, that's point one of  
29 your thesis.
- 30 A. Yes.
- 31 Q. Secondly, that those elders, those senior traditional  
32 owners, have not only been the respected people in the  
33 community, but they have also been the people who, in  
34 the main, have had the core of the traditional  
35 knowledge. Point two.
- 36 A. In general, yes.
- 37 Q. Point three is that they have had, in an unbroken line,  
38 the core knowledge passed on by people, even before the

1 European invasion of their lands.

2 A. That is what they say.

3 Q. Point four, today those same people who claim to be the  
4 elders and senior traditional owners have, in an  
5 unbroken line, core cultural knowledge which never got  
6 to anthropologists, but which was passed on to them  
7 because they were the senior people, or would become the  
8 senior people.

9 A. I wouldn't agree with your wording. Certainly some  
10 Ngarrindjeri adults today do possess cultural traditions  
11 that have not been recorded by Europeans, including  
12 anthropologists, missionaries and historians and written  
13 down.

14 Q. You know that there is a suggestion in the literature by  
15 the Berndts that Pinkie Mack was telling them things  
16 that she didn't want, or didn't feel appropriate, to  
17 pass on. In other words, that she was happy to tell  
18 things to the Berndts because she realised that they  
19 were recording it for posterity. Do you have any hint  
20 of that attitude on the part of Pinkie Mack.

21 A. I have only had indirect reading of the context of the  
22 Berndts work with Pinkie Mack. I have not made a  
23 detailed study of that.

24 COMSR: I'll have to allow some opportunity to  
25 other counsel.

26 MR ABBOTT: Very well. I will, if you tell me that  
27 I have to stop, stop.

28 COMSR: Well, as I understand it, Mr Tilmouth  
29 requires 10 minutes, which probably translates into  
30 quarter of an hour, and other counsel -

31 MS ESZENYI: Five minutes.

32 MR SMITH: Five minutes.

33 COMSR: If there any -

34 MR ABBOTT: There is, I wanted to go through his  
35 claims in the literature.

36 COMSR: Perhaps if we'd got to that earlier.

37 MR SMITH: There is a bit of time left if that is  
38 true.

N. DRAPER XXN (MR ABBOTT)  
(MR TILMOUTH)

1 MR STEELE: That hasn't taken into account me.

2 COMSR: Of course, yes. I think, Mr Abbott, in  
3 the circumstances, I've just got to -

4 MR ABBOTT: I accept your ruling and I will sit  
5 down.

6 CROSS-EXAMINATION BY MR TILMOUTH

7 Q. I just want to come back to your experience. Can you  
8 tell the Commissioner firstly when you first became  
9 involved with the Ngarrindjeri people.

10 A. The first Ngarrindjeri people I met was in 1984/1985  
11 when I did a little bit of consulting work and then was  
12 teaching in Aboriginal Studies at the South Australian  
13 College of Advanced Education, and then from 1987 to  
14 1985, in working for the State Government, I worked  
15 periodically with a number of Ngarrindjeri people on  
16 Aboriginal heritage matters for the State.

17 Q. Was that 1987 to 1995.

18 A. That is correct, about eight years.

19 Q. What about specifically on Hindmarsh Island. When did  
20 you start actual site work there for any purpose.

21 A. My first reconnaissance of Hindmarsh Island would have  
22 been in 1988, when the first development assessment work  
23 was undertaken there by Vanessa Edmonds.

24 Q. Are you able to help us whether any of the  
25 anthropologists in the past, whether they be Tindale or  
26 Berndt or anybody else, have actually done hard field  
27 work on Hindmarsh Island itself before then.

28 A. I believe that not to be the case. One of Norman  
29 Tindale's significant informants, Reuben Walker, was  
30 based at Goolwa and considered that his base, so we're  
31 dealing with a man there. There are references to  
32 Hindmarsh Island in passing, for instance traditional  
33 trade routes passing across the island. Tindale also  
34 recorded a few place names for Hindmarsh Island with far  
35 less detail, I might add, even to the meaning of the  
36 names than he did for immediately surrounding areas  
37 which are recorded in quite rich detail. The Berndts  
38 have very little to say about Hindmarsh Island so no, it



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- 1 doesn't appear very much at all in the anthropological  
2 or ethnographic literature.
- 3 Q. But have people actually gone out and trod on Hindmarsh  
4 Island and done any kind of sustained archaeological  
5 work there.
- 6 A. Before 1988, with the first survey for specific  
7 development purposes by Vanessa Edmonds, the only work  
8 that I'm aware of is occasional records of recovered  
9 burials by the South Australian Museum, or discovered  
10 artifacts, so as something came to the museum's notice  
11 it was recorded, and some conservation work on Mundoo  
12 Island by the Aboriginal heritage branch with respect to  
13 Aboriginal sites, so very little.
- 14 Q. Can you help the Commissioner, and bearing in mind the  
15 time, I have to ask this in a fairly omnibus way, but  
16 how many days, weeks or months would you have actually  
17 spent on the island, if I can put it this way, in hard  
18 groundwork.
- 19 A. I would estimate about three months.
- 20 Q. All up.
- 21 A. All up about three months.
- 22 Q. Of course in between those times, you were doing work on  
23 and in relation to the island, whether it be in the  
24 Goolwa area or back in your office here somewhere in  
25 Adelaide.
- 26 A. Yes. There was certainly some additional work of that  
27 nature.
- 28 Q. Are you familiar at all with the Aboriginal land claim  
29 with respect to Junction Waterhole Dam near Alice  
30 Springs.
- 31 A. I can't specifically recall any knowledge of that  
32 particular matter.
- 33 Q. Are you aware of a report of Commissioner Wootten in  
34 relation to that matter. Have you seen it, have you  
35 read it, or have you considered it at all.
- 36 A. No, I have not.
- 37 Q. Can I just put a few extracts to you from it to see  
38 whether, in your experience, you would agree with these

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1 kinds of observations, translated to your experience in  
2 relation to the Ngarrindjeri people here. The first is  
3 -  
4 MR TILMOUTH: Would it help if I gave paragraph  
5 references so this can be collated later, if necessary?  
6 CONTINUED

- 1 COMSR: It probably would, if you are in a  
2 position to do so.  
3 XXN
- 4 Q. I refer to para.7.1.7. I will paraphrase where needs be  
5 to save time. `Information about the details of these  
6 dreaming tracks is regarded as sacred and secret and is  
7 disclosed only with great reluctance. This is  
8 particularly true of disclosure about the two women  
9 track to men, whether Aboriginal or European.' Can  
10 you comment on that in relation to your experiences  
11 here.
- 12 A. That sounds like a very similar situation to my  
13 experience.
- 14 OBJECTION Mr Abbott objects.
- 15 MR ABBOTT: I object to the question. The  
16 `experiences here', is that meant to be Hindmarsh  
17 Island, or is that meant to be here in South Australia?
- 18 COMSR: I take it that he meant Hindmarsh  
19 Island. Perhaps you can -
- 20 MR TILMOUTH: I will clarify it.  
21 XXN
- 22 Q. You were asked by Mr Abbott about both your experiences  
23 generally and then as translated to Hindmarsh Island.  
24 And I will use those two focal points to encapsulate my  
25 references to here. In other words, is that statement  
26 consistent with both your general and specific  
27 experience.
- 28 A. Yes, it is consistent with both.
- 29 Q. Would you agree with this extract as well and if I put  
30 the question to you similarly, at para.7.1.11 `Western  
31 civilisations have long been accustomed to the notion of  
32 traditions as being recorded and authenticated in  
33 written texts, and more recently to their being  
34 interpreted and their correctness tested in a rationalist  
35 manner in the light of the results of historical and  
36 scientific inquiry. It is not easy for those who have  
37 grown up and been formally and informally educated in  
38 this culture to understand an empathise with traditions

1 communicated by oral narrative, song, art and dance, and  
2 having an authority quite independent of historical,  
3 scientific and rationalist scrutiny.'

4 A. Yes, I would agree with that.

5 Q. At para.7.1.13 'The issue should not be whether, judged  
6 by the norms and values of our secular culture or our  
7 religions, the sites are important, but whether they are  
8 important to Aboriginals in terms of the norms and  
9 values of their traditional culture and beliefs.'

10 A. Yes, certainly.

11 Q. If I could quote to you para.7.1.9 'To reveal these  
12 beliefs to anyone not entitled to know them under  
13 Aboriginal tradition (including other Aboriginals and  
14 even people of the opposite sex in the same community)  
15 is itself a kind of desecration, and it has been done  
16 reluctantly and painfully on the basis that it is  
17 necessary to prevent the destruction of important  
18 sites.'

19 A. Yes.

20 Q. Do you see parallels in relation to that kind of  
21 observation in the situation we have here.

22 A. I see that as a very closely analogous situation, yes.

23 Q. By that do you mean the situation of the urgency as you  
24 talked about it sometime ago now in your evidence to  
25 this Commission.

26 A. Yes, exactly that.

27 Q. Commissioner Wootten also said this 'Moreover, I would  
28 not wish my report to be the vehicle for the public  
29 trivialisation and ridicule of Aboriginal beliefs in the  
30 media by uncomprehending people, a situation which was  
31 such a shocking feature of the debate over Corronation  
32 Hill.' In general terms would you agree that in our  
33 culture it is often easy to trivialise and ridicule  
34 Aboriginal beliefs, because they don't have any  
35 reference to our cultural norms.

36 A. Yes, that is repeatedly the case, I think.

37 Q. And it is erroneous, is it not, to attack the Aboriginal  
38 beliefs simply because they don't have a specific

1 reference point in our culture or in our way of  
2 thinking.

3 A. Yes, it is.

4 Q. Is it true to say as well that that is a common feature  
5 in your experience of the revelation of secret  
6 information by Aboriginal people in the context of an  
7 imperative to reveal it.

8 A. In my experience that is a very major concern, yes.

9 Q. Could I suggest a common concern or feature in this type  
10 of area of secret sacred knowledge is, the question is  
11 whether it should be revealed.

12 A. Yes, time and time again.

13 Q. I don't want to go into details, because you prefer to  
14 protect the confidence, but you will remember you gave  
15 evidence in relation to a conversation you had with some  
16 of the men on 15 April 1994 after the DOSAA meeting.

17 A. Yes.

18 Q. Some of the information which was conveyed to you at  
19 that time in general terms related, did it not, to  
20 confidential cultural information which was specific to  
21 men, the Aboriginal men.

22 A. Yes, it was.

23 Q. To use a European acronym, it related to men's business.

24 A. Yes, it did.

25 Q. Which is an indicator in its own right, is it not, that  
26 there is a separation in Ngarrindjeri culture on a  
27 gender basis.

28 A. Yes.

29 Q. Without going into the detail, is it true that the men  
30 gave you some limited detail of how the women's secret  
31 knowledge related and inter-related to the men's secret  
32 knowledge.

33 A. That is correct.

34 Q. And that involved, did it not, not only a view of the  
35 landscape in the area of Goolwa and Hindmarsh Island,  
36 but its relationship to the wider area.

37 A. Yes, it did.

38 Q. Indeed, the wider coastal area, did it not.

- 1 A. Yes, that's correct.
- 2 Q. Including from the men's point of view the wider coastal  
3 area going towards the coast in the west.
- 4 OBJECTION Mr Abbott objects.
- 5 MR ABBOTT: If Mr Tilmouth knows it and Mr Draper  
6 knows it, why can't we know it?
- 7 COMSR: Because, as I understand it, to be  
8 suggesting the details would mean we would have to go  
9 into private session at least.
- 10 MR TILMOUTH: More than that. I will ask this to  
11 clarify it.
- 12 XXN
- 13 Q. None of this, to your knowledge, is in the public  
14 domain, is it.
- 15 A. I am pretty certain that none of this is in the public  
16 domain, yes.
- 17 Q. Isn't it true that, from when this question first arose,  
18 particularly through George Trevorrow in early January  
19 of 1994, and going right through to 15 April, that so  
20 far as you could tell from what they were saying, how  
21 they were saying it, the manner and so on, that they  
22 regard it as a very serious matter indeed.
- 23 A. It was certainly very serious and something they were  
24 very uncomfortable about. Certainly serious, yes.
- 25 Q. It was something that remained there, if I can put it  
26 this way, as a significant thread in the minds of the  
27 men beginning in about January of 1994.
- 28 A. That's correct.
- 29 Q. And the triggering event on that is this question about  
30 speaking to Mr Jacobs QC.
- 31 A. Yes, that's the occasion I am first aware of it.
- 32 Q. Could I ask this, as well: assuming that there is secret  
33 women's business, whether it be related to Hindmarsh  
34 Island or otherwise, in the Ngarrindjeri culture, is  
35 that something that in your experience and in your view  
36 the men would or could suggest to women the content of  
37 that business and have that accepted by the women.
- 38 A. I think that the women would take very great exception,

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1 in fact, offence to any such suggestion from their men  
2 as to what they should consider their business. And I  
3 do not believe that it would be very likely at all  
4 beyond that offence that they would accept any such  
5 direction or suggestion from the men. It would be most  
6 most unusual.

7 Q. Can I try and put that in my white fella language. Not  
8 only, as I understand it, would it be wrong to suggest  
9 to women about women's business, but the suggestion of  
10 the content of it would actually create an adverse  
11 reaction in the women.

12 A. I would expect women in that position to, as you say,  
13 have a very adverse reaction to such suggestions, yes.

14 NO CROSS-EXAMINATION BY MS ESZENYI

15 CROSS-EXAMINATION BY MR STEELE

16 Q. Just to clear up a piece of confusion that I saw in the  
17 evidence: there was some suggestion by Mr Smith that  
18 there was funding for the work at the beginning of  
19 November 1993 to the extent of \$20,000. That's not  
20 right, is it.

21 A. That's not correct. The initial \$20,000 of funding  
22 provided by the Minister of Transport was for the major  
23 cultural heritage survey of Hindmarsh Island, which was  
24 the twin to the environmental survey of Hindmarsh Island  
25 that National Parks were doing. So it was not for that  
26 clearance work around the bridge approaches and the  
27 borrow pit which was done in a few days. It was for the  
28 major survey work that followed.

29 Q. You spoke of Goolwa being on a trade route or a number  
30 of trade routes. What sort of number of people would  
31 you expect to accumulate along those trade routes from  
32 time to time at Goolwa.

33 A. There are historic accounts particularly in the early  
34 local newspapers, books by early settlers, etc, of  
35 regular gatherings of between 300 and 500 people at  
36 Goolwa in that context.

37 Q. Would it be a commonplace or if not would it occur at  
38 all that there would be ceremonial meetings at such

- 1 gatherings.
- 2 A. The major contexts for such gatherings are the sharing  
3 of ceremonies and other significant cultural events.  
4 That is why they are held. So the big party in Adelaide  
5 held every November is because of the Grand Prix, which  
6 is a trite example. At Goolwa those large gatherings  
7 are for the occasion of major ceremonial events,  
8 corroborees are mentioned, in particular, in those  
9 historic records and the major ritual exchanges and  
10 initiations, all of those things are mentioned.
- 11 CONTINUED



- Q. In those circumstances, would it occur that there would be separate meetings of men and/or separate meetings of women.
- A. That's highly likely in those contexts, both for organising those events on the ground as they happen by the senior people and because those are occasions where senior elders or traditional owners from a wide area have the opportunity to meet together at one place.
- Q. I want to take you briefly to p.49 of your statement. You might recall you were asked some questions by Mr Smith about a passage which appears about 49.8. Do you remember that.
- A. Yes, I do.
- Q. Is the situation there that you are referring there to two particular aspects: The first being confidential information given to you by men; and, the second being independent information and other archival material.
- A. That's correct.
- Q. The confidential information given to you by men you have discussed with the Commissioner to the extent that you are able.
- A. That's correct.
- Q. Dealing with the independent information and other archival material, is the independent material the information you obtained from the Gunditjmara and Boandik Elders.
- A. That's correct.
- Q. Is the archival material the Tindale field maps to which you referred.
- A. That's correct also.
- Q. Is the aspect to which you referred that part of the evidence that you have given pointing out that there is a rich annotation of names other than around Hindmarsh Island, Mundoo Island and the channel area.
- A. That is correct. And that those names, which few names which are provided for Hindmarsh Island, Mundoo Island, have sufficiently - sorry, significantly less explanation than the surrounding place names and

information.

Q. And the explanation you would proffer is that the absence of such names is an indication of the males who were advising the collators of names, did not know names around that area.

A. My interpretation on the available evidence is either that they did not know at all, or that they were - it was not their business to speak about such matters.

Q. You were asked by Mr Abbott some questions about the recommendations you reported in your site card as to there being no bridge built and the barrages being removed. Do you remember that.

A. Yes, I do.

Q. You told Madam Commissioner that your obligation was to record what your informants wanted you to record.

A. That is correct.

Q. Did you have any expectation that the recommendation of the barrages would be removed, would be acted upon.

A. No.

Q. I want to ask you a couple of questions about 'The World That Was', the Berndt book. Do you accept that is a complete or comprehensive record of the Ngarrindjeri people.

A. No. I don't think that any single book could possibly aspire to that kind of comprehensiveness.

Q. That could only occur, could it not, in the very extraordinary circumstances of the - of those who were able to impart the cultural information, if willing to, and who were prepared to impart all of that information that they would receive it.

A. Yes.

Q. Who were the informants to the Berndts.

A. Well, the major informants that are referred to time and time again - the most major informants were Albert Karloan and Pinkie Mack.

Q. One or two people.

A. Yes.

Q. Who were the informants of Tindale.

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- A. For this particular area, primarily Milera; secondarily, Rueben Walker and others for only very specific pieces of information.
- Q. Do you believe that Ngarrindjeri people would have had a knowledge of female reproductive anatomy.
- A. Certainly.
- Q. How would they have had that.
- A. Well, through life experience; through the butchering, preparation and cooking of female animals; through, most likely, traditional medical procedures to do with birthing; and, possibly even the performance by Ngarrindjeri doctors of caesarean sections and which occurred in other areas of southern and eastern Australia. A number of things.
- Q. One final series of questions. Do you believe that the Ngarrindjeri people would have been able to carry in their mind's eye a map or a plan of the landscape.
- A. I'm certain they could.
- Q. For that to occur, would they have had to have been in a position to be above the landscape looking down on to the landscape.
- A. No, they would not.
- MR STEELE: Those are the only questions that I have of the witness. There is one matter that I wish to raise with you. A number of exhibits have been put in evidence which are original documents and those are the field notes and the site record. Those documents are very material to the witness being able to pursue his career and of great importance to the Government, which is keen to have the survey completed. Can they be released into his custody and have copies taken?
- MR SMITH: That might not be able to be done this afternoon, but that will be done quickly.
- MR STEELE: If that could be done, otherwise he has no means of securing any income.
- RE-EXAMINATION BY MR SMITH
- Q. I produce to you Exhibit 239 which is the draft site card of May 1994, isn't it.

A. Yes.

Q. You have got there 'Site recorder Neale Draper' then crossed out - we can almost see who it is. Could that be Daisy Rankine that you have actually recorded there and crossed out.

A. No, it's not. As far as I know, I just started to write down names. I put down Doug Milera and then considering because he was part of the, of that nominated group by the Lower Murray Aboriginal Heritage Committee, but I decided that immediately, having written it, as Sarah Milera was the main speaking informant, that etiquette suggested that I put her name first. You will notice as it proceeds that Sarah's name is next and Doug Milera's name is again below that. It was a matter of appropriate etiquette. No, Daisy Rankine does not appear on there.

Q. You do know Daisy Rankine.

A. Not well. Personally, no.

Q. When you left South Australia with a job to do on the island, that was to give the Government a comprehensive report. Is that right, the situation, that in March of 1995, you entered in a consultancy agreement with the department to complete the survey report of the island.

A. Yes. Following my resignation in the South Australian Public Service, we entered into a consultancy agreement for the completion of the report and the accompanying site records.

Q. You're still doing that I think.

A. Yes.

Q. Although the agreement required you to finish it by June.

A. There have been significant delays, not the least of them some departmental reorganisation, including accounting and a Royal Commission on the matter.

Q. But, in particular, despite the three months or so work you have done commencing in late 1993 onwards, you have not recorded one site yet, have you.

A. I've recorded more than 30 sites.

- Q. No, not registered, I should say, a single site.
- A. That is correct. But I'm not sure that any other sites have gone through the formal registration process from that time period either.
- Q. I think all of Vanessa Edmonds' sites have been registered, have they.
- A. From her 1988 and 1990 surveys, yes.
- Q. I will ask you a general question about this and, depending on the answer, I won't pursue it. It appears from your field notebook, that in the period of six months or more leading up to October 1993, which you have actually clipped over, the field notebook appears to show generally that you were much pre-occupied with Granite Island in that period. And I finish the question by saying that there was considerable contact between you, the Rankines and the Trevorrow's in relation to difficulties on Granite Island in that period. Would you agree with that.
- A. One of a number of projects that I was assigned to me to work on in that period and continuing through the survey period to some degree, interleaved with it was the tourist development and preservation of Aboriginal sites on Granite Island with the Lower Murray Aboriginal Heritage Committee. Certainly the Rankines, George Trevorrow, Robert Day and, to some degree, Victor Wilson I remember as all being involved on the committee with us on that matter.
- Q. Is it correct, and I won't go through it, but the bridge, the Hindmarsh Island Bridge in this period leading up to about October 1993 doesn't rate a mention in your notes as, for instance, a concern of the Trevorrow's or the Rankines.
- A. Until the end of October 1993, I wasn't working on that matter, so it wouldn't appear in my field book. I mean, as it is noted, I worked with that community on some other very specific matters, but not on that matter, no.
- Q. Who was working on this matter of the bridge in that early part of 1993.

A. With respect to Aboriginal heritage specifically?

Q. Yes.

A. No-one. I think that is the whole point.

Q. I want to go to another topic altogether, and not in any great detail. I think when you first got to Adelaide, there was a problem with the Mount Barker Summit in 1984 and an Aboriginal site on the summit at Mount Barker. I don't want you to go into it. That is correct, isn't it.

A. Yes.

Q. That brewed up again in 1987 and 1988, both in respect of the summit itself and the discovery of some skeletal remains in a quarry some 20 kilometres or so from the summit at Mount Barker.

A. I'm not sure of the matter you refer to with respect to skeletal remains without further detail which you might not want to give me. The issue of communications and towers of various sorts on Mount Barker Summit has arisen in a cultural heritage problem every time someone basically wants to put a new communications tower there, or add to one there. That is certainly true.

Q. There's not a problem with the skeletal remains, but there was a series of articles in the Advertiser about the whole topic, so what I want to put to you about is that -

A. I'm just not sure of which place you're referring to in particular?

Q. I'm referring to a quarry site 20 kilometres east of the Mount Barker Summit where some skeletal remains were found.

A. Is there a name? I mean, does the site have a name, or?

Q. No, not one that I know of.

A. Because I'm not -

Q. You have got a vague memory of something that occurred in relation to the Mount Barker area summit and a quarry near it.

A. I can think of several quarries near it and I'm not sure of which one - and at least one of the burials. I'm not

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clear which quarry you mean?

COMSR: Does it matter which quarry?

A. Whether a sand quarry or a rock quarry or -? They are  
all quarries.

REXN

Q. Did all of them have skeletal remains in them.

CONTINUED

- 1 A. Well, many of them do. I just - if I am not sure of  
2 which one then we may be talking about the wrong thing.
- 3 Q. Look.
- 4 A. Yes, I know the one you mean now.
- 5 Q. You have refreshed your memory by looking at an article  
6 in The Advertiser of 1 September 1987, about a number of  
7 skeletons found at a quarry, about 20 kilometres east of  
8 Mount Barker Summit.
- 9 A. Yes.
- 10 Q. The point I want to make is, you will notice there is a  
11 photograph there, a photograph there showing Aboriginal  
12 Elders; Mrs Daisy Rankine, Mr George Trevorrow and Mrs  
13 Ellen Trevorrow, who had much to say about the discovery  
14 of these remains.
- 15 A. Yes.
- 16 Q. Is that right. You were dealing with them in in your  
17 capacity as a government employee.
- 18 A. George Trevorrow, and perhaps Tom, but George was the  
19 main one that I am aware certainly that I personally had  
20 any dealings with on that matter and, I believe a couple  
21 of Aboriginal rangers at the time and I suspect Tom  
22 Trevorrow was one of those.
- 23 Q. There is a photograph here in this Advertiser caption  
24 showing Daisy Rankine, George and Ellen Trevorrow, is  
25 there.
- 26 A. Yes, there is.
- 27 Q. Indeed, in connection with the Summit dispute involving  
28 the towers, which I can show you articles about, in July  
29 1988, George Trevorrow and Victor Wilson were prominent  
30 Aboriginal men, much interested in that development and  
31 you dealt with them, didn't you.
- 32 A. To a very limited extent, yes, a lot of this matter was  
33 dealt with up front by the then manager of the  
34 Aboriginal Heritage Branch, with a number of staff, who  
35 included me, but also included our senior anthropologist  
36 and our site registrar, did a lot of the leg work if you  
37 like, with respect to the actual sites.
- 38 Q. There was a South Australian Building Trades Federation



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1 union ban on construction work there for a while, wasn't  
2 there, on the Summit.

3 A. At Mount Barker?

4 Q. Yes.

5 A. There was, I think, somewhere around late 1984, early  
6 1985.

7 Q. The spokesman for the union was the State Secretary, Mr  
8 Ben Carslake.

9 A. I have no idea.

10 Q. Have a look at this article, because I think you would  
11 have had something to do with him, wouldn't you, Mr  
12 Carslake. You are looking at an Advertiser article of  
13 12 May 1988, 'Building union bans on Mount Barker  
14 Summit.'

15 A. I have had nothing - I had nothing to do with building  
16 unions at all with respect to Mount Barker Summit.

17 Q. See a photograph there of Ben Carslake.

18 A. I do. Neither the name or the face are familiar to me.

19 Q. He was a man that was down on the bridge site, part of  
20 the union, CFMEU union ban, was he not.

21 A. I have no idea.

22 Q. No idea.

23 A. No idea, I dealt with, you know, the Government, the  
24 council, land owners who made submissions and Aboriginal  
25 people. I did not deal in any way with the protest  
26 movements or the unions as such, with respect to the  
27 Hindmarsh Island bridge issue.

28 Q. I think I have spoken to you about this report, but I  
29 need to show you this, because Mr Barton has written to  
30 you, Mr Graham Barton, concerning Amelia Park.

31 A. He provided me with a copy of a submission he had made,  
32 he sent to Professor Saunders, asking me to take that  
33 information into account in preparing my survey report,  
34 which I agreed to do so and I have a copy of that  
35 material and I intend to do so.

36 Q. It is the position, just putting it generally, is it,  
37 looking at Exhibit 80, Vanessa Edmunds, in early 1990,  
38 the second survey was asked to look at whether or not

- 1     there were any sites on the Crystal Street bridge  
2     corridor in Goolwa, wasn't she.
- 3     A. That's correct.
- 4     Q. She actually found a site which is part of Amelia Park,  
5     right at the Crystal Street alignment.
- 6     A. Yes.
- 7     Q. It was because there was a midden found there, and it is  
8     Amelia Park, isn't it, part of Amelia Park.
- 9     A. It is certainly the Amelia Park area is central to that  
10    site location she recorded, yes.
- 11    Q. That was one of the reasons, I take it, that the bridge  
12    alignment was changed to the existing ferry alignment,  
13    namely, the Brooking Street alignment, is that right.
- 14    A. I don't know, because that was a planning decision. I  
15    believe that it was certainly relevant in refusing the  
16    Crystal Street alignment, that that site was there, but  
17    I am not aware that at that time an alternative  
18    alignment was picked out. All I am aware of is the fact  
19    that, the State Government assessment and decision on  
20    that, EIS, refused that particular alignment.
- 21    Q. In any event, by about October, of 1993, I think.
- 22    A. Yes.
- 23    Q. It was back to the Brooking Street alignment, was the  
24    proposed bridge corridor, wasn't it.
- 25    A. Certainly, yes.
- 26    Q. Which is the existing road down to the ferry.
- 27    A. Yes.
- 28    Q. And Amelia Park, which was, which is the park that  
29    extends from the top of the hill, to the north I think.
- 30    A. It is adjacent to and north of Brooking Street.
- 31    Q. It runs down to the present ferry landing.
- 32    A. That is correct, yes.
- 33    Q. Is that one of Mr Barton's submissions to you, concerned  
34    Amelia Park, in the area where it abutts the present  
35    ferry landing.
- 36    A. That's correct.
- 37    Q. He, I think, produced to you, and I will produce to you  
38    some photographs. I will just hand you this. This is

## N. DRAPER REXN (MR SMITH)

1 the last topic, I won't be more than a few minutes.  
2 Looking at that clump of three photographs, I am really  
3 focussing ing on the photograph, the black and white  
4 photograph, which Mr Barton says was taken in about 1910  
5 as compared to the more recent photograph in about 1960  
6 in the foreground. His submission to you, I think, and  
7 the question I put to you is, obviously that part of  
8 Amelia Park, right by the ferry alignment, is fill.

9 A. Yes, that's right.

10 Q. Rather than original land.

11 A. Yes, that's common knowledge.

12 Q. That could not be, or do you say it is, a midden or a  
13 sacred site or.

14 A. Certainly the area that is shown in the 1910 photograph,  
15 as foreshore mud flat and water, was filled, as was the  
16 area immediately to the south of it where the wharf was  
17 placed, so that, any Aboriginal archeological site  
18 existing on that shoreline edge, would be under fill.  
19 But, it is also true that, the left-hand or northern  
20 edge of that photograph, is practically the end of that  
21 embayment and that the natural land form swings out  
22 sharply into the channel just out of that shot, and  
23 follows, basically, from there the current shoreline of  
24 Amelia Park and I can show you an archival map that  
25 shows that very clearly.

26 Q. Yet, Aboriginal people that were protesting about an  
27 alleged desecration of the Amelia Park site, really  
28 sought to close off the park, from the Brooking Street  
29 end, completely, did they not Dr Draper.

30 A. Initially that was the suggestion, the northern part of  
31 Amelia Park is most important and, in fact, in  
32 negotiations with the Department of State Aboriginal  
33 Affairs and the District Council of Port Elliot and  
34 Goolwa, that same group agreed to the provision of some  
35 car parking spaces at the Brooking Street end within  
36 that area, when it was to be fenced off.

37 EXHIBIT 264 Photographs tendered by Mr Smith.

38 Admitted.

- 1 Q. In your field notebook you make an assertion that 16  
2 families owned Hindmarsh Island and I can refer you to  
3 your notebook, p.101, is it. Can you tell us on what  
4 basis you made that assertion. There we are, p.101 at  
5 the very bottom. I produce to the witness MFI 237.
- 6 A. This is at the bottom of p.101. These are notes I made  
7 from the interview previously referred to with Peter  
8 Yeaves, on Tuesday 10 May. So, what I have done there,  
9 as I have over a period of space of three pages, I have  
10 written down the historical information provided to me  
11 in an interview, with Peter Yeaves. So I am not making  
12 an assertion, I am writing down what an informant has  
13 told me.
- 14 Q. You have Margaret Bolster's phone number in the back  
15 page of this notebook. She is a conservation council  
16 lady, isn't she.
- 17 A. Yes, I think she is and that phone number was thrust  
18 upon me. Someone said she had relevant - some  
19 historical information, some old newspaper clippings  
20 I think. I got a fairly comprehensive file of that  
21 information from Frank Tuckwell and didn't have the  
22 opportunity, or because of my perception that the  
23 conservation council had a role in the matter, I didn't  
24 have the inclination to follow that up and I did not.
- 25 Q. Did you have some sympathy, can you tell the  
26 Commissioner Dr Draper, whether you had some sympathy  
27 at that time about the conservation council's  
28 opposition, at least in 1994, to the construction of  
29 the bridge.
- 30 A. I am not aware, in any of the vaguest senses of what  
31 their position was. I understand certainly they were  
32 opposed to it. I didn't have the time to, sort of, read  
33 or watch television, everything that was going on,  
34 during this period. I was running a survey. I was very  
35 busy. So, I ran a cultural heritage survey as  
36 professionally well as I can, and did not enter into,  
37 you know, personal matters or anything of that nature.
- 38 Q. You must have known at least in 1994, they were

6010

MST 61U

N. DRAPER REXN (MR SMITH)

- 1 prominent in their opposition to the construction of the
- 2 bridge, the conservation.
- 3 A. In a very general way, yes.
- 4 NO FURTHER QUESTIONS
- 5 WITNESS RELEASED

6011  
MST 61U

- 1 MR SMITH: I will tidy up. You know, I put a
- 2 number of Advertiser articles to the witness. I will
- 3 tidy that up and tender those when we resume.
- 4 COMSR: Perhaps find out what Dr Draper requires
- 5 by way of originals and copies can be made.
- 6 CONTINUED

- 1 MR SMITH: Monday - well, I'd anticipated that we  
2 would hear from the men, and therefore I'm waiting with  
3 bated breath for the statements of the men.
- 4 COMSR: Which men will be appearing?
- 5 MR KENNY: I'm finalising statements on behalf of  
6 the men.
- 7 COMSR: Perhaps if we know which men you're  
8 calling.
- 9 MR KENNY: Tom Trevorrow, Henry Rankine, and I  
10 anticipate we'll provide a statement on behalf of a  
11 person by the name of Allan Clark, who may be of  
12 assistance.
- 13 COMSR: I understand that one of the other men  
14 has just had an operation. Have you discussed with -
- 15 MR KENNY: Two, in fact. I've seen both of them  
16 this afternoon, I've personally visited them in  
17 hospital.
- 18 MR SMITH: My learned friends have had such  
19 problems obtaining statements from these men, do they  
20 seek to lead the witnesses themselves, bearing in mind  
21 that I haven't had a statement or an opportunity to  
22 confer with these men myself.
- 23 MR KENNY: It was our intention to make the men  
24 available to counsel assisting so that he can discuss  
25 these matters with them.
- 26 MR SMITH: It was.
- 27 MR KENNY: It is still, we may be able to organise  
28 that for Monday morning.
- 29 MR SMITH: I don't want to overkill them with  
30 preparation.
- 31 COMSR: Are either of the other men fit enough  
32 to be interviewed in the same way that I did the lady?  
33 Who was that?
- 34 MR KENNY: My assessment is, after having seen them  
35 today, both of them are in considerable amount of  
36 discomfort.
- 37 COMSR: I gathered that they would be at this  
38 stage. Perhaps if they have got doctors looking after

1     them, you might perhaps enquire as to whether either of  
2     them would be fit enough.

3   MR KENNY:        Yes. I think it's a matter of assessing  
4     that next week.

5   COMSR:            I thought so.

6   MR KENNY:        At this stage they are not.

7   COMSR:            It's a bit too early, I think, to  
8     determine that.

9   MR KENNY:        Mr Robert Day had his operation last  
10    Friday. He had complications with a chest infection,  
11    and he has recovered quite significantly.

12   COMSR:            It's just that it's been raised as a  
13    possibility, so I thought I would pursue it now so you  
14    could let me know the situation.

15   MR KENNY:        I will keep you advised.

16   MR MEYER:        Before you adjourn, I've asked counsel  
17    assisting, Ms Simpson, about the release of Dorothy  
18    Wilson's statement, in so far as you will recall that  
19    large sections had been blacked out. Since that time,  
20    well, a lot of progress has been made, and I don't  
21    expect to deal with it now, but I merely foreshadow that  
22    we need to be able to have the balance of that to make  
23    meaningful preparations. Rather than that being an  
24    arrangement between Ms Simpson and I, it should be  
25    released to counsel.

26   MR ABBOTT:       We don't have any objection to the  
27    release to counsel on the usual undertaking.

28   COMSR:            You haven't at any time, but the  
29    question is whether it is appropriate that all of it be  
30    released. It's so long that I've looked at the  
31    statement.

32   MR MEYER:        I'm putting it on the record, that's  
33    all.

34   MR ABBOTT:       Can I ask, just so that I don't prepare  
35    the wrong cross-examination, can I take it from the list  
36    that's been read out, that Mr Victor Wilson will not be  
37    coming forward?

38   MR KENNY:        That's correct. I indicated that



- 1 earlier, that a week or two ago, that he wouldn't -  
2 MR ABBOTT: Front?  
3 MR KENNY: Voluntarily be givING evidence.  
4 MR SMITH: I suppose, then, there may be  
5 difficulties, because I imagine I won't have statements  
6 to give out to people, but perhaps we'll cross that  
7 bridge when we come to it on Monday.  
8 COMSR: I take it you will be getting them  
9 either - will they be available over the weekend to Mr  
10 Smith?  
11 MR KENNY: I would hope so.  
12 MR MEYER: You mean the statements?  
13 MR KENNY: Yes.  
14 COMSR: We won't be sitting tomorrow because of  
15 the obvious difficulties with the Pageant going right  
16 past the front door, as it were, and I gather that the  
17 witnesses wouldn't have been available in any case, so  
18 we'll adjourn until Monday morning.  
19 ADJOURNED 5.17 P.M. TO MONDAY, 6 NOVEMBER 995 AT 9.30 A.M.

1 COMSR STEVENS

2

3 HINDMARSH ISLAND BRIDGE ROYAL COMMISSION

4

5 MONDAY, 6 NOVEMBER 1995

6

7 RESUMING 9.44 A.M.

8 MR SMITH: The program for today was to be evidence  
9 from three men, Tom Trevorror, Henry Rankine and Alan  
10 Clarke. I have been given, half an hour ago, three  
11 statements, as yet unsigned. The proposal is that Mr  
12 Tilmouth, when he comes in, have his clients sign the  
13 statements, I will make copies then of them, and make  
14 them available to counsel at the bar table.

15 I will confer, as is the usual course, with these  
16 three witnesses in the course of the day, and their  
17 evidence will commence tomorrow morning. There is a  
18 request in one of the statements that the Camp Coorong  
19 video be shown as a prelude to the evidence of Tom  
20 Trevorror. We have that in the evidence at the moment.

21 I suggest that we watch that this morning, it is  
22 about 20 minutes, so that then counsel will have  
23 knowledge of what's on it as they take the statements  
24 away to consider them. That is the program I think we  
25 should follow today.

26 I do that on the basis that, to expect everybody to  
27 cross-examine or examine these witnesses on the basis of  
28 a 30 second - people will not have read the statements  
29 for a start. I haven't given statements to anybody  
30 because they are unsigned and came in half an hour ago,  
31 or thereabouts. I think this is the only way to do it,  
32 I'm afraid, despite the fact that it, in effect, amounts  
33 to the loss of a day, but there are other things we can  
34 be doing.

35 COMSR: Yes, there are. I suppose there is no  
36 alternative. You cannot lead the witnesses through the  
37 evidence until you have had the opportunity to confer  
38 with them, and until their statements are signed, and

1 other counsel, of course, that would be affected by  
2 their statements must have the opportunity.

3 MR SMITH: I could get part-way through, but an  
4 adjournment of their evidence is irresistible, so it  
5 might as well be done at once.

6 COMSR: Yes, there doesn't seem to be any  
7 alternative, unfortunate though it is in the  
8 circumstances.

9 MR SMITH: I suggest we perhaps just watch the  
10 videos, and then Mr Tilmouth will have the statements  
11 signed, and I can orchestrate the issue of them to  
12 counsel.

13 COMSR: Before the video commences, there is one  
14 issue that arises out of Friday afternoon's evidence of  
15 Dr Draper, when he was cross-examined concerning his  
16 private diary notes concerning his opinion of Dr Edmonds  
17 and Dr Warrell, and their level of professional  
18 expertise.

19 You may recall that I put a suppression order on the  
20 publication of the contents of the notes until those  
21 persons had been contacted. In case there is any  
22 confusion about the matter, and there may well be, I had  
23 intended, of course, that that cover any evidence given  
24 concerning the notes, and that evidence is given at  
25 pp.5,936 to 5,943.

26 I just wish to clarify that there is a suppression  
27 of that material until Dr Edmonds and Dr Warrell have  
28 indicated what, if anything, they wish to do. As yet,  
29 neither of those persons has been contacted. So that  
30 order will continue for the present. Are we ready to  
31 resume with the video?

32 MR MEYER: There are a couple of other mechanical  
33 matters. You were going to deal with the Wednesday  
34 afternoon blue transcript of Dr Fergie that had been  
35 suppressed. You remember Mr Abbott conducted the  
36 entirety of that section of his cross-examination with a  
37 closed court.

38 COMSR: That is right.

- 1 MS SIMPSON: That was fixed last Friday.
- 2 MR MEYER: I haven't caught up with that. I  
3 thought the situation was you were going to. The other  
4 matter I wish to raise is that, when looking at the  
5 exhibits, Mr Palyga and I couldn't remember whether the  
6 ABC interview of Lindy Warrell had been tendered. You  
7 recall that you made some remarks the following day  
8 about that interview.
- 9 MS SIMPSON: It is not an Exhibit.
- 10 MR MEYER: We will seek to tender that interview,  
11 if we need to take any steps in terms of proving it.
- 12 MR SMITH: We have a transcript of that, and the  
13 footage and that will be tendered. That is where Dr  
14 Warrell really gives her evidence to the 7.30 Report.
- 15 MR MEYER: The other one is the position with  
16 Posgate's evidence. That has been, in essence,  
17 suppressed, and there was going to be a notification to  
18 the other person involved as to whether that suppression  
19 order is going to remain. Perhaps you might care to  
20 consider that with counsel assisting, the suppression of  
21 the man's name.
- 22 COMSR: Is that Mr Longworth?
- 23 MR SMITH: Yes. He was contacted by Frances  
24 Anderson from the commission and given an opportunity to  
25 come and give evidence, and he declined.
- 26 MR MEYER: The use of the witness's name was  
27 suppressed and remains suppressed, as I understand it.
- 28 COMSR: Yes.
- 29 MR MEYER: It is the other gentleman's name that I  
30 was referring to.
- 31 COMSR: Yes. I have a number of other  
32 statements and matters that I propose to review, and see  
33 which of them can at this stage be released. A lot of  
34 them were suppressed out of what might be called a  
35 conservative view of the effect of the contents of the  
36 statements. I just cannot pick up where that is. In  
37 any event, you are seeking to have the name of the

1 person referred to in the evidence of Mr Posgate  
2 released from the suppression order?

3 MR MEYER: What I am doing is attempting to tidy up  
4 where I can think of suppression orders, et cetera.  
5 That was one where there was going to be notification,  
6 and we were going to look at it again.

7 COMSR: Yes, there are one or two matters of  
8 that nature that we are looking at now. But insofar as  
9 that matter is concerned, yes, I will lift the  
10 suppression order in respect of the name of Mr  
11 Longworth. I cannot refer to the page of the evidence  
12 at this stage. I will refer to it -

13 MR MEYER: We know the evidence concerned.

14 COMSR: Are there any other matters before we  
15 show the video?

16 MR TILMOUTH: Yes, I have a small matter. This Camp  
17 Coorong video involves the Trevorrow, George and Tom  
18 Trevorrow especially. I understand that it was prepared  
19 with the help of the museum when some of the elders were  
20 brought together to speak about early times and the  
21 hardships. One or two of them have since died.

22 Mr Tom Trevorrow is here at the moment. George  
23 Trevorrow has been transferred to Meningie Hospital. He  
24 is the one who has had the back operation. In my  
25 submission, it would be very useful indeed to put Mr Tom  
26 Trevorrow in the box now just to explain briefly the  
27 background as to how the video was prepared. Just  
28 showing it in a vacuum, in my submission, would not be  
29 as effective as allowing him just briefly to explain  
30 what the circumstances -

31 COMSR: I am not sure it is showing it in a  
32 vacuum, because, as I recall, Dr Clarke gave some  
33 evidence.

34 MR TILMOUTH: He gave a little I think. It would only  
35 be short, but I understand it would be very useful if Mr  
36 Tom Trevorrow could explain how the video was prepared,  
37 for what purposes it was prepared. I don't think that  
38 would take anyone by surprise.

