

1 COMSR STEVENS

2

3 HINDMARSH ISLAND BRIDGE ROYAL COMMISSION

4

5 WEDNESDAY, 11 OCTOBER 1995

6

7 RESUMING 10.10 A.M.

8 MR SMITH: The program for today is, first of all,
9 the Aboriginal Legal Rights Movement subpoena, duces
10 tecum, for the file of Tim Wooley, is returnable this
11 morning at 10 o'clock.

12 The witnesses for today are the Museum staff
13 members, Margaret Amon, Kate Allport and Francesca
14 Alberts.

15 MR GRAY: I would seek to intervene in this matter
16 on behalf of the Law Society of Australia. In light of
17 the return of the subpoena that the commission has
18 issued, there would appear to the society to be
19 questions related to legal professional privilege. The
20 society would wish really to be heard, limited to that
21 question in respect of legal professional privilege, and
22 Royal Commissions generally and its existence.

23 COMSR: Certainly.

24 MS LAYTON: I appear for the Aboriginal Legal Rights
25 Movement, which has been summonsed thorough its director,
26 Sandra Saunders, to produce the Tim Wooley files to the
27 Royal Commission. The council of the Aboriginal Legal
28 Rights Movement has directed its director not to produce
29 the files for reasons which are set out in a letter
30 signed by members of the executive council, and which
31 letter I now hand to you, together with a copy for
32 counsel assisting.

33 COMSR: Thank you.

34 DOCUMENT HANDED TO BENCH

35 MS LAYTON: In short, there are three reasons for
36 the non-production in accordance with the summons which
37 the ALRM says is a nullity and is void and is
38 unenforcible.

1 Firstly it is said that the files are covered by
2 legal professional privilege, which privilege is not
3 taken away or abrogated by the Royal Commissions Act.

4 Secondly, the coercive production of files under the
5 State Royal Commissions Act impairs the function of a
6 Commonwealth act, namely the Aboriginal and Torres
7 Strait Islander Heritage Protection Act, and is
8 therefore inconsistent with s.109 of the Federal
9 Constitution. This is the same argument which was
10 predicated by the Commonwealth Solicitor-General when he
11 appeared on 19 July.

12 COMSR: Yes.

13 MS LAYTON: I understand that a further submission
14 has been sent to the Attorney-General's Department from
15 the Commission reinforcing that same argument with
16 respect to the files.

17 COMSR: That's the letter.

18 MR SMITH: Yes.

19 MS LAYTON: That's a letter from the
20 Attorney-General's Department signed, as I understand
21 it, by Ernst Wilhelm.

22 MR SMITH: I'll formally place that letter on the
23 file, if I could interrupt my learned friend.

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25 MS LAYTON: The third ground for non-production is
26 that the production of the files would include
27 divulgence of Aboriginal traditions and sites, contrary
28 to s.35 of the State Aboriginal Heritage Act, and these
29 files were never the specific subject of consultation
30 with Aboriginal people and, in particular, with the
31 clients of ALRM solicitor Mr Wooley, and therefore there
32 is no valid authorisation which permits this divulgence,
33 and the ALRM says that the files are kept and will
34 continue to remain at the premises of the ALRM in
35 custody for the persons to whom they lawfully belong.

36 That completes the submissions.

37 COMSR: They are more fully set out in the body

38 -

- 1 MS LAYTON: That's correct.
- 2 MR GRAY: Does the Commission wish to hear me at
3 this stage in relation to legal professional privilege?
- 4 COMSR: I take it no-one else -
- 5 MR GRAY: Or at another appropriate stage? I'm in
6 the commission's hand.
- 7 MR SMITH: I think it ought to be made clear who
8 the clients are and are the clients claiming privilege.
9 The ALRM hasn't indicated that.
- 10 COMSR: Yes. Who claims to be acting for the
11 clients?
- 12 MS LAYTON: I think that will have to be cleared up
13 by Mr Tilmouth and others, but you will see annexed to
14 in the letter written instructions from the clients that
15 they don't waive privilege. That is annexed to the
16 letter that was handed to the commission.
- 17 COMSR: Of course I haven't read the full
18 contents yet. Mr Tilmouth, do you wish to be heard?
- 19 MR TILMOUTH: Yes. Annexed to that letter you will
20 see that there are letters signed by members of the
21 Lower Murray Aboriginal Heritage Committee, as it was at
22 relevant times, to Mr Wooley's file, and for whom he
23 acted. You know I act for Mr Robert Day, that's the
24 first letter, if they are in the same order as mine, in
25 which the privilege is claimed and not waived.
- 26 COMSR: Are these individuals who are claiming
27 privilege?
- 28 MR TILMOUTH: Jointly and severally, as I understand
29 it.
- 30 COMSR: For the files of the Lower Murray
31 Aboriginal Heritage Committee, is that the situation?
- 32 MR TILMOUTH: As I understand it, it's a joint and
33 several privilege, because it was never a formal,
34 incorporated body. It was a body established under the
35 Act by the minister, the State minister, for
36 consultative purposes, so there was never any corporate
37 structure.
- 38 Robert Day is the first letter, I act for him, as

1 you know. The letters are in the same form. The second
2 letter is from Tom Trevorrow, for whom I act, of course.
3 Henry Rankine is about the fourth letter down, for whom
4 I act. Below his letter is Victor Wilson. As you know,
5 I also act for him. Finally, below his letter, is
6 George Trevorrow's.

7 So as a first step, privilege is claimed on behalf
8 of them with respect to the file and with respect to,
9 clearly, communications between them individually and
10 collectively, and Mr Wooley has legally professionally
11 privileged communications.

12 COMSR: This is legal professional privilege
13 claimed?

14 MR TILMOUTH: Yes, that's the first limb. The other
15 limb, of course, was the limb that was advanced by Dr
16 Griffith, as Ms Layton pointed out to you, on 14 July,
17 which is quite separate, of course, from the legal
18 professional privilege. That is rather a legal point.

19 In our submission, most of the file must have
20 clearly been for the purposes of the question of
21 communications with Mr Tickner under the Federal act.
22 As Ms Layton said, of course, to that extent that is
23 covered by the letter from the Attorney-General's
24 Department, which Mr Smith has noted, and which was
25 referred to a moment ago.

26 There are two separate limbs. The first one is
27 legal professional privilege, and the second one is the
28 question of the implications to the Federal act.

29 Can I simply, at this stage, without an elaborate
30 argument, point out that I support the submission in so
31 far as it is made very briefly in the letter from
32 Aboriginal Legal Rights obviously on the question of
33 legal professional privilege, but in so far as it
34 touches upon the question of whether or not privilege is
35 waived under the Royal Commissions Act. There is, of
36 course, an obligation under summons to give evidence, or
37 to produce documents and to give evidence, but in my
38 submission the position is really indistinguishable from

1 the High Court decision in *Sorby v The Commonwealth*. I
2 give you the reference, 152 CLR 281, a 1983 decision of
3 that court. It related to proceedings under the Royal
4 Commissions Act, Commonwealth, and the Queensland
5 Commission of Enquiry Act. There were provisions
6 requiring a person summonsed to answer questions, even
7 though those questions might incriminate that person.