- 1 MR SMITH: We could do that tomorrow.
- 2 MR TILMOUTH: As I said, I can't see any harm in it at  
3 all, with respect. He feels it would help the  
4 commission if he could just explain how the video came  
5 to be.
- 6 COMSR: I have looked at the video on two or  
7 three occasions. The explanation, I think, or some  
8 explanation, appears during the course of that.
- 9 MR TILMOUTH: Yes, but it doesn't identify all of the  
10 main characters and what their origins are.
- 11 COMSR: I will not argue about it. We will have  
12 the video now and we can cover that, Mr Tilmouth.
- 13 MR SMITH: This is the Lindsay Wilson video  
14 relating to building wurlies.
- 15 VIDEO PLAYED 9.55 A.M.
- 16 CONTINUED

## VIDEO CONCLUDES

MR SMITH: Before we adjourn, Mr Wardle, on behalf of his client Betty Fisher, has made efforts to secure the notebook, the handwritten notebook, and I tender perhaps this letter because the consent to produce that has been refused by Dr Kartinyeri. Perhaps I will tell you the contents of the letter quickly. Mr Wardle wrote to Doreen Kartinyeri and said:

'It has become apparent that Betty's credibility and that of the Ngarrindjeri women to whom she spoke is very much under challenge. Indeed, it is being suggested that Betty and others have concocted the notebook for the purposes of the Royal Commission and are afraid to produce it lest it be of recent origins and, therefore, not genuine. It is, therefore, absolutely vital that the notebook be returned to Betty, not only for the sake of her own reputation, but for the reputation of those women who have entrusted her with the information contained within the notebook. As you are the recognised historian of the Ngarrindjeri people, I, therefore, request your co-operation and assistance in recovering the notebook with a view to producing it to the Royal Commission on the condition that its examination be restricted to women only and that it then be available for release to any Federal inquiry on the same restricted basis. I, therefore, formally request that you sign at the foot of this letter at the place indicated to signify your consent to the return of the notebook. I'm sending a similar letter to Veronica Brodie. Yours faithfully. Doug Wardle.'

The note on the bottom reads:

'I, Doreen Kartinyeri, hereby do not consent to the return of the notebook to Betty Fisher and her solicitor.'

Signed D. Kartinyeri. Dated 3 November 1995.'

That should be tendered and I hand out copies to counsel.

EXHIBIT 265 Letter from Doug Wardle to Doreen Kartinyeri regarding return of notebook, tendered, by Mr Smith.  
Admitted.

MR SMITH: I ask you to adjourn the inquiry to enable me to have the statements of Henry Rankine, Alan Clarke and Tom Trevorrow signed and to enable me to confer with those gentlemen. I will then, forthwith upon the statements being signed, issue those to counsel at the bar table and I remind them again of their confidentiality undertakings. The programme will be that these three gentlemen will be called tomorrow with the hope that their evidence be completed tomorrow. Mr Tom Trevorrow -

MR ABBOTT: There may be certain difficulties from my point of view. I don't know what is in these statements and how many of my clients they touch on?

COMSR: If that is the case, counsel assisting has only come into possession of the statements this morning.

MR ABBOTT: This is not any criticism of counsel assisting, but it is a criticism of Mr Tilmouth and of his clients producing these statements at this time.

COMSR: The statements are not signed.

MR ABBOTT: It is difficult to know what status they have got.

COMSR: It's from a practical point of view we can't proceed today.

MR SMITH: I indicate from Mr Tom Trevorrow's sake that he will be given an opportunity tomorrow to further explain the video that we have seen, and that has been the object of showing the video this morning and that will be the object of showing it to him him and what he will give evidence about.

COMSR: I've seen the video on a number of occasions and I don't think he will be -

MR ABBOTT: I thought it was George Trevorrow we were looking at?



MR TILMOUTH: It is both of them.

MR SMITH: He is the main player. He did feature in the video. George Trevorrow is bed-ridden. The issue there is whether he is present to and you are willing to take his evidence.

COMSR: I am willing to.

MR SMITH: I suggest we adjourn and I will take care of all of these outstanding matters immediately; that we adjourn to 9.30 tomorrow. I ask counsel to wait so that I can hopefully have the statements signed and issued this morning.

ADJOURNED 10.48 A.M. TO TUESDAY 7 NOVEMBER 1995 AT 9.30 A.M.

1 COMSR STEVENS

2

3 HINDMARSH ISLAND BRIDGE ROYAL COMMISSION

4

5 TUESDAY, 7 NOVEMBER 1995

6

7 RESUMING 9.37 A.M.

8 MR SMITH: The program for today is evidence of

9 Henry Rankine, Tom Trevorrow and, in the course of the

10 day, there will be an argument - well, there may not be

11 an argument, but we'll address you on the question of

12 accepting fully into evidence the Mouth House letter and

13 the museum letter; the letter to Mr Tickner of 9 May and

14 the letter to Mr Tickner from the museum of 12 May.

15 However, I propose perhaps to move straight to the

16 evidence of Henry Rankine.

17 MR SMITH CALLS

18 HENRY JAMES RANKINE OAM SWORN

19 EXAMINATION BY MR SMITH

20 Q. I think you were born at Raukkan or Point McLeay

21 Hospital on 25 November 1940, is that correct.

22 A. That's correct, yes.

23 Q. You've lived on Raukkan for most of your life, is that

24 so.

25 A. Yes.

26 Q. I think also that you have been a member of the Point

27 McLeay Community Council from the early years in 1962,

28 and you are currently employed as the Coordinator of the

29 Point McLeay Community Council, is that right.

30 A. That's right, yes.

31 Q. I think you are also a member of a number of bodies and

32 committees such as the Coorong Consultative Committee

33 and the Lower Murray Aboriginal Heritage Committee, is

34 that right.

35 A. The Ngarrindjeri Heritage Committee.

36 Q. Is it, okay. It's now called the Ngarrindjeri Heritage

37 Committee, is it.

38 A. Yes.

- 1 Q. It was formerly the Lower Murray Aboriginal Heritage  
2 Committee.
- 3 A. That's correct, yes.
- 4 Q. I think in connection with this matter, or this enquiry,  
5 you have provided the Commission with a statement  
6 covering some events that you recall relating to the  
7 Hindmarsh Island Bridge, is that so.
- 8 A. Yes, that's correct.
- 9 Q. Looking at this statement produced to you, do you  
10 recognise that as a statement, with some alterations  
11 that you've made, but it's the statement you've signed  
12 for proffering to this enquiry, is that right.
- 13 A. That's correct, yes.
- 14 EXHIBIT 266 Statement of Henry Rankine tendered by  
15 Mr Smith. Admitted.
- 16 Q. Amongst other things, as a member of the Point McLeay  
17 Community Council you have, over the years, since the  
18 80s at least, been consulted or at least been spoken to  
19 in relation to a number of developments that have been  
20 proposed for the wider area of the Ngarrindjeri country,  
21 is that right.
- 22 A. Yes.
- 23 Q. Could you tell the Commissioner when it was that you  
24 first became a member of the Lower Murray Aboriginal  
25 Heritage Committee, as it was then called.
- 26 A. I forget the date.
- 27 Q. Would it have been in the 80s.
- 28 A. It would have been in the 80s.
- 29 Q. Perhaps the early 80s.
- 30 A. Yes.
- 31 Q. I'm sorry, I've misled you there, I think. The  
32 committee was set up under the Aboriginal Heritage Act  
33 1988.
- 34 A. Yes, sorry, that would be better, yes.
- 35 Q. So it would have to be around about 1988.
- 36 A. Yes.
- 37 Q. One of the areas of Ngarrindjeri land that was the  
38 subject of some development proposals was Granite

- 1 Island, I think, is that right.
- 2 A. Yes.
- 3 Q. Were you consulted by, for instance, Dr Neale Draper  
4 about your concerns in relation to Granite Island. In  
5 other words, were you asked to go with Neale Draper to  
6 look at Granite Island, and did you talk to him about  
7 your concerns.
- 8 A. I talked to Neale Draper about my concerns, but I didn't  
9 visit the island with Neale Draper.
- 10 Q. Who did you visit the island with, then.
- 11 A. I visited the island with this other chap that started  
12 discussing this matter on the development of Granite  
13 Island.
- 14 COMSR
- 15 Q. Was that the developer that you're talking about.
- 16 A. Yes, the first person, and I just forget his name now.
- 17 XN
- 18 Q. Were you concerned with Granite Island in the sense of  
19 visiting it with people at about the same time as the  
20 Hindmarsh Island Bridge problem was arising. Was it  
21 happening together, Granite Island and Hindmarsh Island.
- 22 A. I think Hindmarsh Island happened first.
- 23 Q. In late 1988 the archaeologist, Vanessa Edmonds, was  
24 engaged to do an archaeological survey of Hindmarsh  
25 Island. You know that now, don't you.
- 26 A. Yes, I know that now, yes.
- 27 Q. Is it the case that you were sent Vanessa Edmonds' first  
28 report, her 1988 report that she did on her work on  
29 Hindmarsh Island.
- 30 A. I think that was sent to the Point McLeay Community  
31 Council, not me personally.
- 32 Q. Do you see there, looking at document number 9 of  
33 Exhibit 197, that that's a letter to you from a Mr Ware,  
34 the Manager of the Aboriginal Heritage Branch of the  
35 Department of Environment and Planning.
- 36 A. Yes.
- 37 Q. Mr Ware says to you there he's sent to you two  
38 development applications for Hindmarsh Island, and says,

## H.J. RANKINE XN (MR SMITH)

- 1 as I understand that, 'The island lies within the area  
2 of concern of Ngarrindjeri and Ramindjeri descendants,  
3 and it seems appropriate to seek your opinion'. He then  
4 goes on to say in the letter, and this is a letter to  
5 you of 2 February 1989, 'Some archaeology sites have  
6 been recorded on the island, and these are listed in a  
7 report by Vanessa Edmonds, 1988, a copy of which was  
8 sent to you last year'. Looking at Exhibit 13, that's a  
9 copy of Vanessa Edmonds' report of September 1988. Do  
10 you -
- 11 A. I don't recall seeing this one here.
- 12 Q. Do you accept it was sent to you.
- 13 A. This letter, yes.
- 14 Q. No, the report of Vanessa Edmonds.
- 15 A. No. It could have been sent to the council, but I  
16 didn't see it.
- 17 Q. Who was on the council say back in 1988, late 1988. You  
18 were on the council, were you.
- 19 A. I was there.
- 20 Q. Why wouldn't you have seen the report if it was sent to  
21 the council.
- 22 A. Well, I didn't see that report there.
- 23 Q. The letter says to you, I'm going back now to Exhibit  
24 197, letter number 9, 'I would be grateful if you would  
25 relay your comments, either in writing or by phoning  
26 Neale Draper, before mid February so that we can pass  
27 your comments on to the Planning Commission when they  
28 meet to discuss the proposals'. Did you or the council  
29 reply to that request.
- 30 A. I don't think. I can't remember.
- 31 Q. Now in 1988 you were invited to join the Coorong  
32 Consultative Committee, is that right, 1988.
- 33 A. Like I said earlier, I can't remember the exact date.
- 34 Q. But you remember, I take it, going to the meetings of  
35 the Coorong Consultative Committee.
- 36 A. Yes.
- 37 Q. You were a member, I think, for some years, along with  
38 George Trevorrow from Camp Coorong, is that right.

1 A. Yes.

2 Q. I think you still are a member of the Coorong  
3 Consultative Committee, are you not.

4 A. Yes.

5 Q. Is it the case that the Coorong Consultative Committee  
6 is informed about various development applications that  
7 are occurring around the Coorong area, that's what the  
8 Coorong Consultative Committee does, amongst other  
9 things.

10 A. Yes, amongst other things, yes.

11 Q. You are on the committee, do you agree, as a member  
12 representing Raukkan and, in effect, representing the  
13 Ngarrindjeri people.

14 A. Representing Ngarrindjeri people.

15 Q. Can I ask you if you remember that in March of 1989  
16 there were two development proposals placed before the  
17 Coorong Consultative Committee, one by the Chapmans and  
18 the other one by Mr Jolly. You mightn't remember the  
19 exact date, but do you remember, when you were on the  
20 committee, that those two developments, or documents  
21 relating to them, were lodged before the committee so  
22 that the Coorong Consultative Committee knew that these  
23 two developments were proposed for the island.

24 A. I don't think.

25 Q. Now I produce to you Exhibit 184 which are minutes of  
26 the Coorong and District Consultative Committee, 17th  
27 Meeting, 13 March 1989. I think, in fairness to you,  
28 you're not recorded as being present at that particular  
29 meeting.

30 A. I'm just trying to think if I was there or not.

31 Q. You don't remember if -

32 A. I don't remember being there.

33 Q. But do you remember that you receive minutes when you're  
34 not at the meetings. That's correct, isn't it.

35 A. Yes, I receive minutes and I get them and I put them one  
36 side.

37 Q. You see there, item 5.3 on the agenda at the committee  
38 was 'Hindmarsh Island Developments', and some details

- 1 are provided about Mr Jolly's development and the  
2 Chapman development. Do you remember, even though you  
3 weren't at the meeting, seeing details of minutes of  
4 those two proposals.
- 5 A. No, I can't remember.
- 6 Q. Can I take you to a meeting with the Chapmans. I think  
7 you have a memory, do you not, of meeting with the  
8 Chapmans in a park at Murray Bridge.
- 9 A. Not Wendy, Tom Chapman was there.
- 10 Q. Wendy.
- 11 A. It was Nadia.
- 12 Q. Is it the case that you met with the Chapmans in a park  
13 at Murray Bridge, is that right.
- 14 A. Excuse me, I met with Tom Chapman and Nadia McLaren, not  
15 with Wendy.
- 16 Q. That was in the park at Murray Bridge.
- 17 A. Yes.
- 18 Q. Would you agree that they say it took place on 2  
19 September 1989. Would you agree with that.
- 20 A. Yes, I think that right.
- 21 Q. Did that meeting take place for about an hour.
- 22 A. Yes, I think it was about an hour, 45 minutes, because I  
23 was heading to a football match on that day.
- 24 Q. I take it that you'd received some phone call about that  
25 before the meeting in the park, did you. In other words  
26 some arrangements had to be made.
- 27 A. Yes.
- 28 Q. What was discussed in the park between you and Nadia  
29 McLaren and Tom Chapman.
- 30 A. To my knowledge we discussed the development, the marina  
31 development.
- 32 CONTINUED

- 1 Q. Isn't it the case that you discussed the nature of the  
2 marina extensions and the bridge proposal.
- 3 A. The development, but I don't remember discussing bridge  
4 proposal.
- 5 Q. Could the bridge proposal have been discussed with you.
- 6 A. Not to my knowledge.
- 7 Q. Can I take you back then to the Coorong Consultative  
8 Committee again. Looking at Exhibit 184, that is a  
9 minute of a meeting of the committee of 3 July 1989.  
10 Again, I notice that you were not present as recorded on  
11 the minutes, but you accept you were sent the minutes.  
12 Do you accept that.
- 13 A. I was sent the minutes, yes.
- 14 Q. You see the minutes there, p.7, talks about the  
15 Hindmarsh Island developments. On p.7 `There are two  
16 plans proposed at the present. One has a bridge option,  
17 one does not'. You see that.
- 18 A. Yes.
- 19 Q. So you received a copy of that minute.
- 20 A. I probably received a copy of the minutes -
- 21 Q. With some notice that there was a bridge in one plan, in  
22 one of the options.
- 23 A. Like I said just now, when I got my minutes I put them  
24 to one side and left them. I never read them.
- 25 Q. Why don't you read them.
- 26 A. I got a lot of other papers to read too, and a lot of  
27 the minutes I don't read because I am not a person who  
28 reads a lot.
- 29 Q. I am suggesting to you that, in the light of that, would  
30 you agree that it was likely then that Tom Chapman and  
31 Nadia McLaren discussed with you, not only the Goolwa  
32 marina extension, but the bridge in the park at Murray  
33 Bridge on 2 September 1989.
- 34 A. If they discussed it with me then I didn't take notice  
35 of it, but the thing that we was talking about there was  
36 the development expansion, or the development - the



- 1 marina development and my heritage, skeletal remains and  
2 all that. That's what we discussed.
- 3 Q. You received a letter, I think, from the Chapmans after  
4 that. Looking at Exhibit 178, document 16 is a letter  
5 of 4 September. You see there that's a letter to you  
6 from Tom Chapman, dated 4 September 1989, is it not.
- 7 A. Yes.
- 8 Q. Tom Chapman is there enclosing, for your information, a  
9 copy of the Vanessa Edmonds report of 1988. Do you  
10 accept that happened. Namely, that you were sent by Tom  
11 Chapman a copy of the Vanessa Edmonds archaeological  
12 report of 1988.
- 13 A. I don't know if I received that or not now.
- 14 Q. Do you accept that you received it, or you've just got  
15 absolutely no memory of it.
- 16 A. No memory of it.
- 17 Q. I would suggest to you that that's the second copy of  
18 that report you'd received. You'd received one copy, I  
19 suggest, from the Department of Environment and  
20 Planning, the Aboriginal Heritage Branch, and this is  
21 the second time you were sent a copy of it. Do you  
22 accept that.
- 23 A. No.
- 24 Q. It could have happened, but you just -
- 25 A. It could have happened, but it -
- 26 Q. You see there Mr Chapman is making arrangements to meet  
27 with you. He is asking 'Wendy and Nadia would like to  
28 meet with you at Point McLeay on Thursday, the week of  
29 the 14th'. Do you see there.
- 30 A. Yes.
- 31 Q. That was acceptable to you and a meeting did take place,  
32 didn't it.
- 33 A. Yes.
- 34 Q. So Wendy Chapman and Nadia McLaren came to your house at  
35 Raukkan and discussed, did they not, a draft  
36 environmental impact statement and the bridge  
37 development. Isn't that the case.
- 38 A. Excuse me, you said discussed it?

- 1 Q. Yes. Nadia McLaren and Wendy Chapman came to your house  
2 in Raukkan, didn't they.
- 3 A. Yes.
- 4 Q. And you agree that that took place on 14 September 1989.  
5 You would accept that, would you.
- 6 A. I would accept that they came there, yes.
- 7 Q. What was discussed there then, as you can remember it.
- 8 A. What did I - just the marina.
- 9 Q. And the bridge was discussed, was it.
- 10 A. I don't remember discussing the bridge.
- 11 Q. Was your wife present.
- 12 A. Yes.
- 13 Q. Nadia McLaren was asking you for information, wasn't  
14 she, about the Aboriginal significance of the island and  
15 that sort of thing.
- 16 A. Yes.
- 17 Q. Did she disclose to you that she was asking those  
18 questions because she was going to put it in a formal  
19 document, namely, an environmental impact statement.  
20 Did you understand that to be the case.
- 21 A. That's what I understood, yes.
- 22 Q. So it was you giving these two people, Wendy Chapman and  
23 Nadia McLaren, some information about the importance of  
24 the area to Aboriginal people, is that right.
- 25 A. Yes.
- 26 Q. Can I suggest to you that a bridge, as part of the  
27 development, was discussed on that occasion.
- 28 A. No. They could have said it, but I forgot.
- 29 Q. How long did that meeting go for.
- 30 A. About an hour.
- 31 Q. I think, after the meeting, a few days later - I should  
32 say in the next month, you received a letter from Wendy  
33 Chapman, didn't you, and I will show it to you now,  
34 Exhibit 167. First of all, you are looking at Exhibit  
35 167, which is a letter from Wendy Chapman to you dated 9  
36 November 1989, is it not.
- 37 A. Yes.

- 1 Q. And she thanks you for your hospitality on the 14th,  
2 doesn't she.
- 3 A. Yes.
- 4 Q. And she says in paragraph 5 `We have enclosed a copy of  
5 our draft environmental impact statement for you to look  
6 at. We were very grateful for your advice, which has  
7 been incorporated into the document, as well as your  
8 assurance that there is no problem with our development  
9 regarding Aboriginal heritage and sites. Such assurance  
10 will be good for us to display when other people try to  
11 make mischief.' And can I now ask you to look at  
12 Exhibit 193, which is this document. I suggest to you  
13 that you were sent a copy, enclosed with that letter, of  
14 this document, which is called a draft environmental  
15 impact statement, were you not.
- 16 A. I don't remember getting that one.
- 17 Q. Have a look inside it and just be sure that you don't  
18 remember. There are maps and pictures. It is quite a  
19 considerable document, isn't it.
- 20 A. It is.
- 21 Q. It features prominently a bridge, doesn't it.
- 22 A. Yes, it does.
- 23 Q. And even the front page is headed, is it not, `Hindmarsh  
24 Island Bridge marina extensions and waterfront  
25 development'. I ask you, do you accept that you  
26 received that letter from Wendy Chapman of 9 November  
27 1989, Exhibit 167.
- 28 A. Yes.
- 29 Q. Do you accept that you received, enclosed in that  
30 letter, the draft environmental impact statement.
- 31 A. I could have received it.
- 32 Q. You could have.
- 33 A. Yes, but I don't remember getting that (INDICATES  
34 EXHIBIT 193). It could have come to Raukkan.  
35 COMSR
- 36 Q. How many such development proposals would you receive in  
37 a year.
- 38 A. Not many.

- 1 Q. What about the draft environmental impact statements,  
2 how frequently do you receive those.
- 3 A. It seems to me that this is - this one here is the -  
4 there were only two, and I didn't read them. Like I  
5 said, I'm not a great reader.
- 6 XN
- 7 Q. There is a couple of rather graphic pictures though,  
8 aren't there. A view of the bridge from Hindmarsh  
9 Island, ferry reserve, that's p.70 of the draft EIS.  
10 P.71 is the view of the bridge from the Goolwa caravan  
11 park and there are two more pictures. So, in fact,  
12 there are five pictures in all which graphically  
13 illustrate the bridge, don't they.
- 14 A. They do, yes.
- 15 Q. You say you can't remember that.
- 16 A. No, I don't. I can't remember that.
- 17 Q. I think there was a further enclosure in that letter,  
18 was there not. It was a letter that the Chapmans wanted  
19 you to sign to send back to them. It is a letter dated  
20 14 November, and it is addressed from you to Tom  
21 Chapman, acknowledging that you were consulted, but you  
22 didn't send that, did you.
- 23 A. No.
- 24 Q. In December 1989, the evidence before this inquiry from  
25 both Tom Chapman and Vanessa Edmonds concerns - told  
26 the inquiry that Aboriginal skeletal remains were  
27 discovered near an unused and landscaped area of the  
28 marina at Goolwa, and you were contacted about that. Do  
29 you have a memory of that, that there was a discovery of  
30 some skeletal remains, and you and your wife Jean were  
31 contacted about it.
- 32 A. Was that in the marina?
- 33 Q. In an area near a landscaped area of the marina.
- 34 MR MEYER: Adjacent to an area where the water is,  
35 I think.
- 36 A. Yes, that's what I mean. If that's what you are talking  
37 about then -

- 1 XN  
2 Q. You agree with that.  
3 A. Yes.  
4 Q. I will add to that question: it was adjacent to where  
5 the water enters the marina. Does that ring a bell with  
6 you then.  
7 A. Yes. I'm sure they told me about the one skeletal thing  
8 there.  
9 Q. Who did you speak to about that. Who do you remember  
10 speaking to about the discovery.  
11 A. I don't remember.  
12 Q. You don't remember, but you have got some vague memory  
13 of having been spoken to about it.  
14 A. When you are talking about skeletal remains, then you  
15 are talking about my people.  
16 Q. In January 1990, the anthropologist, Mr Rod Lucas, was  
17 doing work on the island, was he not.  
18 A. Yes, I think so, yes.  
19 Q. And you had some contact with him, did you not. You  
20 spoke with Mr Lucas, did you not.  
21 A. I could have.  
22 Q. You could have.  
23 A. Yes.  
24 Q. What do you remember speaking to him about.  
25 A. I don't remember what I spoke to him about.  
26 Q. You spoke to him about various sites, did you not.  
27 A. Not to Rod - I don't think to Rod Lucas. I don't know,  
28 because there was Neale Draper, Rod Lucas, Vanessa  
29 Edmonds, they all had their finger in the pie there.  
30 Q. I will just ask you to throw your memory back to early  
31 1990. Do you remember having some conversations about  
32 the island and its significance with the anthropologist,  
33 Rod Lucas.  
34 A. I don't remember having discussions with him, but I  
35 think the man -  
36 Q. Looking at Exhibit 15, the report of Rod Lucas,  
37 para.5.2.2, Mr Lucas sets out there `Henry Rankine,  
38 Chairman of the Raukkan Community Council expressed

6035

RF 63B

H.J. RANKINE XN (MR SMITH)

1 profound concern over any disturbance to middens or  
2 burial sites on Hindmarsh Island. His advice was "Don't  
3 touch them. What can we do short of saying no  
4 development at all? Perhaps we could have a contract  
5 with the developer over burial sites".'  
6 CONTINUED

- 1 And Mr Lucas has got a date there, 25 January 1990,  
2 indicating that that is when he spoke to you. Do you  
3 agree with that.
- 4 A. Now I see it I do agree with that, yes.
- 5 Q. But do you agree that you must have had therefore some  
6 contact.
- 7 A. Yes.
- 8 Q. With Rod Lucas, is that so.
- 9 A. Yes.
- 10 Q. Isn't it the case that at around about this time, in  
11 early January 1990, Vanessa Edmonds the archaeologist  
12 was working on the island again, is that the case. (NOT  
13 ANSWERED)
- 14 Q. Do you agree that Vanessa Edmonds the archaeologist came  
15 back to the island and did some work and had some  
16 contact with you over it. (NOT ANSWERED)
- 17 Q. Or do you have no memory of it.
- 18 A. I can't remember talking to her, because I don't get on  
19 good with her.
- 20 Q. Looking at Exhibit 14, now before you, the Vanessa  
21 Edmonds report, which I suggest was sent to you in  
22 January of 1990. (NOT ANSWERED)
- 23 Q. Would you agree that that was the case.
- 24 A. I don't remember getting this one here.
- 25 Q. Can I tell you that Vanessa Edmonds told us in evidence  
26 that she sent a copy of her report to Neale Draper at  
27 the Aboriginal Heritage Branch, another to Point McLeay  
28 Community Council and one to George Trevorrow at the  
29 Ngarrindjeri Lands and Progress Association at Camp  
30 Coorong. So, would you accept that you, at the Point  
31 McLeay Community Council, received a copy of Vanessa  
32 Edmonds's report in January 1990.
- 33 A. She could have sent it there.
- 34 Q. You will see that half the report is devoted to  
35 consideration of the bridge development, isn't it. (NOT  
36 ANSWERED)
- 37 Q. See, have a look at the p.16, for instance, of the  
38 report, there is a diagram including a proposed

- 1 Hindmarsh Island bridge and there is frequent mentions  
2 of the bridge throughout the rear portion of the report,  
3 isn't there. (NOT ANSWERED)
- 4 Q. `Proposed Bridge S.2', p.15 onward, do you see that.  
5 (NOT ANSWERED)
- 6 Q. So you have had a look at that. A goodly portion of  
7 that report, Exhibit 14, is devoted to a consideration  
8 of the archaeological implication of the Hindmarsh  
9 Island bridge, isn't it.
- 10 A. Yes.
- 11 Q. Do you accept that that report was sent to the Raukkan  
12 Council in about January of 1990.
- 13 A. I can't remember that one.
- 14 Q. In January 1990 or thereabouts, who was on the council.
- 15 A. I can't remember who was on the council too. I know I  
16 was there, but council changes around.
- 17 Q. Who is on the council now.
- 18 A. There is myself, Lionel Jackson, Grace Sumner, Keith  
19 Weetra, Lawson Rigney.
- 20 Q. Who was that.
- 21 A. Lawson Rigney.
- 22 Q. Grace Sumner you mentioned before.
- 23 A. Yes.
- 24 Q. How long has she been on the council.
- 25 A. About four years, I think, maybe less. Grant Rigney.
- 26 Q. Your wife.
- 27 A. No. Sheila Goldsmith.
- 28 Q. How long has Sheila been on the council.
- 29 A. She's been there quite a while.
- 30 Q. How many years.
- 31 A. She is not far behind me.
- 32 Q. Sheila Goldsmith, that is.
- 33 A. Yes.
- 34 Q. Who else. (NOT ANSWERED)
- 35 Q. Sheila Goldsmith is one of the Elder women down at Point  
36 McLeay, isn't she.
- 37 A. Yes.
- 38 Q. And Grace Sumner is one of the Elder women down at Point



- 1 McLeay.  
2 A. Yes.  
3 Q. Can you tell us anybody else who is on the council.  
4 A. I can't think of any.  
5 Q. Can you remember any discussions on the council  
6 expressing concern, at that time, in 1990, about a  
7 bridge for Hindmarsh Island.  
8 A. I don't think they heard about that bridge, at that  
9 stage, at that period.  
10 Q. You don't think they heard about the bridge.  
11 A. No, not in 1990.  
12 Q. If they got that report in January 1990, it is certainly  
13 spelled out there, isn't it.  
14 A. Yes, but they were not discussing that.  
15 Q. In 1990 you were going to the meetings of the Coorong  
16 Consultative Committee, weren't you, from time to time.  
17 A. Yes.  
18 Q. And you were going there with George Trevorrow, from  
19 time to time. (NOT ANSWERED)  
20 Q. He was there too, wasn't he, from time to time.  
21 A. Yes, I think maybe he went to the meeting when I didn't  
22 go.  
23 Q. He was representing, in a sense, the Ngarrindjeri people  
24 too, wasn't he, George Trevorrow.  
25 A. Yes.  
26 Q. And occasionally his brother, Tom, would go in his place  
27 to the meetings, is that right.  
28 A. I couldn't say that.  
29 Q. Looking at Exhibit 184, now before you, which are the  
30 minutes of the Coorong Consultative Committee. And I am  
31 referring you to a meeting of 19 March 1990, so there we  
32 have it.  
33 A. Yes.  
34 Q. It is the minutes of the fourth annual general meeting  
35 and the 21st ordinary meeting of the consultative  
36 committee held on 19 March. You are present, Henry  
37 Rankine.  
38 A. Yes, and George.

- 1 Q. And George Trevorrow is present. And I take you to item  
2 5.3 `Hindmarsh Island Development. Mike Jolly advised  
3 that there will be an approval for the marina and bridge  
4 to Hindmarsh Island by the end of the month. Finance is  
5 yet to be resolved. Approvals for the project will be  
6 given by Cabinet. Environmental impact studies have  
7 been prepared.' Do you remember that.
- 8 A. I don't remember it, but I see it there now.
- 9 Q. That is as early as March of 1990.
- 10 A. Yes.
- 11 Q. Did you voice any objection to that.
- 12 A. I probably did.
- 13 Q. It is not mentioned there, is it.
- 14 A. No, but it was environmental.
- 15 Q. Isn't the fact of the matter that you didn't voice any  
16 objection on behalf of the Ngarrindjeri people to this  
17 bridge proposal until 1993. (NOT ANSWERED)
- 18 Q. Isn't that the case.
- 19 A. 1993?
- 20 Q. Yes, do you understand my question.
- 21 A. I think I do.
- 22 Q. I am suggesting to you that you knew, you well knew that  
23 there was a bridge proposal for Hindmarsh Island and you  
24 didn't voice any objection to it until 1993. (NOT  
25 ANSWERED)
- 26 Q. What do you say about that.
- 27 A. I would say that I didn't remember that, okay.
- 28 COMSR
- 29 Q. I am not quite clear what you say you don't remember.  
30 You don't remember that you first voiced objection in  
31 1993, is that what you are saying.
- 32 A. Yes, in 1990. And that gentleman said I voiced my  
33 opinion in 1993.
- 34 Q. Yes, your opinion in relation to the bridge, he is  
35 talking about.
- 36 A. I probably did, yes, voiced my opinion in 1993.
- 37 XN
- 38 Q. Looking at a copy of your statement, now before you,

- 1 Exhibit 266, do you see at the top of p.9 of your  
2 statement you say 'The first thing I can remember about  
3 the Hindmarsh Island bridge was during the discussion  
4 with the heritage committee at Camp Coorong and that  
5 must have been in September or October of 1993.'
- 6 A. Yes.
- 7 Q. That couldn't be right, could it.
- 8 A. Sorry?
- 9 Q. That couldn't be right, that that is the first thing you  
10 can remember about the Hindmarsh Island bridge.
- 11 A. Not according to that there (INDICATES).
- 12 Q. You accept that you knew about the Hindmarsh Island  
13 bridge from about 1989 onward, didn't you.
- 14 A. From 1989?
- 15 Q. Yes.
- 16 A. No, I can't remember talking about the bridge back that  
17 way.
- 18 Q. At least you can go back as far as that minute, can't  
19 you.
- 20 A. Yes.
- 21 Q. In March of 1990 you learned that approval was going to  
22 be given for the bridge development in about a months  
23 time, didn't you.
- 24 A. Yes, that's what it says there.
- 25 Q. Isn't it the case that, up until September or October  
26 1993, your main concerns in relation to the island were  
27 burial sites and middens, is that the case.
- 28 A. Yes, correct.
- 29 Q. In October of 1993, you went to a meeting at the  
30 Centenary Hall at Goolwa, a public meeting, did you not.
- 31 A. That's correct, yes.
- 32 Q. Looking at what we have been calling flyers, now before  
33 you, that is a notice of a public meeting 'Too late to  
34 stop Hindmarsh Island bridge? 7.30 to 9.30 p.m. Friday  
35 October the 8th 1993.' Do you see there.
- 36 A. Yes.
- 37 Q. 'To be held at the Centenary Hall Goolwa. Speakers will  
38 include, amongst other people, a representative of the

- 1 Lower Murray Aboriginal Heritage Committee.' Okay.  
2 A. Yes.  
3 Q. You attended that meeting with George Trevorrow, did you  
4 not.  
5 A. I did, yes.  
6 Q. Is it the case that you realised that the point of the  
7 meeting was to oppose, as it says up the top of the  
8 flyer, the building or the construction of the Hindmarsh  
9 Island bridge. You realised that's what the meeting was  
10 about.  
11 A. Yes.  
12 Q. You spoke at that meeting, didn't you.  
13 A. Yes, I was asked, yes.  
14 Q. Do you remember being asked a question from the floor by  
15 Mr Tony Brooks. (NOT ANSWERED)  
16 Q. Do you know Tony Brooks.  
17 A. I could have met him.  
18 Q. The question he asked was prefaced by a remark by him 'I  
19 have been in a party touring the heritage area with  
20 Henry Rankine.' So, as a prelude to this meeting, did  
21 you go on a tour of the island or the areas around the  
22 bridge. (NOT ANSWERED)  
23 Q. Did you go on a bit of a walk around the place  
24 before this meeting with a few people.  
25 A. I think we went across the ferry around the island.  
26 CONTINUED

- 1 Q. Granite Island did you say.  
2 MR MEYER: No, 'We went across the ferry and around  
3 the island'.  
4 XN  
5 Q. You went across, and did you go to the lakes shore with  
6 people, with some people.  
7 A. You got me now. When you say 'lake shore', what do you  
8 mean?  
9 Q. The shore I'm asking you. I mean, I didn't go with you.  
10 A. No.  
11 Q. Did you go to the shore of any of the lakes with a  
12 touring party as a prelude; that is, before this public  
13 meeting on 8 October 1993.  
14 A. I only went across the ferry, through Hindmarsh Island,  
15 on Hindmarsh Island down towards the mouth, then turned  
16 around and we come back and crossed over.  
17 Q. Was that in company with some conservation people that  
18 attended the meeting on 8 October with you.  
19 A. When you say 'conservation people'?  
20 Q. Who went with you, can you tell us.  
21 A. There were a few people. I can't remember, all of them.  
22 Q. White people.  
23 A. Yes.  
24 Q. The man who asked you this question, Mr Tony Brooks.  
25 A. I wouldn't have a clue if he went there too.  
26 Q. He stood up and asked you a question, did he not, about  
27 whether there were any sites of significance in the area  
28 of the bridge corridor, or words to that effect.  
29 A. He could have asked that. I don't remember him asking  
30 that.  
31 Q. Do you remember what your answer was to that question.  
32 A. No, I don't.  
33 Q. It's been suggested in evidence by, amongst other  
34 people, Mr Jolly that you said words to the effect that  
35 you didn't know of any, but you could probably find  
36 some.  
37 A. I haven't been on the, over that side of the island,  
38 Hindmarsh Island, walking around looking for anything.

- 1 Q. Did you say words to that effect at this public meeting.  
2 A. I could have.  
3 Q. At that stage, I take it that you were not aware of any  
4 sites of significance in the area of the bridge where  
5 the bridge landed on the island, or back over here at  
6 the Goolwa foreshore.  
7 A. No. The Goolwa foreshore, yes. On Hindmarsh Island,  
8 no.  
9 Q. Just pausing for a minute. In October 1993, you  
10 wouldn't say, or would you, that you had not been  
11 consulted - perhaps that is a double negative and I'll  
12 start that question again.  
13 A. Yes.  
14 Q. Do you claim as of October 1993 that you hadn't been  
15 consulted about the construction of the bridge, the  
16 Hindmarsh Island Bridge. Do you say you hadn't been  
17 consulted about the bridge.  
18 A. I don't know.  
19 Q. You wouldn't say that, would you, because you had plenty  
20 of notices, didn't you, that there was a bridge  
21 proposed; isn't that the case.  
22 A. Yes.  
23 Q. And you had numerous notices, I suggest, from 1989  
24 onward about the construction of the bridge, didn't you.  
25 A. From 1989?  
26 Q. 1989 onwards. Conversations with the Chapmans in the  
27 park, the draft Environmental Impact Statement.  
28 A. I -  
29 Q. The report of Vanessa Edmonds.  
30 A. I didn't read the draft environmental statement.  
31 Q. And I suggest to you the report, the second report of  
32 Vanessa Edmonds which the council must have received, I  
33 suggest - and then the Coorong Consultative Committee,  
34 you agree you had plenty of notice of the bridge by  
35 October 1993, do you.  
36 A. I've - yes 1993, yes.  
37 Q. On what basis in October 1993 when you attended this  
38 public meeting on the 8th were you opposing the bridge.

- 1 Why were you opposing the bridge.
- 2 A. I was opposing the bridge because it was going - this  
3 was to be built and went across Aboriginal site on the  
4 Goolwa side. This I do know and I took great faith in  
5 Mr Dean Brown. Shouldn't do that, hey.
- 6 Q. You opposed the bridge because it was going to land on  
7 the island side on some Aboriginal sites.
- 8 A. Yes.
- 9 Q. Is that the reason.
- 10 A. No, not on the island side, on the mainland.
- 11 Q. On the mainland side.
- 12 A. Yes, because, like I said just a minute ago, I didn't go  
13 on the island side.
- 14 Q. When did you first learn that on the mainland side the  
15 bridge was going to be constructed on a special site;  
16 when did you find out about that.
- 17 A. There was another lot of development people that asked  
18 me to check that area out.
- 19 Q. Was that the development, what has been called the Carmo  
20 Development on the wharf area.
- 21 A. Yes.
- 22 Q. So that's further south, isn't it; that is, it's south  
23 of where the bridge is going to land. The wharf area is  
24 down here, south. (INDICATING ON MAP).
- 25 A. Yes, but I walked all of that. It's no good walking in  
26 one spot.
- 27 Q. Wasn't that development proposed in 1992. If you turn  
28 to p.7 of your statement, see there at the top of p.7.
- 29 A. Yes.
- 30 Q. You see there you mention: `I remember that in about  
31 1992, I went and inspected a wharf at Goolwa for a  
32 marina and motel development that was to go on the  
33 wharf'. See that.
- 34 A. Yes, I see that.
- 35 Q. It cannot, you must have discovered this site before  
36 then, mustn't you. We're talking about the meeting in  
37 October 1993 - I'm sorry I withdraw that. In 1992, you  
38 inspected this Goolwa wharf site and found a site, did

1 you.

2 A. Yes.

3 Q. When do you say that you first learnt that the bridge  
4 was going to go on this special site that you discovered  
5 in connection with the Carmo Development.

6 A. No, it wasn't in connection with the Carmo Development,  
7 it's a different thing.

8 Q. You see, the bridge site doesn't land on that area at  
9 all, does it, the Carmo wharf area.

10 A. No. Like I explained just a minute ago, when I looked  
11 for something, I go further, right, but you can't just  
12 inspect one spot.

13 Q. Well, if you discovered then - so what do you say, that  
14 in 1992, you discovered that this wharf site extended up  
15 to where the bridge was going to land, did you.

16 A. Yes. I went right along there.

17 Q. Why didn't you voice an objection in 1992 then to the  
18 bridge.

19 A. Did we have the power to at that stage, voice our  
20 opinion?

21 COMSR: This is in 1992.

22 XN

23 Q. 1992. You say the power stems from the Aboriginal  
24 Heritage Act 1988.

25 A. Yes.

26 Q. You had the power then, didn't you, in 1992. My  
27 question is: Why did you not voice an objection to the  
28 bridge in 1992 when you found the site connected with  
29 the wharf development.

30 A. '92?

31 Q. Yes.

32 A. Probably forgot about the bridge coming across there.

33 Q. Really you didn't really have any objection to the  
34 bridge at that stage, did you, in 1992.

35 A. Then? Can't remember, so I don't want to answer the  
36 question.

37 MR SMITH: I want to play five minutes of an audio  
38 tape of the proceedings at the public meeting on 8



6046

CJ 63D

H.J. RANKINE XN (MR SMITH)

- 1 October. I want to play the section which is devoted to
- 2 the speech of George Trevorrow and Mr Rankine. There is
- 3 much more of it, but I don't intend to subject everybody
- 4 to the balance of the tape, but it's available.
- 5 AUDIO TAPE PLAYED
- 6 CONTINUED

## H.J. RANKINE XN (MR SMITH)

1 AUDIO TAPE CONCLUDES

2 MR SMITH: So far as we can tell, the question of  
3 Henry Rankine that was the subject of the evidence of Mr  
4 Jolly, because - perhaps I will just clear it, we can't  
5 unscramble it, the noise is such that it's very  
6 difficult to hear, so I'm not playing any further part  
7 of the tape, but it's available to counsel. I tender at  
8 this stage, so that it can go into evidence and be  
9 available, the two audio tapes relating to the entirety  
10 of that meeting.

11 EXHIBIT 267 Two audio tapes relating to public  
12 Meeting tendered by Mr Smith. Admitted.

13 Q. You agree, first of all, that the first speaker there  
14 was George Trevorrow.

15 A. Yes.

16 Q. The second speaker on the other side of the tape, when  
17 we turned it over, was yourself.

18 A. Yes.

19 Q. Then the question that was asked about the bridge was  
20 answered by George Trevorrow, is that right.

21 A. Yes.

22 Q. The last voice on the tape was George, not you.

23 A. Yes.

24 Q. You began to answer, did you, was it your voice just  
25 before George answered.

26 A. Yes. I said to him that he should -

27 Q. Should answer the question.

28 A. Yes, stand up and talk.

29 Q. You agree, however, that you did later stand up and  
30 answer a question from the floor about the bridge. Do  
31 you remember doing that.

32 A. No, I don't remember that.

33 Q. You see in the early part of the address of George  
34 Trevorrow, he said that the Ngarrindjeri people had not  
35 been consulted at all. Do you remember him saying that.

36 A. Yes.

37 Q. That's not correct, is it.

38 A. No.

## H.J. RANKINE XN (MR SMITH)

- 1 Q. Because George Trevorrow was at least on the Coorong  
2 Consultative Committee with you, wasn't he, when the  
3 bridge was proposed as one of the developments, and you  
4 were given notice that it was going to go ahead in a  
5 month or so after March 1990. Do you agree with that.
- 6 A. No, I can't remember that.
- 7 Q. Well, I showed you the minutes.
- 8 A. I know, I can see it there, but I still don't remember  
9 it.
- 10 Q. Would you agree that it wasn't correct of George  
11 Trevorrow to say that there had been no consultation at  
12 all. It was incorrect, wasn't it.
- 13 A. According to what's here it's incorrect, yes.
- 14 Q. From your point of view it was incorrect, wasn't it.
- 15 A. Now.
- 16 Q. Can you tell us, then, your speaking out in a public  
17 meeting in October 1993, can you tell us what provoked  
18 you to attend that meeting and get up and speak.
- 19 A. This meeting here?
- 20 Q. Yes, on 8 October 1993.
- 21 A. Well, like I said earlier part, that there was a lot of  
22 people there, and there was also Mr Dean Brown and, you  
23 know -
- 24 Q. Who asked you to go to this meeting.
- 25 A. I couldn't remember who asked me to go there.
- 26 Q. Well, can you think about that a bit, because you hadn't  
27 attended any such meeting in formal opposition to the  
28 bridge up until this time, had you. This was the first  
29 time, wasn't it.
- 30 A. I can't remember.
- 31 Q. I want to know if you can help the Commissioner by  
32 telling her who it was that encouraged you or invited  
33 you to go to this meeting.
- 34 A. As I said, I can't remember who told me that, 'Come down  
35 this way, there's a big meeting down here about the  
36 bridge. Everybody will be right there'. I can't  
37 remember who said that.
- 38 Q. Remember there was a development proposed for Sellicks

- 1 Beach, do you remember that.  
2 A. Sellicks beach?  
3 Q. Sellicks Beach, and Rod Lucas, the anthropologist, did a  
4 report about Sellicks Beach and a special Aboriginal  
5 site in the area of Sellicks Beach. Could you remember  
6 that.  
7 A. Sellicks Beach is -?  
8 Q. Sellicks Beach, up the coast a bit.  
9 A. Yes, well, this is Kurna country.  
10 Q. Yes.  
11 A. They shouldn't have anything said about Kurna country,  
12 I'm Ngarrindjeri.  
13 Q. You claim to be part Kurna there.  
14 A. I do, yes.  
15 Q. And you spoke to Rod Lucas about that site being a men's  
16 site, didn't you.  
17 A. No, hang on a minute, no. I do know men's site in  
18 Kurna area.  
19 Q. Do you say that -  
20 A. I can't answer that one.  
21 Q. Did you speak to Rod Lucas about a report he was doing  
22 of the significance of a site in the Sellicks Beach  
23 area, and the Williams family were involved also and, in  
24 particular, Georgina Williams.  
25 A. Are you talking about a men's site with a woman? I  
26 don't want to go.  
27 Q. A washpool, Tjilbruke Spring. (NOT ANSWERED)  
28 COMSR Are you going to go into any -  
29 MR SMITH: I'm not going into any detail, it's not  
30 a secret or anything.  
31 XN  
32 Q. Tjilbruke Spring, a washpool, a men's site.  
33 A. I know about Tjilbruke.  
34 Q. Did you speak to Rod Lucas about that and support the  
35 fact that this was a special site.  
36 A. All the sites where Tjilbruke was, from here, Adelaide,  
37 to Cape Jervis, and we sat down and we cried, and all  
38 the springs that come up, they are all sacred parts. If

- 1 you are to talk about men's business, then I won't  
2 answer you anything.
- 3 Q. I don't want to talk about it in any detail, but I want  
4 to know whether you came forward and spoke to Rod Lucas  
5 about that in 1989. You did, didn't you.
- 6 A. I probably did speak to him, but right now, unless you  
7 show me like this here, (INDICATES) it's gone with the  
8 wind.
- 9 Q. I show you a report of Rod Lucas dated 1989,  
10 'Anthropological Significance of Aboriginal Sites,  
11 Sellicks Beach' and there's a mention of you here at  
12 3.5, 'Henry Rankine, for example, believes' etc. Do you  
13 accept that you spoke in detail to Rod Lucas about that  
14 site in connection with the development that was  
15 proposed for that site in 1989.
- 16 A. Now I see it here, yes, probably talked to him, but you  
17 see a lot of things you talk in here as developments on  
18 sites.
- 19 Q. The thrust of my question to you really is that you were  
20 there in 1989 supporting opposition to development at a  
21 site at Sellicks Beach, weren't you.
- 22 A. Right now, after seeing that, yes.
- 23 Q. However, it took you until 1993 or thereabouts to voice  
24 your objection to the Hindmarsh Island Bridge. That's  
25 right, isn't it. My question really is you agree with  
26 that, that it was not until 1993 that you voiced your  
27 objection to the construction of the Hindmarsh Island  
28 Bridge.
- 29 A. Yes.
- 30 Q. I want to know why you were so late voicing your  
31 objection to the Hindmarsh Island Bridge.
- 32 A. Maybe because now the Premier was on our side.
- 33 Q. You have no memory of who encouraged you to go to that  
34 meeting.
- 35 A. No.
- 36 COMSR
- 37 Q. Other than being encouraged, do you remember how it came  
38 about that you did go to the meeting.

## H.J. RANKINE XN (MR SMITH)

- 1 A. Well, someone said there was a meeting down at Goolwa, a  
2 very important meeting, something about the bridge, so I  
3 went down there. When I got there, I was asked to go on  
4 to the stage.
- 5 Q. When you say `someone', someone from where.
- 6 A. From in our community.
- 7 Q. From your community.
- 8 A. Yes.
- 9 XN
- 10 Q. Who was it, can you give us a hint. Was it Victor  
11 Wilson.
- 12 A. Sorry, I've said I forget the name, I've forgotten the  
13 person, all right?
- 14 Q. I'll just ask a couple more questions about that. The  
15 people who were at that meeting there, the Friends of  
16 Hindmarsh Island, the conservation people, did they  
17 encourage you to go to the meeting on 8 October.
- 18 A. It was someone in my community.
- 19 Q. In 1994, in the early part of 1994, in April of 1994,  
20 you received a telephone call from Wendy Chapman, did  
21 you not.
- 22 A. Yes.
- 23 Q. I think you agree that - and you can go to p.11 of your  
24 statement, if you like - you had a telephone  
25 conversation with Wendy Chapman.
- 26 A. Yes.
- 27 Q. Can you remember what was said in the telephone call.  
28 If you set it out there, is that correct.
- 29 A. Yes. I'm quite happy to remember that.
- 30 Q. Did you tell Wendy Chapman that things had changed. Did  
31 Wendy Chapman raise with you the fact that you'd never  
32 raised any objection before, words to that effect.
- 33 A. Could have.
- 34 Q. Did she ask you why your attitude had changed.
- 35 A. I said to Mrs Chapman that our attitude has changed  
36 because we have got a right, the Aboriginal Heritage  
37 Act, policy, or the two houses of Government, that we  
38 can do something. Before we could not do anything at

- 1 all, couldn't speak out, now it was our time to speak
- 2 out, to say something.
- 3 Q. You'd spoken out in the Sellicks Beach matter, though,
- 4 hadn't you, before, in 1989.
- 5 A. Yes, this is part of it.
- 6 CONTINUED

1 We are talking -

2 Q. We are in 1993 now, aren't we.

3 A. Yes.

4 Q. We are talking about a phone call in 1994. So what did  
5 you say to Wendy Chapman when she asked you why things  
6 had changed, or words to that effect.

7 A. Well, I think I said to Wendy Chapman that things have  
8 changed because once upon a time the Aboriginal people  
9 on our place, in our community now, had just reserves,  
10 always used to have a superintendent and all that there,  
11 and we always used to say `Yes boss, no boss, kiss your  
12 something boss'. Now it is a different opinion. We had  
13 something to work with - well, I believe that we had  
14 something to work with, but after looking at this here,  
15 it's a different opinion.

16 Q. Is it the case that you communicated to Mrs Chapman that  
17 Matt Rigney, Victor Wilson and Doug Milera had moved  
18 into the picture. Isn't that -

19 A. They had moved into the picture or was in the picture?

20 Q. Sort of taken up the opposition to the bridge, words to  
21 that effect.

22 A. Excuse me, we was all in the picture.

23 Q. Had Matt Rigney, Victor Wilson and Doug Milera been in  
24 the picture before this, that is - and I'm really  
25 referring back to October 1993.

26 A. In this picture where it says that we are there is  
27 because we are backing all the other people.

28 Q. In February 1994 there was a meeting at the Coorong  
29 consultative committee. You were there.

30 A. Yes.

31 Q. And I'm looking now at Exhibit 184. The question of the  
32 bridge arose, I think. By this time, of course, you  
33 were opposed to the bridge weren't you.

34 A. Yes.

35 Q. February 1994, and under the heading `Item number 13' of  
36 the minutes it indicates that you were apprised of a  
37 number of sensitive sites on Hindmarsh Island. Have a  
38 look at that. You see there the item, item 13,



- 1 indicates that the local heritage group - that's  
2 yourself, is that right, the local heritage group.
- 3 A. Yes.
- 4 Q. Had a map showing all sacred sites of the area. Is that  
5 the case, that you had a map at the meeting in February  
6 1994. You might not necessarily have had the map at the  
7 meeting.
- 8 A. I didn't have the map at the meeting.
- 9 Q. But you had a map in your possession, as it were.
- 10 A. I've got papers that shows sites.
- 11 Q. Who gave you the map with the sacred sites marked on it.
- 12 A. Sorry?
- 13 Q. Who gave you the map that's referred to there in item 13  
14 of the minutes of the Coorong Consultative Committee of  
15 21 February.
- 16 A. I got them from the S.A. Museum.
- 17 Q. Who marked the sites on the map.
- 18 A. They were already marked. I got them already marked by  
19 my grandfather.
- 20 Q. You have got that map, I suppose, today, have you.
- 21 A. No. Sorry?
- 22 Q. You haven't got that map.
- 23 A. Not on me today.
- 24 Q. At home, have you.
- 25 A. Home.
- 26 Q. Following your conversation with Wendy Chapman, I think  
27 Tom Chapman phoned you and arranged a meeting at David  
28 Rathman's office, didn't he.
- 29 A. Yes.
- 30 Q. And you and your wife went to that meeting, is that  
31 right.
- 32 A. That's correct.
- 33 Q. I think you set out what happened at that meeting at  
34 p.12 of your statement, don't you. Would you turn to  
35 p.12.
- 36 A. Yes, I got it.
- 37 Q. Is it fair to say that the meeting did not resolve the  
38 question of the bridge, did it.

- 1 A. No.
- 2 Q. You say at the bottom of p.12 that by 27 April you'd  
3 heard about sacred women's business on Hindmarsh Island.
- 4 A. Yes.
- 5 Q. Who had you heard about sacred women's business from.
- 6 A. Like I said in here, I had heard, I think, from Sarah  
7 Milera.
- 8 Q. When.
- 9 A. Prior to this meeting, when they was sitting having  
10 discussions.
- 11 Q. When was that.
- 12 A. I couldn't tell you what date.
- 13 COMSR
- 14 Q. When you say prior to the meeting, was it a short time  
15 before the meeting or what.
- 16 A. No, like I said, I can't - couldn't put a date on it for  
17 you.
- 18 Q. I am not asking about the date, but are you talking  
19 about days.
- 20 A. Date, time or days, I couldn't put it.
- 21 Q. You don't know -
- 22 A. No.
- 23 Q. How close to the meeting it was that you heard the  
24 information being said.
- 25 A. Yes.
- 26 Q. Can you help me to this extent, was it days or weeks, or  
27 what.
- 28 A. Like I said just a minute ago, I can't put my finger on  
29 it, days, weeks or hours.
- 30 XN
- 31 Q. You see at the bottom of p.12 there you say `By the 27th  
32 I had heard about sacred women's business on Hindmarsh  
33 Island' okay. So by the time of the meeting in  
34 Rathman's office, you had heard about it. That's right.
- 35 A. Yes, but you could take that date here, 27th, hey.
- 36 Q. When you spoke to Wendy Chapman on 17 April, did you  
37 know about women's business then on the island.
- 38 A. I couldn't tell you.

H.J. RANKINE XN (MR SMITH)  
XXN (MR MEYER)

- 1 Q. Who did you hear about it from.  
2 A. Well, like I said here, I thought - I think I heard it  
3 from Sarah, but it could have been from anyone.  
4 Q. I beg your pardon.  
5 A. It could have been from anyone. You know, for example,  
6 just a woman sitting down there, all this women's  
7 business on Hindmarsh Island.  
8 Q. Did you know about it at the time you stood up to speak  
9 in the hall at Goolwa in October 1993, or was it after  
10 that.  
11 A. I couldn't tell you. I don't think - I don't know if it  
12 was before that or after that, because I get a bit  
13 touchy when you are talking about women's business.  
14 It's not - nothing to do with me.  
15 Q. I am not going to ask you anything about the contents of  
16 it, just the fact of its existence.  
17 A. Yes, even that.  
18 CROSS-EXAMINATION BY MR MEYER  
19 Q. Would you turn to p.2 of your statement.  
20 A. Can I ask whom do you represent, sir.  
21 Q. The Chapmans, Tom and Wendy.  
22 A. Okay, thank you.  
23 Q. My name is David Meyer. P.2 of your statement, at line  
24 24, you refer to the Ngarrindjeri Heritage Committee. I  
25 understand in your answer to a question from Mr Smith  
26 that that's previously the Lower Murray Aboriginal  
27 Heritage Committee.  
28 A. Yes.  
29 Q. That's the committee that Doug Milera was the secretary  
30 of.  
31 A. That's correct.  
32 Q. But as I understand it, he isn't any more, is that  
33 right, or is he still the secretary.  
34 A. No, he's not the secretary of the Ngarrindjeri Heritage  
35 Committee.  
36 Q. But he was the secretary of the Lower Murray Aboriginal  
37 Heritage Committee.  
38 A. Lower Murray Aboriginal Heritage Committee.

- 1 Q. When did it change from being the Lower Murray  
2 Aboriginal Heritage Committee to the Ngarrindjeri  
3 Heritage Committee.
- 4 A. It was last year. Late part last year or early part  
5 this year.
- 6 Q. Not very long ago.
- 7 A. Not very long ago. We had a committee meeting.
- 8 Q. How long was Doug the secretary for, quite a few years.
- 9 A. Yes, about three, four.
- 10 Q. Whilst Doug was the secretary, you were on the  
11 committee.
- 12 A. Yes.
- 13 Q. Have you been on the committee, in essence, since it  
14 started.
- 15 A. Lower Murray Heritage Committee, yes, close to it.
- 16 Q. That's been for quite a while, hasn't it.
- 17 A. Yes.
- 18 Q. Have there always been Aboriginal women on that  
19 committee as well.
- 20 A. No.
- 21 Q. When did women first go onto the Heritage Committee, how  
22 long ago.
- 23 A. I think when we formed this last one, Ngarrindjeri  
24 Heritage Committee.
- 25 Q. Prior to that no women on the committee, is that right.
- 26 A. No woman on the committee. It's not because we didn't  
27 want them there, but - they could have come, they could  
28 come into the meetings at any time and voice their  
29 opinions.
- 30 Q. You talked about the Point McLeay or Raukkan Council,  
31 and you told Mr Smith a number of names of women who  
32 were on that committee. I think you referred to Sheila  
33 Goldsmith, is that right.
- 34 A. Yes.
- 35 Q. Has she been on the committee for a long time.
- 36 A. She has.
- 37 Q. You have mentioned the names of a couple of other

## H.J. RANKINE XXN (MR MEYER)

- 1 ladies, women who were on the committee. That's right,  
2 isn't it.
- 3 A. Yes, Grace -
- 4 Q. They've been on the committee for a long time.
- 5 A. There have always been women and men on the Point McLeay  
6 Community Council.
- 7 MR MEYER: May I approach the witness? I wish to  
8 show him a name in the same context as we referred to  
9 the daughter of Pinkie Mack.
- 10 COMSR: Yes.
- 11 XXN
- 12 Q. You know the lady whose name I've written on that piece  
13 of paper.
- 14 A. Yes.
- 15 Q. She has died, hasn't she.
- 16 A. Yes.
- 17 Q. Is it appropriate for us to call her Henry's auntie.
- 18 A. You can.
- 19 Q. Is that a proper way to refer to her.
- 20 A. I always did refer to her as that.
- 21 Q. How long since that lady died.
- 22 A. Maybe two years.
- 23 MR MEYER: I should give you, Commissioner, the  
24 piece of paper so that you know who we are talking about  
25 as well. I have spoken to Mr Kenny to establish that's  
26 a proper way to refer to this lady, so he knows as well  
27 who I am talking about.
- 28 MR SMITH: The trouble with that is that it is  
29 never going to appear in the transcript.
- 30 MR MEYER: It can be recorded in the transcript,  
31 can't it, in the same way that we refer to the daughter  
32 of Pinkie Mack.
- 33 MR SMITH: What we did was we referred to the name  
34 of the deceased person once and never thereafter, to  
35 connect it. Would that be regarded as disrespectful if  
36 we did that?
- 37 COMSR
- 38 Q. Is that an appropriate way to go about it, Mr Rankine.

- 1 A. You could - well, that's my auntie and, you know, I  
2 don't mind referring to her as my auntie, but -  
3 XXN
- 4 Q. So that we can identify who it is for the record, we  
5 have to say her name. Should we do that in a closed  
6 session when other people aren't here. How do we go  
7 about doing that. Which is the most appropriate way.
- 8 A. I think you would have to do that in a closed session.
- 9 MR SMITH: Could we get the reporter just to record  
10 the name is brackets.
- 11 MR TILMOUTH: We can agree that later. If that can be  
12 recorded, we can look at the transcript.
- 13 MR MEYER: If we show it to the reporter the  
14 reporter will be able to make a note and we can go back  
15 and fix it all up.
- 16 COMSR: Yes, and suppress it then so it doesn't  
17 appear on the transcript.
- 18 REPORTER SHOWN NAME OF LEILA RANKINE WHICH IS SUPPRESSED  
19 AND TO BE REFERRED TO AS `HENRY'S AUNTIE'.  
20 XXN
- 21 Q. Did that lady live at - did your auntie live at Raukkan.  
22 A. A long time ago.
- 23 Q. Did she leave Raukkan before she died.  
24 A. Yes.
- 25 Q. Did she leave Raukkan, for example, say before 1985.  
26 A. Yes.
- 27 Q. So she wasn't on the council or had anything to do with  
28 any of these persons.  
29 A. No.
- 30 Q. I think that you have known at least Tom Chapman for  
31 quite a long time, haven't you.  
32 A. I did know both of them for quite some time.
- 33 Q. Tom was significantly involved in the development of a  
34 place called Signal Point, is that right.  
35 A. He could have.
- 36 Q. You and he were on a committee together, weren't you, in  
37 relation to Signal Point.

- 1 A. No, I wasn't on any committee at Signal Point. I don't
- 2 believe it.
- 3 Q. Did Tom talk to you about Signal Point.
- 4 A. When?
- 5 Q. At various times when they were organising getting it
- 6 set up.
- 7 A. He could of.
- 8 Q. Whereabouts is Signal Point.
- 9 A. Not far away from where you want to build the bridge.
- 10 Q. Is that between the proposed Carmo site and the bridge
- 11 site.
- 12 A. I think it would be.
- 13 CONTINUED

- 1 Q. I show to you a letter, dated 23 January 1990, from  
2 Vanessa Edmonds to Tom Chapman.
- 3 A. Yes.
- 4 Q. Do you see that one.
- 5 A. Yes.
- 6 Q. This letter says in part in the second paragraph 'There  
7 are four other copies.' And it is referring to a report  
8 called 'An archaeological survey of the Marina Goolwa,  
9 Hindmarsh Island, South Australia.' That's what it is  
10 called, isn't it.
- 11 A. Yes.
- 12 Q. 'There are four other copies. One has been sent to  
13 Neale Draper, Aboriginal Heritage Branch, another to the  
14 Point McLeay Community Council, one to Mr George  
15 Trevorrow, at the Ngarrindjeri Lands and Progress  
16 Association, Camp Coorong and I have kept a copy for my  
17 own records.' The 'community council', that is the  
18 council that you, I think, at the time, were chairman  
19 of, is that right.
- 20 A. 1990?
- 21 Q. Yes.
- 22 A. Yes, I could have been the chairperson, yes. I have  
23 been off the chair for quite sometime now.
- 24 Q. And George Trevorrow, he is the gentleman who runs or is  
25 associated with Camp Coorong.
- 26 A. Yes.
- 27 Q. Was he, at the time, the chairman of the Ngarrindjeri  
28 Lands and Progress Association.
- 29 A. Yes, I think he was, at the time.
- 30 Q. Is he the brother of Tom Trevorrow.
- 31 A. Yes.
- 32 Q. Is Tom also involved with Camp Coorong. Does he work at  
33 Camp Coorong.
- 34 A. I think so.
- 35 Q. And has done for quite a few years.
- 36 A. I think they both, you know, I can't - I don't really  
37 know that, because Tom was on the National Parks and  
38 Wildlife.



- 1 Q. Did you approve of the building of Signal Point.  
2 A. Approve of the building of Signal Point?  
3 Q. Yes.  
4 A. When Signal Point was built, I don't think we had a say.  
5 Q. But that's not what I am asking you. I am asking you,  
6 did you think that was a good idea. Do you think it was  
7 a good idea.  
8 A. Do I think it was a good idea?  
9 Q. Yes.  
10 A. At the time it was being built.  
11 Q. What about now.  
12 A. What do you mean `What about now'?  
13 Q. Do you still think it is a good idea.  
14 A. We can't go back and change it, right now. What's done  
15 has been done.  
16 Q. But do you think it is a good idea now.  
17 A. Right now?  
18 Q. Yes.  
19 A. No, I can't answer your question.  
20 Q. Looking at document 9, of Exhibit 197, which is the  
21 DOSAA documents, now before you, Mr Smith showed you  
22 that letter. That is the letter from the Department of  
23 Environment & Planning addressed to you in February  
24 1989, is that right.  
25 A. Yes.  
26 Q. If you go to the second to last paragraph, that  
27 paragraph says `If you are aware of other Aboriginal  
28 people who should be contacted about this proposal,  
29 would you let Neale Draper know as soon as possible.'  
30 That's what that says, isn't it.  
31 A. That's what it says there.  
32 Q. This is about the proposed development on Hindmarsh  
33 Island, isn't it. (NOT ANSWERED)  
34 Q. That's what it says.  
35 A. That's what it says. And a copy of the development  
36 applications.  
37 Q. Did you let Neale Draper know of any other Aboriginal  
38 people who should be contacted about the proposal.

- 1 A. I can't remember that.
- 2 Q. Because specifically you were asked, weren't you, as the  
3 chairperson of the Point McLeay Council, to advise of  
4 anybody - any other Aboriginal person who might be  
5 important to speak to, weren't you.
- 6 A. By this letter, yes.
- 7 Q. At the time that that letter was sent to you, you were  
8 also a member of the Lower Murray Aboriginal Heritage  
9 Committee, weren't you.
- 10 A. Yes - in 1989? Yes.
- 11 Q. There were Aboriginal women on the Point McLeay  
12 Community Council when you received that letter.
- 13 A. Always.
- 14 Q. Always.
- 15 A. Yes, on the council, yes.
- 16 Q. Why didn't you write back to the Department of  
17 Environment & Planning or ring them up on the telephone  
18 or go and see them and say that there were other  
19 Aboriginal people who should be spoken to about the  
20 proposal if you thought that there were.
- 21 A. I couldn't answer you that.
- 22 Q. You have regular meetings of the Point McLeay Council,  
23 don't you.
- 24 A. Every fortnight.
- 25 Q. And, at the regular meetings of the Point McLeay  
26 Council, you advise the council members of  
27 correspondence and letters that have been received since  
28 the last council meeting.
- 29 A. That's what they do now, yes.
- 30 Q. And that's what they used to do then, isn't it.
- 31 A. Yes.
- 32 Q. Is that right.
- 33 A. Yes.
- 34 Q. As the chairperson of the council you used to run proper  
35 meetings of the council.
- 36 A. I thought I did, up to that moment, up to then.
- 37 Q. I am sure you did.
- 38 A. Yes.

- 1 Q. That's what I am putting to you. That, as matters like  
2 this letter would come along to the council, they would  
3 be brought to the notice of the council that these  
4 letters had been received.
- 5 A. All correspondence.
- 6 Q. Available for everybody to look at.
- 7 A. Yes.
- 8 Q. If any other person on the Point McLeay Council wished  
9 to contact the Department of Environment & Planning the  
10 invitation was there to do so in that letter, wasn't it.
- 11 A. The invitation was there, yes.
- 12 Q. I showed you a letter addressed to Tom Chapman, didn't  
13 I, a minute ago.
- 14 A. Yes.
- 15 Q. And that was by Vanessa Edmonds saying that she had sent  
16 a copy of her report down to you.
- 17 A. Yes.
- 18 Q. Again, a document like that you would consider that you  
19 received that as the chairman of the council, wouldn't  
20 you.
- 21 A. That's part of the correspondence.
- 22 Q. Didn't send it to you as Henry Rankine merely because  
23 you were Henry, but rather because you were the chairman  
24 of the council.
- 25 A. Yes.
- 26 Q. And, again, you would, in running the council meetings,  
27 when you received something like that, you would record  
28 it as being something that was received by the Point  
29 McLeay Council at the next meeting.
- 30 A. Would have, yes.
- 31 Q. Everybody on the council would be able to go and look at  
32 the report if they wanted to.
- 33 A. At that time, at the meeting, I would say, yes, come  
34 back and read it, or they would look at it and say maybe  
35 that document is too thick for me to read. I don't  
36 want to read it, because - something like that.
- 37 Q. Just like at any meeting that we go to. Some members  
38 read all the papers and some don't.

- 1 A. That's correct. We get that in all societies, don't we?
- 2 Q. Absolutely, some are energetic and some aren't, that's
- 3 right, isn't it. It doesn't alter the fact, though,
- 4 that everybody at the meeting has got the chance to look
- 5 at the documents if they want to.
- 6 A. That's correct.
- 7 Q. It is just that they leave a few to do all the work,
- 8 don't they.
- 9 A. That's right.
- 10 Q. Mr Smith showed you a copy of the environmental impact
- 11 statement, as well, didn't he.
- 12 A. That's right.
- 13 Q. I just show you p.10A of Exhibit 197. The front page of
- 14 that says 'Draft environmental impact statement for
- 15 Hindmarsh Island bridge marina extensions and waterfront
- 16 development', doesn't it.
- 17 A. Yes.
- 18 Q. And it says at the bottom 'For public comment', is that
- 19 right.
- 20 A. Yes.
- 21 Q. That document, as the chairman of the council, you would
- 22 have also stuck that into the council correspondence.
- 23 A. That would have been there, too. And I thought I
- 24 answered that just a minute ago.
- 25 Q. No, a minute ago I was asking you about the Vanessa
- 26 Edmonds letter. Now I have moved on to the
- 27 environmental impact statement. That would have gone in
- 28 in the same way.
- 29 A. Yes.
- 30 Q. Looking at Exhibit 172, now before you, that is an
- 31 agenda for the Lower Murray Aboriginal Heritage
- 32 Committee and we think that it was in the latter part of
- 33 1990. Do you recognise that document.
- 34 A. I think I recognise it. I think I have seen this one
- 35 before.
- 36 Q. That refers to matters relating to Hindmarsh Island
- 37 being discussed by the Lower Murray Aboriginal Heritage
- 38 Committee, doesn't it.

1 A. Sorry?

2 Q. That refers to one of the items under discussion was a  
3 development on Hindmarsh Island, wasn't it.

4 A. Yes.

5 Q. Can we take it from that document then that the issue of  
6 Hindmarsh Island was being discussed by the Lower Murray  
7 Aboriginal Heritage Committee at least before the end of  
8 1990.

9 A. It probably was because 'Development proposal to build  
10 on Aboriginal sites.'

11 Q. And your real concern always is, isn't it, about proper  
12 respect for Aboriginal skeletal remains and matters of  
13 that nature, isn't it.

14 A. Aboriginal skeletal remains, middens, camping sites  
15 which belong to the Ngarrindjeri which a lot of people  
16 want to walk over right now. That's my main aim, to see  
17 that they are protected because they mean just as much  
18 to us as what a new city being built.

19 Q. What you wish to strive for is a proper protection of  
20 matters of that nature, isn't it.

21 A. Always.

22 COMSR

23 Q. In what manner do you contemplate that they would be  
24 protected. How would that be achieved.

25 A. Fenced off. If they are out in the open, put trees and  
26 that on them. Don't let any animal go on them. Don't  
27 let no tractors, ploughs, anything go on them, vehicles,  
28 anything like that, because they are our burial sites of  
29 our people that's gone before us.

30 Q. I suppose you would have to identify them first and then  
31 put the protective fencing and such like around them.

32 A. We do.

33 XXN

34 Q. And, in fact, Tom Chapman got it right, didn't he. We  
35 were talking about the problem that occurred at the  
36 waterfront where the river comes in. He got it right by  
37 telephoning you up and speaking to you and getting  
38 advice about -

- 1 A. Reburying?
- 2 Q. Reburying, didn't he, some skeletal remains that he  
3 found.
- 4 A. Yes.
- 5 Q. And that's what you expected to happen.
- 6 A. I always do expect that to happen, but it doesn't happen  
7 that way.
- 8 Q. It doesn't always happen that way.
- 9 A. No.
- 10 Q. But, in fact, what has happened in relation to the  
11 marina development is that areas within the marina  
12 development where Aboriginal sites have been located  
13 have been included into parklands and things like that,  
14 haven't they.
- 15 A. I hope they do.
- 16 Q. But that is what has happened, isn't it.
- 17 A. I haven't been there.
- 18 CONTINUED

Q. I thought you were aware of -

A. I haven't been there.

Q. How they were dealt with.

A. I haven't been on the development site. I cannot tell you much about the development site. The only time if I tell you is if I visited there.

Q. Have you heard of any suggestion of a rumour that people would be paid money. The suggestion I've heard is \$1,000,000 for giving evidence favourable to the Chapmans in this matter.

A. Would you give me some?

Q. No, you won't get any money from me whichever way you give your evidence.

A. No.

Q. Have you heard anything like that.

A. I heard something like that. It's nice for you to let me know, thank you.

Q. But you don't believe that, do you.

A. I cannot tell you.

COMSR

Q. I think Mr Meyer is asking you about your personal belief though. Are you able to say whether you personally believe that rumour.

A. I think if I answer it in a manner that Mr Meyer wants me to answer it, I may find myself in hot water. I'll leave it like that, thank you very much.

XXN

Q. I have no desire to put you in hot water at all. Did you hear any suggestion at any time about the building of a super highway which was going to link up with the road down through the South East.

A. I've heard that too.

Q. Did you hear of that in connection with any issue of building the bridge.

A. A lot of things fly around, not only pelicans.

Q. I will stay away from any of that. Tom and Wendy say to me that they met you with your wife Jean at an art display, I think, of Aboriginal paintings at the Hilton

Hotel here in Victoria Square in about November 1990.

Do you remember an occasion like that.

A. I think you may be referring to my cousin's paintings that were on display there.

Q. Could be. They say to me that you assisted them, Tom and Wendy, in fact, to buy one of the paintings.

A. I did. That occurred, yes.

Q. Do you remember that.

A. Yes.

Q. They say that on that occasion - they say that was about November 1990; does that sound about right, about five years ago.

A. Yes.

Q. They say that on that occasion, there was some discussion between you and Tom and Wendy about the fact of building the bridge; do you recall that.

A. I don't recall that because there was a lot of people there and there was a lot of people moving around. All I remember there is that my cousin's paintings were on the wall and they bought one.

Q. Do you know what I'm talking about if I refer to an AACOP meeting.

A. No. You will have to tell me what that meant?

Q. I think it means, I'm not sure, 'Aboriginal Affairs Committee on Planning'.

A. No.

Q. Don't know of that committee.

A. No.

Q. I understand there was a meeting of a committee in February 1991 at Goolwa at which there was a discussion about a supplementary development plan. Do you remember anything about that.

A. No, can't remember that.

MR TILMOUTH: While Mr Meyer is looking at this, I think the witness might benefit from a short break if that is not too much of an inconvenience.

ADJOURNED 12.05 P.M.



RESUMING 12.21 P.M.

XXN

Q. Only a couple of matters I wish to put to you to sum this up. The situation, I think you agree with me is this: That during 1990, your council, the Point McLeay Council, received the Edmonds report, received the Environmental Impact Study, received an invitation to comment on it. That's right, you agreed with me about that all, going into the correspondence.

A. Yes.

Q. The Lower Murray Aboriginal Heritage Committee had also received information about Hindmarsh Island and it's been on their agenda and they have discussed it by 1990; that's right, isn't it, with the minutes that I showed you.

A. Just had the minutes there.

Q. That's right, isn't it.

A. About the Lower Murray?

COMSR

Q. Are you agreeing with what Mr Meyer put to you that those documents had all come into the Point McLeay Council by that time.

A. Well, I could say, yes, they probably did come into the Point McLeay Council, but what Mr Meyer is talking about is the Lower Murray -

XXN

Q. Not the Heritage Committee. I'm saying we know that it was the Hindmarsh Island proposal which was discussed there because of the agenda, don't we.

A. Yes.

Q. And we know that the Edmonds' report was sent to George Trevorrow and the Ngarrindjeri Lands and Progress Association, don't we.

A. Yes.

Q. So, through 1990, there had, in fact, been consultation with the three major Ngarrindjeri bodies, hadn't there.

A. Yes, according to the paperwork, yes.

Q. Doug Milera, he got on the TV earlier this year, didn't

H.J. RANKINE XXN (MR MEYER)  
(MR TILMOUTH)

he, making comments about matters relating to Hindmarsh Island.

A. Yes.

Q. Do you remember that.

A. Yes.

Q. He wrote a letter to Mr Tickner, Exhibit 61. Looking at Exhibit 61 produced, if you look at this letter, this is a letter dated 6 June 1995.

A. Yes.

Q. In here in the Commission, that is document no.61.

A. Yes.

Q. That letter is signed by Doug.

A. Yes.

Q. In the second paragraph of that letter he says 'I feel I've been used by others to further their causes and not our cause. People we considered to be our friends - unionists, the friends of Kumarangk and other bridge protestors - have used my Aboriginal heritage for the purpose of stopping a project that they were unsuccessful at stopping.' Did you feel like that; did you feel like Doug felt that he had been used.

A. Can I say, Ma'am, that this is Doug, not me, right. That's my answer to you.

Q. That is Doug's letter.

A. Yes.

Q. My question to you know is: Did you feel like that.

A. Again, I will say that is Doug's letter.

COMSR

Q. Are you saying that is Doug's opinion.

A. That's Doug's opinion, not mine.

CROSS-EXAMINATION BY MR TILMOUTH

Q. I know some of this will be in your statement, but I just want you to explain to the Commissioner a little more. How much schooling did you receive.

A. Up to year six and half a grade in year seven.

Q. Where was that.

A. Raukkan School, Point McLeay.

Q. Who was in charge of that school at that time.

- A. I think it was W.T. Lawrie.
- Q. Was there an administrator at Point McLeay, was it then called, in the '40s and '50s.
- A. Superintendent?
- Q. Yes.
- A. Yes.
- Q. 'The boss', I suppose you call him.
- A. Yes.
- Q. Who was that in the 1940s when you were a young boy.
- A. Bartlett.
- COMSR
- Q. Whom did you say.
- A. Bartlett.
- XXN
- Q. What about into the 1950s.
- A. There was Bartlett, Swallings, Hanna. Big mob of them. They come in that fast and went out again.
- Q. Was there an Aboriginal Community Council in those days.
- A. No.
- Q. When did all of that start.
- A. 1958 it was advisory council to the superintendent.
- Q. What's the situation now, is the council an incorporated body.
- A. The council is incorporated body, yes.
- Q. How long has it been an incorporated body for.
- A. From 1974.
- Q. Was before then it was just an advisory body.
- A. Just an advisory body where they could overturn any decision that we made.
- Q. From 1974, was the council a solely Aboriginal council.
- A. Yes.
- Q. Has it always had a chairperson since then.
- A. Yes.
- Q. Has that always been an Aboriginal person.
- A. Yes.
- Q. What about the administrator or superintendent, what happened after 1974, was there somebody who had that position or a new position called 'the boss'.

A. No, that was advisor.

Q. There has been a community advisor.

A. Community advisor, yes.

Q. Is there still a community advisor these days.

A. That's part of the role I play.

Q. In 1974 when the advisor position started, was that an Aboriginal person.

A. No.

Q. From when was the first Aboriginal person community advisor.

A. About five years ago.

Q. That was the first one, was it.

A. Yes.

Q. Who was that.

A. About eight years ago and the name of the advisor was Mrs Val Power.

Q. How long was she in that position.

A. Close to four years.

Q. Who succeeded her.

A. Well, when she left, we didn't have any more advisors, just myself a co-ordinator.

Q. Could I go back to your school days. I don't want a lot of detail necessarily, but can you just tell the Commissioner a little bit what life was like on the mission in those days, as it was called, in the 1940s: Did you have to stay there, could you leave; how many people were there. That kind of thing.

A. There would have been around about five to 600 people up to 1956. After 1956, the Government of the day promised our people that they would have better jobs, better houses, everything better than on Point McLeay; which a lot of the people did take - a lot of families broke up after that. I could say something like 75% of the families broke up after that. They left home.

Q. How many people there now.

A. About 150.

Q. When you were brought up in the '40s and '50s, what was the situation regarding your movements. Were you

allowed into the towns, were you allowed into Adelaide.

A. We can go anywhere we wanted. But in 1962, they had a permit system on Point McLeay where if anyone wanted to come to Point McLeay, they would have to go and get a permit for half an hour, hour, two days, three days.

And if they wasn't there - if they was there after the permit ran out, they could end up with gaol sentence of three months, or from one week to three months. In 1962, myself and my wife had to get a permit to take my one week old son back to Point McLeay. This is what we call Dog Act and some times a lot of people think we are still under that Act, and they get a surprise.

Q. When did that take effect; when did that operate from, the Dog Act.

A. That has been there from when time began.

Q. What happened in 1962.

A. In 1974, we had - the Point McLeay Community Council, we took over the place and we abolished that system.

Q. You received a Churchill Fellowship in 1989 - beg your pardon, recently.

A. Yes.

Q. Have you actually taken up that fellowship yet.

A. No, not yet. I'm taking it up in the middle of June next year.

Q. What is that for.

A. To see and to investigate and learn what the native American Indians had to put up with.

CONTINUED

## H.J. RANKINE XXN (MR TILMOUTH)

- 1 Q. These are the American Indians, what are they,  
2 California.
- 3 A. Go into California, going up to Canada.
- 4 Q. You received the Achievement Award for Advance Australia  
5 in 1989.
- 6 A. Yes.
- 7 Q. What was that for.
- 8 A. That was for things I do for the community and  
9 Aboriginal people.
- 10 Q. You've been asked some questions about consultation.  
11 Did you, at some stage, write to the Ombudsman about  
12 consultation in relation to the Hindmarsh Island matter.
- 13 A. Yes.
- 14 Q. How did you approach the Ombudsman, did you write to  
15 him, did you go and see him, how did that come about.
- 16 A. He come to visit Point McLeay.
- 17 Q. Why was that, do you know. Was it arranged.
- 18 A. Yes, it was arranged prior, it was through prior  
19 arrangements.
- 20 Q. How did that come about, did somebody ring the  
21 Ombudsman, or did he ring up and say he was coming down  
22 anyway.
- 23 A. He rang up and said he was coming down.
- 24 Q. Can you tell the Commissioner when it was that you spoke  
25 with the Ombudsman.
- 26 A. The dates I forget.
- 27 Q. Would it have been about late 1993.
- 28 A. I think so, yes.
- 29 Q. What was the essence of what you had to say to the  
30 Ombudsman about the Hindmarsh Island matter.
- 31 A. Well, seeing that our Minister for Aboriginal Affairs,  
32 Dr Michael Armitage, has never stepped out in the  
33 front-line like he do when he is talking on health, he  
34 has never been out in the front speaking on behalf of  
35 the Aboriginal people. I have asked Eugene Biganovski,  
36 if he could address why our minister then hasn't come  
37 out in front and spoke for our people.
- 38 COMSR: Was this considered within the scope of

## H.J. RANKINE XXN (MR TILMOUTH)

1 the Ombudsman's powers?

2 MR TILMOUTH: I don't know about that. What I had in  
3 mind was Mr Jacobs gave a little bit of evidence about  
4 this material, and that's why I'm asking that now. If  
5 I'm correct, there was an annexure to Mr Jacobs'  
6 statement, Exhibit 196, where a letter was sent - Ms  
7 Simpson confirms I'm right, it is Exhibit 196 - there  
8 was a letter of 6 December 1993 from Mr Rathman to the  
9 Ombudsman, that's why I raise it. That's how it  
10 connects to the current evidence.

11 XXN

12 Q. Can I ask you this; you've given a general answer, but  
13 how in your mind did what you have to say to Mr  
14 Biganovski, the Ombudsman, relate to the Hindmarsh  
15 Island question.

16 A. Well, I look at it in the manner that all the ministers,  
17 they have got a portfolio, and in that portfolio, for  
18 example Dr Michael Armitage, he should be standing out  
19 in front, and that's why I asked the question and asked  
20 Mr Biganovski to find out.

21 Q. Was there, in about 1986 or 1987, a question which arose  
22 in relation to a proposal near the caravan park at  
23 Meningie. Do you remember anything about that. Is it  
24 something you can talk about, at least in open session.

25 A. Well, I could. What there is there was a site at  
26 Meningie caravan park, and they told the developers  
27 there to go around. There was a big argument, but they  
28 did go around in the end.

29 Q. I don't want to go into details, to preserve the  
30 content, but in those negotiations, when in relation to  
31 them did the Aboriginal community come out and say that  
32 there was a site in that area.

33 A. Well, I would have to leave the rest of your question.  
34 You would have to ask our people that live in Meningie.

35 Q. Were you involved in that yourself.

36 A. I was, I think, I was in the background.

37 Q. Perhaps I can put it this way; when the development was  
38 proposed, to your knowledge did the Aboriginal people

H.J. RANKINE XXN (MR TILMOUTH)  
REXN (MR SMITH)

- 1 straight away talk about the site, or did it take some  
2 time before they could actually reveal it.
- 3 A. Again, I can't answer you.
- 4 Q. Was any anthropologist involved in that issue from the  
5 museum.
- 6 A. I can't remember now, sorry.
- 7 RE-EXAMINATION BY MR SMITH
- 8 Q. I've produced to you a bundle of memoranda, Exhibit 251,  
9 concerning a meeting held between the representatives of  
10 the South Australian Museum and the Lower Murray  
11 Aboriginal Heritage Committee at the Lower Murray  
12 Nunga's Club at Murray Bridge on Monday 12 November  
13 1990. The documents indicate that it was concerning the  
14 recovery of some skeletal remains for burial from the  
15 museum, right.
- 16 A. Yes.
- 17 Q. The record there shows that you attended that meeting.  
18 Do you have a memory of that.
- 19 A. I know that we were talking about skeletal remains.
- 20 Q. I just want to ask you about the representation of the  
21 committee. You see there on p.2 of the bundle there's  
22 an indication that the committee was represented by Mr  
23 Wilson, Doug Milera, Leah Rankine and Henry Rankine,  
24 Edie Rigney, Laura Winslow. Do you see that.
- 25 A. Yes.
- 26 Q. Now Leah Rankine, is she a relative of yours.
- 27 A. She is. I don't want to mention her name again in here.  
28 She is my sister and she died.
- 29 Q. I'm sorry, okay. At that time, what was her age, can  
30 you tell us that.
- 31 MR MEYER: Is that Henry's auntie?
- 32 A. The other one is my auntie, this is my sister.
- 33 REXN
- 34 Q. Is she about your age.
- 35 A. No, she is older than me, she would have been 60.
- 36 Q. And Edie Rigney from Murray Bridge.
- 37 A. Yes.
- 38 Q. She is one of the proponent ladies, isn't she. She is



## H.J. RANKINE REXN (MR SMITH)

- 1 one of the ladies with Margaret Jacobs, Doreen  
2 Kartinyeri, Connie Roberts. She is one of the proponent  
3 ladies, isn't she.  
4 A. Yes.  
5 Q. How old is she approximately.  
6 A. She would be around the same age - no, she would be two  
7 or three years older than my sister.  
8 Q. Laura Winslow.  
9 A. She is younger than me.  
10 Q. It's the the case, isn't it, that women played a part in  
11 those meetings, didn't they, such as that one on 12  
12 November 1990.  
13 A. Yes.  
14 Q. Women have always had a seat, as it were, on the Point  
15 McLeay Community Council, haven't they.  
16 A. Sorry, are you talking about two different places here?  
17 Q. Yes, I'm going now from the committee that considered  
18 the recovery of skeletal remains from the museum on 12  
19 November 1990, to a more general proposition, namely  
20 that women have always had a place on the Point McLeay  
21 Community Council.  
22 A. Yes.  
23 Q. That's true, isn't it.  
24 A. Yes.  
25 NO FURTHER QUESTIONS  
26 WITNESS RELEASED

1 MR SMITH CALLS

2 THOMAS EDWIN TREVORROW SWORN

3 EXAMINATION BY MR SMITH

4 Q. I think you're resident at Camp Coorong, is that  
5 correct.

6 A. Yes.

7 Q. I think Camp Coorong is operated by the Ngarrindjeri  
8 Land and Progress Association Incorporated, is that  
9 right.