8 It was held by the High Court that neither acts
9 abrogated the privilege against self-incrimination, and
10 my submission, of course, is, by parity of reasoning,
11 the privilege against self-incrimination is one given to
12 us by the common law, like legal professional privilege,
13 and the fundamental principle is that it requires very
14 clear words or express words to overcome that privilege.

15 COMSR: It would be a parity of reasoning if
16 there is a parity in the statutory provisions, I
17 suppose.

18 MR TILMOUTH: That's true, but in my submission, in so
19 far as there is the obligation to give evidence, there
20 is a saving provision, that the evidence can't be used
21 in any other proceedings when they are in direct
22 parallel.

23 Can I mention, without arguing at this stage of the
24 case, the subsequent case of *Pineboard*, also High Court,
25 and the Trade Practices Commission, also 1983, 152 CLR
26 at 328. It's not so directly in point but,
27 nevertheless, it relates to the same fundamental issue
28 about the abrogation of basic common law privilege,
29 except by very clear words or express enactment.

30 They are my submissions.

31 MR STRATFORD: On behalf of Mr Wooley, I think I should
32 briefly make submissions, at this stage only to support
33 the submissions made on behalf of ALRM - ALRM, of
34 course, being my client's employer - and to support the
35 submissions of Mr Tilmouth; Mr Tilmouth now, of course,
36 representing the clients for whom Mr Wooley previously
37 acted.

38 COMSR: I thought it was at Mr Wooley's request

1 that this subpoena was issued.

2 MR STRATFORD: It's not so much at the request, it's
3 actually a prerequisite to Mr Wooley giving evidence.

4 COMSR: I don't know about a prerequisite.

5 MR STRATFORD: It would be very difficult for him to
6 give evidence without the files, so the determination of
7 whether or not the files are available needs to be
8 decided, and if they are decided to be available to him,
9 then he then prepares his statement on the basis of
10 those files, and gives evidence before you by referring
11 to those files.

12 COMSR: Well, in so far as that may be some
13 detriment to him, it might be a matter that I consider.
14 In any event, we won't take that matter any further now.
15 You're saying that, notwithstanding the question, you
16 support the arguments that have been addressed to me so
17 far.

18 MR STRATFORD: Yes. I don't know if you misunderstood
19 what I was trying to say previously. The point that I
20 was trying to make previously was that the availability
21 or the non-availability of the files needs to be
22 determined to define Mr Wooley's position before you as
23 a witness. This argument needs to be sorted out. It's
24 an argument that, you might recall, I raised as early as
25 24 July, and the availability or the non-availability of
26 the files has different effects on Mr Wooley's position
27 before you.

28 If the files are not available, then the statement
29 that he will be called upon to provide to Mr Smith, and
30 the evidence that he will give, will take on a
31 particular format; if the files are available, then a
32 different format will follow, but the availability of
33 the files, the access he has to them with respect to the
34 argument on legal professional privilege, and what I've
35 termed the Gavan Griffith argument, need to be
36 determined in relation to Mr Wooley's position before
37 you.

38 MR BOURNE: I rise in response to your questions as

1 to who are the clients or whether Mr Wooley is affected
2 by the summons and the question for production of the
3 file. I have, as you will recall, represented Mr
4 Milera, and I would seek to put on record my formal
5 instructions from Mr Milera in relation to this issue.

6 COMSR: Have you sought leave?

7 MR BOURNE: I don't currently have leave to appear,
8 but for the purpose of responding to your request a
9 moment ago for information as to who are the clients and
10 what attitude they have to the issue of legal
11 professional privilege, I seek leave to appear.

12 COMSR: For that purpose only?

13 MR BOURNE: Yes.

14 COMSR: Well, you've been before me on a number
15 of occasions now, either seeking leave to or seeking
16 leave not to appear. It's got to the stage now I'm
17 quite uncertain as to what your status is before me.

18 MR BOURNE: This is a view which I'm starting to
19 share as well.

20 COMSR: I'm not surprised.

21 MR BOURNE: In particular, I've been writing to the
22 commission and asking counsel assisting the Commission
23 of my client's involvement in this commission in recent
24 times. Counsel assisting was on record, on 27
25 September, as saying that my client is to be summoned to
26 give evidence in the matter. It puts me in the position
27 of considerable embarrassment that I still don't know
28 certainly whether he is going to be and, if he is going
29 to be, whether he is going to be. I have pointed out in
30 correspondence that it is essential for me to properly
31 prepare my involvement in the matter and the advice that
32 I give to Mr Milera that I be made aware of that as soon
33 as possible, sooner rather than later. It would be
34 quite unsatisfactory for that to be left to the last
35 minute, with the result that my client is not in a
36 position to attend or to proceed when he is summoned, so
37 I will put on record now my involvement in the matter I
38 do seek to clarify and I do seek to have sorted out as

1 soon as possible. If a summons is to be issued, I ask
2 that it be issued and served on me on behalf of Mr
3 Milera as soon as possible.

4 COMSR: I don't think that can be done. I think
5 personal service is required.

6 MR BOURNE: That is not a matter to which I've given
7 any great attention. I was asked by counsel assisting
8 to obtain instructions to accept service, and I did.

9 COMSR: Alright, I don't wish to hold up this
10 matter while we deal with that matter.

11 MR BOURNE: My comments about that are on record.

12 COMSR: I take it you have some instructions on
13 record with respect of Mr Milera that go particularly to
14 these issues?

15 MR BOURNE: Quite. Those instructions are that -

16 COMSR: You have leave to appear for those
17 purposes.

18 MR BOURNE: Those instructions are that Mr Milera
19 was, as the commission would be aware, the Secretary of
20 the Lower Murray Aboriginal Heritage Committee, and also
21 a party, personally, to the Federal Court proceedings,
22 and in relation to both those capacities, he was
23 represented by the ALRM, and Mr Wooley in particular.
24 He does not waive privilege in respect of the file, and
25 he has instructed ALRM and Mr Wooley to keep
26 confidential the discussions and the communications
27 which passed between them.

28 Mr Milera also relies, in particular, on the grounds
29 put to the Commission by Dr Gavin Griffith pp.13 to 18
30 of the transcript, and we say that his involvement in
31 the matter, particularly as a party to the Federal court
32 proceedings, perhaps puts him in a rather special
33 position vis-a-vis the requirement that the file be
34 produced to this commission.

35 I adopt what has been put already by those who
36 appeared before me this morning in relation to both the
37 legal professional privilege argument and the points
38 raised by Dr Griffith in his submissions.