10 A. That's correct.

11 Q. Amongst the things that are done down there, you have  
12 ecologically sensitive tours for the public, is that  
13 right, the public attend there and are taken on tours.

14 A. The public attend, what do you mean by 'ecological'?

15 Q. I mean you teach people to be sympathetic to the  
16 environment and show them the environment.

17 A. Yes, and we teach them about the environment, about the  
18 land, and about our Ngarrindjeri culture and heritage.

19 Q. I think you have also been a member of what was called  
20 the Lower Murray Aboriginal Heritage Committee.

21 A. That's right.

22 Q. From its inception in 1989.

23 A. Yes, 1988, 1989, something like that.

24 Q. In connection with this enquiry, I think you've provided  
25 the commission with a statement, have you not.

26 A. Yes.

27 Q. Looking at this statement produced to you, do you  
28 recognise that as your statement as signed by you at the  
29 bottom of each page.

30 A. Yes.

31 EXHIBIT 268 Statement of Thomas Edwin Trevorrow  
32 tendered by Mr Smith. Admitted.

33 Q. I just want to ask you a few questions about it. You've  
34 got a copy of it, have you.

35 A. Yes.

36 Q. I'm just going to go to p.5. You give us a bit of  
37 history and your schooling, and at p.5 you tell us that  
38 you were lucky enough to get a ranger training position

## T.E. TREVORROW XN (MR SMITH)

1 with Coorong National Parks, and graduated as a ranger.

2 A. Yes.

3 Q. It's not in your statement, but that was in 1983, 1984,  
4 would you agree.

5 A. No, I was wrong there. I can't keep on dates and times  
6 and years, mate. I worked it out after it was 1988,  
7 because I calculated it on how old my child was at that  
8 time.

9 COMSR

10 Q. That was when you first got a ranger training position  
11 was it.

12 A. What's that?

13 Q. In 1988 was when you first got a ranger training  
14 position, was it.

15 A. Yes.

16 MR TILMOUTH: I should say Mr Trevorrow is fairly  
17 deaf.

18 COMSR: I gathered that.

19 XN

20 Q. Camp Coorong was set up to assist with, to teach people  
21 the culture of the Ngarrindjeri people and the  
22 environment. When was that, when did you first start  
23 working at Camp Coorong.

24 A. Me?

25 MR MEYER: When it was it set up as opposed to when  
26 he started working there, that was a different question.

27 A. What did he say? REXN.

28 Q. Don't worry about him.

29 A. He is interfering with your talking to me.

30 Q. He is.

31 A. So if he could be quiet while you are talking, that  
32 would be appreciated.

33 Q. Camp Coorong was set up as a place where the public can  
34 go.

35 A. That's right.

36 Q. And be taught about matters relating to the environment  
37 and Aboriginal culture. When did that happen, when was  
38 it first set up.

- 1 A. Well, see, I got it right from the start, I remember it  
2 quite clearly because it stuck in my head. The first  
3 day that we got incorporated was in 1985. I just forget  
4 the day and month. In 1985 we got incorporated. I've  
5 got more to add to that.
- 6 Q. Yes.
- 7 A. And we sat down as a community of Ngarrindjeri people at  
8 Meningie, and when we got together, we formed our  
9 constitution, which we developed for the welfare,  
10 education and employment matters for our people, because  
11 employment at Meningie area was 99%, and we decided to  
12 do something for ourselves and try and develop something  
13 to be an Aboriginal incorporated organisation. When we  
14 sat down, first thing we sat down and we said `What  
15 shall we do now we're incorporated', and we sat down and  
16 talked about a development, race relations, culture  
17 education camp, we said a place where we can bring  
18 people to and we can talk to them about our Ngarrindjeri  
19 history and heritage, and we said we'd be able to share  
20 our culture with them, and we set that up, so that was  
21 the beginning. I can talk on another hour or so about  
22 the start of Camp Coorong if you want, because that's  
23 how it started off and how we got going, and it was a  
24 community idea, we all sat down and got it going.
- 25 Q. Now the incorporation you mentioned, that is the  
26 incorporation of the Ngarrindjeri Lands and Progress  
27 Association, is it.
- 28 A. Yes, Ngarrindjeri.
- 29 Q. I think you've been employed by that association now for  
30 some seven years. Have I got the dates right.
- 31 A. Yes, I think so.
- 32 Q. It's more than that, isn't it.
- 33 A. I'm with National Parks, and I asked for 12 months'  
34 leave from National Parks to go over and assist with the  
35 development of NLPA and Camp Coorong. When it came time  
36 for me to go back, I requested the National Parks that I  
37 stay on at Camp Coorong, because we'd be doing the same  
38 thing.

## T.E. TREVORROW XN (MR SMITH)

- 1 Q. The Lower Murray Aboriginal Heritage Committee came into  
2 being, I think, in 1988, 1989.
- 3 A. The heritage committee?
- 4 Q. Yes, the committee itself.
- 5 A. Yes.
- 6 Q. You joined that as a committee member, did you not.
- 7 A. Yes.
- 8 Q. Your fellow committee members were your brother George.
- 9 A. George.
- 10 Q. Douglas Milera.
- 11 Q. Doug Milera.
- 12 Q. Victor Wilson.
- 13 A. Victor Wilson.
- 14 Q. Henry Rankine.
- 15 A. Henry.
- 16 Q. Who else, anybody else.
- 17 A. Yes, at the beginning we had quite a few members, but  
18 then some dropped away and dropped off.
- 19 Q. Robert Day, for instance, was he a member.
- 20 A. Yes, Robert Day.
- 21 Q. The older or the younger.
- 22 A. Older.
- 23 Q. Cyril Trevorrow is a name that gets mentioned. Was he a  
24 member, at some stage, of the committee.
- 25 A. You see - in a way, yes, because our Lower Murray  
26 Aboriginal Heritage Committee was not a structured or  
27 constituted committee. It was representatives from each  
28 community and area who we'd meet and we'd try and sort  
29 out issues to do with development, and Road Transport  
30 Authority and things like that, and a lot of times our  
31 younger ones would come along with us also, and they  
32 would listen and they would learn, and we were trying to  
33 do it that way. So in our meetings you'll see a lot of  
34 names crop up of people who were present at those  
35 meetings, because it was open to everybody, Ngarrindjeri  
36 people, to come look and sit and more or less partake if  
37 they wanted to, have a say.
- 38 Q. Not only men, but women also.

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T.E. TREVORROW XN (MR SMITH)

- 1 A. Women also.
- 2 Q. At p.6 you tell us about the Tailem Bend road matter.
- 3 A. Yes.
- 4 CONTINUED

- 1 Q. In 1988, we know that the archaeologist, Vanessa  
2 Edmonds, did a survey of Hindmarsh Island, and can I  
3 suggest to you that you were sent, or at least shall I  
4 put it like this, a copy of Vanessa Edmonds' report  
5 dated September 1988 was sent to Camp Coorong.
- 6 A. Yes.
- 7 Q. You agree with that.
- 8 A. Yes.
- 9 Q. And then in 1990 there was more activity on the island  
10 in the sense that there was an application - there was  
11 an anthropological survey done by the anthropologist,  
12 Rod Lucas, and another archaeological survey done by  
13 Vanessa Edmonds. Do you agree with that.
- 14 A. I agree with the Rod Lucas report, but I have never  
15 sighted the 1990 Vanessa Edmonds report. That one  
16 you've got me stumped on because I've never seen it, and  
17 I didn't know that it happened, but I know the 1988 one  
18 and I know the Rod Lucas one, 19 - in 1990.
- 19 Q. You and your brother George, and your respective wives,  
20 Ellen and Shirley, run Camp Coorong, do you - operate it  
21 or run it.
- 22 A. Yes. We're part of the community that run - we work out  
23 there and we live on site for people when they come  
24 there, you know, visitors.
- 25 Q. Could the report have been sent to you, the second  
26 Vanessa Edmonds report, in early 1990 and you not see  
27 it. In other words, could it have just got - could  
28 George and his wife have seen it and you not know about  
29 it.
- 30 A. Possibly, but I'm not too sure on that.
- 31 Q. By 1990 it was well known that a bridge was proposed for  
32 Hindmarsh Island, wasn't it.
- 33 A. Not to my knowledge.
- 34 Q. Did you, from time to time, attend at the Coorong  
35 Consultative Committee Meetings in place of your brother  
36 George.
- 37 A. No. Maybe once, but no, not - no. It might have been  
38 once I think, but I never -

- 1 Q. Did you not know that in early 1990 Vanessa Edmonds had  
2 done an archaeological survey on the island, and, in  
3 particular, paid attention to the proposed construction  
4 of a bridge.
- 5 A. 19?
- 6 Q. Early 1990.
- 7 A. Not to my knowledge.
- 8 Q. When did you first learn then that a bridge was proposed  
9 for Hindmarsh Island, linking the island to the  
10 mainland.
- 11 A. I think it was 1991, 92 - somewhere further up than 1990  
12 I know, because - why I say that is because, in my mind,  
13 I know the Rod Lucas report, because I remember the  
14 meeting, and I remember it took place at Kalparran, and  
15 I know that it was a long time after that is when I  
16 first heard about a bridge being built, and that's why  
17 I'm recollecting in my head that it had to be at least  
18 twelve months or so after 1990 that I realised.
- 19 Q. So about 1991.
- 20 A. 91, yes, 92.
- 21 Q. Because Rod Lucas reported in early 1990.
- 22 A. Early 1990.
- 23 Q. I will show you his report, if you like. You spoke with  
24 Rod Lucas, providing him with information to help him  
25 with his report, didn't you.
- 26 A. Yes.
- 27 Q. And you are mentioned in his report.
- 28 A. I know that because I read the report. I don't remember  
29 it properly in my head though.
- 30 Q. He says that he spoke with you on 26 January 1990.
- 31 A. I think that's correct, yes.
- 32 Q. You would accept that, would you.
- 33 A. Yes.
- 34 Q. Did your brother George keep you acquainted with what  
35 went on on the Coorong Consultative Committee.
- 36 A. Briefly, at times.
- 37 Q. Did he tell you, for instance, that in March of 1990 it  
38 was - the meeting was told that approval for the



- 1 Hindmarsh Island Bridge could be expected in a month's  
2 time.
- 3 A. Say that again.
- 4 Q. I will put it to you this way.
- 5 A. Did you say 1990?
- 6 Q. There is a minute of the Coorong Consultative Committee  
7 meeting, which I can show you, which shows that your  
8 brother George, in company with Henry Rankine, was at a  
9 meeting of the Coorong Consultative Committee, where a  
10 fellow committee member, Mr Jolly, advised the meeting  
11 that, in respect of one of the developments on Hindmarsh  
12 Island, the bridge would be approved in about a month's  
13 time. So that's minuted in a meeting and I'm accepting  
14 the truth of that. I am wondering whether or not your  
15 brother George told you about that.
- 16 A. I don't think so.
- 17 Q. That's a bit earlier than you remember knowing about the  
18 bridge, isn't it.
- 19 A. Yes.
- 20 Q. March 1990.
- 21 A. Yes. No, I never heard of that one.
- 22 ADJOURNED 1.02 P.M.
- 23 RESUMING 2.20 P.M.
- 24 Q. Yesterday you were present, were you not, when we saw  
25 the Camp Coorong video.
- 26 A. Yes.
- 27 Q. But we also saw a wurlie building video.
- 28 A. That's right.
- 29 Q. Which features, amongst people, Lindsay Wilson, who is  
30 now deceased. That's right, isn't it.
- 31 A. Uncle Lindsay, yes.
- 32 Q. Dulcie Wilson's husband.
- 33 A. Yes.
- 34 Q. That was in 1992.
- 35 A. Yes.
- 36 Q. By that time, you agree that you knew the bridge was  
37 proposed, didn't you. By 1992, at least.
- 38 A. Yes, possibly could have.

- 1 Q. At that time, in 1992, correct me if I am wrong, but  
2 there was no opposition expressed to the bridge from  
3 Camp Coorong, was there.
- 4 A. Opposition?
- 5 Q. Opposition to the construction of the bridge at  
6 Hindmarsh Island.
- 7 A. There was no written opposition or any documented  
8 opposition. There was oral opposition.
- 9 Q. What do you mean by that. Who -
- 10 A. We were talking amongst other people, Ngarrindjeri  
11 people. That's how we done our operations, is that  
12 we'd talk with our people and spread the word around,  
13 and we'd all discuss things so that's the - what's that  
14 word you said?
- 15 Q. Opposition.
- 16 A. Yes, that's why there was no opposition in written  
17 evidence or anything like that, is because our way is  
18 oral, and a lot of that we still do today. And with a  
19 lot of our heritage meetings that we have we speak  
20 orally about - trying to work things out.
- 21 Q. But certainly from October 1993 onward, you started -  
22 the committee started writing letters, so the opposition  
23 became written, didn't it.
- 24 A. It became written.
- 25 Q. And the opposition took the form of attending public  
26 meetings and protests too, didn't it.
- 27 A. Yes.
- 28 Q. Why didn't it happen earlier.
- 29 A. Because we could see that things were going to become  
30 more threatening to the Hindmarsh Island area, and  
31 because we were - thought that Dean Brown at that time  
32 along the track said that there would be no bridge and  
33 no development.
- 34 Q. Providing he got into government.
- 35 A. So -
- 36 Q. Even by October 1993 he wasn't in government, was he.
- 37 A. No.
- 38 Q. He wasn't in government until the end of that year.

1 A. Yes.

2 Q. So -

3 A. And we were hoping at that time along the line that our  
4 Aboriginal Heritage Act, which was brought in in 1988,  
5 which we, as Ngarrindjeri people, were learning about as  
6 we were going, what it really meant, how good an Act it  
7 was, and we were hoping that that Act would protect our  
8 sites.

9 Q. It's the case that the Ngarrindjeri people, for  
10 instance, voiced their disapproval of the Telecom towers  
11 on the summit of Mount Barker in 1987 and 1988, didn't  
12 they.

13 A. Yes.

14 Q. And I think there's a photograph of your wife, isn't  
15 there, in connection with that, on the summit of Mount  
16 Barker. I think I showed you this yesterday, didn't I,  
17 a copy of an article in the 'Advertiser' of 1 December  
18 1987, which shows Aboriginal elder, Mrs Daisy Rankine,  
19 your brother, George Trevorrow -

20 A. Yes.

21 Q. And I think that's your wife, Ellen Trevorrow.

22 A. Ellen Trevorrow, yes.

23 Q. So as early as late 1987, you were making your voice  
24 heard at the summit of Mount Barker, weren't you.

25 A. Yes, and before that too.

26 Q. Yes.

27 A. We were always doing our best and trying.

28 Q. Why weren't you making your voice heard aggressively  
29 like that in connection with the construction of the  
30 bridge when you knew about it, as you say, in 1991 or  
31 1992. If it was so offensive to you, why wasn't Camp  
32 Coorong opposing the bridge back then, 1991, 92.

33 A. We were orally between ourselves, but we weren't out  
34 there standing up, jumping around and what's-a-name. We  
35 were doing it our way, Ngarrindjeri way. You know what  
36 I mean. We talk and say what we're going to do with  
37 these people now, which way we're going to go, and that

- 1 takes time, and in a lot of our consultation processes  
2 it took time.
- 3 Q. In October of 1993, construction was about to begin on  
4 the bridge, wasn't it.
- 5 A. Yes, and no matter what we said and what we done, it  
6 still got all overlooked. People were ignoring us.
- 7 Q. But you didn't say anything up until that stage, did  
8 you. Up until about October 1993.
- 9 A. Yes, but -
- 10 Q. Except 'Be careful of the burial sites' and -
- 11 A. Yes, but didn't Armitage override our Act then, or is  
12 that after?
- 13 Q. I can't help you with that. Can you tell us whether or  
14 not you were encouraged by say the - by other people to  
15 take a more active objection to the bridge. Did that  
16 happen, that you got some encouragement to come forward  
17 and be more aggressive.
- 18 A. That's possible.
- 19 Q. Did that come from the conservation people, the Friends  
20 of Goolwa and Kumarangk.
- 21 A. It may have.
- 22 Q. What can you tell us about that. Who was it that was  
23 encouraging you in -
- 24 A. I can't say who, but along the line I know we had - we'd  
25 had people saying to us, you know, that you should stand  
26 up more for your rights, you should stand up more for  
27 your heritage, and I just can't remember exactly who  
28 said that.
- 29 COMSR
- 30 Q. When you say you can't remember who said it, do you  
31 recall which group or association you are talking about  
32 when you say that, if not the person concerned.
- 33 A. No, I can't remember that properly. No, I can't recall  
34 that.
- 35 CONTINUED

- 1 Q. It seems to me, listening to the evidence concerning the  
2 various developments that went on, that the same  
3 Aboriginal names keep recurring over and over again with  
4 respect to each of the developments where there is  
5 opposition. Is there some reason why it happens that  
6 way.
- 7 A. The same?
- 8 Q. The same names keep being heard by me over and over  
9 again.
- 10 A. What names are they?
- 11 Q. Your own and the Rankines. In each instance it seems  
12 there is a limited number of people concerned. Is there  
13 some explanation for that.
- 14 A. I think I can give you an explanation from my point of  
15 view why that happens. And I think it is because our  
16 communities look up to those names that keep appearing  
17 as in a way I guess their leaders that they will put up  
18 front to talk and negotiate for them. So maybe that's  
19 why them names keep appearing. Within my own community,  
20 the Ngarrindjeri Aboriginal people there in Meningie,  
21 when any issue, any problems arise or comes up they come  
22 and talk to me for advice and for help in some form or  
23 manner. I believe over the years the same thing  
24 happened down at Raukkan. How a lot of the Ngarrindjeri  
25 community would go and speak to Henry about issues.  
26 Murray Bridge I think it was Victor Wilson.
- 27 Q. Doug Milera used to be in somewhat the same category.
- 28 A. Yes.
- 29 Q. As one of the names. What base was behind, or what  
30 group did he represent.
- 31 A. Murray Bridge. Doug Milera was one who started standing  
32 up and speaking on behalf of his people and his people  
33 see him as a person up front who is going to represent  
34 them and would speak for them, so that's why a lot of  
35 times his name comes up in a lot of issues.
- 36 XN
- 37 Q. Can I say to you this: that the excuse that is offered  
38 in the papers and in the correspondence that is in

- 1 evidence in the Commission about why the Aboriginal  
2 people didn't come forward before about 1993 was that  
3 they weren't consulted, but you say you knew about it  
4 and you were talking amongst yourselves about it, is  
5 that what you say. You don't say it was a lack of  
6 consultation, do you.
- 7 A. What, with the Hindmarsh Island?
- 8 Q. With the bridge.
- 9 A. Lack of consultation, yes.
- 10 Q. Which is it: is it that you knew that it was coming up  
11 and it just took you time to speak to one another about  
12 it.
- 13 A. Yes, one another. And waiting for the developers and  
14 maybe the Chapmans to come along and consult with the  
15 people and let us know exactly what was going on and  
16 exactly what was planned for Hindmarsh Island in the  
17 future and that.
- 18 Q. You were a ranger employed on the Coorong, weren't you.
- 19 A. Yes.
- 20 Q. You were answerable to the Coorong Consultative  
21 Committee, were you.
- 22 A. I guess so, yes.
- 23 Q. Because your name keeps coming up in the minutes about  
24 taking leave without pay and that sort of thing with the  
25 committee.
- 26 A. Yes.
- 27 Q. Do you know, for instance, that the development  
28 applications for Hindmarsh Island were lodged with the  
29 Coorong Consultative Committee in 1989.
- 30 A. 1989?
- 31 Q. I will give you exact dates. July 1989 `Coorong  
32 Consultative Committee meeting considered two plans  
33 proposed for the development on Hindmarsh Island. One  
34 with a bridge and one without.' Your brother, George, I  
35 don't say he was present, but the evidence is that he  
36 got copies of the minutes of these meetings, but you say  
37 you didn't know about any proposal for a bridge as early  
38 as July 1989.

- 1 A. No.
- 2 Q. The minutes of the consultative committee then show that  
3 there is considerable water under the bridge, no pun  
4 intended. But then in March of 1990 the Coorong  
5 Consultative Committee are told and your brother is  
6 present, according to the minutes, that there is likely  
7 to be an approval for the construction of the bridge in  
8 a months time or thereabouts.
- 9 A. In 1989?
- 10 Q. In 1990.
- 11 A. I don't know.
- 12 Q. You didn't know about that.
- 13 A. No, I didn't.
- 14 Q. You didn't learn about it until 1991/1992, is that the  
15 position.
- 16 A. Yes, that's - yes, that's all I can remember, that's as  
17 far as my memory can remember on that.
- 18 Q. Despite the fact that you were on the committee the  
19 committee did nothing official about it, is that right,  
20 until about October of 1993 when Henry Rankine and  
21 George Trevorrow went to the public meeting at Goolwa.  
22 Do you agree with that.
- 23 A. Say that again.
- 24 Q. I am suggesting that you didn't do anything about your  
25 opposition to the bridge actively until October of 1993  
26 or thereabouts when your brother went to a public  
27 meeting at Goolwa in company with Henry Rankine and  
28 actually spoke on the stage to the meeting. Is that  
29 about your memory of when real opposition commenced from  
30 the Aboriginal quarter.
- 31 A. Possibly. But, as I said, it was there before that  
32 meeting, between us.
- 33 Q. You were sort of telling the Commissioner that pressure  
34 might have been brought to bear on you.
- 35 A. Yes.
- 36 Q. From other quarters.
- 37 A. Yes.
- 38 Q. To really stand up.

- 1 A. Yes.
- 2 Q. And be counted.
- 3 A. Yes.
- 4 Q. Was that from the CFMEU, the union.
- 5 A. No, I think what I meant there, I think, is it was
- 6 camps, like, people that were coming to Camp Coorong and
- 7 were talking and -
- 8 Q. Like who.
- 9 A. Like school groups and like people coming there. And I
- 10 think that's where, you know, we got - more or less got
- 11 encouragement from people to stand up for our rights.
- 12 Q. You get the newspapers down at Camp Coorong, do you.
- 13 A. Sometimes.
- 14 Q. You have guests down there. I suppose they want to read
- 15 the paper, do they.
- 16 A. Yes, some of the guests do. They bring their paper on
- 17 there and they sit there and read it. I don't read the
- 18 paper much, only now and then.
- 19 Q. I am suggesting to you that the bridge, the Hindmarsh
- 20 Island bridge, was in the newspapers on a regular basis
- 21 in the years 1989 through until this dispute erupted in
- 22 1994. Would you agree with that.
- 23 A. I think -
- 24 Q. Would you agree with that, that it received much
- 25 publicity, the bridge.
- 26 A. No, I can't agree with that because I never seen it.
- 27 Q. You have said, at p.9 of your statement, you have got it
- 28 there, at the top of page the bridge was not acceptable.
- 29 So, you have said that the bridge came up in 1991/1992,
- 30 at the bottom of p.8. Then you say 'The Hindmarsh
- 31 Island bridge was not acceptable to the Lower Murray
- 32 Aboriginal Heritage Committee and to the Ngarrindjeri
- 33 people because of the further destruction that the
- 34 bridge would do to burial grounds, old camp sites and
- 35 environmental grounds such as water pollution and land
- 36 degradation.' That's right.
- 37 A. Yes.
- 38 Q. The water pollution and land degradation, that was the



- 1 view of the conservationists who were opposing the  
2 bridge, that is, the Friends of Goolwa and Kumarangk,  
3 did you know that.
- 4 A. That sounds like their words, doesn't it?
- 5 Q. Yes, it does.
- 6 A. But it's not. It's my words.
- 7 Q. You have said then 'I have always known that the  
8 Hindmarsh Island/Murray Mouth area is very significant  
9 to my people.'
- 10 A. Yes.
- 11 Q. And I think you would add to that, wouldn't you, that it  
12 is the meeting of the fresh water and the salt water  
13 which makes it special.
- 14 A. Yes.
- 15 Q. Is that a view you have always held.
- 16 A. Always held, yes.
- 17 Q. When Mr Lucas was doing his anthropological report on  
18 the island, in 1990, that wasn't a view you expressed to  
19 him, was it.
- 20 A. No.
- 21 Q. Why not.
- 22 A. I just didn't express that view to him, at that time.
- 23 Q. Can I suggest to you that that formula of words, the  
24 meeting of the waters, the fresh water meeting with the  
25 salt water, was something that was suggested to you.
- 26 A. No.
- 27 Q. It is your own.
- 28 A. My own.
- 29 Q. Where did you get -
- 30 A. And I can tell you about it, but I am not going to,  
31 because it was taught to me when I was younger and I  
32 learnt it through the years. And I am not going to go  
33 into it and talk about it with this Commission because  
34 of reasons.
- 35 Q. You don't say it is secret or sacred, do you.
- 36 A. No, I am not saying that either.
- 37 Q. Why won't you talk about it.
- 38 A. What?

- 1 Q. Why won't you talk about it.  
2 A. Let me tell you something. That in my younger years  
3 when I was growing up the old people said the River  
4 Murray, murungi, is our life line to the Ngarrindjeri  
5 people. And they said where the river meets the salt  
6 water they said that's our spiritual place. And in most  
7 cases I never, ever questioned my Elders. When they  
8 told me something I left it at that. I learnt more as I  
9 got on. But I'll ask you a question. Why is Goolwa  
10 there? Why do people want to develop there? Isn't it a  
11 special place in most countries and in the world where  
12 the rivers run and meet the sea? Don't you think  
13 Aboriginal people would have special meaning for places  
14 like that and beliefs?  
15 COMSR  
16 Q. Do I take it from what you have said that it is a  
17 spiritual place for the whole of the Ngarrindjeri  
18 people, is it.  
19 A. It is, yes.  
20 XN  
21 Q. You and your brother I think came into possession of a  
22 document called 'Coastal Zone Enquiry Study', is that  
23 right.  
24 A. I think so, yes.  
25 Q. Which was a study that was commissioned by ATSIC and it  
26 is in evidence which dealt with coastal waters, didn't  
27 it.  
28 A. Yes.  
29 Q. And the cultural significance of coastal areas and  
30 waterways.  
31 A. Yes.  
32 Q. You know that, do you, that that report dealt with that.  
33 A. I think so, yes.  
34 Q. You and your brother have got a copy of that, haven't  
35 you.  
36 A. I reckon, yes, I reckon I have seen that. I haven't  
37 read it, but I think the front page of it I can see in  
38 my mind.

- 1 Q. That document is full of information about coastal  
2 waters and the meeting of fresh water and sea water,  
3 isn't it.  
4 A. Yes.  
5 Q. Is that where you got this from.  
6 A. Got what from?  
7 Q. You got this notion of the importance of the meeting of  
8 the waters.  
9 A. What does 'notion' mean?  
10 Q. The idea of.  
11 A. No.  
12 Q. Can I take you to women's business: and I am not going  
13 to enquire into it or anything, so don't be concerned.  
14 When did you first hear about women's business in  
15 association with Hindmarsh Island.  
16 A. In association with Hindmarsh Island, I have got it here  
17 in my statement. March/April.  
18 Q. Of 1994.  
19 A. Yes, in 1994.  
20 Q. You have set out there that you heard that from your  
21 wife.  
22 A. Yes.  
23 Q. And her mother.  
24 A. Yes.  
25 Q. Your wife, Ellen.  
26 A. Ellen.  
27 Q. And who is Ellen's mother.  
28 A. Daisy Rankine.  
29 Q. Daisy Rankine.  
30 A. Yes.  
31 Q. That is the same Daisy Rankine we see photographed in  
32 The Advertiser in connection with the Mount Barker  
33 Summit matter.  
34 A. Yes.  
35 Q. Can you tell us whether the first information about  
36 women's business came to you and your wife Ellen from Dr  
37 Lindy Warrell.  
38 A. Did it?

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KC 63L

T.E. TREVORROW XN (MR SMITH)

- 1 Q. Did it come through Dr Lindy Warrell first.
- 2 A. Can you expand on that a bit more?
- 3 Q. Yes, what I can do is I can do a little better than
- 4 that. I will show you a very short video film.
- 5 VIDEO COMMENCES
- 6 CONTINUED

1 VIDEO CONCLUDES

2 MR SMITH: We will stop the video as now Ms Warrell  
3 gives us the benefit of her view about the Commission.  
4 I tender the video and I hand transcripts to my learned  
5 friends. There is also a transcript to go with the  
6 video.

7 EXHIBIT 269 Video of the 7.30 Report interview with  
8 Lindy Warrell and transcript of same  
9 tendered by Mr Smith. Admitted.

10 XN

11 Q. Could you hear that okay.

12 A. Yes.

13 Q. Is Dr Warrell correct that she mentioned women's  
14 business to you and your wife Ellen on that occasion.

15 A. I think briefly, but was to do with the basket weaving  
16 that Ellen was doing, but not to do with anything  
17 associated with Hindmarsh Island or anything like that.

18 Q. Dr Warrell was plainly talking there, where she was  
19 talking to Alison Caldwell, about the bridge and the  
20 dispute relating to the bridge down on Hindmarsh Island;  
21 wasn't she.

22 A. Yes.

23 Q. And she's making the point that she did mention women's  
24 business to you in connection with the bridge.

25 A. Yes.

26 Q. Do you agree with that.

27 OBJECTION Mr Tilmouth objects.

28 MR TILMOUTH: That is not right. My recollection is  
29 that Dr Warrell said particularly she wasn't even down  
30 there for Hindmarsh Island, and I don't know whether  
31 that is right to so say that she is talking, she was  
32 relating it to Hindmarsh Island at all.

33 MR MEYER: 5.5 on p.3.

34 COMSR: I thought it fairly clearly was being  
35 put to her that that is what the discussion was about.

36 MR TILMOUTH: I'm looking for the passage that she  
37 said something about it.

38 MR SMITH: She wasn't talking about basket weaving,

- 1 was she.
- 2 COMSR: That is a reasonable enough question in  
3 the context of the interview.
- 4 OBJECTION OVERRULED
- 5 XN
- 6 Q. The question was, I'm suggesting to you that it's plain  
7 from listening to that video and what Dr Warrell says  
8 that she raised women's business with you in connection  
9 with the Hindmarsh Island Bridge matter. Is that how  
10 you listened to the video.
- 11 A. That's how I seen it there, now I heard it there, but it  
12 didn't happen like that only. That's wrong.
- 13 Q. How did you remember that happening then.
- 14 A. As I put in my statement, we're talking when she came  
15 down to meet us and when we're looking for our Museum -  
16 we have a cultural Museum at Camp Coorong and was  
17 looking at the basket weaving because we've got basket  
18 weaving in the Museum. That was done by the Manangreda,  
19 the Aboriginal women, and discussions took place with  
20 Ellen and my wife and Lindy Warrell about the workshop  
21 that happened at Camp Coorong that the Manangreda women  
22 done at the Camp Coorong. And all sat around and had a  
23 big basket weaving workshop and we shared basket  
24 weaving. And the Ngarrindjeri women and Ellen and the  
25 Manangreda women were involved in that. That is where  
26 it come into as far as I know, as far as I heard. That  
27 is all that was raised about any women's business, was  
28 to do with the weaving.
- 29 Q. Dr Warrell introduced herself to you as an  
30 anthropologist, did she not.
- 31 A. Possibly, yes. I think it was the place.
- 32 Q. She would have had quite a lively interest in what you  
33 were doing down at Camp Coorong.
- 34 A. She must have to come down and meet us and talk to us.
- 35 Q. I'm suggesting to you that you did speak to her about  
36 the Hindmarsh Island Bridge development and the fact  
37 that Aboriginal people opposed that.
- 38 A. Yes.

1 COMSR

2 Q. Did she give you a card on that occasion.

3 A. A card?

4 Q. Yes, her card.

5 A. I don't know. I can't remember that. I don't think,  
6 otherwise - no, no, she never.

7 XN

8 Q. I will show you that last exhibit, Exhibit 269,  
9 produced. Here's a transcript of 269. I don't want to  
10 play the video back to you again. See there on p.3 'LW'  
11 and she's asked the question by Alison Caldwell where  
12 she says: 'I think that was a very strange  
13 representation of what happened. I visited Camp Coorong  
14 and met Tom and Ellen Trevorrow for the first time at  
15 that time and my visit was absolutely nothing whatsoever  
16 to do with Hindmarsh Island. And it was only in passing  
17 towards the end of our meeting that, you know, er,  
18 something about Hindmarsh Island came up. And I  
19 remember saying then -, and she goes on. And then  
20 right at the end 'Now, what a pity about the women's  
21 business. It would be nice if there was some women's  
22 business or something very loose'. See there.

23 A. Well, I don't remember her saying that.

24 Q. Let's say she said that. What you're implying is that.

25 A. You think me and my wife came up with this idea of  
26 women's business, is that what you are saying?

27 Q. I'll ask the next question then. I'm -

28 A. No, that's wrong. No such thing happened. And I  
29 wouldn't do that and my wife wouldn't do it; and I  
30 wouldn't allow her to and she wouldn't allow me to come  
31 up with something like that.

32 Q. I'm not suggesting you did that in any deliberate way.  
33 Can I ask you whether or not you or your wife might have  
34 passed that on.

35 A. No.

36 Q. Even innocently.

37 A. I don't know. I don't think. Because when I, I seen  
38 this on TV that we just showed there, and it came as a

- 1 shock to me and my wife and I said `What the hell's  
2 going on here?', and we started thinking back and I was  
3 trying to think of the meeting and I was trying to think  
4 of the time. And the only way I found out is I found it  
5 in the old yearly planner stored away. And I looked in  
6 there and I seen Lindy Warrell's name, 2 o'clock. It  
7 was on a Saturday she was coming. Now, the meeting was  
8 that quick with us because we were that flat out and  
9 getting busy for a big meeting. We were going to have a  
10 meeting there between Aboriginal people for all around  
11 Australia, leaders, and mining company bosses. That was  
12 a reconciliation meeting between Aboriginal people and  
13 mining companies. I think when Lindy Warrell walked  
14 through that door, the discussion we had went too,  
15 because we didn't have time to even talk about it after.  
16 And that's why I said when we seen it on TV, we had to  
17 wrack our mind to think `Lindy Warrell? Who is Lindy  
18 Warrell?' You - do you know what I mean?
- 19 Q. Well, can I ask you this: You can't remember whether  
20 she left, you cannot remember whether she left a card  
21 with you or not.
- 22 A. No, I honestly - I can't. But maybe if I go back to my  
23 office and look, I might find one. There may not be  
24 one.
- 25 Q. She offered her assistance to you, didn't she, according  
26 to this, to anything.
- 27 A. Yes, anything.
- 28 Q. I think she said her words were to the effect that if  
29 there is anything she could help you with, she would be  
30 happy to.
- 31 A. Yes.
- 32 Q. All I'm asking is whether you might have passed that  
33 conversation on to, for instance, any of your fellow  
34 members of the Lower Murray Aboriginal Heritage  
35 Committee.
- 36 A. No.
- 37 Q. Why wouldn't you have. Why wouldn't you have passed it  
38 on. There was an anthropologist suggesting to you -



- 1 A. Anthropologist, don't talk about anthropologists. We  
2 have that many of them, now, that speak to us and visit  
3 us both over time. And wouldn't have done that. As I  
4 understand, I said from the day that Lindy Warrell left,  
5 I had no more contact with her, never even heard from  
6 her or nothing until I seen her on TV.
- 7 Q. Then women's business emerged almost coincidentally with  
8 Lindy Warrell's visit to you.
- 9 A. Funny, I know what you are thinking, it's a coincidence  
10 that that happened like that.
- 11 Q. P.10 of your statement - can I ask you one last question  
12 on that topic. Did you at least tell your brother  
13 George this this visit had taken place with Lindy  
14 Warrell.
- 15 A. I possibly would have, yes. I can't say - I wouldn't  
16 have - no, I possibly did. Possibly.
- 17 Q. P.10, you deal with the topic of Lower Murray Aboriginal  
18 Heritage Committee.
- 19 A. Yes.
- 20 Q. You make the point that you were still on the committee  
21 by May of 1994; right.
- 22 A. Yes.
- 23 Q. You didn't seek re-election because of your workload.
- 24 A. Yes.
- 25 Q. In your time as a member of the committee, you had  
26 meetings with developers, national parks, road  
27 transport, Museum, Telecom and Optus.
- 28 A. Yes.
- 29 Q. Telecom, when did you have meetings with Telecom.
- 30 A. My first meetings that I had with them with Telecom -  
31 no, we had several meetings with Telecom.
- 32 Q. What about.
- 33 A. Well, one was they wanted to lay an optical fibre cable  
34 from Melbourne to Adelaide from the Victorian border to  
35 Adelaide and they were going to trench it. So they  
36 consulted with us and we said - we had meetings with  
37 them and we said we'd like an archaeological survey of  
38 where it's going and that we'd like a Ngarrindjeri

1 person, or persons, to be present while, that's the  
2 trenching, was going on in particular areas. So, that  
3 was the first time, I think, we had dealings with  
4 Telecom because - and a couple of little branch lines  
5 here and there.  
6 CONTINUED

T.E. TREVORROW XN (MR SMITH)  
XXN (MR MEYER)

- 1 Q. But nothing to do with Hindmarsh Island,  
2 anthropologically.
- 3 A. There is one where they wanted to lay a new cable across  
4 to the island, under the water I think it was. I didn't  
5 have meetings with them on that one, but I seen some  
6 paperwork that came through showing where they was going  
7 to and how they was going to lay the cable.
- 8 Q. Did you approve of that yourself.
- 9 A. No.
- 10 Q. You wouldn't have wanted that to happen, you wouldn't  
11 have wanted a cable to go across the river to the  
12 island.
- 13 A. No, we never finished our what's-a-names with them on  
14 that because of the issue of the bridge going on.
- 15 Q. What about Optus.
- 16 A. Optus?
- 17 Q. Yes, what negotiations did you have with Optus. What  
18 was that in connection with.
- 19 A. Optus wanted to put telecommunication towers on hills  
20 like -
- 21 Q. Mound Barker.
- 22 A. Mount Barker, Brown Hill, White Hill, and a couple of  
23 hills over here at Victor Harbor, so they came and they  
24 spoke with us and consulted with us. It was good  
25 consultation, and we said 'We need those sites to be  
26 examined and looked at', so what Optus done there was  
27 offered us travelling expenses, accommodation expense  
28 and food expenses if we can get Ngarrindjeri people to  
29 go over there while they were clearing and drilling  
30 those site areas where the towers were going to go.
- 31 Q. And mobile telephones perhaps.
- 32 A. I think Doug Milera got a mobile telephone to help us  
33 with our communications while we were working on the  
34 heritage programs.
- 35 CROSS-EXAMINATION BY MR MEYER
- 36 Q. You received the Lucas report.
- 37 A. 1990, yes.
- 38 Q. That was the one that was done by Rod Lucas.

- 1 A. Rod Lucas, yes.
- 2 Q. That was an anthropological study about Hindmarsh  
3 Island.
- 4 A. Yes.
- 5 Q. Prior to that, Vanessa Edmonds had done a study of  
6 Hindmarsh Island in 1988.
- 7 A. That's right.
- 8 Q. You had a copy of that.
- 9 A. Yes.
- 10 Q. Vanessa Edmonds did another study in early 1990.
- 11 A. Yes.
- 12 Q. The evidence that we have got before us is that she sent  
13 copies of that study to the Point McLeay or Raukkan  
14 Council.
- 15 A. Yes.
- 16 Q. To the Ngarrindjeri Lands and Progress Association.
- 17 A. Yes.
- 18 Q. And to the government and places like that.
- 19 A. Yes.
- 20 Q. You're concerned with the Ngarrindjeri Land and Progress  
21 Association.
- 22 A. Yes.
- 23 Q. It follows, therefore, at least by mid 1990, that the  
24 Ngarrindjeri Lands and Progress Association had received  
25 three different reports about Hindmarsh Island, two by  
26 Vanessa Edmonds and one by Lucas. That's right, isn't  
27 it.
- 28 A. Yes.
- 29 Q. Did the Ngarrindjeri Land and Progress Association, did  
30 have that have a chairman.
- 31 A. Yes.
- 32 Q. Who was the chairman in 1989/90.
- 33 A. George.
- 34 Q. Did you used to go along to the meetings of the  
35 association.
- 36 A. Yes.
- 37 Q. Were you present in this room this morning when Henry  
38 Rankine gave his evidence.

- 1 A. Yes.
- 2 Q. Could you hear me asking Henry questions, or weren't you  
3 able to hear.
- 4 A. I heard some of it but not much because up the back.
- 5 Q. Did you hear me asking Henry questions, or could you not  
6 here either of us.
- 7 A. I heard David mostly because he was on the microphone,  
8 you wasn't. I couldn't hear your microphone much.
- 9 Q. I asked Henry some questions about how he ran the  
10 meetings at the Point McLeay Council. I was going to  
11 take a short cut but I will ask you similar questions.  
12 George, I take it, used to run the meetings as one  
13 ordinarily runs a meeting as the chairman.
- 14 A. Yes.
- 15 Q. If correspondence was received by the association, that  
16 would in some way be recorded as being received.
- 17 A. Yes.
- 18 Q. Correspondence would be read by the chairman, or it  
19 would be indicated to the meeting what it was about.
- 20 A. Yes, in most cases that would be right.
- 21 Q. So when, for example, your Ngarrindjeri Land and  
22 Progress Association received the Edmonds report in  
23 1988, the receipt of that would be recorded at some  
24 meeting, and it would be noted in the minutes.
- 25 A. Yes.
- 26 Q. If there was any issue that anybody in the meeting  
27 wanted to take with what had been received, well then  
28 whoever was present could say whatever they wanted to  
29 say.
- 30 A. Yes.
- 31 Q. In 1988/89, how many people were on the committee of  
32 your association.
- 33 A. A seven member committee.
- 34 Q. Can you remember who they were.
- 35 A. George, chairperson, my wife Ellen, treasurer, because  
36 they have held that position from 1985 right to today.
- 37 Q. Who was the secretary, or didn't you have a secretary as  
38 such, or did Ellen do both the secretary and treasurer's

- 1 job.  
2 A. She did most the time. It could have been - no, I'd  
3 have to go and check back through my paperwork to give  
4 you a true answer.  
5 Q. There's George.  
6 A. Yes.  
7 Q. Ellen.  
8 A. Yes.  
9 Q. You.  
10 A. Yes.  
11 Q. That's three, four to go. Who else.  
12 A. What year do you say?  
13 A. Let's say 1989/1990.  
14 A. Robert Day, Eddy Wilson at one stage, I think Shirley  
15 Gollen at one stage.  
16 Q. So there were men and women on the committee.  
17 A. Yes.  
18 Q. Had there always been men and women on it.  
19 A. Yes.  
20 Q. A mixture.  
21 A. Yes.  
22 Q. Anyhow, then later after the first Edmonds report you  
23 get the Lucas report, and you receive that at the  
24 association.  
25 A. Say that again?  
26 Q. After the first Edmonds report, then you received the  
27 Lucas report.  
28 A. Yes.  
29 Q. And you get that at the association.  
30 A. Yes.  
31 Q. That's discussed at one of the meetings.  
32 A. No. You see we got reports down there that high  
33 (INDICATES), a stack of them. What they've done is  
34 they're tabled, they're showed, `This here is so and  
35 so's report', and it's put over on the shelf. `Whenever  
36 you fellows get time, have a look through it and read it  
37 and see what you think'. That's what happens with the  
38 reports.

- 1 Q. So it's up to you whether or not you read them.
- 2 A. Yes. We don't sit down and go right through them at a  
3 committee meeting because we have got that much other  
4 affairs to do, our community affairs, health, welfare,  
5 housing, all other issues, so incoming correspondence  
6 reports and that we've said 'Look, we've got this report  
7 here, this is about such and such, we'll put it on the  
8 shelf here. When the members have time, or the  
9 community, have a look at it, read through it'.
- 10 Q. Later you got the next Edmonds report. You would say  
11 the same thing happened with that.
- 12 A. The 1990?
- 13 Q. Yes.
- 14 A. That one I can't answer you on. I can't remember  
15 getting that report.
- 16 COMSR
- 17 Q. On how many committees were yourself, George Trevorrow,  
18 Robert Day, Doug Milera, how many committees did that  
19 group serve on.
- 20 A. I think we were on a lot of committees, on committees,  
21 you know, trying to do things, working for the benefit  
22 of our people. Such as I know with Henry Rankine from  
23 Raukkan, he was on a lot of other committees and  
24 speaking for his people, and George was on NLPA,  
25 Ngarrindjeri Land and Progress Association, he was on  
26 ATSIC Council at one stage, Marindie, and he was on  
27 other committees, and I think Doug Milera was the same  
28 at Murray Bridge, so we were, at that time we had a lot  
29 on our plate that we were trying to handle with.
- 30 XXN
- 31 Q. After the Lands and Progress Association received the  
32 Lucas report, do you know whether anybody on your  
33 association gave copies of the Lucas report to anybody  
34 else.
- 35 A. No, I don't remember photocopying it and giving it out  
36 to anybody else.
- 37 Q. Yesterday we saw a tape, a videotape, yesterday morning.  
38 Do you remember that.

- 1 A. Yes.
- 2 Q. Were you here then.
- 3 A. The Camp Coorong ones?
- 4 Q. Yes.
- 5 A. Yes.
- 6 VIDEO PLAYED
- 7 Q. Do you recognise this tape, this video.
- 8 A. Yes.
- 9 Q. That's your brother George.
- 10 A. Yes.
- 11 Q. This is, I think, a video that was made, I think, with
- 12 the cooperation of the museum and your association and
- 13 matters like that, people like that.
- 14 A. Yes.
- 15 Q. In that photograph I think we can see your brother
- 16 George.
- 17 A. Yes.
- 18 Q. He's the person sitting on our right at the end.
- 19 A. Yes.
- 20 Q. We can see Maggie Jacobs.
- 21 A. Yes.
- 22 Q. She is the lady with the grey/white hair sitting nearest
- 23 the tree, is that right.
- 24 A. Yes.
- 25 Q. Are you in that photograph.
- 26 A. Yes.
- 27 Q. Which one is you.
- 28 A. Alongside of George there.
- 29 Q. You're second man in.
- 30 A. Yes.
- 31 Q. I won't refer to anyone who is gone, I've got no need to
- 32 mention the names of anyone who's died that is shown on
- 33 this tape, okay.
- 34 A. Yes.
- 35 Q. That was Maggie Jacobs describing matters in relation to
- 36 the Coorong, wasn't it.
- 37 A. Yes.
- 38 Q. Has anybody ever said to you that you shouldn't show



1 that video to people.

2 A. No.

3 Q. Has anybody ever complained to you about your showing  
4 that video to people.

5 A. No.

6 Q. For example, has Maggie Jacobs ever complained about  
7 showing that video.

8 A. No.

9 Q. Has anybody ever suggested to you that any of the  
10 material that we have seen on the tape that I've shown  
11 to you today is in any way objectionable to be shown.

12 A. No.

13 Q. I will just take you back a bit. Has anybody suggested  
14 that it's objectionable to show a videotape with a  
15 picture like that in it.

16 A. No.

17 Q. You see in this Royal Commission, objection has been  
18 taken to that picture, or a picture in that form. Have  
19 you ever heard of that.

20 A. Yes.

21 Q. Well, why isn't it objectionable for us to look at this  
22 video as far as you're concerned.

23 A. It's the context in which it's used.

24 Q. That's the only answer, is it.

25 A. Yes. As with many of our land forms around the area,  
26 they are there, you can see them, you can't avoid them,  
27 but when you start using them in a different way in a  
28 different manner, that's when it becomes insulting.

29 Q. Is it insulting to have that photograph in an  
30 educational centre, just on the wall.

31 A. No.

32 Q. Is it insulting to have the photograph anywhere on any  
33 wall.

34 A. No, not to my knowledge.

35 Q. So if somebody went along to an education centre and  
36 demanded that a photograph of the Murray Mouth such as  
37 we have just seen on your video was removed, you would  
38 say that was wrong.

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TN 63N

T.E. TREVORROW XXN (MR MEYER)

- 1 A. Say that again?
- 2 Q. If a person was to go along to an education centre.
- 3 A. Education centre.
- 4 Q. And demand that a photograph of the Murray Mouth which
- 5 is on the wall be taken down, you would say that was
- 6 wrong, wouldn't you.
- 7 A. Yes.
- 8 CONTINUED

- 1 Q. If someone came into Camp Coorong and you had a  
2 photograph of the Murray Mouth on the wall and someone  
3 demanded that it be taken down, you would say that that  
4 was wrong, wouldn't you.
- 5 A. Yes. It all depends on the situation, on the persons.  
6 COMSR
- 7 Q. What if it is published in something like a newspaper  
8 then.
- 9 A. Beg yours?
- 10 Q. What if it is published in something like a newspaper,  
11 and I suppose there would be many situations then in  
12 which a person might be viewing it, is that acceptable.
- 13 A. I didn't quite hear you properly then.
- 14 Q. Is it acceptable to publish such a map in a newspaper,  
15 where it might be viewed in many different varieties of  
16 circumstances.
- 17 A. It's - like I said, it's - we've learnt that it is the  
18 way that an area is photographed and the way that that  
19 photograph is used, is whether it is offensive or not  
20 offensive. And we have learnt that it is very much how  
21 we are called sometimes, if we are called Aboriginal  
22 people or if we are called Abos. Abos is offensive, but  
23 if we are called Aboriginal people, well we accept that.  
24 The same thing as in language, how it is used towards us  
25 is the same as what we see as what people do to us with  
26 photographs. We see the old photographs of our old  
27 people, paintings, they are always painted standing with  
28 a spear in their hand and one leg cocked up on the  
29 other. We said 'People's mentality back then' you know  
30 'that's how they seen Aboriginal people, standing with a  
31 spear and with one leg cocked up'. When I take my  
32 groups on cultural treks I talk about the yakka trees.  
33 I say 'Do you see the sticks in the middle, they call  
34 them black boys. Why do they call them black boys? I  
35 don't know why they call them black boys.' Things like  
36 that. That's what I'm trying to explain.
- 37 XXN
- 38 Q. Would you look at the document I now produce, which is

- 1 exhibit number 172 in this commission, and it is an  
2 agenda of the Lower Murray Aboriginal Heritage  
3 Committee. In 1990 you were a member of that committee,  
4 weren't you.
- 5 A. Yes.
- 6 Q. On the agenda, one of the items to be discussed is a  
7 development issue relating to Hindmarsh Island.
- 8 A. Yes.
- 9 Q. Do you remember that being discussed.
- 10 A. I don't think we got around to discussing it.
- 11 Q. Even though it was on the agenda.
- 12 A. Yes. But I'm pretty sure with that meeting there, by  
13 the time we discussed everything else, the day was  
14 finished.
- 15 Q. Wasn't that one of the top items - first items on the  
16 agenda. Isn't that one of the first items on the  
17 agenda.
- 18 A. No, it's No.3.
- 19 Q. Item No.1 is the Highways Department proposal on the  
20 road.
- 21 A. Yes.
- 22 Q. And item No.2, developers' proposals relating to four  
23 different sites.
- 24 A. Yes.
- 25 Q. They were Granite Island, Jervis Bay, Hindmarsh Island  
26 and Kangaroo Island.
- 27 A. Yes.
- 28 Q. Are you saying you didn't discuss the second item on the  
29 agenda.
- 30 A. Yes, I think the second item there is developers'  
31 proposals to build on Aboriginal sites at Granite  
32 Island, Jervis Bay - I think that's Cape Jervis, isn't  
33 it.
- 34 Q. I would think that's Cape Jervis, yes.
- 35 A. But I don't think we got to get onto the Hindmarsh  
36 Island one.
- 37 Q. What about the next one.
- 38 A. I don't think Kangaroo Island either.

- 1 Q. So you only got as far as the road, Granite Island and  
2 Cape Jervis.
- 3 A. Yes, I think, if my memory serves me correct. But, you  
4 see, I think No.5, a lot of discussions went on about  
5 that one, because it's always been our will to get our  
6 old people's remains back from museums and overseas,  
7 wherever they have been sent, and get them put back in  
8 the ground where they were taken from. So I know a lot  
9 of our meetings that we had, we were discussing our old  
10 people's remains being put back in the ground. So I  
11 think in this meeting a lot got taken up there.
- 12 Q. Talking to Mr Smith this afternoon, you have talked  
13 about salt water meeting the fresh water, that that's of  
14 importance to you, is that right.
- 15 A. Yes.
- 16 Q. That's of importance to all Ngarrindjeri people.
- 17 A. I don't know about all Ngarrindjeri people.
- 18 Q. Men and women.
- 19 A. Men and women, yes.
- 20 Q. Did you speak to Neale Draper about that.
- 21 A. No.
- 22 Q. Did you talk to your brother George about it.
- 23 A. With George. George and I have spoken about it, yes.
- 24 Q. In April 1994.
- 25 A. Before April 1994.
- 26 Q. What about during April 1994.
- 27 A. Possibly in April 1994.
- 28 Q. Who else have you talked to about that besides George.
- 29 A. Family members, my wife. I can't say exactly who any  
30 more than that.
- 31 Q. In answer to Commissioner Stevens to some questions  
32 about why some names keep coming up - you remember the  
33 commissioner asked you why some names keep reappearing.
- 34 A. Yes, common names coming up all the time, yes.
- 35 Q. You made a reply along the lines that they come up  
36 because those people are seen as being leaders in their  
37 community areas.

- 1 A. Well, yes, I suppose leaders, but because they are seen  
2 as people who meet with developers and speak with  
3 people, you know. So I could say leaders and speakers.  
4 Q. I understand what you were trying to put.  
5 A. You know what I mean?  
6 Q. They are the spokesperson type people.  
7 A. Yes.  
8 Q. So, in your community, it is you and George.  
9 A. Me and George, Robert Day, my wife Ellen.  
10 Q. And in the Raukkan community it is Henry.  
11 A. Yes, and who else I don't know, but -  
12 Q. If you were going to the Lower Murray Aboriginal  
13 Heritage Committee, you would go to Victor or to Doug.  
14 A. Yes.  
15 Q. If you were wishing to make some inquiries in relation  
16 to a matter, the person that you would go and talk to,  
17 at least first up, would be those people.  
18 A. Sometimes. I remember some issues we discussed at  
19 Murray Bridge a long time ago we used to go to Dorrie  
20 Wilson, because she was the worker at the old Lower  
21 Murray Nungas Club.  
22 Q. That's my very point, that first I go and talk to you,  
23 and you say 'The person I got to go and talk to is  
24 Dorrie Wilson' or some other person, but you will know  
25 who it is, won't you.  
26 A. Yes.  
27 Q. I, on the outside, won't know who it is, will I.  
28 A. No.  
29 Q. So if I want to know whether I should consult with  
30 somebody, and let us say it is something that concerns  
31 your area, I go along and say 'Here's the proposal,  
32 Tom', and you will go and talk to who I should consult  
33 with, won't you.  
34 A. Yes.  
35 Q. Then you will come back and give me the answer.  
36 A. Yes.  
37 Q. Have you heard that a meeting took place at what we've

- 1 called in this Royal Commission the Mouth House on  
2 Hindmarsh Island.
- 3 A. Yes.
- 4 Q. In early May 1994.
- 5 A. Yes.
- 6 Q. We have been told that some of the men who were at that  
7 meeting were your brother George -
- 8 A. Yes.
- 9 Q. Victor Wilson.
- 10 A. Yes.
- 11 Q. And Doug Milera.
- 12 A. Yes.
- 13 Q. You have named them as people who one would expect to be  
14 speaking on behalf of others in their community.
- 15 A. Say that again.
- 16 Q. You have named those three men -
- 17 A. Yes.
- 18 Q. As people that you would expect to be speaking on behalf  
19 of other men in their - other people in their community.
- 20 A. Yes.
- 21 Q. And you would expect them to have consulted with other  
22 people in their community.
- 23 A. Yes.
- 24 Q. If the government wanted to - let us say the planning  
25 people had some new proposal and they wanted to find out  
26 whether that proposal, of whatever nature it was, was  
27 acceptable to your people. Then what you would say is:  
28 The people that the government should send the papers  
29 off to, the others, would be at least Doug, Victor,  
30 George and Henry.
- 31 A. Yes. Yes, I suppose.
- 32 Q. Those four would spread it out around their community  
33 and come back with the answer.
- 34 A. Yes.
- 35 Q. The next step, I think, is a somewhat obvious one. I  
36 cannot make you read something, can I.
- 37 A. Can you what?
- 38 Q. I can't make you read something, can I.

1 A. Read something?

2 Q. If I send you something through the post -

3 A. Yes.

4 Q. I can't make you read it, can I. You either do or you  
5 don't.

6 A. That's right.

7 Q. It depends how busy you are.

8 A. Yes.

9 Q. You don't expect me to come down to you and take hold of  
10 you and sit you down and say `You must now read this  
11 document that I've sent to you'. You don't expect that,  
12 do you.

13 MR TILMOUTH: I am not sure where this is going. It  
14 is a matter of comment I think, if anything, but it is  
15 purely speculative. The other thing is I think it is  
16 convenient to have a five minute break.

17 MR MEYER: I object to that, I am nearly finished,  
18 especially amongst the barracking I am getting from the  
19 rear. A great issue has been made in relation to -

20 A. Can I answer that?

21 COMSR: Mr Trevorrow would like to answer that  
22 question so I will permit it.

23 A. I will give you some sort of answer on that. I don't  
24 know what answer you want on it.

25 XXN

26 Q. I just want to know.

27 A. I am probably not educated as good as you are.

28 INTERJECTOR: Well said, Tom.

29 COMSR: Just a minute. Could you keep quiet and  
30 give Mr Trevorrow a chance to answer that on his own  
31 behalf.

32 A. In 1988 there was an Aboriginal Heritage Act that was  
33 put through parliament for us, as Ngarrindjeri  
34 Aboriginal people, to help us. We are learning that  
35 Aboriginal Heritage Act over the years and what it means  
36 and that. We get bombarded with documents and papers to  
37 read. A lot of us can't even read very well, because we  
38 never had a good education, because our lives weren't



1 very good. We got put through hell in our upbringing,  
2 hardship times. Now, a document comes along and you  
3 say, would I expect you to come down and read that  
4 document to me.

5 XXN

6 Q. All I said -

7 MR TILMOUTH: Let him finish.

8 A. I'd say `Mr Meyer, please come down and help us, make us  
9 - help us with this document, show us exactly what it  
10 means, what you are on about, what you are talking  
11 about. Help us so we can help you.' That's what I'd  
12 say to you. Do you know what I mean?

13 XXN

14 Q. Sure.

15 A. Because we get documents here, we got document there, we  
16 got to run to this meeting, we got to see to this  
17 community problem, we got to run our camp, we got that  
18 many things to do, and we never had no big degrees in  
19 schooling, or scholarships or anything to be able to  
20 handle that situation. So we get - Ngarrindjeri  
21 Aboriginal people have been trying to do our best. We  
22 have been trying to help people. We've been trying to  
23 negotiate. And we've proved ourselves, I think, with  
24 the Roads Transport Authority, we have proved ourselves  
25 with Telecom, we have proved ourselves with Optus, We  
26 have proved ourselves with other developments. We have  
27 been trying. This one here, this one here is - was too  
28 big and too quick and too much funny business involved  
29 in it. That's why we got caught up with it.

30 Q. It is the too big and the too quick that I am in fact  
31 putting to you. I am only taking up your answer that  
32 you gave earlier, and that is that you said you received  
33 the documents and you put them on one side. All I am  
34 putting to you is that you in fact get the information,  
35 don't you. You have received that.

36 A. We have received information. Now, I don't know whether  
37 I received that 1990 report though.

- 1 Q. But the next step is either you come back and you say 'I  
2 haven't had time to read it', or you come back and say  
3 'I didn't understand it', or you come back and say 'I  
4 need some professional assistance to explain that to  
5 us', or 'Please give me some help in some way or other'.  
6 They're the possible answers, aren't they. Is that  
7 right.
- 8 A. Yes.
- 9 Q. And anybody, not just an Aboriginal person, needs that  
10 sort of assistance, don't they.
- 11 A. Yes.
- 12 Q. For example, if I need assistance on how to make my  
13 motor car go, I've got to go to a mechanic, don't I.
- 14 A. That's right.
- 15 Q. Each of us can only do our particular little bit.
- 16 A. That's right.
- 17 Q. That's right, isn't it.
- 18 A. Yes.
- 19 Q. My question to you is: you having got all of those bits  
20 and pieces, you didn't say anything of 'I haven't got  
21 time to read it' did you. Your association didn't say  
22 'I've received all the documents, but I haven't got time  
23 to read them' did they.
- 24 A. Who we didn't say that to?
- 25 Q. The government. The government. Anybody, in fact.
- 26 A. Sorry?
- 27 Q. You didn't say it to anybody, in fact.
- 28 A. About the Hindmarsh Island?
- 29 Q. Yes.
- 30 A. No, because we were waiting for the consultation process  
31 to be carried out.
- 32 Q. It was being carried out. You were being sent the  
33 papers.
- 34 A. The Rod Lucas report?
- 35 Q. You didn't say 'I need assistance to understand it' did  
36 you. You didn't say 'I need somebody to come down and  
37 provide us with some advice in relation to it'. None of  
38 those responses were made, were they.

- 1 A. No, they weren't made in writing or paperwork to  
2 anybody.
- 3 Q. In your association, having received the documents,  
4 nothing more happened, did it.
- 5 A. We were talking about it amongst ourselves, orally.
- 6 Q. As far as anybody outside of your circle is concerned,  
7 for the people outside of your association, they didn't  
8 hear anything more from you, did they. That's the  
9 truth, isn't it.
- 10 A. Like who? Like who?
- 11 Q. Anybody.
- 12 CONTINUED

- 1 A. What circle?  
2 Q. You say 'We were talking amongst ourselves.' That's  
3 your answer, isn't it. 'We were talking amongst  
4 ourselves, orally.'  
5 A. You said 'circle'. What circle do you mean?  
6 Q. In your group.  
7 A. What group?  
8 Q. In your association.  
9 A. LMAHC?  
10 Q. Yes.  
11 A. No, I am talking about in the Ngarrindjeri people.  
12 Q. Even if you were talking about in the Ngarrindjeri  
13 people, nothing came outside of that, did it.  
14 A. No, not for a while, no, it didn't.  
15 COMSR  
16 Q. As I understand it, you say one of your problems was  
17 that you were getting too much of this sort of material.  
18 It was coming in in stacks, as I understand what you are  
19 saying. After a while, did you develop a certain  
20 familiarity or expertise with dealing with these types  
21 of reports.  
22 A. With these?  
23 Q. Types of reports. You know, ATSI reports.  
24 A. Did we get any?  
25 Q. Did you get a bit more of a grip of what was contained  
26 in them.  
27 A. No, and I guess that is part of the reason why you will  
28 see that I stepped down off that committee to have a bit  
29 of a break because of my commitment to my Ngarrindjeri  
30 people at Meningie, to Camp Coorong and my commitment to  
31 heritage issues, the whole lot was too great so I  
32 stepped off and I thought I will let other Ngarrindjeri  
33 people go on there now who might be able to work on our  
34 issues for us.  
35 XXN  
36 Q. In one of your answers to one of the questions you made  
37 a reference I think to say there was too much funny  
38 business or something of that nature. Did you say

- 1 something like that.
- 2 A. Yes, I think I did.
- 3 Q. What were you referring to.
- 4 A. I don't know. I just think I said that off the top of
- 5 my head.
- 6 Q. There wasn't any funny business or silly business in
- 7 relation to this, was there.
- 8 A. There was a lack of consultation.
- 9 Q. There wasn't anything untoward or anything like that in
- 10 relation to this proposal, was there.
- 11 A. Any what?
- 12 Q. Anything untoward or wrong or anything like that in
- 13 relation to this proposal, was there.
- 14 A. Yes, I am not too sure on that, on the technical points
- 15 of that.
- 16 Q. You didn't mean that there was. In relation to funny
- 17 business, that was a remark off the cuff.
- 18 A. Yes.
- 19 ADJOURNED 3.53 P.M.

- 1 RESUMING 4 P.M.  
2 CROSS-EXAMINATION BY MS PYKE  
3 Q. You said that you first heard about the bridge and  
4 Hindmarsh Island sometime after Rod Lucas had talked to  
5 you and after he had done his report.  
6 A. Yes.  
7 Q. Can I take it from that then that, when Rod Lucas was  
8 discussing issues to do with Hindmarsh Island with you,  
9 he didn't talk to you about a bridge.  
10 A. Did he talk to us about a bridge?  
11 Q. A bridge, yes.  
12 A. No.  
13 Q. As far as you can remember there was no mention of a  
14 bridge by Rod Lucas.  
15 A. No, no mention at all.  
16 Q. I have just seen a little bit of the Camp Coorong video.  
17 Would I be right in thinking that very much the  
18 Ngarrindjeri people consider that their culture is very  
19 much alive, a living culture.  
20 A. It is. It hasn't gone. Our life style may have  
21 changed, but our culture is still there.  
22 Q. From what you know is there still very much a body of  
23 myth and tradition and beliefs that some of the  
24 Ngarrindjeri people still have and maintain.  
25 A. Yes.  
26 Q. Again you are obviously a man who has taken a fairly  
27 high profile in your own community. Do you believe that  
28 there are many things in relation to Ngarrindjeri  
29 tradition that have not been recorded in writing.  
30 A. There is things that haven't been recorded and those are  
31 still with us.  
32 Q. Would there be things in relation to Ngarrindjeri myth  
33 and spiritual beliefs that you think haven't been  
34 recorded.  
35 A. Yes.  
36 Q. Is that part still of your oral tradition if I can put  
37 it that way.  
38 A. It is still a part of our oral traditions.

- 1 Q. From your experience is that still very much alive. For  
2 example, Ngarrindjeri people still talk amongst  
3 themselves about certain beliefs and traditions.
- 4 A. We talk about it amongst ourselves and at times when we  
5 all get together and we have big gatherings and a lot of  
6 these meeting we have had at Camp Coorong. And when we  
7 have big meetings at Raukkan that's when we start  
8 talking about our spiritual beliefs, our heritage issues  
9 and that and a lot of times there is Elders there and  
10 they see what we are doing and they open up and they  
11 talk to us and they tell us things, us younger fellows  
12 like me.
- 13 Q. So at your age - I am not trying to be rude about this -  
14 but at your age are you still learning some things  
15 about -
- 16 A. I am still learning. I am still learning from my  
17 Elders.
- 18 Q. Is there such a thing as - and I don't want you to give  
19 detail obviously and I am sure you wouldn't give me the  
20 detail anyway, but I am not asking for any detail - but  
21 are there any secret men's beliefs for Ngarrindjeri men.
- 22 A. Men's?
- 23 Q. Yes.
- 24 A. Yes.
- 25 Q. Things that Ngarrindjeri men should not speak to anyone  
26 other than other Ngarrindjeri men about.
- 27 A. That's right. There is places of Ngarrindjeri men's  
28 business. I have been shown them. And they are here  
29 (INDICATES), they are here (INDICATES), until when I am  
30 ready.
- 31 MR TILMOUTH: Indicates the head and the heart.  
32 XXN
- 33 Q. And these are secret places that are not to be talked  
34 about other than to other men.
- 35 A. That's right.
- 36 Q. Are there beliefs that are secret to Ngarrindjeri men.
- 37 A. Yes, beliefs and customs, if that's the correct word.
- 38 Q. Are you aware of the fact that there are secret women's

- 1 beliefs.
- 2 A. Yes.
- 3 Q. For Ngarrindjeri women.
- 4 A. Yes.
- 5 Q. Have you known of the fact that there are secret women's
- 6 beliefs for Ngarrindjeri women for a long time. And not
- 7 necessarily relating to Hindmarsh Island. I am just
- 8 talking about just generally, that there are secret
- 9 women's beliefs for Ngarrindjeri women.
- 10 A. I have known that for a long time and I have known there
- 11 is Ngarrindjeri men's business for a long time. A long
- 12 time before Hindmarsh Island business come up.
- 13 Q. There has been a phrase that has been used in this
- 14 Commission, secret sacred beliefs. Is that the same
- 15 sort of thing.
- 16 A. It is I suppose, yes, those words are the same, but to
- 17 us as Ngarrindjeri people they are spiritual. I think
- 18 that's more an appropriate word to use.
- 19 Q. But there is certainly an element of secrecy about them.
- 20 A. Secrets, that's right, yes.
- 21 Q. As a Ngarrindjeri man growing up, you have always
- 22 understood that there have been secret women's spiritual
- 23 beliefs.
- 24 A. Yes.
- 25 Q. And secret men's spiritual beliefs.
- 26 A. Yes.
- 27 Q. But you haven't known the detail of what the women's
- 28 beliefs are.
- 29 A. No.
- 30 Q. As far as you are aware, have the women known the detail
- 31 of what the men's beliefs are.
- 32 A. No.
- 33 Q. Is this what has happened, that it is only in 1994 that
- 34 you became aware that some of the women's secret
- 35 spiritual beliefs related to Hindmarsh Island.
- 36 A. Yes.
- 37 Q. That was the first time that you heard of a particular
- 38 place that was connected with women's secret spiritual



1 beliefs.

2 A. Yes.

3 Q. You have spoken I think to Neale Draper, Dr Draper, have  
4 you had some involvement with him, or have I  
5 misunderstood that.

6 A. Not much, no.

7 Q. Are there some - and I will only ask you about men's  
8 beliefs - are there some secret men's beliefs that would  
9 be passed on, for example, in appropriate circumstances  
10 to a white man.

11 A. To a white man?

12 Q. Yes.

13 A. It would be passed on if that man had respect for it,  
14 acknowledged it and respected it. And we can sense  
15 that, us Ngarrindjeri people, because we have got a  
16 sixth sense and we can tell whether somebody's genuine  
17 or not. And if our feelings, like me, tell us that  
18 that's all right, sometimes we say some things.

19 Q. Are there some Ngarrindjeri men's beliefs that are  
20 secret that really are more secret, if I can put it that  
21 way, and serious than others. Are there degrees of  
22 secrecy. So what I suppose I am asking you is this: are  
23 there some of your secret beliefs that you might pass on  
24 to a white man in appropriate circumstances, but some  
25 that you would never pass on.

26 A. There is some that we won't pass on. You are getting  
27 fairly -

28 Q. Yes, I know. I don't want any detail.

29 A. But a lot of that is involved in initiation processes,  
30 if you know what I mean.

31 Q. I am not wanting to put you on the spot. I am just  
32 wanting, I suppose, just the idea that there are degrees  
33 of secrecy. There are some secret things that you might  
34 in appropriate circumstances if you trusted a particular  
35 white man pass that information on.

36 A. Yes.

37 Q. And that might be in a situation where, for example, it  
38 was necessary to protect a site.

- 1 A. To protect an area where we as Ngarrindjeri Aboriginal  
2 people may not be able to, but we need somebody else to  
3 help us to do that.
- 4 Q. Again from your experience in your community do you  
5 believe that the same basic system applies to the women  
6 and their spiritual beliefs.
- 7 A. Yes.
- 8 Q. That there are some that might get passed on, but there  
9 is a core, if I can put it that way.
- 10 A. Yes.
- 11 Q. That do not get passed on.
- 12 A. Yes.
- 13 OBJECTION Mr Meyer objects.
- 14 MR MEYER: To answer that he has to have given us  
15 the detail and basis on how he can answer that.  
16 Otherwise he can't know.
- 17 MS PYKE: I put it to him in the sense that he has  
18 understood.
- 19 MR MEYER: No, it is just impossible.
- 20 MS PYKE: Anyway, he has answered the question  
21 satisfactorily.
- 22 MR MEYER: No, he hasn't, he hasn't answered it at  
23 all.
- 24 COMSR: I don't think he has answered it yet.  
25 The objection is he can't know what women's secret  
26 beliefs are.
- 27 MS PYKE: He has said that he knows that there  
28 are.
- 29 COMSR: He knows that there are.
- 30 MR MEYER: How can he know whether there are some  
31 women's beliefs that are more secret than others that  
32 enable some to be passed on and not to be passed on if  
33 he doesn't know what they are? That is an impossible  
34 proposition.
- 35 COMSR: That is as far as he can go, where he is  
36 at now.
- 37 MS PYKE: I have actually got no further  
38 questions.

1 CROSS-EXAMINATION BY MS FREEMAN

2 Q. Do you know a couple by the name of Jan and Neville  
3 Thomas.

4 A. Say that again?

5 Q. Jan and Neville Thomas.

6 A. Jan and Neville Thomas?

7 Q. They were once living on Hindmarsh Island, have you  
8 heard of them.

9 A. No.

10 Q. We have had some evidence in this Commission that Jan  
11 and Neville Thomas were planning to undertake a  
12 development on Hindmarsh Island in late 1993, have you  
13 heard anything about that.

14 A. Yes, but the name doesn't ring a bell, but I heard about  
15 more developments on Hindmarsh Island.

16 Q. We have heard some evidence that they were planning to  
17 have a tourism development involving a duck boat that  
18 would skid across the water, does that sound familiar.

19 A. No, duck boat?

20 Q. We also heard some evidence that Jan and Neville Thomas  
21 planned to link this up with something that the  
22 Trevorrows were doing, have you heard anything about  
23 that.

24 A. Have they got a company name or anything?

25 Q. Not that I am aware of. Perhaps if you look at Exhibit  
26 55A, now before you, that is an article 'Visit Scenic  
27 Chincoteague, Virginia'. We have heard some evidence  
28 that Jan and Neville Thomas were planning to do a  
29 development on Hindmarsh Island linking up with the  
30 Trevorrows that was similar to the development at  
31 Chincoteague Island in Virginia.

32 A. No.

33 Q. Have you seen that before. (NOT ANSWERED)

34 Q. You haven't been involved at all in any plans for a  
35 linking up with the development on Hindmarsh Island.

36 A. No.

T.E. TREVORROW XXN (MS FREEMAN)  
(MR TILMOUTH)

1 Q. Are you aware of your brother George being involved in  
2 any development.

3 A. No, not that I know of.

4 CROSS-EXAMINATION BY MR TILMOUTH

5 Q. Can I clear up something which was asserted. Initially  
6 you spoke about unemployment in the Meningie area. I  
7 think you mean to say that 99% of the Aboriginal people  
8 were unemployed.

9 A. Yes.

10 Q. That was partly why the Camp Coorong development was  
11 begun, to try and provide some employment for the  
12 Aboriginal people.

13 A. That's right.

14 Q. And the Ngarrindjeri people of the area in particular.

15 A. Yes.

16 Q. Without going into great detail can you tell the  
17 Commissioner a little bit about what happens at Camp  
18 Coorong. What you do, your daily work is. You talked  
19 about school groups and so on. Can you elaborate a bit  
20 please.

21 A. Well, with Camp Coorong, we call it - we see it as a  
22 place of sharing. Sharing cultures. Groups come to  
23 Camp Coorong, school groups, primary children,  
24 secondary, university, college groups, adult groups.  
25 And they come there and we sit and we talk. And we talk  
26 about Ngarrindjeri Aboriginal people, about - we go back  
27 and talk about our traditional times that's been  
28 knowledge passed on to us. We talk about our living in  
29 my period of time. We go into what we as Ngarrindjeri  
30 people are trying to do today. We have much discussions  
31 on that. We take groups out on field trips along the  
32 Coorong right down the south and we take them down and  
33 follow the trail of our creator Ngurunderi and take them  
34 right to Kingston where the prupi is, the evil source in  
35 the video, and show them - and show them our old camp  
36 sites and midden sites, our old fire places. And we  
37 talk about our people who lived in the sandhills on the  
38 Younghusband Peninsula and how they survived. We show

1 them how to find water, where to find water. We take  
2 them on bush walks. We show them our medicine and food  
3 plants. We show them what they can eat in the bush. We  
4 tell them the Ngarrindjeri name of the plants and common  
5 names. And I'm lucky enough, I learnt a lot of the  
6 botanical names. And take them down to the northern end  
7 of the Coorong, down towards Pelican Point and we take  
8 them into Raukkan and talk about the history of Raukkan,  
9 and then we come back to camp again. Then we do  
10 Ngarrindjeri basket weaving with them. We teach them  
11 how to do the weaving and sit down and they go through  
12 our Museum. We have a cultural Museum at Camp Coorong  
13 where we have a lot of the arts and crafts and history  
14 and information, and we show them through there. And  
15 then a lot of other times, show the video and talk about  
16 the videos and I explain what the videos are before we  
17 play them.

18 Q. Partly out of respect for the people that have since  
19 died, or are shown in them.

20 A. Yes.

21 Q. Camp Coorong is not just about nature walks and bush  
22 trails.

23 A. No. It's Camp Coorong, we see it as a place of sharing  
24 cultures, working in the area of reconciliation and  
25 trying to make people understand, trying to teach people  
26 to be able, especially those who have had nothing to do  
27 with Aboriginal people, who don't know the life we were  
28 brought up in, the conditions we were brought up in.  
29 They don't know nothing about the rules and regulations  
30 that were placed on us in our early years by the  
31 Government. Aboriginal people have always been living  
32 under Government rules and we talk about them things and  
33 talk about the 1967 referendum and what it meant to us.  
34 I remember the old fringe camps at the 1967 referendum,  
35 the old people were happy. They said 'They're finally  
36 treating us equal, they're treating us the same as  
37 them'. But in some cases yes, in some cases no.

38 Q. Is Camp Coorong near to the One Mile and Three Mile Camp

- 1 that you and George were talking about on the video.
- 2 A. Not far in Bonney Reserve, the old Seven Mile Camp and  
3 not far in is the Three Mile and the One Mile Camp.
- 4 Q. You lived at those camps yourself.
- 5 A. I lived on them three camps and in other camps along the  
6 Coorong.
- 7 Q. After you were born in 1954.
- 8 A. Yes.
- 9 Q. We have heard a little bit about them, how they were  
10 lived in. There are still little remainders of those  
11 camps there even today.
- 12 A. There is a little bit of the old camps. The old wells  
13 are there and a little bit of remnants on the ground  
14 with how we lived like and showing what we lived in and  
15 explaining what we lived in, how they were built, where  
16 we got food from and whatever.
- 17 Q. Moving on from Camp Coorong, you explain the importance  
18 of the area both in terms of your culture but you do  
19 also explain it in terms of the physical explanation.
- 20 A. The physical, yes.
- 21 Q. And also some of the small signs of the past where camps  
22 were and things like that.
- 23 A. Yes, that's right.
- 24 Q. Without going into details, does that include burial  
25 sites and middens, and so on.
- 26 A. That's right.
- 27 Q. That is to the extent that you want to show members of  
28 the public.
- 29 A. Yes.
- 30 Q. In relation to that video, that was made, I think, in  
31 1990; wasn't it.
- 32 A. Yes, 1990. I think sharing our culture is the one.
- 33 Q. You heard and participated in that video about how the  
34 water colour has changed.
- 35 A. Yes.
- 36 Q. How the beaches have disappeared.
- 37 A. Yes.
- 38 Q. How the food life was abundant when you were young and

1 so on.

2 A. Yes.

3 Q. Are all of those things true.

4 A. They are all true. That is back in the '60s.

5 Q. In relation to more particularly Hindmarsh Island, are  
6 they the sorts of influences that led you to oppose  
7 Hindmarsh Island.

8 A. That did.

9 Q. What you have seen change in the area.

10 A. Yes.

11 Q. Even since the '50s and '60s, are they some of the  
12 factors that motivated opposition.

13 A. Yes, a part of it.

14 Q. Let's go back to what Mr Smith put to you when he  
15 referred to p.9 of your statement, that you are worried  
16 about the destruction of the bridge because of what it  
17 would do to your burial grounds, old camp sites;  
18 environmental grounds such as water pollution and land  
19 degradation.

20 A. Yes.

21 Q. The things that were talked about on the video are the  
22 things that you had in mind.

23 A. Yes. One of the things I do when I take the groups out,  
24 I take them to the old One Mile place and say 'See that  
25 well, that used to supply us fresh water all year round  
26 for a big mob of the Ngarrindjeri people living there'.  
27 We go out out to Three Mile further out and the same  
28 thing happens when you come there and look that the well  
29 and it's got salt in it. That one has salt in it and  
30 the fresh water's gone. We do that at the Seven Mile  
31 camp and do that at 50 kilometres down at Salt Creek.  
32 We do that at 70, 80 kilometres at Chinaman's Well. We  
33 don't start getting fresh water in the wells until  
34 closer to Kingston. And we talk about the draining of  
35 the South East, which started back there in 1860 and how  
36 it has affected the land all the way north of Meningie  
37 and how they've drained the South East in the early  
38 years and took out the fresh water out to the sea. That

- 1 fresh water also used to come to Meningie in the top end  
2 of the south end of the Coorong, surplus water and  
3 underground water. And they're all the things passed  
4 down to us. This is all our knowledge of the land.  
5 When I take the Three Mile lands, I say 'See all the  
6 scrub out there on the hills over there, that all the  
7 hills over there are bare now and they all had bush on  
8 them. That's where we'd go gathering food and had full  
9 emus and kangaroos there at that stage'.
- 10 Q. In your life time.  
11 A. Yes.
- 12 Q. And the wells that you speak of and the elder people  
13 spoke of on the video as being suitable to drink from  
14 are all dried up now.  
15 A. All gone now.
- 16 Q. I want to go one step further from what Miss Pyke asked  
17 you - and I don't want to go into details. You were  
18 asked questions about the existence of men's business  
19 and women's business generally, weren't you. You were  
20 asked by this young lady here.  
21 A. Yes.
- 22 Q. Without going into detail, is this something - men's  
23 business - related to the Hindmarsh Island area and the  
24 coastal strips both going south and going north and  
25 east, if that is a sufficient description.  
26 A. No, I don't - no comment.
- 27 Q. You also asked questions about consultation and you  
28 mentioned something about Mr Lucas, but I don't think  
29 you finished it. Do you remember when Mr Smith was  
30 asking you questions about consultation and you raised  
31 the question of Mr Lucas's report.  
32 A. Yes.
- 33 Q. What did you have in mind in relation to consultation  
34 and Mr Lucas, or Dr Lucas.  
35 A. In the area of consultation.
- 36 Q. Yes. What was the expectation of consultation, what did  
37 you, as a community, expect it would involve.  
38 A. Wherever he was doing the report for that, they would



- 1 come and meet with us on a regular basis so we can sort  
2 things out. Just like Telecom did, just like Optus did,  
3 Road Transport Authority, they come and have regular  
4 meetings with us and they talk and we work it out and  
5 negotiate and we would work through.
- 6 Q. Each of those issues.
- 7 A. Each of those issues. This one of Hindmarsh Island,  
8 there were no proper consultations, follow-up with us.
- 9 Q. Who is the `us' that you speak of in relation to these  
10 other issues that were worked out like Optus, Mount  
11 Barker and so on. Who is the `us' you spoke of from the  
12 community's point of view.
- 13 A. The representatives from each community.
- 14 Q. Who do you mean, individual persons -
- 15 A. Me.
- 16 Q. Or do you mean speaking with the council. What do you  
17 mean by using `us'.
- 18 A. With the Lower Murray Aboriginal Heritage Committee.
- 19 Q. As a committee.
- 20 A. Yes.
- 21 Q. Sitting down with the committee.
- 22 A. Yes.
- 23 Q. Your committee, responsible -
- 24 A. Yes.
- 25 Q. And negotiating.
- 26 A. Yes. And taking us there to the places and pointing out  
27 what is going on to us. Just like the Road Transport,  
28 did they take us to the area of the Tailem Bend highway  
29 and said `This is where the road's going to go through  
30 here', and we could see it and -
- 31 Q. You go on.
- 32 A. You know, and that is what I mean.
- 33 Q. Can I put this to you: from the point of view of the  
34 community, would you call a meeting with Henry Rankine  
35 at a park at Murray Bridge for 45 minutes while he was  
36 on his way to a football match consultation, community  
37 consultation.
- 38 A. No.

- 1 Q. What about a visit by the Chapmans being accompanied by  
2 an expert to see Henry and maybe his wife, is that a  
3 consultation for the purpose of -
- 4 A. No. That is like a Lindy Warrell visit.
- 5 Q. I will come back to Lindy Warrell in a moment. As  
6 regards Mr Lucas, what were your expectations  
7 specifically arising from Mr Lucas's report. Did you  
8 have some understanding or expectation of what would  
9 follow from that - not generally, but particularly  
10 arising from the Lucas report itself.
- 11 A. I think what happened there was what we said. It was  
12 said that he had to go back and proper, arrange for  
13 proper consultation to be carried out with the  
14 committee.
- 15 Q. He said some things in his report that you understood  
16 would be followed up; is that what you are getting at.
- 17 A. Yes.
- 18 Q. I interrupted you. You go on if there was something  
19 more you wanted to add.
- 20 A. That is what we expected to come out of that, but it  
21 didn't.
- 22 Q. That's what you were waiting for, is it.
- 23 A. Yes.
- 24 Q. You mentioned Lindy Warrell. How long was she at Camp  
25 Coorong for altogether on that day.
- 26 A. I think it was an hour or so, I'm not too sure, but I'm  
27 pretty sure it was about an hour, maybe two hours.
- 28 Q. How long was she actually with you and your wife.
- 29 A. All that time.
- 30 Q. Do I understand it correctly that that is the first time  
31 and the last time you have ever seen her.
- 32 A. That is the first time I met her and the last time I  
33 seen her.
- 34 Q. Like a lot of white people, I suppose.
- 35 A. Yes.
- 36 OBJECTION Mr Meyer objects on the ground that the  
37 question is insinuating a most improper  
38 suggestion.

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CJ 63Q

T.E. TREVORROW XXN (MR TILMOUTH)

- 1 MR MEYER: I am surprised by Mr Tilmouth.
- 2 MR TILMOUTH: I didn't have anybody in particular here
- 3 in mind. That is a common difficulty.
- 4 CONTINUED

## T.E. TREVORROW XXN (MR TILMOUTH)

- 1 MR TILMOUTH: I will move on with that.
- 2 COMSR: You're saying that you weren't implying  
3 anything derogatory by that statement.
- 4 MR TILMOUTH: Anybody involved in this Commission in  
5 this instance, yes.
- 6 MR MEYER: Everybody keeps warning us to take care.
- 7 MR TILMOUTH: I could give a lot of examples, but -  
8 XXN
- 9 Q. In relation to some of the consultations that you've  
10 engaged in, was there an occasion when an issue arose  
11 about the Meningie Caravan Park.
- 12 A. Yes, Meningie Caravan Park.
- 13 Q. When was that.
- 14 A. That goes back to about 1982/83.
- 15 Q. Without identifying the subject matter, did an issue  
16 arise there with respect to the local interests of the  
17 local people.
- 18 A. Yes.
- 19 Q. Were there consultations in relation to that.
- 20 A. No.
- 21 Q. Did that involve the Ngarrindjeri people in particular.
- 22 A. Yes.
- 23 OBJECTION Mr Abbott objects.
- 24 MR ABBOTT: Where is this in the statement?
- 25 MR TILMOUTH: You may remember I also put this to  
26 Henry Rankine. Unfortunately Mr Abbott hasn't been  
27 here.
- 28 MR ABBOTT: I haven't been here, but I'd like to  
29 know where it is in the statement so we know about it.
- 30 MR TILMOUTH: I would like to know the principle that  
31 says I can only ask questions on what appears in a  
32 witness' statement.
- 33 MR ABBOTT: Your witness' statement, I had assumed  
34 erroneously, the proof, contained the substance of what  
35 the witness was going to say. I've now read the proof.  
36 I now see that it doesn't contain all this witness wants  
37 to say. I'm just asking, you obviously have a proof of  
38 it, I don't. I think I'm entitled.