- 1 COMSR: Is there anyone else?
- 2 MR ABBOTT: I am concerned, on behalf of my clients,
3 that what we've heard today is but the setting for a
4 situation where Mr Wooley is called to give evidence,
5 having requested that his files be obtained, and we now
6 hear from his counsel that he is now supporting the
7 refusal of the ALRM to produce the files. Presumably Mr
8 Wooley will then be saying he can't remember because he
9 doesn't have the files.
- 10 COMSR: I don't think we have got that far.
- 11 MR ABBOTT: We haven't yet got that far, but I am
12 saying that I am concerned about the consequences of
13 this and, in my submission, what ought to happen today
14 is what happens in every case where there is a claim of
15 legal professional privilege made, that the documents
16 are handed over, and -
- 17 COMSR: I think that's not the only claim that
18 is made.
- 19 CONTINUED

1 MR ABBOTT: Dealing just with legal professional
2 privilege: if it was that and nothing else, the subpoena
3 would be answered. The files would be produced. They
4 would be then separated into those which, in the opinion
5 of those who have them in their possession, fulfil the
6 sole purpose test. And there appears to be, in this
7 matter, a singular fudging of the issue as to who is the
8 client, because the ALRM is not the client. The ALRM
9 can never -

10 COMSR: It has the custody -

11 MR ABBOTT: The ALRM can never be the client. So,
12 the only persons who can be the client are the Lower
13 Murray Aboriginal Heritage Committee, an organisation
14 which, contrary to Mr Tilmouth's assertion, is not
15 recognised by the Aboriginal Heritage Act. The Act
16 recognises the Aboriginal Heritage Committee. There is
17 no recognition of the Lower Murray Aboriginal Heritage
18 Committee. And, in my submission, incorporated or
19 unincorporated, recognised by statute or not recognised
20 by statute, it is the current representatives of the
21 Committee who could and should claim the privilege.

22 According to my information, the only person in the
23 list of names read out by Mr Tilmouth who is now
24 currently on the Committee and who would be, therefore,
25 in a position to vote in respect of whether privilege
26 should be claimed, is Henry Rankine. And, if one
27 assumes that there is a privilege on the basis of the
28 client being the Lower Murray Aboriginal Heritage
29 Committee - let's just assume that there is a privilege
30 that exists - the privilege can only be claimed by the
31 Committee on behalf of that association, albeit
32 unincorporated. The members of the current Committee
33 should be here and should be represented, because past
34 members do not represent the current Committee. And,
35 whatever Mr Milera's role was or was not, it is clear,
36 on the submissions that have been made, that the Lower
37 Murray Aboriginal Heritage Committee is claimed to be
38 the client. And certainly the documents that we have

1 seen from Mr Wooley's files already, because he sent
2 them to other organisations, refer to him acting for the
3 Lower Murray Aboriginal Heritage Committee, not
4 individual members thereof.

5 So, in my submission, we need to find out, in
6 relation to the issue of privilege, who are the current
7 Committee of the Lower Murray Aboriginal Heritage
8 Committee. If anyone represents them, let them come
9 along and claim privilege and then we should debate the
10 issue. But, for it to go off on the present basis that
11 there is a claim made by persons who formerly had an
12 association with it is, in my submission, quite wrong.

13 As to the second issue of s.109 inconsistency, that
14 is not a matter that should concern you. If persons
15 want to ventilate that issue, there are other places in
16 which it can be ventilated. And, in my submission, if
17 they want to assert that this impairs the function of
18 the Commonwealth Act, then it should be done by
19 evidence, if it is to be done at all before you. And
20 chapter and verse should be spelt out, rather than a
21 bald assertion that somehow the functions of the
22 Commonwealth Act or the Aboriginal & Torres Strait
23 Islander Act is being impaired.

24 As to the issue of breach of s.35 of the Aboriginal
25 Heritage Act South Australia, this may be an issue, but
26 it should not stop the production of the documents. It
27 may stop the dissemination of them, but, like everything
28 else, you will need to get hold of the documents to see
29 whether there is such an issue and to see whether you
30 will need to apply for an authorisation. And in none of
31 my submissions do I put forward the position that legal
32 professional privilege doesn't apply to this Commission.

33 MR MEYER: I support what Mr Abbott has put, but I
34 add we haven't had the privilege of receiving the
35 correspondence that has been handed to the Commissioner,
36 while Mr Tilmouth and others appear to be in possession
37 of the documents from those proposing the matter. And,
38 therefore, I am in the dark.

1 I have never had any documents handed to me that he,
2 hasn't had, unless there are some that relate to
3 undertakings.

4 COMSR: Mr Meyer, you can be provided with
5 copies of those.

6 Obviously this is a matter that is not going to be
7 disposed of today.

8 Do you wish to be heard, Mr Gray?

9 MR GRAY: I suppose I am in the position where, if
10 the Commission accepts the proposition that legal
11 professional privilege subsists in relation to documents
12 or evidence that is given to this Commission, then what
13 I might put to the Commission becomes irrelevant.

14 On the other hand, as there has been some
15 suggestions that legal professional privilege might not
16 subsist in Commissions of this nature -

17 COMSR: I think this is an arguable proposition,
18 Mr Gray.

19 MR GRAY: In light of that, I am quite happy, if
20 the Commission considers it convenient, to put to the
21 Commission an argument in relation to it.

22 COMSR: All right.

23 MR MEYER: Could I suggest that would be better
24 done when we have all got the documents and we do set it
25 down for a time for argument?

26 MR SMITH: I think Mr Gray's submission relates to
27 the point of principle rather than the question of the
28 privilege, in this particular case. It may save him
29 coming back, if he disposes of his argument now, if that
30 is the case.

31 MR GRAY: That is so.

32 COMSR: I think that is the case, is it not?

33 MR GRAY: The Society is only interested in this
34 matter because of the principles involved.

35 COMSR: Of course, yes.

36 MR GRAY: If I hand to you, Commissioner, a
37 summary of submissions, which may save me going to great
38 details in relation to this.

1 If I might address myself briefly to what I have,
2 therefore, set out: you will see that:
3 `The Law Society of South Australia is concerned to
4 ensure that there is no erosion of the principle that,
5 other than in certain defined circumstances ... '

6 By that I mean the exceptions to the principle.
7 `... communications between a legal practitioner and
8 Client are privileged.'

9 It is important, in that regard, to appreciate that
10 legal professional privilege is a substantive and
11 fundamental common law principle. That it is so was
12 resolved in the High Court in 1983 as a consequence of
13 really two cases. One of which isn't mentioned on the
14 summary of the submissions, but is *O'Reilly v The*
15 *Commissioners of the State Bank of Victoria & Others*
16 (1983) 153 CLR at p.1.

17 In that case, a majority of the court were of the
18 view that legal professional privilege was in the nature
19 of a rule of evidence and not a substantive common law
20 right. Almost immediately that matter was reargued and
21 the result of that was the decision of a majority of the
22 court reversing *O'Reilly's* case in *Baker v Campbell*,
23 which is the authority that I have referred to in para.2
24 of the summary of submissions. And I think the
25 starkness of that reversal is best expressed by what
26 *Murphy J* said, at p.88 of that decision, where he said,
27 referring to legal professional privilege:

28 `The privilege should not be confined to protecting
29 evidence from disclosure only in judicial or
30 quasi-judicial proceedings.'

31 He then went on to cite a Canadian decision, which
32 described the privilege as:

33 `... a manifestation of a fundamental principle upon
34 which our judicial system is based, which principle
35 would be breached just as clearly and with equal injury
36 to our judicial system by any compulsory form of free
37 prosecution discovery.'