- 1 COMSR: You haven't been supplied with the proof  
2 of this additional material.
- 3 MR ABBOTT: Mr Tilmouth obviously has a statement,  
4 he hasn't seen fit to include it in this witness'  
5 statement to the Royal Commission, and I would like to  
6 know how many of these there are, or if this is the only  
7 one. If this is a short succinct matter, so be it. I  
8 wouldn't complain if it's a one-off, short matter.
- 9 MR TILMOUTH: That's all it is, it's an example of  
10 consultations in the past raised.
- 11 MR ABBOTT: I withdraw my objection if it is a  
12 short, succinct matter.
- 13 XXN
- 14 Q. Were you involved in that matter.
- 15 A. Yes.
- 16 Q. Was that a community matter which had to be discussed by  
17 the community.
- 18 A. Yes.
- 19 Q. Was there a question in relation to that issue of  
20 disclosing some part of the culture which was only known  
21 to the Aboriginal people.
- 22 A. Yes.
- 23 Q. When did that disclosure come out in terms of the  
24 negotiation over the caravan park.
- 25 A. About 82/83. 1982/83 I think it was.
- 26 Q. How long after the negotiations had begun was the  
27 decision made to talk about that matter.
- 28 A. When we had to sort that matter out, we seen machines  
29 going into one of our burial grounds there in the area  
30 of Meningie, and that's when we had to go in and put a  
31 stop to that.
- 32 OBJECTION Mr Abbott objects.
- 33 MR ABBOTT: I must object to this. Obviously the  
34 line of attack which is being taken by Mr Tilmouth will  
35 be that it took a long time for the Aboriginal  
36 community, the relevant Aboriginal community, to get  
37 around to discussing the community issue.
- 38 COMSR: I gather that's the inference.

## T.E. TREVORROW XXN (MR TILMOUTH)

- 1 MR ABBOTT: One can extrapolate and say a similar  
2 instance applies to the Hindmarsh Island issue. This is  
3 obviously an important matter. It's obvious it's been  
4 deliberately left out so we can learn about it for the  
5 first time when Mr Tilmouth is examining, and I object  
6 to us having no -
- 7 INTERJECTOR: Speak up to we can hear you.
- 8 MR ABBOTT: I object to having no forewarning of it,  
9 and I object to it not being included in the proof of Mr  
10 Tom Trevorrow. I don't know whether counsel assisting  
11 has been informed that this will be the basis of  
12 examination but, if he hasn't been, I think it's a  
13 serious omission.
- 14 COMSR: I don't think it appears in the  
15 statement at all.
- 16 MR TILMOUTH: It doesn't.
- 17 MR ABBOTT: Deliberately so.
- 18 MR TILMOUTH: That's not right.
- 19 MR ABBOTT: Why is it left out?
- 20 MR TILMOUTH: It's only something that I only learned  
21 about quite recently.
- 22 MR ABBOTT: Is it?
- 23 MR TILMOUTH: It's been well documented in the past on  
24 what I've ascertained and, to my mind, given the nature  
25 of the questions by Mr Smith, it's clearly a relevant  
26 issue on the issue of consultation.
- 27 MR ABBOTT: Can I ask what my learned friend means  
28 by 'quite recently'? If it means yesterday, I don't  
29 object.
- 30 MR TILMOUTH: This morning.
- 31 MR ABBOTT: So the first time was this morning, all  
32 right. I don't object on that basis if the first time  
33 that Mr Tilmouth heard about it was this morning.
- 34 MR TILMOUTH: I hand to Mr Smith something which was  
35 given to me this morning as well which prompted this,  
36 it's a copy of the Journal of the Anthropological  
37 Society of South Australia of October 1987 where, on  
38 p.4, this matter is recorded, and I give it to Mr Smith.

T.E. TREVORROW XXN (MR TILMOUTH)  
REXN (MR SMITH)

- 1 I invite its tender in due course, and I will leave it  
2 at that.
- 3 COMSR: In any case, as I understand it, Mr  
4 Abbott, on the basis that this material has only come to  
5 hand this morning -
- 6 MR ABBOTT: I don't object. If Mr Tilmouth heard  
7 about it this morning, I don't object. Obviously he  
8 couldn't include it in a statement we got yesterday.
- 9 MR TILMOUTH: I just foreshadow that I apply to tender  
10 it, but I obviously give Mr Smith the chance to consider  
11 it.
- 12 MR SMITH: I'll have a look at it, but it gives no  
13 opportunity to check this material out, to consult with  
14 with experts about it, but anyway, I will have a look at  
15 it. Is it up to me again?
- 16 COMSR: Yes.
- 17 RE-EXAMINATION BY MR SMITH
- 18 Q. I asked you some questions about a coastal zone report,  
19 but I didn't have the exhibit number at the time I asked  
20 you. This is Exhibit 234, and it's a report done by Dr  
21 Dermott Smythe entitled 'A Voice in all Places:  
22 Aboriginal and Torres Strait Islander Interests in  
23 Australia's Coastal Zone'. That document, can I ask  
24 you, I think that document was handed to Dr Draper, or  
25 bits of it, by your brother. Would you be able to help  
26 us with that, whether that was the case.
- 27 A. No, I don't.
- 28 Q. But you got a copy, you and your brother got a copy of  
29 that report at some stage, didn't you.
- 30 A. I think so, yes.
- 31 Q. I think what Dr Smythe in that report says is that some  
32 consultation occurred with Aboriginal people around the  
33 coastal areas, including the Coorong, so can you help  
34 us; did Dr Smythe or his agents confer with you and your  
35 brother as they prepared this report, and they say the  
36 consultations took place in August 1992.
- 37 A. No, I can't recall that, sorry.
- 38 Q. There's a little section here, you see, on

## T.E. TREVORROW REXN (MR SMITH)

1 `Environmental Degradation in the Lower Murray and Along  
2 the Coorong'. My question really is did you provide Dr  
3 Smythe or his agents with information about the Coorong  
4 and the state of affairs on the Coorong.

5 A. Quite possibly, yes.

6 Q. And received a copy of this report.

7 A. That's possible, yes.

8 Q. If Dr Draper says it was given to him by your brother,  
9 that could well be the case.

10 A. Yes.

11 Q. I just want to ask you a few more questions about some  
12 of the questions that young lady over there asked you  
13 about women's business. You've got your statement in  
14 front of you, haven't you. Do you see there at line 127  
15 of p.9, you say `I first heard of the women's business  
16 in relation to Hindmarsh Island from my wife and her  
17 mother'.

18 A. Yes.

19 Q. `I heard these words used in late March or early April  
20 1994'.

21 A. Yes.

22 Q. And you said to me that that was the first time that  
23 you'd heard it.

24 A. Yes.

25 Q. Now what did you mean by that exactly, and I'm really  
26 asking you to clarify that in the light of what you said  
27 in answer to Ms Pyke's questions about having -

28 A. In relation to Hindmarsh Island.

29 Q. So what you meant to say -

30 A. Not in relation to women's business, I meant there in  
31 relation to -

32 Q. Hindmarsh Island.

33 A. Yes.

34 Q. So the women's business that you had heard about  
35 generally, what, related to the whole of the  
36 Ngarrindjeri lands, did it, or did it - tell me what -

37 A. It didn't relate to the land, a specific place on the  
38 land.



- 1 Q. Did it relate generally to Aboriginal people in  
2 Australia, did it.
- 3 A. No, it related to Ngarrindjeri Aboriginal people,  
4 because it's what I've been told, what I've been taught  
5 and told by my elders.
- 6 Q. That such a concept or such an idea as secret women's  
7 business exists, is that it, or women's business are we  
8 talking about.
- 9 A. Women's business.
- 10 Q. Women's business.
- 11 A. Which must have been secret because I've never been told  
12 about it and I've never found out about it.
- 13 COMSR
- 14 Q. I'm not quite clear now what you are saying. Had you  
15 been told or did you know that women's business existed,  
16 but you didn't know what it consisted of.
- 17 A. Didn't know what -?
- 18 Q. You knew it existed, but you didn't know the details of  
19 it, is that what you're saying.
- 20 A. That's right. That's correct.
- 21 Q. As far as Hindmarsh Island was concerned, you didn't  
22 know of its existence at all.
- 23 A. I didn't know it existed there.
- 24 REXN
- 25 Q. Is what you're conveying to us that it's generally  
26 accepted amongst Aboriginal people that there's men's  
27 business on one side, and women's business on the other.
- 28 A. Yes.
- 29 Q. And it's often the case that the men don't know about  
30 the women's business except that it exists, and vice  
31 versa.
- 32 A. I was told that when women's business is carried out,  
33 you wasn't even allow to be in hearing distance, you had  
34 to be so far away. And something else that I will share  
35 with this Commission is I know where Ngarrindjeri men's  
36 business is; it's a coincidence, I suppose, or what, I  
37 don't know, it's on an island.
- 38 Q. One more topic, my learned friend Mr Tilmouth asked you

1 some questions about Mr Lucas' report because he spoke  
2 to you in January 1990 particularly, didn't he. You had  
3 conversations with Mr Lucas.

4 A. Yes.

5 Q. I show you a copy of Exhibit 15 which I've got here,  
6 5.3, which is a summary of section five. Mr Lucas sets  
7 out a number of propositions concerning consultation,  
8 but he says in the third last paragraph 'The tendi  
9 wishes to convene a meeting of all those people they  
10 believe to have a traditional interest in Hindmarsh  
11 Island. The purpose of the meeting will be to elicit  
12 opinions on the proposed development, and to make a  
13 decision on what they think should be done. The tendi  
14 would like this to be followed by a meeting on Hindmarsh  
15 Island to discuss the relevant issues with the  
16 developers'. Can you tell me whether the tendi convened  
17 a meeting and elicited opinions and made a decision  
18 about what should be done.

19 A. No, that never come about because we couldn't get any  
20 money to get everybody to a meeting, travel expenses,  
21 fuel, whatever, you know, to try and get people  
22 together. That's always been a problem us with us as  
23 Aboriginal people is we can never, ever get enough money  
24 to get our people together, to have proper meetings.  
25 The government makes it very difficult for us.

26 Q. This document that you handed to Steve.

27 A. Yes.

28 Q. Your solicitor Steve Kenny.

29 A. Yes.

30 Q. Where did this come from.

31 A. I found that home in the office at Camp Coorong, NLPA  
32 office. It was up in the board room with the other  
33 papers.

34 CONTINUED

T.E. TREVORROW REXN (MR SMITH)  
XXN (MR ABBOTT)

- 1 Q. Why would you have a copy of a notice of a general  
2 meeting of the anthropological society. Who gave you  
3 this. Was it Mr Hemming.  
4 A. Yes, I think.  
5 MR SMITH: I will consider that and see whether it  
6 should be tendered.  
7 MR ABBOTT: I have one question which Miss Freeman  
8 inadvertently didn't ask. It relates to p.9, line 124.  
9 COMSR: I know you weren't here.  
10 MR ABBOTT: It is an information seeking question  
11 and I tell your Honour what it is so that you can  
12 consider whether I should be entitled to ask it. At  
13 line 124 it says 'I also know that my elders in the past  
14 and present were not and are not happy with the barrages  
15 being built, but unfortunately back then they had no  
16 say'. I want to elicit from him who were the elders  
17 from the past and the present, and I ask that I be  
18 permitted to ask him that one question.  
19 COMSR: Yes, Mr Abbott.  
20 MR ABBOTT: He could specify elders in the past and  
21 elders in the present.  
22 LEAVE GRANTED TO MR ABBOTT TO FURTHER CROSS-EXAMINE WITNESS  
23 FURTHER CROSS-EXAMINATION BY MR ABBOTT  
24 Q. Could you answer that question.  
25 A. I can't hear what you are talking about.  
26 Q. Do you have your statement in front of you.  
27 A. Yes.  
28 Q. Could you go to p.9, please.  
29 A. 9.  
30 Q. Yes, line 124.  
31 A. Yes.  
32 Q. It says 'I also know that my elders in the past and  
33 present -'  
34 A. Yes.  
35 Q. 'Were not and are not happy with the barrages being  
36 built, but unfortunately back then they had no say'.  
37 You have identified two groups of your elders, elders in  
38 the past and elders in the present.

- 1 A. Yes.
- 2 Q. Who were the elders in the past. If you can't say their  
3 names, could you write them down.
- 4 A. Yes.
- 5 Q. And who are the elders in the present.
- 6 A. You want me to write them down too?
- 7 Q. I would prefer an answer to the elders in the present.  
8 It is just that I apprehend some of the elders in the  
9 past may be deceased. In other words, who did you  
10 regard as your elders in the past who were not happy  
11 with the barrages being built.
- 12 A. Yes.
- 13 WITNESS WRITES NAMES
- 14 MRS JACOBS: I'm the eldest. I'm the eldest from  
15 Raukkan.
- 16 MR ABBOTT: Maggie wants to be included in the  
17 present ones.
- 18 XXN
- 19 Q. Could you tell us who the elders in the present are.
- 20 A. The present?
- 21 Q. Yes.
- 22 A. Auntie Maggie is one of them.
- 23 Q. Maggie, yes.
- 24 COMSR: No prompting from the rear, please.
- 25 MR ABBOTT: I don't mind prompting.
- 26 XXN
- 27 Q. You have written down the elders in the past who were  
28 not happy with the barrages being built. Can we have  
29 that list, please.
- 30 A. I haven't written them down.
- 31 Q. Could you write the elders in the past.
- 32 A. This is going to take me a while.
- 33 Q. Okay.
- 34 WITNESS WRITES NAMES
- 35 A. I got some here. I'm not writing them all down.
- 36 Q. Could I have a look at the list, please.
- 37 A. Yes.
- 38 Q. These are the names of your forebears, who are now

- 1 deceased, who you knew were not happy with the barrages  
2 being built.
- 3 A. That's right.
- 4 Q. And they voiced their opposition to the barrages to you.
- 5 A. Not directly to me. I heard them talking about it,  
6 saying they're not happy with the barrages being built.
- 7 Q. While that is being given a number, can you tell us who  
8 the present elders are who are not happy with the  
9 barrages being built in the 1939-1943 period.
- 10 A. Auntie Maggie.
- 11 Q. Maggie Jacobs.
- 12 A. Jacobs.
- 13 Q. Yes.
- 14 A. Auntie Veronica.
- 15 Q. Veronica.
- 16 A. Brodie. Eddie Wilson.
- 17 Q. Yes, anyone else.
- 18 A. My mother-in-law, Daisy Rankine.
- 19 Q. Yes.
- 20 A. And Robert Day.
- 21 Q. Yes.
- 22 A. There is some more too.
- 23 Q. Of the elders in the present whom you have just  
24 nominated, have they ever given you any reason why they  
25 are not happy with the barrages being built.
- 26 A. No, they have never given me a reason. They just say  
27 they should not have been built there. I was never  
28 taught to question my elders. When they say something,  
29 I accept it.
- 30 INTERJECTOR: Well said.
- 31 EXHIBIT 270 List of elders names tendered by Mr  
32 Abbott. Admitted.
- 33 NO FURTHER QUESTIONS
- 34 WITNESS RELEASED

1 MR SMITH: That's all for this afternoon. Could I  
2 suggest we adjourn until 10 o'clock in the morning.  
3 There is one sort of housekeeping issue to be resolved,  
4 that is the argument as to the Mouth House letter and  
5 the museum letter.

6 COMSR: There are arrangements to be made for  
7 the other witness too.

8 MR SMITH: Arrangements need to be finalised for  
9 the evidence of George Trevorrow. I am told by my  
10 learned friend, Mr Tilmouth, that he will let me know  
11 what is suitable, if you like, to Mr Trevorrow and his  
12 medical advisers.

13 MR ABBOTT: Are we getting a statement?

14 MR SMITH: Yes, and there will have to be a  
15 statement in advance, of course, of that. So I will be  
16 in a position to tell you what the position is tomorrow  
17 morning in relation to that. Subject to some loose  
18 ends, it may be that there won't be anything other than  
19 the evidence of Mr Trevorrow. So it may be subject to  
20 some documentary material which we will straighten out,  
21 but that will be the last witness.

22 ADJOURNED 4.55 P.M. TO WEDNESDAY, 8 NOVEMBER 1995 AT 10 A.M.

1 COMSR STEVENS

2

3

4 HINDMARSH ISLAND BRIDGE ROYAL COMMISSION

5

6

7 WEDNESDAY, 8 NOVEMBER 1995

8

9

10 RESUMING 10.10 A.M.

11 MR SMITH: The matters to be resolved today are,  
12 first of all, the question of the admission of the Mouth  
13 House letter of 9 May 1994. The admission of the museum  
14 letter of 12 May 1994. Both of which are marked for  
15 identification only, at the moment. The question of the  
16 evidence of George Trevorrow. And the question of  
17 fixing a day for really reviewing all the suppression  
18 orders and the admission of further documentary  
19 evidence. And I indicate that there is some further  
20 documentary evidence that the Commission wishes to place  
21 formally into evidence. I will need to speak to my  
22 learned friends about that and supply them with copies  
23 of this material. So, beyond that, there is no more  
24 business for the hearing room today. I suggest that we  
25 perhaps commence by getting an indication from Mr  
26 Tilmouth as to the availability of Mr George Trevorrow,  
27 because it is important that his evidence be taken as  
28 quickly as possible so that counsel and the Commission  
29 can get down to considering first of all counsels' final  
30 addresses and the Commission's report.

31 MR TILMOUTH: I have handed to Mr Smith a copy of a  
32 medical report which we received late yesterday in  
33 relation to George Trevorrow from Dr Senior of the  
34 Meningie Health Service. George Trevorrow was  
35 transferred from the Wakefield Hospital some days ago to  
36 Meningie. The letter will be available to you, but it  
37 says in part that he is recovering, but, at this stage,  
38 he is still unsuitable for appearance in court. It is

1 probable that in 10 to 14 days he will be sufficiently  
2 recovered.

3 COMSR: It is not contemplated that he will have  
4 to appear in court.

5 MR TILMOUTH: I think it encompasses whether he is fit  
6 to be extensively questioned and cross-examined as well.  
7 But we didn't contemplate, at this stage, in view of his  
8 illness, that he come up to Adelaide, but what we are  
9 hoping to do is Mr Kenny will go and see him later this  
10 week and try and assess the situation. He is keen to  
11 give evidence and we are hoping that on discharge this  
12 weekend things might improve for him.

13 COMSR: Yes, I had in mind, of course, doing  
14 something similar to what happened with a previous  
15 witness.

16 MR TILMOUTH: Yes.

17 COMSR: Whose state of health was poor.

18 MR TILMOUTH: At the moment, we might be too sanguine  
19 about this, but we are hoping early next week. He is  
20 keen to give evidence. Might I say as well because of  
21 rumours that are floating around, this was not elective  
22 surgery. This was surgery imposed upon him because of  
23 the deterioration in a condition. It is not something  
24 that he wanted. So what I would suggest is if we could  
25 report back to Mr Smith by Thursday or Friday after we  
26 have spoken to him and see what the situation is then.  
27 Mr Kenny saw him last Friday and he was plainly unfit  
28 even for interview purposes. But, of course, that is a  
29 few days ago now.

30 MR SMITH: That is, in a sense, very  
31 unsatisfactory, but perhaps it is out of the hands of  
32 the legal representatives, but the Commission to take  
33 evidence needs to involve reporters, needs counsel who  
34 have got an interest in hearing what Mr Trevorrow says  
35 to be advised and needs to make arrangements to go down  
36 presumably to Meningie or something like that. So that  
37 I think the time has come for Mr Tilmouth and Mr Kenny  
38 to stop giving the Commission weather reports and make



1 definite arrangements.

2 MR TILMOUTH: I object to that. That is quite an  
3 unfair representation of the position. This man is  
4 seriously ill. The fact of the matter is he was unfit  
5 for interview when we last saw him. Still less any  
6 chance of being in court or being cross-examined. They  
7 are not weather reports. They are serious medical  
8 reports. He is unfit to give evidence under any  
9 circumstances. He desires to give evidence. We have  
10 said that any number of times. We are anxious for him  
11 to give evidence and that is the position. As soon as  
12 we have a medical clearance we would propose that the  
13 evidence be taken.

14 COMSR: Yes, as I have indicated, Mr Tilmouth, I  
15 am prepared, if he is not fit to travel, as I gather  
16 from what you are saying that's out of the question, to  
17 go to Meningie. But, of course, it can't stretch on  
18 into the indefinite future.

19 MR TILMOUTH: I understand that. My main objection is  
20 to the pejorative connotation of 'weather reports'.

21 MR SMITH: I just don't want Monday to come around  
22 again and we have something similar 'Well, I will be  
23 going to see him this weekend and we might be able to  
24 tell you something.' We have to report by 14 December  
25 and we need to know what Mr Trevorrow is going to say to  
26 help us with that final report.

27 MR TILMOUTH: Can I say it plainly: he is keen to give  
28 evidence. The only thing standing in the way is the  
29 medical opinion.

30 COMSR: Yes, and I am prepared to make what  
31 arrangements might meet that situation, Mr Tilmouth, but  
32 I suppose it is one of those things, it cannot be put  
33 off.

34 MR TILMOUTH: No, we are minded of the time as  
35 everybody else is in relation to this.

36 MR LOVELL: Given the delay with Mr Trevorrow,  
37 perhaps my friend can give us a copy of his statement?  
38 He has certainly had 6 months to get that. If he is

- 1 that keen to give evidence, I presume they have already  
2 got it.
- 3 MR TILMOUTH: The statement isn't available. It  
4 hasn't been approved or signed by Mr Trevorrow. Mr  
5 Kenny went down a number of times and he was unfit to  
6 review the statement, at that stage.
- 7 COMSR: Yes, I suppose it is the delay in  
8 getting the statement prepared in the first place, Mr  
9 Tilmouth, which has found us in this position.
- 10 MR TILMOUTH: Yes, I understand that. But, as I have  
11 been saying on innumerable occasions, he has been very  
12 ill even presurgery for some months and he was largely  
13 immobile for some weeks beforehand.
- 14 MR ABBOTT: Our view is that this is just another  
15 tactic.
- 16 COMSR: I don't think his present position is a  
17 tactic.
- 18 MR ABBOTT: No, not the present position, but the  
19 the failure to produce the statement and the delays.  
20 How is it that the dissident women were able to produce  
21 their statements months ago, even with a substantial gap  
22 between the production of the statements and giving  
23 evidence?
- 24 COMSR: Yes, I am not saying that we find  
25 ourselves in a satisfactory position by any means.
- 26 MR ABBOTT: No, it is most unsatisfactory. Even if  
27 you get evidence tomorrow, his statement won't be  
28 available. How are we to cross-examine? We will be  
29 ambushed into the cross-examination.
- 30 COMSR: There is a short time yet.
- 31 MR SMITH: What we have got to do is just get ahead  
32 and start. So I rely then on Mr Tilmouth to let me know  
33 what the position is before the end of the week.
- 34 MR TILMOUTH: As soon as I can. That is the  
35 undertaking I have given.
- 36 COMSR: Perhaps you can indicate what that means  
37 in terms of days, Mr Tilmouth, as soon as you can? Mr  
38 Kenny is going down, is he, tomorrow?

- 1 MR TILMOUTH: Hopefully. At the outside the day  
2 after.
- 3 COMSR: In that case, we can be advised by  
4 Friday afternoon of the situation?
- 5 MR TILMOUTH: Yes, that's what I said earlier.
- 6 MR SMITH: Perhaps you will give some thought with  
7 perhaps some input from my learned friends to the  
8 question of the final addresses. I suggest that we have  
9 written addresses delivered to the Commission by Friday,  
10 24 November. That will be 14 days from this Friday.
- 11 COMSR: Is there any reason why counsel can't  
12 deliver within ten days?
- 13 MS PYKE: I think 14 days is a more realistic  
14 assessment because there are two things required. One  
15 obviously for counsel, solicitors and clients to prepare  
16 it and the logistics of getting it actually typed. At  
17 the end of four months of hearing, I would have thought  
18 that 14 days is -
- 19 COMSR: Let me point out that there is a time  
20 limit for the delivery of the report.
- 21 MS PYKE: I appreciate that, but it seems to me  
22 that we have to have an opportunity to prepare proper  
23 submissions if they are to be any use at all. I don't  
24 know what the attitude of other members is, but that's  
25 mine.
- 26 COMSR: Of course, as far as any oral addresses  
27 are concerned, that will have to be strictly limited as  
28 to time. Anyone that indicates that they wish to make  
29 an oral address I have in mind to limit that.
- 30 MR ABBOTT: Why do we need oral addresses?
- 31 COMSR: I don't know.
- 32 MR MEYER: This has obviously been a subject of  
33 discussion at the bar table as to how we handle these  
34 proceedings. And my understanding is one of the  
35 discussions that has been up and down is that we have a  
36 limited opportunity to speak to written addresses and a  
37 period of an hour has been muted and, for my part, I  
38 find that a satisfactory course to adopt. If we have

1 written addresses and then have the opportunity to speak  
2 to written addresses for a limit period of time, perhaps  
3 some more limited than others, because there have been  
4 varying levels of involvement by different parties in  
5 relation to this. Otherwise I support counsel  
6 assisting's suggestion for Friday, 24 November. One of  
7 the principal difficulties being it is actually simpler  
8 to write very long submissions than short ones and it  
9 takes time to, in fact, work them backwards to a  
10 sensibly useful form for your Honour, rather than some  
11 lengthy resume of the evidence that has taken place.  
12 Because that only increases the task of counsel  
13 assisting and your Honour in making use of them. So I  
14 support the suggestion of a little additional time so  
15 that we can, in fact, produce a better address.

16 COMSR: I don't anticipate that all parties  
17 would wish to address and make an oral address, in any  
18 event.

19 MR SMITH: No, I would have thought that we would  
20 take the oral addresses on Monday, the 27th therefore  
21 giving people the weekend to consider one another's  
22 addresses, if that's the case, if people are interested  
23 in that. And then no more than a day for oral addresses  
24 on Monday, the 27th and a strict time limit of 1 hour.  
25 You sit down at the expiration of 1 hour whether you  
26 have finished or not. If people don't want to address,  
27 fine, orally address, I mean.

28 COMSR: We will explore that. There are a lot  
29 of counsel and parties who aren't here.

30 MR SMITH: I think people need to know what the  
31 position is. I think it ought to be fixed.

32 COMSR: I will fix it on that basis then, Mr  
33 Smith.

34 MR SMITH: So that written addresses have to be in  
35 by Friday, the 24th.

36 MR ABBOTT: In and exchanged by Friday the 24th.

37 MR SMITH: Yes.

38 MR MEYER: Do we then need to provide sufficient

- 1 copies, otherwise the Commission is going to have the  
2 task of coping thousands of submissions on Friday, the  
3 24th.
- 4 COMSR: It may well be that submissions by one  
5 party may have limited application to the rest of  
6 counsel concerned.
- 7 MR SMITH: I would have thought that the best way  
8 to do that would be for counsel to send their written  
9 addresses here to the Commission with copies and people  
10 who want to see what other people have said -
- 11 COMSR: Make an application.
- 12 MR SMITH: Come and collect them, because we won't  
13 have staff to do that.
- 14 MR SMITH: My learned friend, Mr Tilmouth, suggests  
15 that they arrive at about no later than 2 o'clock so  
16 that then people can come in in the afternoon and  
17 collect the copies that they want. So, 2 o'clock  
18 Friday, the 24th.
- 19 COMSR: For the delivery of written submissions.
- 20 MR SMITH: For the delivery of written submissions.  
21 And those people who want to see what other people have  
22 said attend here and collect copies.
- 23 MR MEYER: Original plus 8?
- 24 MR SMITH: Yes.
- 25 COMSR: Yes.
- 26 MR MEYER: I am happy for it to be recorded and it  
27 might encourage other people to say the same thing. You  
28 ring the bell after an hour and we sit down. I am happy  
29 to have that recorded on the transcript and I am happy to  
30 obey.
- 31 MR SMITH: People not wanting to make written  
32 submissions can indicate to me. I can imagine that  
33 people at the bar table who have a limited interest in  
34 the proceedings won't be addressing. I have spoken to a  
35 couple of people in that position. It will finish  
36 within a day. I will find out who will be so that we  
37 know and I can set a programme for Monday.
- 38 MR SMITH: The next matter of a housekeeping sort

1 is the Commission has a number of submissions and there  
2 is some further documentary evidence which needs to be  
3 put in formally. It will take my learned friend, Ms  
4 Simpson, and myself a little while to do that and to  
5 make copies. So that we suggest, subject to your  
6 convenience and everybody else's, that we fix Monday of  
7 next week as a sitting day to take care of matters such  
8 as further documentary evidence, suppression orders,  
9 review of suppression orders and ancillary matters that  
10 counsel may want to raise with me being really the  
11 formal cutting off of any further evidence.

12 COMSR: Apart from -

13 MR SMITH: Apart from Mr Trevorrow, I suppose. So  
14 that that will be a final sitting day, as it were,  
15 subject to Mr Trevorrow.

16 MR ABBOTT: Can we enforce the rule that I thought  
17 was going to be enforced and it hasn't been and that is  
18 anyone who wants to raise anything on Monday the 13th  
19 should give notice of it to counsel assisting in  
20 advance.

21 COMSR: Yes, so that we have some idea.

22 MR ABBOTT: Yes, and counsel assisting can then  
23 decide whether to permit that person to raise it.

24 MR SMITH: Yes, and there are some rulings I think  
25 that we need to consider that are outstanding and we can  
26 dispose of them on Monday.

27 CONTINUED

1 The last matter for the day, subject to anyone's  
2 comments to those arrangements, is the question of the  
3 admission of the Mouth House and Museum letters. They  
4 are - and perhaps you should have them in front of you.  
5 They are MFI 204 and the letter Exhibit 206. I think  
6 that you have got those in front of you.

7 The document marked 204 for identification is the  
8 Museum letter composed on 12 May 1994 and sent from the  
9 Museum to Mr Tickner. Exhibit 206 is what we have been  
10 calling the Mouth House letter. It was faxed to Mr  
11 Tickner on 9 May 1994 from Goolwa.

12 I indicate to you that in accordance with my  
13 undertaking, I notified the Attorney-General's  
14 Department, the Australian Government Solicitor, that I  
15 would be seeking the admission of these two letters. In  
16 fact, I notified Mr Birmingham of the Attorney-General's  
17 Department on 3 October 1995 that this argument would  
18 take place, in effect, yesterday and it's been adjourned  
19 off to today. He did not indicate one way or the other  
20 whether the Australian Government Solicitor would  
21 attend, but, Ma'am, I tell you that the Australian  
22 Government Solicitor here in Adelaide and the  
23 Attorney-General's Department in Canberra have opposed  
24 the admission of these two letters. The opposition has  
25 been articulated in correspondence to the Commission  
26 that you are well aware of.

27 One of the grounds of opposition is that these  
28 letters are covered by a confidentiality order made by  
29 O'Loughlin J on 12 September 1994. I will make brief  
30 submissions to you from the commission's point of view.

31 MR ABBOTT: Is anyone opposed to it? If there is no  
32 opposition, to it that wouldn't be necessary.

33 MR TILMOUTH: I've opposed it all along.

34 MR ABBOTT: On what standing?

35 MR SMITH: I seek to tender, on behalf of the  
36 Commission, both those two letters. Perhaps if there is  
37 any opposition, rather than to embark upon an argument  
38 to support something that is unopposed, let's hear what

1 the opposition is.

2 MR TILMOUTH: You may remember that I opposed this  
3 when it was first sought to be tendered at p.763.

4 MR SMITH: Could I interrupt my learned friend,  
5 with respect. Can I ask on what basis Mr Tilmouth  
6 opposes the tender of these two letters?

7 MR ABBOTT: What standing?

8 MR SMITH: Not the argument, but on what standing  
9 does he have to oppose the Commission receiving these  
10 two letters?

11 MR TILMOUTH: I would have thought that the standing  
12 is very obvious. This was generated at the Mouth House  
13 at the time that three of my clients were said to be  
14 there and at a time at which it is no doubt to be argued  
15 that what was put in the letter and what may have been  
16 changed in the letter directly resulted from certain  
17 conversations that occurred there.

18 MR ABBOTT: Three of your clients, none of whom have  
19 done the courtesy of turning up and giving any evidence.

20 The fact that he acts for three people who claim to have  
21 been there, none of whom have bothered to come along and  
22 tell us what happened there or give a statement.

23 COMSR: In any event, there is no evidence to  
24 suggest that any of your clients have even seen or  
25 commented on that.

26 MR TILMOUTH: That is not to the point. The case is,  
27 the situation is that as a result of things which were  
28 alleged to have been done, the letter was apparently  
29 changed and it, no doubt, has been changed in a very  
30 significant way indeed. I would have thought that that  
31 is obvious, my locus standi is obvious in that. The  
32 whole focus as to the argument in relation to the men  
33 has been the very Mouth House incident, and the Mouth  
34 House letter is, of course, the ultimate result of that  
35 incident on the arguments, or the matter of the  
36 cross-examination as I understand it.

37 MR ABBOTT: You haven't challenged by evidence  
38 anything that my clients have said.



- 1 MR TILMOUTH: That is not right. I have  
2 cross-examined Dorothy Wilson about a different version  
3 of events in relation to do with what happened.
- 4 MR ABBOTT: You have not called any evidence.
- 5 MR TILMOUTH: This is going around in circles. I  
6 indicated that we want to call George Trevorrow and this  
7 idle sparring at the bar table is useless and  
8 distractive.
- 9 MR ABBOTT: It would be more useful for Mr George  
10 Trevorrow's statement to say that he says something, and  
11 at present we don't -
- 12 MR TILMOUTH: That is proving my point.
- 13 COMSR: That is the document signed by one of  
14 the witnesses who has given evidence.
- 15 MR ABBOTT: If Mr Tilmouth gives us an assurance  
16 that Mr Trevorrow will be giving evidence about the  
17 compilation of the Mouth House evidence, then let him  
18 give that assurance and the undertaking to the  
19 Commission. But I suspect it won't be forthcoming, and  
20 instead of which we will be treated to the exercise that  
21 'My client wants to say something tangentially to do  
22 with this'. Will George Treborrow be saying anything  
23 which directly impacts on the compilation of that  
24 letter?
- 25 MR TILMOUTH: In that is the test of locus standi and  
26 one turns around and says 'Will Dorothy Wilson give  
27 evidence about this, about that and the other', and Mr  
28 Abbott's right to appear is limited indeed. He has been  
29 given leave at large and that is a facile argument -
- 30 COMSR: Let me see what your argument is.
- 31 MR TILMOUTH: My argument is that it goes back to what  
32 I put at p.676. That is the argument put by Dr Griffith  
33 when he appeared before you at p.676 and those pages  
34 following. I objected to any secondary evidence of a  
35 letter when the original letter could not be produced,  
36 and I maintained that objection. I don't even  
37 understand that the letter which is currently before you  
38 is even a copy of the one which was given to Mr Smith

- 1 and apparently kept by him. I'm still concerned about  
2 the inclusion of evidence in that regard because another  
3 letter is altogether apparently a copy letter that has  
4 been submitted to you. It's a very unsatisfactory state  
5 to be trying to draw conclusions about what might or  
6 might not have been in that letter and under whose  
7 signature it is from a mere photocopy.
- 8 MR ABBOTT: Read the Evidence Act.
- 9 COMSR: There are some circumstances, of course,  
10 in which -
- 11 MR TILMOUTH: Secondary evidence can be given in the  
12 courts.
- 13 COMSR: There are some circumstances which the  
14 differences might be so narrow that one couldn't see a  
15 distinction. But where it's plainly obvious, I don't  
16 think that that can be contended.
- 17 MR TILMOUTH: The last point is more of a matter of  
18 weight than admissibility per se. I raised that point  
19 the other day. I always maintained an objection to  
20 receiving the letter, and the grounds are articulated at  
21 p.676 and those following. I repeat them. They  
22 virtually go back to Dr Griffith's arguments initially  
23 and I want it firmly recorded, as no doubt it will be,  
24 that we strongly oppose the reception of this material.
- 25 While I'm on my feet, the argument about the second  
26 letter would be essentially the same and that will save  
27 me repeating it later.
- 28 MR SMITH: That is based on the confidentiality  
29 order?
- 30 MR TILMOUTH: It's based upon not only the argument of  
31 Dr Griffith, but the confidentiality order by O'Loughlin  
32 J in relation to the s.13 documents in the Federal Court  
33 action. It's based on that ground as a result of the  
34 other grounds I articulated earlier.
- 35 MR ABBOTT: As to the Mouth House letter, I rise in  
36 opposition to Mr Tilmouth. It is a document signed by  
37 my client, a photocopy or original, and, in my  
38 submission, is irrelevant. She is able to identify the

1 constituent parts of what is now the Mouth House letter  
2 and to tell you in respect of that letter which bears  
3 her signature, amongst others, what was on the face of  
4 the document when she signed it and what was not on the  
5 face of the document when she signed it. In my  
6 submission, those are very important matters, none of  
7 which was challenged by Mr Tilmouth.

8 Yet again we see that when put on the spot, Mr  
9 Tilmouth is unable to tell us or, in particular, to tell  
10 you whether Mr Trevorrow would be giving any evidence -  
11 even assuming he is well enough to do so - which  
12 directly bears on the admissibility of these two  
13 documents.

14 I mean, we have had Betty Fisher telling us of what  
15 is in documents we don't know about and we have had all  
16 sorts of people telling us what is in documents we can't  
17 see. Here is a document we can see and which is before  
18 you and we have produced and which has been signed by my  
19 client. The argument is that Mr Trevorrow might perhaps  
20 say something which impinges on it and I'm not prepared  
21 to tell you what he might say as it is my client's  
22 document. The other documents I produced and which were  
23 identified by the witness as being the letter which was  
24 typed. That, in fact, has been identified. That's what  
25 the evidence says.

26 Now the only consideration that can touch on it, in  
27 my submission, is whether there is some order of the  
28 Federal Court which prevents these particular pieces of  
29 Paper being received; and there is no order, in my  
30 submission, of the Federal Court that prevents these  
31 particular pieces of paper being received.

32 COMSR: Well I think - yes, Mr Meyer.

33 MR MEYER: I join with my friend Mr Abbott. I will  
34 assist you further with regard to the confidentiality  
35 argument because, as I previously submitted, that  
36 argument is groundless. Your Honour will recall that we  
37 had some debate about the issue of confidentiality when  
38 the occasion -

1 COMSR: What the actual status of the order is  
2 and what the covers.

3 MR MEYER: When the Saunders' report arose. If it  
4 assists you, I will try and give you a very short  
5 summary of the situation. I might add that it's a  
6 summary that has been provided to the Australian  
7 Government Solicitor by our office on 19 September 1995  
8 following the Minister for Aboriginal Affairs, the  
9 Solicitor for the Australian Government Solicitor  
10 writing to us and saying in the first paragraph by the  
11 Australian Government Solicitor:  
12 'I'm writing on instructions from the Minister ...  
13 before the South Australian Royal Commission.'  
14 That relates directly to what previously occurred and  
15 referred to Mr Tilmouth's argument which was put forward  
16 at p.676, or whatever the reference was.

17 On 12 September 1994, in the Federal Court, that was  
18 at a time before the actual hearings had commenced and  
19 it was in the interlocutory chamber-type situation, the  
20 s.13 documents, which are the documents which accompany  
21 and which are documents referred to under the ADJR Act  
22 for documents taken into account by the Minister in  
23 coming to his declaration, had been lodged with the  
24 Federal Court. Mr Andrew Collett, who then appeared for  
25 the named second respondents - Doug Milera and Isobel  
26 Norville - raised a query regarding the relevant s.35  
27 determination. The transcript at p.97 says: 'You're  
28 asking me to suppress some parts of these papers ... of  
29 that nature.' That was then dealt with. The next thing  
30 to occur was towards the end of the trial where specific  
31 instructions were obtained in relation to the 29 April  
32 Draper report, which we are familiar with in these  
33 proceedings. I think there was also the Edmonds and  
34 Lucas report, but I won't swear to that. In particular,  
35 the Draper report. Some quite specific orders were made  
36 restricting those reports to counsel and clients; or,  
37 alternatively, just counsel - in any event, restricted  
38 in a similar fashion to that. That was the end of the

1 matter as far as the Federal Court original hearings  
2 were concerned.

3 When the matter came before the Full Court - and I  
4 have referred to this material before - Mr Wilhelm, who  
5 was then appearing for the Minister, was avoiding  
6 referring to some matters in the course of his argument  
7 and the Chief Justice said to him:

8 `Mr Wilhelm, I should just mention something which you  
9 have been doing ... public material.'

10 Included in those are these letters that we have been  
11 talking about, so the next thing to occur is the ALRM  
12 themselves distributing them.

13 On 22 May 1995, they distributed documents which had  
14 been extracted from the s.13 documents, and the  
15 documents had a covering note with them. It said - this  
16 has been previously mentioned in the transcript:

17 `Please note that the letter of 20 April 1994 marked.  
18 Confidential ... in the Federal Court.'

19 The ALRM is running with the hares and hunting with the  
20 hounds in so far as they have distributed s.13 documents  
21 specifically stating that because they were tendered in  
22 the Federal Court, they're publicly available as part of  
23 the evidence.

24 The argument is brought here that that is not the  
25 case when it happens to suit. The real thing that is,  
26 in fact, happening is that the Minister is taking every  
27 step that he can to try and obstruct this Commission  
28 from receiving material that is obviously relevant to  
29 it. He does that even though he now appears to accept,  
30 contrary to a previous argument, that this Commission  
31 isn't a Commission into Aboriginal beliefs.

32 I don't know whether your Honour has had the  
33 opportunity to read in this morning's Australian where  
34 Mr Tickner himself decides that he will argue his case  
35 in relation to this Royal Commission in the Australian  
36 under a headline, or whatever it is the press call it,  
37 `Hindmarsh hearing on the road to nowhere'. It then  
38 says:

1 `The Federal Aboriginal Affairs Minister argues his side  
2 of the Hindmarsh debate.'

3 I refer to column three where it says:

4 `I do, however, agree with ... about agendas.' The  
5 thought that the Minister's counsel came and argued that  
6 this matter to the Commission about the Aboriginal  
7 beliefs, that clearly I'm incorrect about that.

8 These letters are clearly admissible and if the  
9 Minister wishes to suggest that they are not, well (a)  
10 he should come along, but, secondly, he is faced with Mr  
11 Wilhelm might come and appear with him and deal with the  
12 matters of the discussion between himself and the Chief  
13 Justice which made it perfectly clear they were all  
14 public.

15 COMSR: Do you wish to add anything?

16 MR SMITH: If you are prepared to accept the tender  
17 without hearing from me?

18 CONTINUED

- 1 MR TILMOUTH: Before you make a formal order, may I  
2 remind you, as I put at p.677, as this hasn't been  
3 addressed, my understanding of the matter was that  
4 Registrar Fisher made an order on 28 March 1995, he  
5 being a Registrar of the Federal Court, that when the  
6 appeal index was settled in the ADJR proceedings to  
7 which Mr Meyer has referred, that none of the documents  
8 be available to the public without legal judgment from  
9 the Federal Court.
- 10 MR MEYER: In case there is a problem about that,  
11 the hearing of the extracts that I've read from the  
12 Chief Justice occurred after that date.
- 13 MR TILMOUTH: That was relating to public statements  
14 in open court about documents, not their availability.
- 15 MR ABBOTT: Were you there?
- 16 MR TILMOUTH: No.
- 17 COMSR: I propose to receive both those  
18 documents as an exhibit.
- 19 EXHIBIT 204 MFI 204 tendered by Mr Smith. Admitted.
- 20 EXHIBIT 206 MFI 206 tendered by Mr Smith. Admitted.
- 21 MR MEYER: I assume, in the issue of tidying up,  
22 that on Monday we'll be able to deal with -
- 23 COMSR: There is a number of matters.
- 24 MR MEYER: - matters that male counsel haven't been  
25 able to have.
- 26 COMSR: That's right.
- 27 MR MEYER: I've raised Dorothy Wilson, but I've  
28 since done more work and there are blacked out parts of  
29 other statements.
- 30 COMSR: Of course a lot of those statements were  
31 dealt with very early in the hearing and, since then, a  
32 great deal more information has now been disclosed, and  
33 that's why I propose to review those orders because I  
34 don't think it was known to what extent information  
35 would become available, so I think it's appropriate to  
36 review the orders that have been made, so that counsel  
37 will know what material they can refer to for the  
38 purposes of their submissions.

1 MR MEYER: I raise it only because I limited my  
2 request to Dorothy Wilson last time, but now I'm  
3 widening it to the lot.

4 COMSR: Yes. As far as the exhibits are  
5 concerned, I think most of the suppression orders are in  
6 relation to either the anthropological reports or the  
7 statements of the dissident women. I'll deal with that  
8 when we deal with any other issues, and if counsel wish  
9 to raise any will they remember to let counsel assisting  
10 know before Monday.

11 ADJOURNED 10.52 A.M. TO MONDAY, 13 NOVEMBER 1995 AT 10.00 A.M.



6166  
CJ 65A

1 COMMISSIONER STEVENS  
2  
3 HINDMARSH ISLAND BRIDGE ROYAL COMMISSION  
4  
5 MONDAY, 13 NOVEMBER 1995  
6  
7 RESUMING 10.09 A.M.  
8  
9 MR SMITH: This morning is primarily, subject to  
10 what other people want to raise, to be used to tender  
11 some documentary evidence that's come into the  
12 Commission and that is outstanding and hadn't been put  
13 into evidence yet in any formal way. Next, I think we  
14 would like to know what the state of the witness George  
15 Trevorrow is and when we can expect to hear from him, if  
16 at all. There the the prospect of a further lady giving  
17 evidence on Wednesday, Veronica Brodie, and I inform the  
18 hearing of that. If anybody wants to raise matters  
19 relating to suppressions, et cetera, and the lifting of  
20 any orders, perhaps that can be done now if you need to  
21 deal with that.  
22 COMSR: We will see how far we go.  
23 MR SMITH: With a little bit of explanation, I will  
24 tender a number of further exhibits. If I indicate to  
25 counsel that copies have not been prepared of all this  
26 material, but if counsel, who have a list in front of  
27 them, indicate on the list what they have copies of,  
28 that will save us duplicating things ten-fold as we have  
29 been doing.  
30 COMSR: I have a copy of the ones that you  
31 propose to tender today.  
32 MR SMITH: The first item on the list is the video  
33 tape and transcript of the 7.30 Report of 1 August 1995  
34 which features an interview with Doreen Kartinyeri. The  
35 focus of attention on that interview is Doreen  
36 Kartinyeri in conversation with the reporter Alison  
37 Caldwell dealing with the question of the men indicating  
38 the map and dealing with the question of her initial

1 approach to the Museum and what she says about that. In  
2 a sense, it's some second-hand evidence that you can  
3 take into account of the proponent women. I tender that  
4 video tape and transcript of the 7.30 Report dated 1  
5 August 1995 interview with Doreen Kartinyeri.

6 EXHIBIT 271 Video tape and transcript of 7.30 Report  
7 dated 1 August 1995, interview of Doreen  
8 Kartinyeri tendered by Mr Smith.  
9 Admitted.

10 MR ABBOTT: I would like to have a look at the  
11 transcript before I consent to that going in.

12 MR SMITH: Perhaps if people reserve their  
13 positions about that.

14 COMSR: I don't know what raises an objection?

15 MR ABBOTT: I don't know how self-serving it is on  
16 the part of the Doreen Kartinyeri.

17 COMSR: I doubt whether that is an objection as  
18 to a matter of comment.

19 MR ABBOTT: Everything that has come into existence  
20 since the beginning of this Royal Commission,  
21 particularly since July 1995, I think should be  
22 critically examined. The mere fact that Doreen  
23 Kartinyeri happens to have said or done something is  
24 hardly a basis for automatic admission of it, but I take  
25 it from my learned friend that it has some particular  
26 relevance and it is not another of her utterances.

27 MR SMITH: No, it does - we are not tendering, for  
28 instance, everything said by people outside the  
29 Commission. We take the view, subject to questions of  
30 weight, that comments made by Doreen Kartinyeri to the  
31 media about, for instance, the allegations that are made  
32 by the Museum anthropologists against her are there, so  
33 that I mean it has slender evidentiary weight, I would  
34 suggest, but that is something that is said and its a  
35 hint of what the position might be in relation to that  
36 topic.

37 MR KENNY: Could I indicate I also have not seen  
38 the transcript of that. I don't know that I've

1 actually seen that interview. It appears to concern my  
2 clients. I would like to reserve my position in  
3 relation to that and also to suggest that if we are  
4 going to be -  
5 COMSR: Concerns your clients?  
6 MR KENNY: Only the Museum, yes. I don't know -  
7 all I say is I haven't seen a lot of these others and I  
8 don't want to stand up and object all the time.  
9 COMSR: It doesn't concern your clients.  
10 MR KENNY: I don't know. I haven't seen a large  
11 number of these exhibits and I don't want to be  
12 interrupting and -  
13 COMSR: You will have the opportunity to view  
14 them if you wish to do so.  
15 MR KENNY: I would like to do that.  
16 MR ABBOTT: I would like to take the same position  
17 and reserve my position. They can go in subject to the  
18 position being reserved.  
19 MS PYKE: If that could apply to all counsel. It  
20 is really difficult to know what your position is  
21 without having seen all of these things.  
22 COMSR: The position is that you will make what  
23 use or otherwise you will make of them if you see fit in  
24 which that course.  
25 MR KENNY: Could I raise one other point. With the  
26 provision of tendering of one report of Doreen  
27 Kartinyeri's, she's made a number of comments. I simply  
28 raise as a matter of caution upon you that this applies  
29 to other witnesses, and particularly the Doug Milera  
30 tapes, that counsel listed here. Our position would be  
31 that we consider other matters outside and then perhaps  
32 all of the interviews should be tendered to get the  
33 wider picture rather than selective choices of those  
34 interviews with particular people. I'm not just  
35 speaking specifically of Doreen Kartinyeri. Doug Milera  
36 wrote to counsel assisting asking that.  
37 COMSR: We appreciate that. That is why this  
38 process is going on.

- 1 MR KENNY: I acknowledge that.
- 2 MR ABBOTT: I oppose that course for these people  
3 who will not voluntarily come to this Commission, and in  
4 that sense that is nonsensical to get the wider picture  
5 when they deliberately will not come along and decline  
6 to give evidence.
- 7 MR SMITH: And the Commission wouldn't entertain  
8 all the utterances of the video and all of that.
- 9 MR MEYER: I support the tendering of exhibit 1.
- 10 MR SMITH: In fact, Mr Kenny, I think I'm about to  
11 concede a number of things that Mr Tilmouth has written  
12 to me about the tendering.
- 13 COMSR: But the same argument would apply, I  
14 take it, that Mr Kenny has just put to me in respect of  
15 these matters. Nevertheless, we will proceed.
- 16 MR SMITH: All of these things are questions of  
17 weight and I accept that slender weight can be attached  
18 to a lot of this material as third and fourth hand, as  
19 it is. Item number two are video tapes of the 7.30  
20 Report of 27 July 1995 and 28 July 1995 which focus on  
21 the Douglas Milera retraction.
- 22 EXHIBIT 272 Video tape of 7.30 Report dated 27 July  
23 1995 and 28 July 1995 of Douglas Milera  
24 tendered by Mr Smith. Admitted.
- 25 MR SMITH: The Commission has realised that Doug  
26 Milera ought to have been a witness in this Commission,  
27 given that he was a central player. Since it is clear  
28 that he is not going to be a witness, I accept that you  
29 can have some slender regard to that retraction.
- 30 MR ABBOTT: I object to it. I would like my  
31 objection to be noted to Exhibit 272.
- 32 MR SMITH: There is some value both in two respects  
33 to that. It could be said that Douglas Milera doesn't  
34 look any more coherent in his retraction interview than  
35 he did at the time that he was giving the Chris Kenny  
36 interview. Item 3, have you marked that item?
- 37 COMSR: Yes.
- 38 MR ABBOTT: Exhibit 3 I object to. Could I ask some

1 questions of counsel assisting what this is? Is this Mr  
2 Bourne's document?

3 MR SMITH: It is, yes.

4 MR ABBOTT: This is a statement prepared by a lawyer  
5 on behalf of Douglas Milera which should not go in  
6 unless Douglas Milera comes along to give evidence. Why  
7 should Douglas Milera be accorded any special  
8 preferential treatment? My ladies were not able to  
9 hand up their statements prepared by their lawyer if  
10 they did not come along. Why should Douglas Milera  
11 receive that preferential treatment? I object to it.

12 MR SMITH: I would accept that Mr Abbott's  
13 objection has strong foundation, and it's a question in  
14 the end of exactly how you deal with that. It happened.  
15 It was an event that happened in the context of this  
16 Commission in terms of weighing up the truth of what  
17 he's accounted to Chris Kenny in his interview. There  
18 will be submissions about that. The statement is a  
19 claim in a general way of a retraction.

20 MR ABBOTT: We have seen this before. This is the  
21 one where he said he intended to co-operate fully with  
22 the Federal inquiry but not this one.

23 MR SMITH: I tender that.

24 COMSR: You are objecting?

25 MR ABBOTT: I am objecting and I ask that my  
26 objection be noted.

27 COMSR: It is not a statement of evidence that  
28 he might have given in the way that your ladies have  
29 given you a statement of the evidence which they propose  
30 to give, this is a statement why he doesn't propose to  
31 give any evidence, as I understand it.

32 MR ABBOTT: No, it goes further. It says why what  
33 he said on television should not be considered and why  
34 what he says in this statement should be considered.

35 COMSR: Be considered in preference to that.

36 MR ABBOTT: He is obviously intending that it has  
37 some weight. It seems to be very carefully constructed,  
38 to use a neutral phrase, and to skirt around certain

1 issues. It's not just an excuse as to why he's not  
2 turning up to this Commission. That is all.

3 COMSR: It is an issue that is before us. I  
4 suppose the question of the initial claim by him that  
5 the women's business was fabricated and his subsequent  
6 retraction.

7 MR ABBOTT: If it's received by you as an historical  
8 document, namely, that he wasn't around to see his  
9 lawyer and his lawyer prepared it and sent it in, that  
10 is one thing. If it's going to be accepted by you as  
11 the truth of its contents, that is another. I don't  
12 mind you receiving it on the basis.

13 COMSR: It's a statement by him that it's going  
14 to be received as to the truth of its contents, I think.

15 MR ABBOTT: It's a statement by his lawyer for him  
16 and that's the basis of objecting to it. I mean, in my  
17 submission, he can't have any evidentiary weight in  
18 terms of the determination of the issues as to whether  
19 or not what he said, when he wasn't represented, to Mr  
20 Kenny who has given evidence about it. He could hardly  
21 stand in the way of rebutting that, given that Mr Milera  
22 declines to come along and get into the witness box and  
23 to say what the truth is. I mean, you have Mr Kenny's  
24 sworn evidence and those other witnesses who saw Mr  
25 Milera on the one hand and the assertions made by  
26 Milera's lawyer in the absence of Milera. Moreover, it  
27 is a conscious decision not to attend by Milera on the  
28 other. The latter cannot be afforded any weight at all.  
29 You can accept it as an historical document showing the  
30 statements by Mr Milera, the contortions that Mr Milera  
31 has gone through to try and evidently water down what he  
32 said to Mr Kenny without with avoiding coming along here  
33 to be cross-examined in the witness box.

34 COMSR: Yes.

35 MR ABBOTT: On that basis, it may have some use, but  
36 no other use, I submit.

37 MR MEYER: I adopt the second half of Mr Abbott's  
38 submissions. That is why I haven't objected to it, that

1 it is the use to be put to the document.

2 EXHIBIT 273 Statement of Douglas Milera handed to  
3 the Commission on 27 July 1995 tendered  
4 by Mr Smith. Admitted.

5 MR SMITH: Item no.4 is to replace Exhibit 269.

6 That is the wild footage of the Lindy Warrell interview  
7 which was the subject of some cross-examination. I ask  
8 that that be merely replacing Exhibit 269. In the sense  
9 that the wild footage embraces the 7.30 Report, you  
10 wouldn't need to have the two of them and it's the wild  
11 footage which was the subject of the cross-examination.

12 COMSR: I simply note we are replacing the one  
13 tape with what you call the `wild footage in Exhibit  
14 269.

15 MR SMITH: Item no.5 is a letter to the Royal  
16 Commission from the barrister Martin Hoyle on behalf of  
17 his client Anne Lucas, a letter dated 7 November 1995,  
18 enclosing the rent book for the Mouth House. It shows  
19 that, the record shows that Neale Draper, for the  
20 Department of State Aboriginal affairs, paid \$16,080 to  
21 Mrs Lucas to rent the Mouth House for six weeks at \$280  
22 per week from 22 April 1994 to 6 June 1994 and there was  
23 an extension for a further period to 20 June 1994. And  
24 the letter also confirms that the aerial photographs on  
25 the walls of the Mouth House, which were seen by the  
26 Royal Commission when the witness Francis Ellen Anderson  
27 went down to the Mouth House, were there during the  
28 period of the rental to Mr Draper.

29 EXHIBIT 274 Letter to the Royal Commission from  
30 Martin Hoyle dated 7 November 1995 and  
31 rent book for Mouth House tendered by Mr  
32 Smith. Admitted.

33 MR SMITH: Item 6 are four small booklets, the  
34 genealogies of Rigney, Wilson, Wanganeen and Kartinyeri.  
35 They are not proffered to you as necessarily accurate  
36 genealogies compiled by Doreen Kartinyeri. The Rigney  
37 genealogy contains the assertion by Doreen Kartinyeri  
38 that she knew little of her culture. `I told Lewis I

1 didn't know much about the culture and language, but I  
2 said I do know the identities of the Point Pearce and  
3 the Point McLeay people'. There are similar comments in  
4 the other genealogies.

5 EXHIBIT 275 Four booklets of genealogies of Rigney,  
6 Wilson, Wanganeen and Kartinyeri  
7 tendered by Mr Smith. Admitted.

8 MR SMITH: The next item 7 is a letter from a  
9 solicitor purporting to act for Dr Doreen Kartinyeri in  
10 response to the Commission's letter inviting Doreen  
11 Kartinyeri to come to the Commission to give evidence.  
12 That is a letter from S.J. McKinnon and Associates dated  
13 24 October 1995 indicating that Dr Doreen Kartinyeri  
14 will not come and give evidence and making the assertion  
15 about women's business.

16 MR ABBOTT: That is a curious suggestion that you  
17 should by-pass a lawyer.

18 MR SMITH: I tender that exhibit.

19 EXHIBIT 276 Letter from S.J. McKinnon & Associates  
20 dated 24 October 1959 re Doreen  
21 Kartinyeri tendered by Mr Smith.  
22 Admitted.

23 MR SMITH: It was urged upon the Commission that it  
24 should receive the letter from the Ngarrindjeri women  
25 from Camp Coorong and Point McLeay dated 23 October  
26 1995. You will remember on a particular weekend, my  
27 learned friend Miss Simpson and Francis Anderson went to  
28 Camp Coorong and to Point McLeay to speak to the ladies  
29 there. It's the commission's position that initially  
30 they were received and then on the following week my  
31 learned friend, Mr Kenny, attempted to tender two  
32 letters from these ladies.

33 CONTINUED



1 And we have been urged to actually receive those two  
2 letters. What we have done really is provide you with a  
3 statement of Frances Ellen Anderson, dated 25 October  
4 1995 with attachments, that explain what happened on  
5 that weekend and also the letters.

6 So, first of all, I tender the statement of Frances  
7 Ellen Anderson, dated 25 October 1995 and attachments,  
8 which are the copy letters that went out to the ladies  
9 of those communities.

10 MR KENNY: Before that goes in, I was wondering if  
11 I could have a look at that statement?

12 MR SMITH: Mr Kenny can have a look at that in due  
13 course.

14 MR KENNY: I simply ask that I be shown a copy of  
15 that. Mr Abbott has been shown copies as it goes along.

16 COMSR: Is this something to do with the men?

17 MR ABBOTT: No, it is nothing to do with them.

18 In relation to item 7, which is now Exhibit 276,  
19 which is the letter from someone purporting to be the  
20 solicitor for Doreen Kartinyeri, I take it that you are  
21 not receiving it as the truth of the contents thereof,  
22 but merely as an historical document?

23 COMSR: Yes.

24 MR ABBOTT: That completes the picture, as it were,  
25 of Doreen Kartinyeri's interaction with this Commission.

26 COMSR: Yes.

27 MR ABBOTT: And the same, I take it, will apply to  
28 item 9, the letter from the ladies from the Ngarrindjeri  
29 women?

30 MR SMITH: Yes.

31 MR ABBOTT: I wouldn't want them to be received as  
32 the truth of their contents, but as what they are now  
33 saying as evidence of the interaction or lack of it with  
34 the Royal Commission.

35 MR SMITH: Yes.

36 COMSR: Is there anything in that statement that  
37 effects either Dr Fergie or any of the men concerned?

38 MR SMITH: No.

- 1 MS PYKE: Certainly I would have thought frankly I  
2 would want to cross-examine this witness about some of  
3 the matters contained in that statement.
- 4 MR SMITH: That is not going to happen.
- 5 MS PYKE: That is all very well. I object to the  
6 statement being tendered if I am not going to have an  
7 opportunity to cross-examine the witness about certain  
8 comments that the women made to her about what took  
9 place at Graham's Castle. I would want to take  
10 instructions from my client and cross-examine this  
11 witness. If that is to be evidence of the truth of the  
12 facts asserted by the witnesses, I want to  
13 cross-examine.
- 14 MR MEYER: Can I make this suggestion, if there is  
15 tension about that document, can we go on to the others  
16 and give us all the opportunity of reading it rather  
17 than passing it around one at a time?
- 18 MR KENNY: Can I note my objection to the tender of  
19 that. That document purports to essentially give  
20 evidence of the statements of various women concerning  
21 their involvement at Graham's Castle and their election  
22 of Doreen Kartinyeri as their spokesperson.
- 23 MR ABBOTT: It is nothing to do with your clients at  
24 all.
- 25 MR KENNY: No, I agree, but one of them is married  
26 to one of my clients. And it concerns this witness's  
27 opinion as given there in terms of, for example, the  
28 reluctance of the women to confirm that they nominated  
29 Doreen Kartinyeri as their spokesperson. I suggest that  
30 it is an inappropriate tender of that evidence and that  
31 evidence should be disregarded unless this witness is  
32 going to give evidence.
- 33 MR ABBOTT: How could you possibly cross-examine on  
34 it?
- 35 MS PYKE: Getting back to my submission that it  
36 just seems to me that for some of the reasons outlined  
37 by Mr Kenny certainly it impacts upon my clients and I  
38 would want very much to test the assertions of Ms

1 Anderson.

2 COMSR: As I understand it, the statement is not  
3 saying anything about what happened at the meeting. She  
4 is saying what she was told by the women.

5 MS PYKE: The only relevance of that statement is  
6 for you to accept it as the truth of the facts asserted  
7 by the women that Ms Anderson spoke to, otherwise it is  
8 completely irrelevant. I would want to test Ms  
9 Anderson's version of what went on there and find out,  
10 because part of it is conclusion. We don't have the  
11 facts upon which the conclusion is drawn. All of that  
12 would need to be drawn out. It seems to me that its  
13 weight is minimal. But if you accept it presumably it  
14 is on the basis of some weight and some relevance. It  
15 seems it particularly refers to events at Graham's  
16 Castle and the election of Dr Kartinyeri as the  
17 spokesperson and I would very much want to cross-examine  
18 this witness.

19 COMSR: The witness obviously could not give any  
20 evidence. She doesn't purport to say anything about  
21 what happens at Graham's Castle.

22 MS PYKE: She gives an opinion and third-hand  
23 evidence about what went on. I just say it is a matter  
24 of evidence, it should not be tendered if the witness  
25 can't be produced for cross-examine. Even then it would  
26 be of minimal evidence.

27 COMSR: I understand that it could not be  
28 evidence, her evidence as to what happened at Graham's  
29 Castle, but it could be her evidence as to what she was  
30 told and what she had understood was going to happen in  
31 respect of the group of them.

32 MS PYKE: I want to test that, because there are  
33 conclusions in there that don't seem to be based on any  
34 fact contained in the statement.

35 MR SMITH: If that is so, I would accept that that  
36 part of what Frances Anderson says you would give almost  
37 no weight to, if she is making a conclusion about what  
38 was said.

- 1 COMSR: Other counsel want to have a look at it.  
2 I will mark it for identification while that occurs, MFI  
3 277.
- 4 MR SMITH: You are marking that for identification,  
5 are you?
- 6 COMSR: I understand that not all counsel have  
7 seen it.
- 8 MR ABBOTT: Like the other ones I have objected to,  
9 it should be received and, if they want to make  
10 something of it on the issue of weight - again, it seems  
11 to be one rule for them and another rule for me.
- 12 MR MEYER: I withdraw my suggestion.
- 13 MR ABBOTT: It should be tendered as an exhibit.
- 14 COMSR: Yes, the use to which it is put, clearly  
15 it is not evidence of anything that happened at Graham's  
16 Castle.
- 17 MR ABBOTT: Exactly. First of all, Mr Kenny would  
18 have no standing to cross-examine Ms Anderson.
- 19 COMSR: I appreciate that.
- 20 MR ABBOTT: Ms Pyke wasn't there when Ms Anderson  
21 was speaking to these people and I doubt whether she  
22 would have any standing to cross-examine as I wouldn't.  
23 This is an investigation of who went down and spoke to  
24 the women.
- 25 COMSR: Yes, as I understand the limited use  
26 that could be made of that, it really goes more to what  
27 has occurred when there have been attempts made to  
28 obtain the evidence of different witnesses. It goes to  
29 that issue.
- 30 MR SMITH: Yes, the object of that was there were  
31 some suggestions of intimidation of these ladies on that  
32 weekend and my learned friends to my left-rear have  
33 urged me to put before you the letters, two letters from  
34 the Point McLeay Community Council and the Ngarrindjeri  
35 Lands Progress Association, which were proffered to you  
36 on that Monday morning following the weekend and you did  
37 not receive them. They have since urged me to put them  
38 in.

- 1 MS PYKE: Might I say that is not me.
- 2 MR SMITH: That is Mr Kenny and Mr Tilmouth and we  
3 are prepared to do so, only on the basis that it is  
4 balanced by the account by Mrs Anderson.
- 5 MR ABBOTT: Could I have a look at those letters?
- 6 MR SMITH: So I tender them.
- 7 COMSR: It goes in on that limited basis then.
- 8 MR SMITH: Yes, all these are subject to very  
9 slender evidentiary value, but it is.
- 10 EXHIBIT 277 Statement of F.E. Anderson, dated 25  
11 October 1995 and attachments tendered by  
12 Mr Smith. Admitted.
- 13 EXHIBIT 278 Letter from Ngarrindjeri women from Camp  
14 Coorong, dated 23 October 1995, and  
15 letter from Ngarrindjeri women from  
16 Point McLeay, dated 23 October 1995,  
17 tendered by Mr Smith. Admitted.
- 18 MR SMITH: Item 10 is the transcript of the Keith  
19 Conlon radio interview with Douglas Milera, on 7 June  
20 1995, that being the morning after the Channel 10  
21 fabrication interview with Douglas Milera.
- 22 EXHIBIT 279 Transcript of Keith Conlon radio  
23 interview with Douglas Milera, on 7 June  
24 1995, tendered by Mr Smith. Admitted.
- 25 MR SMITH: Item 11, letter from John Stanton to the  
26 Director of the South Australian Museum, dated 30 August  
27 1995, I tender that. John Stanton is the curator of the  
28 Berndt collection and he in that letter proffers his  
29 views about the contents of the notes of the Berndts'  
30 and the topic of secret women's business.
- 31 MS PYKE: I wonder what is the basis of this? It  
32 is a letter to Mr Anderson, who is the director of the  
33 museum. Mr Anderson hasn't been called to give  
34 evidence. Dr Stanton has not been called to give  
35 evidence. What can the relevance be of this in any way,  
36 shape or form?
- 37 MR SMITH: It is plainly relevant, isn't it? It  
38 deals with the very focus of attention of this Inquiry,

1 secret women's business. So, relevance is obvious. The  
2 fact that it is proffered to you via a letter where the  
3 writer of the letter has not given evidence and is not  
4 subject to cross-examination is therefore a question of  
5 weight. But, as I understand the evidence, the  
6 anthropological debate that has taken place has taken  
7 place on the assumption largely that there is nothing  
8 definite and direct in the literature about secret  
9 women's business. There is also an embargo on the  
10 disclosure of the notes. That is the Berndts' field  
11 notes. And difficulties in obtaining those for this  
12 Commission, bearing in mind the fact that I think there  
13 is a 30 year embargo on it. So, Ms Pyke can make an  
14 argument as to weight in relation to that letter.  
15 Indeed we haven't called Dr Stanton to give this  
16 evidence and that's a matter for weight and comment.  
17 And we are not going to call Dr Stanton. So, that is  
18 the basis upon which the letter is proffered.

19 MS PYKE: I just make my objection. It purports  
20 to deal with matters that clearly would relate to my  
21 client that my client would wish to test and we are not  
22 going to have any opportunity to do so.

23 COMSR: It tests the availability or otherwise  
24 of the embargo.

25 MS PYKE: This purports to go further than that.  
26 There is an opinion about a variety of matters. We  
27 would accept that there is an embargo on the notes and,  
28 if that was all this letter said, there wouldn't be a  
29 problem.

30 EXHIBIT 280 Letter from John Stanton to Director,  
31 S.A. Museum, dated 30 August 1995,  
32 tendered by Mr Smith. Admitted.

33 MR SMITH: I tender also item 12, a Radio National  
34 programme, of 17 September 1995, which includes an  
35 interview with John Stanton, amongst other people. And  
36 I haven't got copies, at the moment, to give to counsel,  
37 but they can be provided immediately. In effect, John  
38 Stanton says much the same as he says in that letter

1 about the Berndt notes.

2 EXHIBIT 281 Radio National transcript including  
3 interview with John Stanton, on 17  
4 September 1995, tendered by Mr Smith.  
5 Admitted.

6 MR SMITH: Item 13, I simply ask that you add that  
7 to Exhibit 248, which was a typed up quarterly report of  
8 Doreen Kartinyeri proffered to the museum from Port  
9 Germein for April to June 1994. It was typed up from a  
10 handwritten facsimile. I tender the handwritten  
11 facsimile and I ask that that be included with Exhibit  
12 248.

13 COMSR: Handwritten facsimile will be included  
14 and form part of Exhibit 248.

15 MR SMITH: Item 14 are a series of marked for  
16 identification exhibits and I can provide you with a  
17 number of those. I think perhaps they were simply  
18 overlooked and you might feel you can now fully admit  
19 those exhibits.

20 MS PYKE: I object to MFI 161 and MFI 162. They  
21 were Dr Lindy Warrell's comments upon Dr Dean Fergie's  
22 report. They have only ever been marked for  
23 identification. Dr Warrell's comments and observations  
24 were not put to Dr Fergie by counsel assisting or anyone  
25 else.

26 MR ABBOTT: I did, I put some of them.

27 MS PYKE: No, Dr Warrell has not been called. We  
28 have heard her say she has some sort of contentious  
29 objection to coming to this Commission. I say it would  
30 be most unfair to receive those into evidence and indeed  
31 if, at this stage, they having only been marked for  
32 identification it is planned to tender them, I would  
33 wish to recall my client so that she can give evidence  
34 about the contents of them. It just seems to me most  
35 inappropriate that they were not tendered. They were  
36 not put to her, certainly by counsel assisting and if I  
37 remember correctly by Mr Abbott. I stand to be  
38 corrected. But the fact of the matter is she is

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1 available. The Commission can summons her if it wants  
2 her to give evidence and I can challenge her views.  
3 COMSR: Have you got those?  
4 MR SMITH: Yes, they are before you.  
5 MS PYKE: They have only been marked for  
6 identification.  
7 CONTINUED



1 COMSR: Yes, Mr Smith.

2 MR SMITH: Those comments of Ms Pyke, in an  
3 ordinary interpartes piece of litigation, are well made,  
4 but I would be surprised if the ilk of those criticisms  
5 was not the subject of examination of Dr Fergie. To the  
6 extent that they have not been, then you need to take  
7 that into account quite sensitively; you can receive  
8 this material that I'm proffering to you, you can  
9 receive this as an investigation. It will have problems  
10 in terms of you making findings based upon it, but this  
11 enquiry could persist for another six months if all  
12 these matters were the subject of evidence and fully  
13 resolved, and that cannot happen.

14 MS PYKE: Can I say this; this commands a  
15 different position. There are other reports that are  
16 being tendered where people purport to speak and to  
17 offer their own views and professional opinions, if I  
18 can put it that way. I mean Mr Lucas' report, Rod  
19 Lucas, I indicated to counsel assisting, I wished him to  
20 be called so that I can cross-examine him so that  
21 matters that had been put out of his report to my client  
22 could be addressed. As I understand it, he is not going  
23 to be called, but that's a slightly different thing that  
24 is being put in and tendered as a specific criticism.  
25 The sole purpose of those reports is to criticise my  
26 clients. It's not about Dr Warrell and her views of the  
27 parties which are the subject of these proceedings.  
28 They can only be prejudicial if that witness isn't  
29 called and, if she is not called, they can have no  
30 weight, and I say that they shouldn't be received by you  
31 into evidence at all and, if they are, as I say, I would  
32 specifically wish to recall Dr Fergie to address the  
33 matters raised in them.

34 MR ABBOTT: This brings into focus an issue I wanted  
35 to take up, and that is I will be seeking that you  
36 receive, as an exhibit, a report by a Dr Brunton which  
37 is also critical of Dr Fergie and Dr Draper. Now this  
38 is not on the list that is proposed this morning, but

1 both Dr Brunton's document and the Lindy Warrell  
2 document fall into the category of criticisms of the  
3 various reports to which they relate.

4 It's my submission that you can receive those  
5 documents not as evidence of the facts contained therein  
6 at all, but merely because they voice some views which  
7 you could discern if you were minded to critically  
8 approach the reports in the same way that Drs Warrell  
9 and Brunton did, and which you are free to accept or  
10 reject as you see fit.

11 It's one thing for Dr Warrell if she said in her  
12 report 'Dr Fergie is wrong because there were, in fact,  
13 two books written about this matter which she hasn't  
14 consulted', that's a statement of fact, but as I read Dr  
15 Warrell's comments, it is criticisms in the form of 'Dr  
16 Fergie has been guilty of textual slippage', or 'Dr  
17 Fergie has failed to give full weight to X, Y or Z'.  
18 These statements of Dr Warrell, as indeed Dr Brunton's  
19 statements, are merely arguments for and against  
20 accepting or not accepting Dr Fergie and Dr Draper, and  
21 they are arguments which you may feel inclined to accept  
22 or which you may entirely reject, and I submit they  
23 should be received on that basis.

24 MS PYKE: I haven't even got the Brunton report; I  
25 don't know what Mr Abbott is referring to. I understood  
26 there was some suggestion he might be called, but  
27 various people have come along here and given evidence  
28 and been subjected to substantial cross-examination by  
29 all parties. It is most unfair, most inappropriate, for  
30 you to receive into evidence particular reports dealing  
31 with particular criticisms of witnesses here. We're not  
32 talking about the tendering of an article or a book that  
33 goes to matters generally or concepts generally, we're  
34 talking about trying to get into evidence what is  
35 particularly critical of witnesses who have come in and  
36 been cross-examined, and for that to be received by you  
37 when there is no opportunity for me to test the views  
38 that are before you, I say is so prejudicial to my

1 client that it must outweigh any benefit. Whilst this  
2 is an enquiry and the rules of evidence don't apply,  
3 there must be some fundamental level of fair play, of  
4 procedural fairness, of fairness to people who have come  
5 here to give evidence. Why bother? Why bother to come  
6 and assist the commission when documents like that will  
7 be received into the commission, when their sole purpose  
8 is to be critical? They do fall, I say, into a  
9 different category completely.

10 COMSR: Your client's already explained the  
11 limitations and purposes for which she prepared her  
12 report.

13 MS PYKE: You can weigh up her evidence. Other  
14 people have been critical, other people who have come to  
15 this commission and given evidence have been critical.  
16 You can weigh that up. What I say is totally  
17 inappropriate is to receive evidence that cannot be  
18 tested in any way, shape or form, and contains things  
19 that have not been put to Dr Fergie. Certainly nothing  
20 in Brunton has been put to Dr Fergie and nothing, I  
21 suggest, in Lindy Warrell's. It wasn't shown to Dr  
22 Fergie, it wasn't shown it to her. It was not an  
23 exhibit. It was merely marked for identification. It  
24 is, I say, totally inappropriate and totally unfair to  
25 the witnesses who have come here to give evidence.

26 MR ABBOTT: Can I just assist? It falls into the  
27 same category as our submissions. I mean it would  
28 receive no greater weight from you, because Dr Warrell  
29 hasn't come here and given evidence `This is my opinion  
30 on oath', therefore you can't receive it as evidence of  
31 the truth of what she says. Because this is an enquiry,  
32 these sorts of documents are receivable because they are  
33 express views which you are free to accept or reject.  
34 In that sense it has no more weight and can have no more  
35 weight than the submissions of Ms Pyke or myself which  
36 we'll be giving you in due course. It's on that basis  
37 it was being sought to tender the documents.

38 MS PYKE: It's not at all the same thing as

1 submissions. We'll all be submitting on the basis of  
2 evidence received by you, properly received.

3 COMSR: If it comes in on the basis that I can  
4 inform my mind on any matter in such manner as I think  
5 proper.

6 MS PYKE: I say if you're going to do that, what's  
7 the point of people being prepared to come here and give  
8 evidence? You may as well fire bullets with impunity  
9 and be quite untested about the views and opinions that  
10 you form. It makes a mockery of the people who have  
11 been prepared to come here and give evidence on their  
12 oath and be tested.

13 MR SMITH: I can indicate that so far as the  
14 commission is concerned those two documents, in terms of  
15 expressing the truth of what's in them, you couldn't  
16 receive them for those purposes at all, but they are  
17 historical documents which were sought by the Chapmans  
18 and came to their attention. Dr Warrell would not come  
19 and give evidence, she was not subject to any  
20 examination or cross-examination. In terms of receiving  
21 that material as the truth of what's asserted in it, my  
22 submission to you would be that you couldn't do that  
23 and, as a matter of fairness, you wouldn't, but they  
24 were historical documents that came into evidence  
25 through, I think, Mr Palyga, and Dr Warrell features, in  
26 fact, in the chronology of events.

27 That's the basis upon which we're seeking to have  
28 them put formally into evidence. I don't think Ms Pyke  
29 ought to be overly concerned about the truth of what is  
30 asserted in those documents being used as a whip against  
31 -

32 COMSR: Truth of an assertion of an opinion, I  
33 suppose, as I understand them to be assertions of  
34 opinion.

35 MR ABBOTT: It can have no greater weight than  
36 Doreen Kartinyeri's letter.

37 MS PYKE: There was evidence given about those  
38 being sought. It's not at all necessary for you to have

1 it before you as an exhibit. The evidence will speak  
2 for itself that Dr Warrell was engaged.

3 MR MEYER: That submission doesn't follow. It was  
4 obviously considered relevant to put in when Palyga was  
5 giving his evidence.

6 MS PYKE: If they were that relevant, there would  
7 have been an attempt to tender them.

8 COMSR: It can go in for the limited purposes  
9 only that they were sought and obtained. I think a  
10 suppression order should go in in respect of both of the  
11 documents, and it be understood that they are not to be  
12 received by the Commission for the purposes of  
13 establishing the truth of any assertions in them. It  
14 demonstrates the state of knowledge, I suppose, if you  
15 want to put it that way, of the Chapmans.

16 The others, we are dealing with the whole -

17 MR SMITH: That's 95 and 96, 161, 162, and 249. I  
18 think 95 and 96 were marked for identification because  
19 there was a feeling of uncertainty about Aggie's Knob,  
20 and whether there was a sacred site and whether it was  
21 in the public arena. I don't think you need concern  
22 yourself -

23 COMSR: I think since then we have had evidence  
24 which shows that it's not, no longer confidential.

25 EXHIBIT 95 MFI 95 tendered by Mr Smith. Admitted.

26 EXHIBIT 96 MFI 96 tendered by Mr Smith. Admitted.

27 EXHIBIT 161 MFI 161 tendered by Mr Smith. Admitted.

28 COMSR: MFI 161 will be admitted on the basis  
29 I've previously indicated and become exhibit 161.

30 EXHIBIT 162 MFI 162 tendered by Mr Smith. Admitted.

31 COMSR: MFI 162 will be admitted on the basis  
32 I've indicated and will become exhibit 162.  
33 MFI 249?

34 MR SMITH: That's the letter to Dr Fergie from  
35 Doreen Kartinyeri indicated 31 October 1995, indicating  
36 to Dr Fergie that she has no permission to divulge. I  
37 can't remember why that was marked for identification  
38 only.

- 1 MR ABBOTT: Consistent with Ms Pyke's exposition, it  
2 won't go into evidence as truth of its contents.
- 3 MS PYKE: I want it tendered on the basis that my  
4 client received it and my client was entitled to  
5 consider it in forming her views as to confidentiality.
- 6 EXHIBIT 249 MFI 249 tendered by Mr Smith. Admitted.
- 7 MS PYKE: Whilst we're on the MFIs, I understood,  
8 and it might be that I got this all quite wrong, but  
9 Exhibit 243, which were basically Dr Fergie's various  
10 bundle of documents, I actually thought all of those had  
11 been released as exhibits, although I notice only some  
12 of them are; some still bear the MFI. They were all  
13 tendered, I think, so exhibit 243 are all exhibits, it's  
14 just that I note that I have notes that some of them  
15 were tendered, but I'm certain that they all -
- 16 COMSR: I think they may have initially gone in  
17 as MFIs, but they have since been admitted.
- 18 MR MEYER: On the final run of this document, I  
19 assumed that all of those MFIs on 243 will disappear.
- 20 MR ABBOTT: They have.
- 21 MR MEYER: Again there are a number of MFIs left  
22 that I'm told by Ms Simpson are being considered by the  
23 commission.
- 24 COMSR: You're talking about various reports?
- 25 MR MEYER: No, various MFIs. If yo turn to p.13 -
- 26 MR SMITH: Can we come back to those? People might  
27 have various things to raise. If we can just get rid of  
28 this list first.
- 29 Item 15 is a statement of the de facto police  
30 historian Robert Jarman Potts concerning the Rocky  
31 Marshall letter. I will provided my friends with copies  
32 of this material. The witness Potts, who is a  
33 commissioned officer in the South Australian Police  
34 Force, who has taken over from the police historian, has  
35 just provided us with some hard historical detail from  
36 records about the police officer, Thomas Rickerby, who  
37 features in the Rocky Marshall letter. I don't think  
38 there is anything contentious about that material. It

1 does challenge some of the dates in the Rocky Marshall  
2 letter, but I tender that.

3 EXHIBIT 282 Statement of Robert Jarman Potts and  
4 attachments re Rocky Marshall tendered  
5 by Mr Smith. Admitted.

6 MR SMITH: Item 16 is a document which forms the  
7 basis of some of the questions which were put to certain  
8 witnesses about Telecom laying, or the attempted laying  
9 of the optical fibre cable from the mainland at Goolwa  
10 to the island, so I tender the statement of Mr Rob Ceely  
11 of Telecom. For reasons which I don't want to elaborate  
12 on, I ask you to suppress the publication of that man's  
13 name, Mr Ceely.

14 COMSR: Not the statement itself?

15 MR SMITH: The statement just goes into evidence as  
16 an ordinary exhibit, and will be provided to counsel. I  
17 ask you to accept that statement and its attachments,  
18 and suppress publication of the name of the man Robert  
19 Ceely.

20 EXHIBIT 283 Statement of Mr rob Ceely and  
21 attachments re Telecom optical fibre  
22 cable tendered by Mr Smith. Admitted.

23 COMSR: Statement admitted as Exhibit 283, and I  
24 suppress from publication the name of the maker of the  
25 statement, Mr Rob Ceely.

26 MR SMITH: Item 17 is a report of Rod Lucas  
27 relating to Sellicks Beach. Now we have come to Mr  
28 Lucas, it's the commission's decision about calling or  
29 not calling witnesses, but I do take into account the  
30 views of counsel at the bar table before advising you on  
31 the question of whether certain witnesses were called,  
32 and I'm a bit alarmed at what I heard Ms Pyke say a  
33 moment ago. The position from Ms Pyke's instructing  
34 solicitor as to the calling of Mr Lucas was that they  
35 had no position, and I hear this morning that that's not  
36 the case but, in any event, it's not Ms Pyke's position  
37 at least, but when the commission was about a week or so  
38 ago contemplating whether other witnesses were to be

1 called and whether, for instance, the anthropologist, Mr  
2 Lucas, should be culled, I did canvass the views of  
3 counsel, but the commission made a decision not to call  
4 him and that's the position.

5 I tender, in any event, the report of Mr Rod Lucas  
6 relating to Sellicks Beach, only because the Sellicks  
7 Beach report and the topic of Sellicks Beach was  
8 canvassed with a number of witnesses in the case; that  
9 is I know Mr Meyer put questions to several people about  
10 the fact that Doreen Kartinyeri was an informant to Mr  
11 Lucas in respect of the Sellicks Beach report. I put,  
12 for instance, to Henry Rankine that he was an informant  
13 to Mr Lucas, and showed him the report. You should  
14 receive that report, but only for that limited purpose.

15 COMSR: Is it a report which in any way contains  
16 any sensitive material?

17 MR MEYER: It's a s.35 document, I reckon.

18 CONTINUED



- 1 MR SMITH: Yes, because really I suppose it's  
2 unfair to make an assumption one way or the other about  
3 that. It's another culture, if you like, or on the  
4 border.
- 5 MS PYKE: I would have thought -
- 6 MR SMITH: I think you should suppress that.
- 7 MR MEYER: If you made the general order of counsel  
8 and clients, then we are right in relation to that.
- 9 MS PYKE: I'm not sure that that is easy, as the  
10 s.35 authority only empowers you to receive in relation  
11 to the Ngarrindjeri -
- 12 COMSR: The original s.35 is much wider. Do you  
13 have a copy of the -
- 14 MR SMITH: I'll obtain some more information about  
15 that if you feel -
- 16 MR ABBOTT: Maybe only part of it needs to be  
17 tendered.
- 18 MR SMITH: Might be sufficient to leave the  
19 evidence as it stands and not admit the report at all.
- 20 MR MEYER: None of the cultural matters are  
21 relevant, it's the consultation is the issue which is  
22 the only part that is relevant.
- 23 MR ABBOTT: I would have thought that it's an easy  
24 matter to do a paste and scissors job on it and the  
25 relevant part remains if there is any s.35 material in  
26 it - and I haven't seen it.
- 27 COMSR: I think perhaps it will be wise to -
- 28 MR SMITH: I'll make some enquiries about the  
29 degree to which this was publicly scrutinized and  
30 divulged to the public, as it were, with the Sellicks  
31 Beach site.
- 32 COMSR: Whether it is a divulgence?
- 33 MR SMITH: I think put that aside. I won't urge  
34 that you receive it.
- 35 COMSR: It's not suggested that it refers to the  
36 Ngarrindjeri people?
- 37 MR SMITH: No. I think it's only in the sense that  
38 Henry Rankine had admitted in having an input and Doreen

1 Kartinyeri, somebody accepted that she had input into  
2 that in 1989. That was the point that was being made.  
3 I move on from 17.

4 18 is a bundle of Advertiser articles and I have  
5 copies to give to counsel. You will remember there were  
6 questions of, amongst other people, Dr Draper but  
7 certainly Henry Rankine and Tom Trevor concerning the  
8 Mount Barker Telecom towers, the Mount Barker Summit and  
9 a quarry located close to Mount Barker and the  
10 involvement of the Ngarrindjeri people in negotiating  
11 with Telecom in respect of those sites. The Advertiser  
12 articles were shown to a number of witnesses.

13 EXHIBIT 284 Bundle of Advertiser articles tendered  
14 by Mr Smith. Admitted.

15 MR SMITH: The next is a statement of Dave Rathman  
16 and the audio tape and the transcript of the meeting of  
17 15 April 1994.

18 COMSR: What is the status of that meeting? Is  
19 it confidential?

20 MR SMITH: It has all the earmarks of at least a  
21 quasi public gathering. There were Government  
22 officials, the Minister, Mr Rathman, members of the  
23 Aboriginal community. All I can indicate to you is that  
24 there is nothing that has passed in that meeting that  
25 disclosed any secrets or any -

26 COMSR: I'm thinking of confidentiality, whether  
27 of its nature it was intended to be confidential.

28 MR SMITH: It was intended to be private as held  
29 between the Minister and the officials and the  
30 Aboriginal communities to be the relevant people to be  
31 consulted with. Beyond that, it was recorded, the  
32 conference, by Telecom and the transcript comes from  
33 that. It was a telephone linkup with various  
34 communities.