38 In other words, it was not confined merely to

1 judicial or quasi-judicial proceedings, but extended
2 across the ambit.

3 Now, Baker v Campbell was dealing with the question
4 of the privilege obtained in a s.10 warrant under the
5 Crimes Act. In other words, not judicial proceedings,
6 but a search warrant. And, of course, it is important
7 to appreciate that, in its own terms, s.10 of the Crimes
8 Act specifies, without qualification of any kind, the
9 seizure of, the production of and the obtaining of
10 documents and things under that particular warrant, in
11 the same sort of terms as a Royal Commissions Act allows
12 the summoning of witnesses and the requirement to
13 produce documents.

14 So, in that respect, those things are the same.

15 And in the summary I have there referred to other
16 passages of a similar kind of the majority in Baker v
17 Campbell.

18 Very recently, in Carter v Managing Partner,
19 Northmore, Hale, Davey & Leak, referred to in para.2 of
20 the summary of submissions, the High Court had reason to
21 reinforce the nature of legal professional privilege.
22 And I have cited passages reported in 69 ALJR, at p.572,
23 from Brennan, Deane, Toohey, and McHugh JJ, which very
24 clearly and unequivocally have emphasised the importance
25 in the public interest in maintaining legal professional
26 privilege as a substantive and fundamental common law
27 principle. There are citations there, for instance, in
28 Brennan J's judgment, at p.574, where he says:
29 `In my opinion, the basic justification for allowing the
30 privilege is the public interest in facilitating the
31 application of the rule of law.'

32 And Deane J's comments, at p.577, which are, I
33 think, of particular interest, when you are talking
34 about something so founded on public interest, that:
35 `The privilege itself represents the outcome of such a
36 balancing process and reflects the common law's verdict
37 that the considerations favouring the perfect security
38 of communications and documents protected by the

1 privilege must prevail.'

2 In other words, the privilege is not one where one
3 balances other public interest considerations and then
4 determines whether the privilege exists. The privilege
5 exists, because that balancing act has taken place. And
6 that is important, in my submission, when one looks at
7 an Act like a Royal Commissions Act, because obviously
8 the Royal Commissions Act has a public interest in
9 ascertaining matters for the purposes of the Inquiry the
10 Commission is charged with. But that is not a matter to
11 be balanced against the fact of legal professional
12 privilege in itself, because that act, the actual
13 existence of the privilege, has already balanced that
14 matter.

15 Also a passage from Toohey J, at p.586, where his
16 Honour said:

17 `Important, indeed, entrenched as legal professional
18 privilege is, it exists to serve a purpose. That is, to
19 promote the public interest by assisting in enhancing
20 the administration of justice. It is not an end in
21 itself.'

22 And finally I have referred to McHugh J, at p.593,
23 where he talks about the privilege as:

24 `... a practical guarantee of fundamental constitution
25 or human rights protecting the confidentiality of
26 communications between lawyer and client.'

27 He refers to it as protecting the right of privacy
28 of persons by ensuing unreserved freedom of
29 communication with lawyers and goes on in that vein.
30 And I refer the Commission specifically to that passage,
31 without reading it in full.

32 That leads me then, of course, with that background
33 of what legal professional privilege is, to say that it
34 applies in all circumstances, unless it is abrogated by
35 statute. And, of course, I say that the Royal
36 Commissions Act does not so abrogate it.

37 I refer, in para.4, to there being:

38 `... a settled rule of construction that general

1 provisions of a statute should only be read as
2 abrogating common law principles or rights to the extent
3 made necessary by express words or necessary
4 intendment.'

5 And I refer to a passage of Deane J's, in Baker v
6 Campbell, to that effect and to which I also refer the
7 Commission, without reading it, because it is a forceful
8 statement about that.

9 In light of that, of course, one should look at
10 another High Court decision of Corporate Affairs
11 Commission v Yuill, which I refer to in para.4, where
12 they did find a necessary intendment. But, in Corporate
13 Affairs Commission v Yuill, there were certain features,
14 which certainly are not present in the Royal Commissions
15 Act. In that case, there was a provision of reasonable
16 excuse to answer questions coupled with provisions, in
17 that particular case, of specific sections dealing with
18 the subject of legal professional privilege. And it was
19 said that, notwithstanding the reasonable excuse
20 provisions for answering questions, the intendment of
21 the legislature in dealing specifically with
22 circumstances of legal professional privilege was enough
23 to show a necessary intendment to abrogate it, abrogate
24 the privilege. That case is discussed in quite some
25 detail by Susan McNicol in her book 'Law of Privilege',
26 and I have referred the Commission to that passage in
27 the book. It contains virtually a critique of the
28 decision, but I refer to it specifically because, I
29 think, in the critique of the decision, it makes it
30 quite clear how the court would look at a piece of
31 legislation where the legislature had actually
32 specifically mentioned the topic of legal professional
33 privilege.

34 That leads me really to the point that the Royal
35 Commissions Act does not address the topic of legal
36 professional privilege and there is no indication
37 whatsoever, in my submission, that the legislature
38 intended to abrogate it.

1 I make the point, in any event, that royal
2 commissions are often regarded as exercising
3 quasi-judicial functions to which legal professional
4 privilege, however characterised, applies. There is a
5 discussion about royal commissions and their functions
6 in Mr Hallet's book, 'Royal Commissions and Boards of
7 Inquiry'. I have cited the reference there at pp.22 and
8 25 in relation to that discussion. He makes the point
9 that a commission, of course, is not a judicial body as
10 such. He says:

11 'Indeed, it will be seen that the inquiry function is
12 not judicial in the legal sense'.

13 But he then goes on, particularly at p.24, to
14 discuss an inquiry function being classified as
15 judicial, and gives three reasons why such a function is
16 judicial. He refers particularly, firstly, to coercive
17 powers that are exercised by a commission. He also,
18 secondly, makes the point that 'judicial' is not
19 confined to legal proceedings, that it is the giving of
20 judgment upon any matter forming or expressing a
21 judgment or critical, which of course is the function of
22 this commission.

23 He makes a third point which relates to the
24 difference between a judicial function and the
25 expression 'acting judicially'. In particular, he
26 refers to an expression by Guillard J, who classified
27 the function of a board of inquiry as a quasi-judicial
28 tribunal.

29 I say all of those three things are enough to
30 indicate that the function of this commission, whilst it
31 may be administrative generally, is a quasi-judicial
32 function. Indeed, part of that is illustrated by the
33 provisions of s.16B of the Royal Commissions Act 1917,
34 which gives immunities to judges, counsel and witnesses.

35 There is a reference to that aspect at p.25 of Mr
36 Hallet's book. The importance of all of that is that
37 legal professional privilege, even as a rule of
38 evidence, applied not only to judicial bodies, but also

1 to quasi-judicial bodies. There are passages in both
2 Baker v Campbell, and Carter v Managing Partner, which
3 illustrate that was the application of the principle.

4 I suppose the classic illustration of that is what
5 was said in the English case which, in its terms, held
6 that legal professional privilege was merely a rule of
7 evidence. And that case, which is not on my list, is
8 Parry Jones v Law Society (1969) 1 Ch 1, at p.9, where
9 Mr Diplock J, as he then was, said that, as a rule of
10 evidence, legal professional privilege extended to
11 tribunals exercising judicial functions.

12 So really the point that I make with respect to that
13 is that a Royal Commission set up in terms of the South
14 Australian Royal Commissions Act, may be regarded as
15 exercising quasi-judicial functions which, however you
16 characterise legal professional privilege, as a rule of
17 evidence, or as a substantive rule, it applies to it and
18 always has.

19 Mr Tilmouth referred you to Sorby v The
20 Commonwealth. Sorby v The Commonwealth was a case which
21 illustrates that a substantive rule of the common law -
22 namely, the privilege against self-incrimination - was
23 not necessarily abrogated by provisions which actually
24 dealt with that privilege.

25 There are differences, of course, between the
26 Commonwealth Board of Inquiry Act in Sorby v The
27 Commonwealth, and the South Australian Royal Commissions
28 Act. The major difference being that there is a
29 provision in the Queensland Act which provides that you
30 may have a reasonable excuse to refuse to answer
31 questions. But, in its own terms, there is a stronger
32 provision, in some respects, related to the use that may
33 be made of evidence given in the commission in relation
34 to subsequent criminal proceedings.

35 The importance of Sorby v The Commonwealth is that
36 the court generally found that, notwithstanding the
37 specific expression related to the privilege against
38 self-incrimination, that finds its way into s.16 of the

1 Royal Commissions Act here, the privilege against
2 self-incrimination was said to have not been abrogated
3 by the provisions of that Act.

4 Here we are dealing with a different topic. We are
5 dealing with a topic of legal professional privilege,
6 but a topic which has the same, in effect, common law
7 principle behind it, but where there is no provision
8 which specifically deals with that topic, such as s.16
9 does in this case with self-incrimination.

10 I also make the point that the fact the legislature
11 has dealt with the topic of self-incrimination, carries
12 the implication as to its intention with respect to
13 legal professional privilege. In other words, you can
14 consider the two things as manifestations of the same
15 base, but they are not otherwise linked. There are
16 expressions by Mason J, as he then was, in *Baker v*
17 *Campbell*, and there is an expression of that by Toohey J
18 in *Carter v Managing Partner*, both of which I have
19 referred to in para.5.

20 So the thrust of what I am really putting is that
21 there is nothing in the legislation where you can say
22 that there was an intendment that in some way legal
23 professional privilege should not subsist, particularly
24 when you look at it in terms of it being a substantive
25 principle of the common law. It would be otherwise if
26 it were merely a rule of evidence, because there this
27 commission, of course, is not bound by such rules.

28 The final point that I make relates to the specific
29 Terms of Reference of this commission. I refer
30 specifically to the Term of Reference in para.(b) of
31 Term of Reference 3, requiring this inquiry to be
32 conducted to protect the confidentiality of any
33 information which could properly be regarded as
34 confidential, whether pursuant to Aboriginal tradition
35 or otherwise.

36 I say that 'otherwise', in its own terms, relates to
37 all forms of confidential information. There is no
38 doubt from some of the passages that I have cited, and

1 certainly a lot of other passages, that, fundamental to
2 legal professional privilege, is confidentiality. It is
3 my contention that the principle of legal professional
4 privilege, grounded as it is in confidentiality, falls
5 within this requirement. Those are the submissions that
6 I wish to put to you, commissioner.

7 MR SMITH: I just want to make three brief points,
8 and then suggest a course of action to you. It is my
9 submission that there is a live argument that you are
10 not bound to uphold a claim of legal professional
11 privilege. Indeed, a ruling to that effect was made by
12 Commissioner Samuel Jacobs QC in the State Bank Royal
13 Commission.

14 I indicate that I would be surprised in this case if
15 you needed to so rule in respect of this file. The
16 material in the file that truly is covered by the
17 principles of legal professional privilege, I would
18 imagine this commission would not be interested in
19 closely investigating.

20 Whether or not the forced production of the file
21 offends against the provisions of s.109 of the
22 Constitution, in my submission, is a matter for debate
23 in another place, if indeed some entity is instructed to
24 take proceedings in another place.

25 As to the third point of objection, the question of
26 the divulgence in contravention of s.35 of the
27 Aboriginal Heritage Act, it is my submission that any
28 such divulgence emanating from the file which this
29 commission seeks production of, would be covered by the
30 present authorisation. If indeed there was material in
31 the file which related to Aboriginal tradition not
32 related to the Lower River Murray, then the subpoena
33 does not seek such information.

34 The fourth point I want to make is: Who are the
35 members of the present Lower Murray Aboriginal Heritage
36 Committee? I understand, for instance, one of the
37 witnesses who has given evidence in this commission, Mrs

1 Bertha Gollan, is a present member of the general
2 committee. Have her instructions been sought on this?

3 I understand that the normal practice is to answer
4 the subpoena, produce the documents, and then debate
5 problems relating to the use of the documents in the
6 hearing. However, as I understand the recent
7 publication, 'Discovery and Interrogatories' by Simpson
8 Bailey and Evans, it has been suggested that you can
9 hear and determine arguments relating to objections to
10 production before requiring production.

11 So, if you decide to take that course, it appears to
12 have some support in recent authority, that you can
13 resolve the arguments, then come back to the subpoena.
14 If you decide to take that course, I suggest you
15 consider your position and adjourn the subpoena for a
16 week.

17 COMSR: I will certainly need to consider what
18 is the position with respect to whether or not the
19 client, for want of a better word, has truly taken the
20 issue that they don't waive legal professional
21 privilege. I think that is a matter that will have to
22 be resolved.

23 MR SMITH: I might say, also, it is a cause of some
24 astonishment for me to hear a submission from Mr
25 Stratford that he supports the opposition to the
26 production of Mr Wooley's file, in the light of Mr
27 Stratford's formal request to the commission for the
28 file to be made available to Mr Wooley.

29 COMSR: He has explained the basis of that.
30 However, I think I am in a situation here where some
31 initial matters have to be clarified, that is, who is
32 the Lower Murray Aboriginal committee for these
33 purposes, is anyone representing that body before me,
34 and has that body waived or seeking to claim legal
35 professional privilege?