35 COMSR: There is nothing in the statement of Mr  
36 Rathman that indicates that it is confidential?

37 MR SMITH: No. To the contrary, he wants you to  
38 have it before you.

- 1 COMSR: Are you putting both in as the one  
2 exhibit?
- 3 MR ABBOTT: I think they should be separate exhibits  
4 the audio tape and the transcript of the meeting of 15  
5 April has a different status to the assertions of Mr  
6 Rathman and I ask had they be given separate exhibit  
7 numbers. That the audio tape and the corrected  
8 transcript be given one and the statement of Rathman be  
9 given not.
- 10 EXHIBIT 285 Audio tape and transcript of the meeting  
11 of April 1994 tendered by Mr Smith.  
12 Admitted.
- 13 MR ABBOTT: I would like my objection to the  
14 statement of David Rathman being tendered to be noted.
- 15 EXHIBIT 286 Statement of David Rathman tendered by  
16 Mr Smith. Admitted.
- 17 MR ABBOTT: The statements of the Campbells and the  
18 statement of Rathman, I presume, will have the same  
19 status and the same weight.
- 20 MR MEYER: In relation to Mr Rathman, I ask you to  
21 make the same note in relation on my position. We have  
22 discussed this with counsel assisting and I acquiesced  
23 in the fact that he wasn't called.
- 24 MR KENNY: We did ask for Mr Rathman to be called.
- 25 COMSR: I note by now that all the people that  
26 counsel have suggested ought to be called, had they been  
27 called there would be no end to the Commission and a  
28 decision has to be made as to who to call and who not to  
29 call in these circumstances.
- 30 MR SMITH: I tender again, these are two witnesses  
31 which, in ideal circumstances, would have been called -  
32 Lorraine Campbell and Merva Campbell - where Mount  
33 Barker is claimed as a sacred site in one of the  
34 statements.
- 35 COMSR: That would be public knowledge.
- 36 MS PYKE: I haven't seen those.
- 37 EXHIBIT 287 Statement of Lorraine Campbell  
38 tendered by Mr Smith. Admitted.

1 EXHIBIT 288 Statement of Merva Campbell tendered by  
2 Mr Smith. Admitted.

3 MR SMITH: Item 21 is a minute which really I seek  
4 your leave to have it included in Exhibit 191, which is  
5 the Department of Environment and Planning documents.  
6 It's a document which is very short document and I will  
7 show my learned friends and I can provide a copy. It's  
8 the Aboriginal Heritage Branch making a comment about  
9 the Supplementary Development Plan which was not in the  
10 department's documents, for some reason, as we received  
11 them, but we got that document from another bundle. I  
12 ask that that be included in Exhibit 191.

13 COMSR: That is a minute dated 9 April 1990 to  
14 the Director, Planning Division from the Manager  
15 Aboriginal Heritage Branch to be included in Exhibit  
16 191.

17 MR SMITH: The last item 22 is a fax from Mr  
18 Richard Owen of the Friends of Goolwa and Kumarangk to  
19 the UTLC dated 23 November 1993, together with the media  
20 realise from the UTLC of the preceding day, 22 November  
21 1993. Again, this is a group - Richard Owen was one of  
22 the Friends of Goolwa and Kumarangk, the President of  
23 the association and potentially a witness. The  
24 significance of that document, for the sake of my  
25 learned friends, is that that has the same layout and  
26 format as a number of documents that came from the Lower  
27 Murray Aboriginal Committee. It's faxed from the same  
28 source in Goolwa. It has limited value, but indicates  
29 some connection between the friends and the union who,  
30 together with the Aboriginal community, objected to the  
31 bridge and were perhaps said to be natural allies.  
32 There has been much evidence given about that by Mr  
33 James, he's identified handwriting, the fax source and  
34 that sort of thing.

35 MR ABBOTT: This would have to be hearsay.

36  
37  
38

1 EXHIBIT 289 Facsimile from Richard Owen, Friends of  
2 Goolwa and Kumarangk to UTLC dated 23  
3 November 1993 together with media  
4 realise of UTLC dated 22 November 1993  
5 tendered by Mr Smith. Admitted.

6 MR SMITH: One other item Mr Tilmouth requested  
7 and, no doubt, Mr Kenny supports him in that request,  
8 that we tender the transcript of a tape. Mr Tilmouth  
9 asked that we produce to you in evidence the tape  
10 recordings of the interview of Dorothy Wilson by Ian  
11 McLachlan. There was, as you will recall from the  
12 evidence of Sue Lawrie a conversation between Dorothy  
13 Wilson Ian McLachlan and Sue Lawrie at Murray Bridge on  
14 24 April 1995. We haven't got the tape still. We have  
15 a transcript of that tape of the conversation and I'm  
16 happy to tender that.

17 COMSR: Who does have the tape?

18 MR SMITH: Remember Sue Lawrie had the tape with  
19 her in evidence. Because of s.35 problems that we had,  
20 we just asked her to undertake to keep the tape in safe  
21 keeping. She proffered the transcript of that tape  
22 which was locked in the safe here, but she kept the  
23 tape. Now the tape can be obtained, but that's the  
24 transcript of it and -

25 MR KENNY: I raise another point. We also sought -  
26 there was another tape recording of Sue Lawrie which Mr  
27 Tilmouth put in that letter. That was at a meeting on  
28 21 May. I wish to bring that to counsel's attention.  
29 There are two tapes, if you wish to talk about the tape  
30 that we are referring to.

31 MR SMITH: This is a tender at the instance of Mr  
32 Tilmouth.

33 MR ABBOTT: And I support it.

34 MR KENNY: We are seeking the production of it  
35 rather than the tender of it. We haven't seen it, so I  
36 don't think the record should show that we sought the  
37 tender of it, but we sought the production of it. So  
38 that is what we consider as our position.

- 1 COMSR: Who are the people involved in it?  
2 Should they have been notified?
- 3 MR SMITH: That is true. Mr Tilmouth asked for the  
4 production of it. What's he going to do with that if he  
5 finds it, makes a submission and then tenders it I  
6 suppose.
- 7 MR KENNY: There is - simply, that is part of the  
8 evidence. We hadn't seen it. Other parties and counsel  
9 assisting obviously had a copy of it and it was  
10 something that we sought to examine.
- 11 MR ABBOTT: I ask that it be tendered and treated as  
12 an exhibit.
- 13 MR SMITH: I will make enquiries about the other.  
14 EXHIBIT 290 Transcript of conversation between  
15 Dorothy Wilson, Ian McLachlan, Sue  
16 Lawrie at Murray Bridge on 24 April 1995  
17 tendered by Mr Smith. Admitted.
- 18 MR SMITH: They're the only matters from myself as  
19 counsel assisting. If there are any other matters that  
20 counsel wish to raise?
- 21 MR ABBOTT: I have some matters. The first is we  
22 have asked counsel assisting to prepare the genealogies  
23 that relate to other players who received a guernsey in  
24 the course of the Commission and I understand that is an  
25 on-going task?
- 26 MR SMITH: I say for the sake of Mr Abbott and my  
27 friends that it's envisaged that there will be evidence  
28 from Veroonica Brodie on Wednesday. We have now until  
29 Wednesday to tidy up any more loose ends that arise,  
30 Wednesday being the absolute cut-off date.
- 31 COMSR: We have to find out what is happening  
32 with respect to Mr Kenny.
- 33 MR SMITH: I indicate that by Wednesday, the  
34 genealogies will be under control and produceable.
- 35 MR ABBOTT: The second matter was that my client  
36 Rocky Koolmatrie has still to be called for further  
37 cross-examination and re-examination. I understand that  
38 no further cross-examination is required.

1 COMSR: No-one has said that.

2 MR ABBOTT: We had proposed to tender through her on  
3 re-examination a petition which she spoke of which she  
4 had and I'll arrange for that to be circulated between  
5 now and Wednesday.

6 The third matter, there are three articles,  
7 statements which we say you should receive for the  
8 purpose of informing yourself and they are: Brunton's  
9 article that I referred to; Partington's article; and,  
10 Austin Gough's article. Partington's article was with  
11 the Current Affairs Bulletin, Austin Gough's was in the  
12 Adelaide Review and Brunton made a statement. They are  
13 all views of people about the evidence or about the  
14 circumstances of the Hindmarsh Island Bridge. They are  
15 matters that just as you have received other newspaper  
16 articles which offer comment, these are yet more, in  
17 essence, newspaper articles.

18 COMSR: The purpose for which newspaper articles  
19 have been received in the main have been to demonstrate  
20 to the extent to which a matter may or may not be in the  
21 public arena.

22 MR ABBOTT: And also the historical context. I tell  
23 you that Mr Partington wrote an article to which Dr  
24 Fergie responded by an article. If it was suggested  
25 that Dr Fergie's article should go in, so should Mr  
26 Partington's.

27 MR MEYER: Fergie used in the article 'Whose sacred  
28 sites' in the Current Affairs Bulletin on 14 September  
29 1995.

30 CONTINUED

- 1 MS PYKE: Let's deal with this one by one.  
2 MR MEYER: I am just identifying it, that's all.  
3 MS PYKE: If these people want to offer opinions  
4 in the newspaper about what is going on in this  
5 Commission, and we are not talking about just an  
6 abstract academic article that people might call in aid  
7 of their arguments, but it seems to me that what is  
8 happening here is that anything that anyone has uttered  
9 that touches on the matters in this Commission it is  
10 being endeavoured to be put in when they are being  
11 critical of what is in this Commission by way of  
12 evidence. Truly we may as well not have bothered. Our  
13 clients may have saved themselves the effort.  
14 COMSR: Just a moment. They have been tendered.  
15 MS PYKE: Partington hasn't.  
16 COMSR: I know. Nobody has made a decision on  
17 it yet.  
18 MS PYKE: I realise that, but I want to be heard  
19 on it.  
20 COMSR: All right.  
21 MS PYKE: Because it seems to me if this sort of  
22 article is going to be tendered we might as well all go  
23 away and do a last comb for everything that has been  
24 written in relation to this.  
25 COMSR: Let me assure you I would discourage  
26 that.  
27 MS PYKE: If this sort of thing is going to happen  
28 we will have our own list ready to put in. Clearly Mr  
29 Abbott has got something from counsel assisting.  
30 MR ABBOTT: No, I have got nothing from counsel  
31 assisting.  
32 MR SMITH: No.  
33 COMSR: You have got a wish list, have you, Mr  
34 Abbott, or what?  
35 MR ABBOTT: Dr Fergie was permitted the very great  
36 indulgence that you gave her of appending to her  
37 statement any documents virtually that we wished to put  
38 in. One being the minutes of the Anthropological



1 Society. Presumably all sorts of documentation went in  
2 with her statement and, of course, the weight of that  
3 documentation depends to a great extent on whether or  
4 not it accords with the views which you eventually form  
5 as a result of your Inquiry. This material are three  
6 articles which, in my submission, you are entitled to  
7 receive for the purposes of informing yourself in  
8 relation to this Inquiry. They occupy exactly the same  
9 status as if I trotted out the arguments in these  
10 articles in the course of my submissions. Some of the  
11 arguments which these authors put forward I may include  
12 in my submissions.

13 MS PYKE: Can we identify the articles? I thought  
14 he said the statement of Mr Brunton.

15 MR ABBOTT: It is an article Mr Brunton prepared.  
16 It is in a booklet.

17 MS PYKE: You said two articles in the press and  
18 Brunton is a statement.

19 MR ABBOTT: It is in the form of a statement. It is  
20 in a booklet. It is not a statement in the sense of a  
21 statement to the Royal Commission, but it is in a  
22 booklet which Dr Brunton prepared called 'Blocking  
23 Business'.

24 MS PYKE: Surely we should see it. He wants to  
25 tender something that is not even produced.

26 MR ABBOTT: Can I just finish my submissions? I  
27 understand that you are naturally anxious to resist the  
28 tendering of these documents, but I will certainly  
29 circulate them before Wednesday. It is Brunton booklet,  
30 Partington's article and Dr Austin Gough's article. I  
31 don't know whether the Commission has copies of them,  
32 but if they can't be provided via the Commission I will  
33 provide them.

34 MR SMITH: We haven't got the Brunton article or  
35 booklet. We have got Partington and Austin Gough.

36 COMSR: They haven't been tendered at all?

37 MR SMITH: No.

38 COMSR: It is just part of collecting anything

1 that is published.

2 MR SMITH: Yes.

3 COMSR: Until I see the articles I am not sure  
4 how it is suggested I could make use of them or what  
5 their status is. I take it that there is some sort of  
6 archaeological or anthropological opinions canvassed in  
7 them.

8 MR ABBOTT: They put forward arguments, that's all,  
9 arguments. And they can be received by you as  
10 arguments. Whether you pay any weight to them, whether  
11 you accept them will, of course, depend upon the  
12 evidence. They will not go in in that sense as  
13 evidence. As I said, they occupy the same status as  
14 submissions that we made. But Dr Fergie, for example,  
15 in her exhibit put in all sorts of things. Pamphlets,  
16 documents, E&WS information bulletins. And these would  
17 go in, I suggest, on the same basis.

18 MS PYKE: Firstly, they were produced by Dr Fergie  
19 in answer to her summons. Secondly, the books and  
20 articles that were appended to her statement were  
21 referred to in her statement and formed part of her  
22 evidence and were made available to facilitate people  
23 cross-examining Dr Fergie. They are in quite a separate  
24 category. She has come and given evidence and has  
25 utilised documentation, books and articles for the  
26 purposes of her opinion and has been happy to be tested  
27 upon them. That has quite a separate category. It is  
28 just not on all fours at all.

29 COMSR: I will wait until I get these copies of  
30 these articles and see what it is that Mr Abbott is  
31 putting to me. I am not ruling.

32 MS PYKE: Might I say it would have been  
33 appropriate, if Mr Abbott wants them to be before you,  
34 to have put them to Dr Fergie. What he is doing now is  
35 trying by the back door to put matters to you that we  
36 were not able to put to Dr Fergie and was not put to  
37 her.

38 MR ABBOTT: That is not correct. I had understood

1 at the time when I was cross-examining Dr Fergie that a  
2 Professor Tonkinson would be giving evidence and would  
3 be available for cross-examination. I had understood  
4 that Professor Tonkinson would be in the nature of.  
5 Commenting by way of putting forward arguments on both  
6 sides, because I understood he was to be called in the  
7 nature of an independent expert and I apprehended that  
8 Professor Tonkinson would be saying here are the  
9 arguments on one side and here are the arguments on the  
10 other side and etc., etc. It was in that context that I  
11 had proposed to put these articles, the Brunton article,  
12 the Partington article and the Austin Gough article, to  
13 Professor Tonkinson. He is not going to be called now  
14 and I have no opportunity. Had I had the luxury of  
15 unlimited time I would have put all of these articles  
16 and more to Dr Fergie. I didn't have the luxury of  
17 unlimited time. I made a decision that the proper  
18 person to put them to would be Tonkinson. I now find he  
19 is not going to be called. On that basis I am seeking  
20 that they be received and I will circulate them.

21 MR SMITH: Perhaps you can just consider that when  
22 they come to hand? It is true that if you received in a  
23 formal way everything that is written about this on both  
24 sides you would have an avalanche of documentation to  
25 deal with.

26 I have been written to by Mr Tilmouth and I should  
27 tell you of the other matters that he has put to me as  
28 counsel assisting.

29 Item 5 of his request was:

30 'Tender the October 1987 journal of the Anthropological  
31 Society of South Australia, which was handed to counsel  
32 assisting, on 7 November.'

33 That was a document at the end of Mr Tom Trevor's  
34 evidence. Mr Tilmouth handed me this document, a  
35 journal of the Anthropological Society of South  
36 Australia, which included notices of a general meeting  
37 and that sort of thing, which I am not sure how it could  
38 be the subject of evidence. The election of officers,

1 etc. Then we had what amounts to almost an essay, if  
2 you like, by Steve Hemming, the witness Hemming.  
3 'October long weekend excursion in 1987', and it is a  
4 story of an excursion by, amongst other people, George  
5 Trevorrow, Tom Trevorrow, Rodney Rigney, etc., which  
6 included reference to some sacred site or a claimed site  
7 in respect of a caravan park at Meningie.

8 It has been put through numerous witnesses that  
9 Aboriginal people do not make claims for the  
10 significance of sites or places until, or don't disclose  
11 their beliefs in relation to these sites and places  
12 until the death knell. And I think the only point that  
13 could be made by that article just proffered could be  
14 that.

15 I would ask that Mr Tilmouth and Mr Kenny be content  
16 with the fact that there is an abundance of evidence on  
17 that topic already before the Commission. So my short  
18 answer to that request is no, the Commission do not  
19 agree to tender that. But that I just offer to Mr Kenny  
20 the fact that there is an abundance of other more  
21 acceptably admissible evidence that establishes that  
22 point if he wants to make it.

23 COMSR: That is already before me.

24 MR SMITH: That Aboriginal people come forward at  
25 the death knell rather than disclose their beliefs too  
26 early.

27 The other proponent women letters, yes, we have put  
28 those in.

29 Mr Tilmouth expressed concern that Dr Lucas wasn't  
30 going to be called. That is the position.

31 And then Professor Tonkinson was raised:

32 'As we understood it, Professor Tonkinson would be  
33 called.'

34 Certainly I confess that we indicated that he would  
35 be called. He was to be called or he was to be in the  
36 nature of a consultant. You have powers to consult with  
37 an expert. Both your Terms of Reference provide for it  
38 and the Act, the Royal Commissions Act itself provides

1 for it and you don't have to do that in an open hearing  
2 context at all. In view of the time constraints we have  
3 and I think I indicated to counsel in a very loose way  
4 that we were considering changing Professor Tonkinson's  
5 role from that of a witness to a private consultant.  
6 And that is the position. On that basis I think I was  
7 asked by Ms Pyke's instructing solicitor to tender an  
8 article by Professor Tonkinson. I think that  
9 inappropriate. Professor Tonkinson is not in the arena,  
10 he is not giving evidence, and therefore an article  
11 proffered to the Commission about his views would be  
12 quite inappropriate, in my submission, and I resist the  
13 tender of an article. He is being used by you merely as  
14 a consultant and he will interpret the evidence to the  
15 extent that you require that sort of assistance.

16 MS PYKE: Can I just be heard on that?

17 Firstly, this is a matter where we were told that  
18 Tonkinson was to be called to give evidence. There is a  
19 particular article that otherwise I would have had my  
20 client address in her statement. This is not Mr  
21 Abbott's school of adducing evidence. We are not trying  
22 to put Tonkinson's evidence through other people,  
23 through other people who weren't going to be at court.  
24 It is an issue. He is clearly someone who is going to  
25 be assisting you.

26 COMSR: No, he won't be giving evidence and of  
27 course I wouldn't want him to be placed in a position  
28 where there is evidence of his produced before me.

29 MS PYKE: No, we would simply seek to have  
30 tendered a particular article he has written about  
31 tradition and understanding traditions.

32 COMSR: I wouldn't propose to do it for the  
33 reasons that Mr Smith has indicated.

34 MS PYKE: If there is to be further argument about  
35 Mr Abbott's sundry newspaper cuttings, articles and  
36 booklets I would wish this to be considered again, at  
37 that time, because it seems to me if you receive those  
38 there is absolutely no reason for you not to receive the

1 Tonkinson article.

2 COMSR: Excepting that those other persons will  
3 not be used as consultants.

4 MS PYKE: Exactly, there is less relevance to  
5 their views and opinions than anybody that is going to  
6 Be utilised by you.

7 COMSR: There is not that same objection, of  
8 course.

9 MS PYKE: It just seems to me that, if you are  
10 going to receive people's views -

11 COMSR: I have not said I am going to receive  
12 them.

13 MS PYKE: This article at least falls into the  
14 same category and, if you are excluding it on the basis  
15 that we were advised that Professor Tonkinson was going  
16 to be called and therefore didn't put that particular  
17 opinion to our client -

18 COMSR: Yes, there is always questions of  
19 availability with witnesses, Ms Pyke. But, in any  
20 event, I haven't looked at the articles that Mr Abbott  
21 is talking about. I haven't made any decision  
22 concerning them.

23 MS PYKE: There is only one other matter, so I  
24 would ask you perhaps to hold that in abeyance and I  
25 don't know that anyone will have any particular  
26 difficulty about this one.

27 Several of the witnesses referred to Hobsbaum and  
28 Ranger, 'The Invention of Tradition'. That was Dr  
29 Clarke, Mr Jones and Dr Fergie. But no part of it was  
30 ever tendered. You might remember they have all  
31 referred to that in passing.

32 COMSR: Yes.

33 MS PYKE: My copy has some highlighter on it, but  
34 I would simply perhaps seek that that be tendered so  
35 that you have it in front of you when you get to the  
36 evidence of the witnesses on the particular topic.

37 MR SMITH: We don't have any trouble with that.  
38 That article was debated by almost all the witnesses.

- 1 COMSR: What is the title of it?
- 2 MS PYKE: It is Eric Hobsbaum. It is the  
3 introduction to his book 'Inventing Traditions'.  
4 Various page references were made.
- 5 MR MEYER: In relation to matters like that, I  
6 mentioned to counsel assisting the book by Meyer. I.  
7 Don't propose to tender it, because I assume that you  
8 can just have reference to it if you need to.
- 9 COMSR: Yes.
- 10 MR MEYER: It is a published literary work. I have  
11 the same view in relation to this document. I have no  
12 objection to it being referred to. Whether you need it  
13 tendered or not is a different matter. It is like a  
14 dictionary, you are open to do so.
- 15 COMSR: Yes.
- 16 MS PYKE: I just think it will make it easier and  
17 a whole lot of articles were referred to and that can be  
18 referred to.
- 19 COMSR: Yes, you are quite right. I have the  
20 Berndts' book referred to.
- 21 MR SMITH: We will get the book, I think, rather  
22 than that.
- 23 COMSR: What is the situation in respect of your  
24 witness, Mr Kenny?
- 25 MR KENNY: Just before I answer that, just if I  
26 could go back to Mr Tilmouth's letter to counsel  
27 assisting.  
28 With respect to Professor Tonkinson, we had in fact  
29 asked in that letter that if you are to employ him in  
30 anyway that might influence the outcome of the matter or  
31 obtain any statements from him -
- 32 COMSR: We won't be obtaining statements from  
33 him, as I understand it.
- 34 MR KENNY: No, certainly, but any material or  
35 information that he supplies to the Commission we would  
36 ask that we at least be given copies of it so that we  
37 can reply to it and be aware of it.
- 38 COMSR: It is not a situation that would call

1 for a reply. He is in the nature of an expert  
2 consultant.

3 MR KENNY: Certainly, I just ask that that be noted  
4 for the record.

5 And just for the record and completeness the tender  
6 of the 1987 journal of the Anthropological Society of  
7 South Australia, we did seek the tender of that  
8 document.

9 COMSR: Yes.

10 MR KENNY: With respect to Mr George Trevorrow, I  
11 attended on him on Friday. He was released from  
12 hospital Friday morning. He will be available to give  
13 evidence if you would be willing to travel down to  
14 Meningie to visit him. He is not really fit to travel.  
15 I mean, he has only just been released from hospital.

16 COMSR: What is the situation, tomorrow?

17 MR ABBOTT: Is the statement available or is that  
18 still -

19 MR KENNY: His statement is not completed, at this  
20 stage and I will endeavour to have it available  
21 tomorrow.

22 COMSR: Tomorrow would have been a good day to  
23 take his evidence.

24 Is it known for sure whether we will have a witness  
25 on Wednesday?

26 MR SMITH: The best we can offer is to say as far  
27 as we know that's the case and that a statement will be  
28 completed and signed today. So that we will be, subject  
29 to really the question of protection, in a position to  
30 make a decision about issuing that statement today once  
31 it is signed.

32 CONTINUED



- 1 COMSR: If that were -
- 2 MR SMITH: The lady is scheduled to come in and see  
3 Ms Simpson this afternoon.
- 4 COMSR: Because otherwise we could take Mr  
5 Trevorrow's evidence on the Wednesday if this witness -
- 6 MR SMITH: We must have a statement in advance.
- 7 COMSR: I understand that from Mr Kenny that  
8 statement will be completed tomorrow.
- 9 MR KENNY: I hope so.
- 10 COMSR: That's a little difficult.
- 11 MR KENNY: I'll use my best endeavours, I give I  
12 that undertaking.
- 13 COMSR: Best endeavours haven't been very  
14 productive up to this date.
- 15 MR SMITH: The evidence must stop on Wednesday. We  
16 simply will not be able to comply with the government's  
17 requirements for a report.
- 18 MR ABBOTT: This is just a nonsense. Mr Kenny's  
19 statements so far have been four pages, or thereabouts,  
20 of very general material, and to suggest that they will  
21 have taken anything like the three or four months he's  
22 had to prepare the statements is a nonsense. It's part  
23 of a delaying tactic by his client. Because the  
24 evidence is concluding on Wednesday, Mr Trevorrow won't  
25 be able to produce a statement until Wednesday morning,  
26 and we're now left in a situation where Mr Trevorrow  
27 will be saying 'This is what I wanted to say, but I  
28 couldn't say it'. This must not be allowed to happen.  
29 If Mr Trevorrow produces a statement, I'm sure it will  
30 be produced today if there was any real will to produce  
31 a statement and have it circulated. I take it that Mr  
32 Kenny would not be resisting that his client be  
33 cross-examined?
- 34 MR KENNY: I'm not. I simply emphasise that Mr  
35 Trevorrow has spent almost the last two weeks in  
36 hospital, he's undergone a major operation. He was  
37 seriously ill and in a great deal of discomfort before  
38 that operation, so much of the recent times I have not

1 than able to speak to him.

2 COMSR: Is Mr Trevorrow not on the telephone?

3 MR KENNY: He certainly is, and I intend spending  
4 most of the today speaking to him and clarifying matters  
5 and finalising the statement. It's also difficult to  
6 show him documents that I have up here and he is in  
7 Meningie, I appreciate that, but I assure you there is  
8 no intention by either myself or Mr Trevorrow to  
9 attempt, as Mr Abbott suggested, to have the best of  
10 both worlds. Mr Trevorrow has been ill and, for that  
11 reason, he has been unavailable. It's not because he  
12 has been attempting to delay the matter.

13 MR ABBOTT: You said months ago you had his  
14 statement or were getting it, before there was sign of  
15 being ill.

16 MR KENNY: I will get instructions, but over this  
17 commission there have been numerous matters that I was  
18 unaware of that had been raised, and I need to speak to  
19 him about them. His illness has considerably delayed  
20 the matter. I can assure you it's not an attempt to  
21 inconvenience this commission; it's not an attempt to  
22 delay him giving evidence.

23 COMSR: The commission is unlikely to be sitting  
24 this afternoon, I would think. Are you intending to go  
25 down to Meningie to see him?

26 MR KENNY: I hope to avoid it. I don't have typing  
27 facilities at Meningie to type up his statement.

28 MR SMITH: I think if there is no statement by 9  
29 o'clock tomorrow morning, my view I would be submitting  
30 to you that we're not going to bother to take his  
31 evidence. This has been going on now for six months,  
32 and we can't leak out beyond Wednesday. This man was at  
33 the Mouth House. He, on one version of the facts, was  
34 the man who indicated the map with his walking stick.

35 MR ABBOTT: Mr Kenny has known the importance of  
36 this witness.

37 MR KENNY: I have known the importance of this  
38 witness, it is simply he has been ill, that's all I say.

- 1 I mean I'm not happy to be in this situation. They are  
2 circumstances beyond my control.
- 3 COMSR: Perhaps you can tell me what is the  
4 situation in respect of him giving evidence. You say  
5 that you will have the statement tomorrow?
- 6 MR KENNY: I believe that I will, yes. If there is  
7 something in the final statement that Mr Trevorrow is  
8 not happy with and instructs me not to hand that to the  
9 commission until he is satisfied, then of course those  
10 matters are outside of my control.
- 11 COMSR: That can be done by phone.
- 12 MR KENNY: Indeed, but what I'm trying to do is  
13 acknowledge the urgency of this matter and, at the same  
14 time, respect my client's instructions.
- 15 COMSR: So there would be no reason, as I  
16 understand it, why you couldn't get your final  
17 instructions this afternoon by phone.
- 18 MR KENNY: I would hope to have them, yes.
- 19 COMSR: Is there some reason that prevents you  
20 having them?
- 21 MR KENNY: It's simply a matter of time, and Mr  
22 Trevorrow's availability. He is not able to concentrate  
23 on this matter for long periods due to the discomfort  
24 that he has been suffering, and the fact that he has  
25 been in hospital for the last several weeks and has  
26 undergone an operation.
- 27 COMSR: So this is a lengthy statement and going  
28 to take a deal of time. All we have at present is the  
29 hope, the expectation, that you'll be able to get some -
- 30 MR KENNY: Certainly. I fully expect to. I'm not  
31 anticipating any difficulty, but I'm not able to give  
32 guarantees on behalf of my client.
- 33 COMSR: We have a problem, then, if you're not  
34 able to give guarantees. You see, on the face of it, I  
35 can't see why the matter of his statement couldn't be  
36 finalised this afternoon, and someone sent down to get  
37 it signed later.
- 38 MR KENNY: Yes. It's simply a matter of time and

1 distance.

2 MR ABBOTT: They've got a fax machine when they want  
3 to use it.

4 MR KENNY: I can assure you that the fax machine is  
5 being used appropriately and to my best endeavours.

6 MR ABBOTT: Unless we receive his statement today, I  
7 submit that Mr Trevorrow should be ruled out. 9 o'clock  
8 tomorrow is not adequate because if he gets another day  
9 it will be more hours and, at this stage, we have to  
10 make a decision, I suggest - and I'm speaking for all of  
11 us at the bar table, except perhaps for Mr Kenny -  
12 whether to join you in going down to Meningie on  
13 Wednesday. That's the decision that needs to be made  
14 today. It can't be left until tomorrow and shouldn't be  
15 left until tomorrow. I submit that if Mr Kenny doesn't  
16 come up with a statement on all the matters on which Mr  
17 Trevorrow wishes to assist you by giving evidence by 5  
18 o'clock today, then Mr Kenny be told that he has left it  
19 too late for his client, and he has had months.

20 Mr George Trevorrow has only been in hospital  
21 apparently for a week or so, ill for a couple of weeks.  
22 They have had months and months and months, and the only  
23 matter on which Mr Kenny must have received  
24 instructions, which I will suggest form the basis of the  
25 statement, if and when we see it, will be the Mouth  
26 House meeting, because he has known about it from day  
27 one.

28 MR SMITH: In a sense, that's right. In a sense,  
29 if Veronica Brodie gives evidence, that could well take  
30 up most of Wednesday, and therefore we ought to be  
31 taking this evidence from this man tomorrow, tomorrow  
32 afternoon. That's what should be happening, because  
33 there will be no evidence after Wednesday. It is just  
34 logistically impossible for this commission to deliver a  
35 meaningful report by 14 December if we start drifting  
36 into evidence late this week or the next.

37 MR KENNY: Also - I thought this was perhaps a  
38 submission I could discuss with counsel assisting, but

- 1 we may as well discuss it here - the logistics of  
2 everyone turning up at Camp Coorong as well. There  
3 needs to be some organisation applied to that if other  
4 people are going to attend.
- 5 COMSR: How many people are really involved in  
6 cross-examination?
- 7 MR ABBOTT: What organisation are we talking about  
8 if I want to attend? What organisation?
- 9 MR KENNY: The place where Mr Trevorrow lives is  
10 called Camp Coorong. Organising lunch.
- 11 MR ABBOTT: I will bring my own.
- 12 MR KENNY: It's also a question of space, finding a  
13 place for them. I will point out that on Wednesday they  
14 actually have two school camps there on that day, and  
15 it's a practical consideration of organisation. It's  
16 not an attempt, I assure you, to delay the matter any  
17 further.
- 18 COMSR: Mr Kenny, will you be able to produce a  
19 report by the this afternoon?
- 20 MR KENNY: No, I don't think I will.
- 21 MR SMITH: I think Mr Kenny has to grasp the  
22 mettle; either Mr Trevorrow gives evidence or doesn't.
- 23 MR KENNY: He wishes to give evidence, but is  
24 unable to.
- 25 COMSR: Perhaps you can contact Mr Trevorrow. I  
26 mean as far as the telephone is concerned, it doesn't  
27 matter whether he is two streets away or down at  
28 Meningie.
- 29 MR KENNY: Certainly. I will be in touch with Mr  
30 Trevorrow this afternoon.
- 31 COMSR: I mean not only in touch with him - what  
32 are the difficulties of taking his instructions? Is  
33 there something that's arisen in the course of evidence?
- 34 MR ABBOTT: It's additional instructions other than  
35 the ones he took months ago.
- 36 MR KENNY: Yes, on a large number of additional  
37 matters that have come to our attention during the  
38 course of this hearing. I don't wish to go into the

1 details at this stage.

2 COMSR: Perhaps you can inform the commission by  
3 5 o'clock this afternoon whether you've managed to get a  
4 faxed statement from your client.

5 MR KENNY: I will do that.

6 MR MEYER: I was omitted from the tendering  
7 documents routine because we switched on to witness  
8 statements. I've got a couple of matters I wish to  
9 raise.

10 I tack on to the end of the list of matters that Mr  
11 Abbott referred to a document that we wish to tender,  
12 and that was an article entitled 'Who's Sacred Sites' by  
13 Dr Deane Fergie in the Current Affairs Bulletin in  
14 August/September 1995. I'm happy for that to be dealt  
15 with on Wednesday. It is, in fact, Dr Fergie's  
16 response, at least in part, in so far as it refers to  
17 the Jeffrey Partington article. I was going to seek to  
18 tender it anyway, but if Ms Pyke is concerned that one  
19 article is being put in without the balance of the other  
20 article, I seek myself to tender Dr Fergie's article,  
21 but I'm happy to leave that to Wednesday.

22 MR SMITH: Was that or any part of it put to Dr  
23 Fergie?

24 MR MEYER: I think so, or matters touching on it if  
25 not specifically put, but matters touching on it, I  
26 think. I will answer that thoroughly on Wednesday  
27 morning.

28 MFI 138 is a document of Mr Colin James which I seek  
29 to have tendered, rather than rely on the evidence that  
30 he referred to. They were the four letters that he had  
31 received from various people. You will recall that he  
32 received various correspondence from people following  
33 the articles that he had written, and I think that they  
34 should be tendered.

35 COMSR: Why?

36 MR MEYER: They were, as I said, referred to in the  
37 evidence-in-chief. They give the surrounding atmosphere  
38 and pressure that was being applied to Mr James. I

1 think they are relevant for those purposes. I don't  
2 mind if you suppress them, but I think they are  
3 relevant. Leaving them as an MFI means that, in  
4 essence, they are not before you, and I think they  
5 should be before you. I'm not suggesting that they  
6 should be in the public arena, I'm perfectly happy for  
7 them to be suppressed, but I think they should be before  
8 you. I don't think there needs to be any disclosure of  
9 the authors of the letters beyond whatever there is  
10 already in the public transcript. I can't recall what  
11 disclosures there are, off the cuff, to be quite frank.

12 COMSR: I can remember there was some discussion  
13 concerning the letters. You're simply tendering them on  
14 the basis that they disclose the sort of pressure that  
15 was being applied at the time.

16 MR MEYER: Yes. As I said, I'm happy for the  
17 contents and names to be suppressed.

18 COMSR: Yes. I wouldn't have thought, apart  
19 from that, that they will serve any other purpose.

20 MR MEYER: No. Do you recall the contents? Mr  
21 James was saying that he had, in fact, never received  
22 correspondence like that.

23 COMSR: That's right. I don't think the  
24 opinions of the persons concerned are of any use to me.

25 MR MEYER: It's the fact of it rather than the  
26 opinions, actual truth or otherwise of them.

27 COMSR: Does anyone wish to be heard on that  
28 application? It's MFI 138 that we're looking at at  
29 present.

30 EXHIBIT 138 MFI 138 tendered by Mr Meyer. Admitted.

31 COMSR: It will be admitted for the purpose  
32 simply of demonstrating the degree of pressure that Mr  
33 James was under, and the exhibit itself will be  
34 suppressed.

35 MR MEYER: The other document that I wish to tender  
36 is a copy of 137.

37 MR SMITH: For the sake of the record, you could  
38 actually release that too.

- 1 COMSR: The DOSAA documents themselves are  
2 suppressed, are they not? Which one are you talking  
3 about?
- 4 MR SMITH: 137. It's MFI for some reason, but it's  
5 in anyway through the DOSSA documents, so you might as  
6 well let it in, rather than try and prune it out of the  
7 list.
- 8 COMSR: I don't know about pruning it out. If  
9 it's in otherwise, there is no need for it to go in now.
- 10 MR SMITH: Except it sort of falls in with the  
11 evidence of Colin James, he gives evidence about it. I  
12 showed him the documents and we had it marked for  
13 identification. If suddenly you look through your  
14 bundle of documents, it won't be there. You might as  
15 well admit it.
- 16 COMSR: I will admit it, but again I'm not sure  
17 as to the status of confidentiality of these meetings.
- 18 MR ABBOTT: It's a matter of public record, because  
19 I cross-examined Dr Draper on this report of the Lower  
20 Murray Aboriginal Heritage Committee in open hearing.  
21 Dr Draper, I don't think, attached any s.35 problems  
22 with reference to the parts of it.
- 23 COMSR: I wasn't thinking so much of that as the  
24 question of whether, for other reasons of  
25 confidentiality as a part of the terms of reference,  
26 that this is a document that ought to be suppressed.
- 27 MR SMITH: This is a government document from the  
28 department. The government waived, when it disclosed  
29 all of these reports to us, any claim for privilege in  
30 respect of these documents.
- 31 COMSR: That might be so, as far as we're  
32 concerned. I can't see anything on the face of it that  
33 would require me to be concerned about it, except in the  
34 nature of it being, as it seems to be, a briefing for  
35 the Lower Murray Aboriginal Heritage Committee. Do you  
36 wish to be heard on that Mr Kenny?
- 37 CONTINUED



- 1 I've got an application before me that Exhibit 137 has  
2 been admitted as an exhibit. There is no - it forms  
3 part of the DOSAA documents, which themselves are  
4 subject to a suppression order, but this one has not  
5 been subject to a suppression order and one apparently  
6 hasn't been sought.
- 7 MR KENNY: I'm not sure that I've seen a copy of  
8 that one.
- 9 COMSR: I don't propose to do anything. It's  
10 now an exhibit and there has been no order made in  
11 respect of it.
- 12 MR ABBOTT: Could we go back to MFI 129. I would  
13 ask that those go in as an Exhibit.
- 14 COMSR: You don't have an updated list. Perhaps  
15 it's not - what's been happening here is the MFI ones  
16 have been then marked an exhibit.
- 17 MR ABBOTT: I want to make sure they are in and I  
18 ask that what is in my list as MFI 129 becomes Exhibit  
19 129.
- 20 COMSR: Does anyone wish to be heard on that?  
21 EXHIBIT 129 Tape marked MFI 129 now tendered by Mr  
22 Abbott. Admitted.
- 23 COMSR: 133?
- 24 MR SMITH: 133 is now an exhibit.
- 25 MR MEYER: That is in the next item that is in.  
26 Often what happens with the list, you see the MFI with a  
27 number and in the next box is an exhibit with a number.
- 28 COMSR: I wish to check it to see that is the  
29 case. 133 has certainly been admitted. 133A has been  
30 admitted.
- 31 MR MEYER: My final one is I wish to tender the  
32 order of O'Loughlin J of 29 March 1994 when Binalong  
33 obtained an interim injunction against various people:  
34 The Conservation Council, CFMEF, Friends of Goolwa and  
35 Kumarangk and some named individuals. I say that that  
36 is relevant and I produce to you a photocopy of the  
37 sealed copy order that is relevant in the chronology of  
38 matters, we say, in was occurring on 29 March 1994.

1 That is a document on the public record.

2 COMSR: It may be on the public record, but what  
3 do you say its relevance is?

4 MR MEYER: We say its relevance is to this. That  
5 as from 29 March 1994, that order was confirmed during  
6 April as a permanent injunction as from 29 March 1994,  
7 the Conservation Council and the officers of the  
8 council, the union and Friends of Goolwa and Kumarangk  
9 and beyond the association is named Richard Owen, Olwyn  
10 Barwick and Douglas Hassal were in effect enjoined  
11 against instructing in any way the construction of the  
12 bridge. Para.2, for example, says:  
13 `Until further order, the respondents be enjoined from  
14 ... orders in relation to Partnership Pacific'.  
15 We say that that order was the final prevention of  
16 action to stop the bridge by anybody other than people  
17 associated with the Aboriginal protests. It's logical  
18 in the sequence of things. We say that there is an  
19 ending to other forms of protest leaving only the  
20 Aboriginal protest.

21 EXHIBIT 291 Order of O'Loughlin J dated 29 March  
22 1994 tendered by Mr Meyer. Admitted.

23 MR ABBOTT: MFI 237, Dr Draper's field notebook  
24 which I omitted to tender, although I only had it  
25 marked. I ask that it go in, not because of what it  
26 contains, but for what it doesn't contain.

27 COMSR: Is there anything in it of a  
28 confidential nature?

29 MR ABBOTT: It may be of a confidential nature and  
30 I'm happy for the contents to be suppressed. I cannot  
31 give your Honour an assurance that there is nothing of a  
32 confidential nature. The important thing is that it be  
33 admitted.

34 MR SMITH: We returned some things to Dr Draper but  
35 not without copying. He is doing a report for the  
36 Government at the moment. If your secretary cannot find  
37 it, it may be because it's out.

38 COMSR: It's his field notebook and until I know

1 what the contents of it are?

2 MR ABBOTT: I cross-examined him on it and it's only  
3 the pages that relate to his involvement in the  
4 Hindmarsh Island. He has notes that run from October  
5 through to December, then again in March and then the  
6 weekend in April.

7 COMSR: It's concerned with sites.

8 MR ABBOTT: Yes, it is concerned with sites and  
9 should certainly be suppressed, but there should be no  
10 bar to it being an exhibit.

11 COMSR: I'm not concerned with it being an  
12 exhibit, I'm concerned with the issue of the material  
13 that is in it.

14 EXHIBIT 237 Document marked MFI 237 for  
15 identification now tendered by Mr  
16 Abbott. Admitted.

17 COMSR: I make an order suppressing the contents  
18 of Exhibit 237 from publication. If there are any other  
19 matters that are still to be dealt with, counsel will  
20 probably have to determine those by Wednesday.

21 MR KENNY: If I record for the transcript, I think  
22 Rocky Koolmatrie - we hadn't indicated we required her  
23 to be cross-examined and I think Dulcie Wilson we didn't  
24 cross-examine either. We were not present and there may  
25 have been another witness. I simply ask it be noted for  
26 the transcript that our lack of cross-examination does  
27 not indicate that we agree with the views expressed by  
28 those witnesses. I don't think any of them directly  
29 impacted on my clients in terms of direct evidence.

30 COMSR: I can't recall that they did.

31 MR ABBOTT: It's not an admission that they didn't  
32 have any questions to ask.

33 MR SMITH: Subject to Mr Kenny and the potential at  
34 the moment of tomorrow afternoon being spent with Mr  
35 Trevorrow.

36 MR KENNY: I'm sorry to interrupt counsel  
37 assisting. I had previously provided counsel assisting  
38 with a statement on an Alan Clarke. Mr Clarke has not,

1 he did attend to give evidence on one day, but counsel  
2 wished to speak to him and he has not come back to see  
3 counsel and he hasn't given evidence. But I would ask  
4 that his statement be tendered along with the other  
5 statements.  
6 MR MEYER: I oppose that.  
7 MR SMITH: Mr Kenny doesn't act for Mr Clarke. Mr  
8 Clarke would not see me. There were a number of matters  
9 I wanted to raise with Mr Clarke, and on no basis will  
10 Mr Clarke's statement be tendered.  
11 COMSR: Yes, Mr Kenny, there doesn't seem to be  
12 a very good foundation for that. You appreciate the  
13 urgency of the situation and you will be in touch with -  
14 MR KENNY: I will be in touch with counsel this  
15 afternoon.  
16 COMSR: It doesn't only involve counsel  
17 assisting, but there are other counsel.  
18 MR KENNY: I appreciate that.  
19 MR SMITH: Subject to that, 10 o'clock on  
20 Wednesday.  
21 ADJOURNED 12.21 P.M. TO WEDNESDAY, 15 NOVEMBER 1995 AT 10 A.M.