36 MR TILMOUTH: Can I just rise to say I don't accept,
37 by way of reply, the proposition that it is the current
38 committee that -

- 1 COMSR: I know you don't accept it, but that is
2 one of the matters that I have to clarify.
- 3 MR TILMOUTH: I can understand your concern about
4 that, but I want to make it clear that I don't accept
5 that proposition.
- 6 COMSR: I appreciate that you do not accept it,
7 and that is your argument.
- 8 MR TILMOUTH: Indeed, it is not a corporate body and
9 it is individuals collectively -
- 10 MR ABBOTT: I understand it has been incorporated.
- 11 MR KENNY: It wasn't at the time.
- 12 COMSR: I am not going to resolve that issue by
13 hearing one party assert one thing and the other party
14 assert another.
- 15 MR ABBOTT: But it is a matter that can be easily
16 checked up.
- 17 COMSR: I propose to adjourn now.
- 18 ADJOURNED 11.06 A.M.
- 19 RESUMING 11.20 A.M.
- 20 MR SMITH: I did leave off the list of witnesses,
21 Dorothy Wilson. She is the first witness.
- 22 COMSR: What is the situation with Mrs Wilson,
23 has her evidence been taken at a closed hearing?
- 24 MR ABBOTT: Her evidence was taken partly in an open
25 session, and then for a brief part in a closed session.
26 You will recall Mrs Shaw led her in
27 examination-in-chief. The cross-examination of my
28 client, with the exception of Ms Simpson, has concluded,
29 other than on the issue of the Mouth House/Bunkhouse
30 letter, which we didn't go into other than touch upon in
31 a general way, and I have asked that my client be
32 recalled to finish her evidence. It just cannot go on
33 that she is hanging around waiting.
- 34 COMSR: Yes, I appreciate the stress that she
35 must be under in the circumstances. Is she prepared to
36 give her evidence in this venue?
- 37 MR ABBOTT: Yes. She is prepared to give her
38 evidence in this venue on this day. I will lead her on

1 the issue of the Mouth House letter. I understand that
2 there may be an issue touching upon that. I will get
3 her evidence, I will then seek to tender it, and I
4 apprehend at that stage you will want to reserve the
5 issue of whether you receive it by way of an exhibit
6 unless and until you have heard further legal argument
7 on it.

8 I have just been informed that Ms Dorothy Wilson is
9 conferring, at the request of your counsel assisting, Ms
10 Simpson, and it may take another 10 minutes. There was
11 apparently something Ms Simpson wanted to clear up with
12 her, I know not what, but that will cause some slight
13 delay so I suggest that we interpose some other short
14 witnesses.

15 CONTINUED

M.M. AMON XN (MR SMITH)

1 MR SMITH CALLS

2 MARGARET MARY AMON SWORN

3 EXAMINATION BY MR SMITH

4 Q. I think you are the clerk of the Anthropology Division
5 of the South Australian Museum, is that correct.

6 A. That's correct.

7 Q. You've had that position, I think, since March of 1994.

8 A. Yes, that's correct.

9 Q. I think in connection with this enquiry, you provided a
10 statement to the commission concerning one particular
11 incident, is that not so.

12 A. Yes, that's correct.

13 Q. Looking at this statement produced to you dated 28 July,
14 do you recognise that as a copy of your statement.

15 A. Yes, that's right, yes.

16 EXHIBIT 203 Statement of Margaret Mary Amon dated
17 28 July 1995 tendered by Mr Smith.

18 Admitted.

19 Q. I think you've worked in the museum since 1988, is that
20 so.

21 A. Actually it was 1989, I stand corrected.

22 Q. Can I take you to your duties as clerk of the
23 anthropology division. What are they exactly.

24 A. I provide a reception service to the division, I screen
25 and monitor telephone calls for staff, act as secretary
26 to the head of the division, and also just undertake
27 clerical duties for the rest of the staff.

28 Q. I think you know the historian and anthropologist,
29 Steven Hemming.

30 A. Yes, I do.

31 Q. Amongst a number of other people on the staff.

32 A. Yes.

33 Q. I think the anthropology and historian staff of the
34 museum share office premises and a lunch room and that
35 sort of thing, do they not.

36 A. Yes, that's correct.

37 Q. I think you have the memory of a day when a facsimile
38 letter was sent from the division to the Federal

M.M. AMON XN (MR SMITH)

- 1 Minister, Mr Robert Tickner, do you not.
2 A. Yes, correct.
3 Q. Those events began at lunchtime, is that correct.
4 A. Yes, as far as I remember, yes.
5 Q. You have an office, or you did at that time have an
6 office close to the lunch room, is that right.
7 A. The whole area is very close. All the rooms are very
8 close together, yes.
9 Q. Now the events relating to the faxing of this letter
10 were at about lunchtime, were they not.
11 A. Yes, they proceeded at lunchtime, yes.
12 Q. The events began when you were having lunch, is that
13 correct.
14 A. Yes. I was almost finished my lunch, yes.
15 Q. Tell us what happened, what you remember.
16 A. There were other people in the staffroom as well.
17 Notably I remember Kate Allport, Stephen Hemming and
18 Doreen Kartinyeri. I may have been reading at the time
19 I was eating, so I wasn't paying a lot of attention to
20 what was happening around me, but I do remember Steve
21 and Doreen talking about something.
22 Q. This is in the lunch room.
23 A. Yes, in the lunch room, yes.
24 Q. So Steve and Doreen were talking about something in the
25 lunch room with you.
26 A. Yes.
27 Q. Who was in the lunch room apart from them.
28 A. I recall Kate Allport being there, and myself at that
29 stage.
30 Q. The conversation that was going on in the lunch room,
31 who was it between and what were the topics.
32 A. It was predominantly between Doreen and Steve, and every
33 now and then I would look up and listen or hear some
34 words that were being said. I do recall, the only thing
35 I remember now that's not in the statement is Doreen
36 saying something like 'They asked me to help them', and
37 then I noticed that the conversation was talking about
38 environmental issues, why a bridge shouldn't be built

1 and things like that.

2 Q. That was what largely a conversation between Steve and
3 Doreen, was it.

4 A. No, collectively.

5 Q. We have got four people in the room, Steve, Doreen
6 Kartinyeri, yourself and Kate Allport.

7 A. Yes. There may have been others, but I simply don't
8 recall.

9 Q. Was anything directed to you, then, in the course of
10 that conversation.

11 A. The only direct question I was asked was from Steve, to
12 ask whether I had Tickner's fax number, and I didn't
13 because it was a number that I'm not familiar with in my
14 telephone directory, and I just said 'No', and he asked
15 me if I could get it for him.

16 Q. Did you do that.

17 A. Yes. I got up within a few moments and just consulted
18 the white pages, asked Directories, and got the fax
19 number.

20 Q. So you had to leave the lunch room to go back to your
21 office, did you.

22 A. Yes.

23 Q. Having obtained the fax number, did you record it
24 anywhere.

25 A. In my telephone directory, yes, I did.

26 Q. Did you return to the lunch room.

27 A. I may have, I might have, it's very hard to remember
28 whether I did or not.

29 Q. So you obtained the fax number, recorded it in your
30 teledex.

31 A. Yes.

32 Q. What about providing it to Steve Hemming, did you do
33 that.

34 A. Yes. I actually wrote it down on a yellow Post-It Note
35 for Steve for himself, and wrote it in my directory.

36 Q. When you gave the number to Steve, did you do that in
37 the lunch room.

38 A. No, it was in the office, actually. When I got it

- 1 straight away I gave it to him.
- 2 Q. Now when you gave it to Stephen Hemming, he was in the
3 office area, was he.
- 4 A. Yes.
- 5 Q. Was Doreen with him.
- 6 A. No.
- 7 Q. You told me earlier that you were involved in the faxing
8 of a letter. Did you see any part of the compilation of
9 that letter taking place.
- 10 A. No.
- 11 Q. When you provided the fax number, Steve was in your
12 office, was he.
- 13 A. Yes.
- 14 Q. What about the preparation of the letter, where was that
15 done.
- 16 A. I don't have any recollection of when it was done or how
17 it was done. It couldn't have been done on my
18 typewriter or computer, because I don't recall Steve
19 asking me if he could use it or anything, so I have no
20 idea when it was written or where it was written.
- 21 Q. What was your next involvement in this, then.
- 22 A. It was obvious Steve was faxing the letter through. I
23 know that he couldn't get through, so he asked me if I
24 could keep trying.
- 25 Q. Where is the fax located in relation to your office.
- 26 A. Just a few metres in front of me.
- 27 Q. This is not in another room.
- 28 A. No, same room.
- 29 Q. So when he was attempting to fax it, were you present.
- 30 A. The first time, yes.
- 31 COMSR
- 32 Q. I don't have much of an idea when this took place in
33 relation to you being asked to get the fax number. Was
34 it the same day.
- 35 A. Yes, early afternoon. I would say it was between 1 and
36 2 that I'd just finished my lunch, and it was after.
37 Maybe twoish in the afternoon I was asked to fax it.

1 XN

2 Q. Do you happen to remember the date.

3 A. No.

4 Q. The month.

5 A. May.

6 Q. May of 1994.

7 A. Yes.

8 Q. So Stephen Hemming is attempting to fax the letter in
9 your presence in your office. What happened.

10 A. Well, at that stage I didn't know what letter it was,
11 and it was only when he asked me to try, if I could keep
12 trying for him, that I actually, in the fax machine, I
13 looked at the - flipped over the edge of it to see what
14 it was, and then I realised that it was a letter signed
15 by Doreen to Robert Tickner.

16 Q. We have got to the stage where Stephen Hemming is trying
17 to fax the letter unsuccessfully. He leaves the job to
18 you, is that right.

19 A. Yes.

20 Q. Did he actually depart the office and leave you to it.

21 A. Every now and then he would come back in, randomly he
22 would come back in.

23 Q. Did you have difficulty faxing the letter.

24 A. Quite a lot. The fax machine has an automatic redial,
25 five times, so I remember it was annoying that I had to
26 keep going up to see, you know, if it had gone off or
27 not, but no, I had quite a bit of difficulty getting it
28 through.

29 Q. Whilst you were having that difficulty, you read the
30 letter then, or bits of it.

31 A. No, I didn't, I read bits of it. When the paper was
32 face down in the fax machine, I flipped the back end up
33 and read what I could see, what was about the last
34 paragraph.

35 Q. Can you do your best to tell us what you read.

36 A. It said something like 'I have information that concerns
37 my genealogies', maybe, 'and that you should pay
38 attention to what I'm saying because I have very

M.M. AMON XN (MR SMITH)

- 1 important information to tell you'. Something like
2 that.
- 3 Q. Now you eventually got the letter through the fax.
- 4 A. Yes, I did. At the time that I gave you my statement, I
5 didn't indicate when. That was because I was unsure of
6 when it did go through but, just a month ago, I came
7 across the fax transmission reports that gave a
8 print-out of the transactions, and I actually looked
9 through the main section and noticed that it went
10 through the next day, which to me is correct, because I
11 was very confused as to when it went.
- 12 Q. So there's a document that tells us when it was that you
13 faxed this letter.
- 14 A. Yes, and it went through the next day at about 8, 10
15 past 8 in the morning that it was faxed from the office.
- 16 Q. Do you recall the date.
- 17 A. No.
- 18 Q. But the record that you referred to will record that,
19 will it.
- 20 A. Yes, it does. It has the date and the time and the
21 phone number.
- 22 Q. Does it, perchance, preserve a copy of the letter.
- 23 A. No.
- 24 Q. Did you retain a copy of this letter.
- 25 A. No, I didn't.
- 26 Q. What did you do with it, or the letter actually went
27 off, did it.
- 28 A. Yes, and actually I do remember because it took so long
29 to take, I do remember saying to Steve 'Look, it's
30 finally gone'. You know, I was relieved that it had
31 finally gone.
- 32 Q. What was Steve's reaction to that.
- 33 A. It was just - he just said 'Good, good', yes.
- 34 Q. Whilst in the tea room before sending the fax, you
35 overheard bits - well, you didn't overhear it, it was
36 open conversation in the lunch room, wasn't it, between
37 Doreen and Steve.
- 38 A. Yes.

M.M. AMON XN (MR SMITH)
XXN (MS PYKE)

- 1 Q. Your statement records that Steve said to Doreen words
2 to the effect of 'I will back you up, Doreen', is that
3 correct.
- 4 A. Yes, that was a snippet that I had heard.
- 5 Q. Was that in the connection of talking about the
6 Hindmarsh Island bridge.
- 7 A. Well, the conversation was talking about the bridge, so
8 I can only assume it was, yes.
- 9 Q. Could I bother you to - do you have it, the record that
10 fixes the time with you now, have you.
- 11 A. No, it's back at the office.
- 12 Q. Which is not all that far away.
- 13 A. No.
- 14 Q. Could I bother you to go - perhaps I should ask you this
15 privately - but could you fetch it for the commission.
- 16 A. Sure.
- 17 Q. Which will provide us, will it not, with the date and
18 the time at which this particular letter was faxed off
19 to Mr Tickner.
- 20 A. Yes. Sure.
- 21 CROSS-EXAMINATION BY MS PYKE
- 22 Q. You're a clerk at the anthropology division of the
23 museum.
- 24 A. Yes, that's correct.
- 25 Q. As I understand your evidence, one of your functions is
26 to act as the receptionist, or take telephone calls.
- 27 A. Yes, that's right.
- 28 Q. As part of your duties, do you take or put telephone
29 calls through to Mr Philip Jones and Mr Philip Clarke.
- 30 A. Yes, I did, yes.
- 31 Q. You are aware, presumably, that the Hindmarsh Island
32 bridge issue escalated earlier this year, and there was
33 involvement by Mr Clarke and Mr Jones in the issue.
- 34 A. Yes.
- 35 Q. Do you recall whether there were approaches by the press
36 to speak with either Mr Clarke or Mr Jones earlier this
37 year.
- 38 A. Yes, I do.

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- 1 OBJECTION Mr Abbott objects.
2 MR ABBOTT: How is this relevant to her
3 instructions?
4 MS PYKE: Mr Jones and Mr Clarke are giving
5 evidence relating to my client.
6 MR ABBOTT: This is intended to buckle them, is it.
7 MS PYKE: Let me worry about my case, Mr Abbott
8 can worry about his.
9 MR ABBOTT: What relevance can it have? What
10 possible relevance has this got, unless it's an attempt
11 to destroy, in advance, the credit of Mr Jones and Mr
12 Clarke by somehow suggesting that they communicated with
13 the press. If that's a sin, then your client's
14 committed it over and over again.
15 MS PYKE: Anyone can make issue of Dr Fergie when
16 she is in the witness box.
17 COMSR: There has to be some relevance to that.
18 MS PYKE: I want to ask several questions on that
19 contact with Mr Clarke and Mr Jones with the press, and
20 the timing of that maybe relevant to certain issues
21 pertaining to their views. They have both been reported
22 in the media, certainly Mr Jones has.
23 MR ABBOTT: As has your client.
24 MS PYKE: That's fine.
25 COMSR: The date and time and place.
26 MS PYKE: I think it's appropriate for me to know
27 at what stage Mr Jones and Mr Clarke communicated with
28 the press.
29 MR ABBOTT: Or the press communicated with them.
30 MS PYKE: Or the press communicated with them.
31 COMSR: Well, first of all, we'll find out if
32 the witness knows anything. We are not going to ask
33 this path -
34 MS PYKE: I'm going to ask several questions.
35 COMSR: How many is 'several'?
36 MS PYKE: We'll have to wait and see what the
37 answers are.

1 COMSR

2 Q. Can you recall when, if, the press or Mr -

3 A. The only involvement that I recall Mr Jones and Mr
4 Clarke having was very late, towards the end of - I'm
5 not sure whether it was - it was actually just before
6 the Royal Commission had been announced, and I had
7 spoken to Philip Jones on numerous occasions about the
8 media, and he said that he didn't want to comment. I
9 know that he had liaison with the director if he should
10 say anything but then, just one day, all of a sudden, he
11 announced that he was going to do an interview with
12 Channel 10, Chris Kenny.

13 XXN

14 Q. What about the print media, the Adelaide Review, Mr
15 Christopher Pearson, do you recall.

16 A. No. I have had had calls from Christopher Pearson to
17 pass on to Philip Jones, yes.

18 Q. Do you recall when they commenced.

19 A. They would be recorded in Mr Jones' message pad that I
20 record all his messages in, so the dates and times would
21 be recorded, yes.

22 CONTINUED

M.M. AMON XXN (MS PYKE)

- 1 Q. You are going to fetch some things for Mr Smith, is it
2 possible for you to fetch that message pad.
- 3 COMSR: Mr Jones's, is it?
- 4 MS PYKE: Yes, the message pad that the witness
5 keeps for Mr Jones.
- 6 COMSR: Where is this leading us?
- 7 MS PYKE: The long and short of it is I would like
8 to know.
- 9 COMSR: Of course there are a lot of things we
10 would like to know, but they do have to be relevant.
- 11 MS PYKE: Frankly, if that has been the criteria -
- 12 COMSR: You are quite right, there has to be -
- 13 MS PYKE: Why have we heard about what deceased
14 persons may have thought, if they had been alive to
15 think about them?
- 16 COMSR: But there has to be some basis on which
17 to pursue this line of questioning.
- 18 MS PYKE: Yes, I say it will be relevant for
19 certain purposes of my cross-examination of Mr Jones to
20 ascertain the time at which he became involved with the
21 media.
- 22 A. But also may I just also add, when I do speak to Mr
23 Pearson on the phone, a lot of the time when I ask him
24 if he would like to leave a message, he will often say
25 'No, I will call back.' So, some of the conversations
26 wouldn't have been recorded at all.
- 27 XXN
- 28 Q. Do you have any independent memory, without looking at
29 your message pad, of around about when Mr Pearson was
30 contacting Mr Jones.
- 31 A. No, not without consulting the actual message book, no.
- 32 Q. I just ask you to consult your message pad, when you go
33 and make the enquiries for Mr Smith.
- 34 MR ABBOTT: I say it is irrelevant.
- 35 MS PYKE: What status is it for Mr Abbott to
36 comment? It is no business of his as he says of others.
- 37 COMSR: If counsel have something to say, say it
38 to me and I will make a ruling on it.

M.M. AMON XXN (MS PYKE)
(MR ABBOTT)

1 Is there anyone else who wishes to cross-examine the
2 witness?

3 MR SMITH: Ms Nelson represents Mr Hemming, of
4 course, who is the topic of this, and she is not here.
5 I have been speaking with her this week. She is tied up
6 in a trial that she had trouble extricating herself
7 from, so this witness can't be fully released, until Ms
8 Nelson has instructions about this evidence, and there
9 may not be a problem. In any event, I would ask if I
10 could speak to this witness for a quick moment, as she
11 walks out of the witness box, I will obtain that other
12 Document.

13 COMSR: First of all, does anyone else wish to
14 ask questions?

15 MR KENNY: No.

16 COMSR: Mr Meyer?

17 MR MEYER: No, not at the present time.

18 My friend asked whether this witness had a copy of
19 the letter that was faxed and she said no, she didn't
20 and it passes my mind that there has got to be a copy
21 somewhere that can be made available to this Commission
22 and I presume we are talking about 12 May. I need to
23 snatch one as it is going past. So, at the present
24 time, I don't have the document available to me, but
25 listening to -

26 COMSR: I don't know the status of it, its
27 degree of confidentiality, anything, at this time.

28 MR MEYER: Nor do I. But, if it comes to me in a
29 form that I can ask this witness about, I will do so.
30 If she comes back with the facsimile report after lunch.
31 That is my only qualification.

32 MR ABBOTT: I have one question.

33 CROSS-EXAMINATION BY MR ABBOTT

34 Q. Looking at this letter from Doreen Kartinyeri to the
35 Honourable Mr Tickner, dated 12 May 1994, now before
36 you, are you able to identify that as being the letter.

37 A. Yes, I do.

38 MR ABBOTT: I ask that it be marked for

1 identification. There may be argument on its
2 admissibility.

3 MR SMITH: I need really to rise to draw your
4 attention to the fact that this letter and the Mouth
5 House letter has been the subject for sometime of, if
6 you like, correspondence between myself, the Crown
7 Solicitor and the Commonwealth Crown Solicitor. This
8 letter and the Mouth House letter are included in the
9 s.13 documents in the Federal Court action. And to the
10 extent that any copy of this letter may have emanated
11 from the Federal Court action, the use of it in this
12 Commission is opposed, at the moment, by the
13 Commonwealth, the Federal Minister. So, the most you
14 could do, in my submission, is mark it for
15 identification, with that embargo on it, that it could
16 not form part of the evidence of this Inquiry, until the
17 matter between this Commission, the State Crown
18 Solicitor and the Commonwealth Crown Solicitor is
19 resolved.

20 MR ABBOTT: I am content with that.

21 MR SMITH: So, whilst even going this far may cause
22 some excitement in Commonwealth circles, I have
23 undertaken to notify the Commonwealth if this becomes an
24 issue and this letter is sought to be ultimately
25 tendered to be received into evidence by you.

26 COMSR: We do have a copy of the other letter
27 which I think in some way was earmarked and it wasn't
28 even officially marked for identification.

29 MR SMITH: No, it wasn't. That arose when we were
30 sitting in the Supreme Court and that letter was put to
31 the witness, Dorothy Wilson, and it wasn't marked for
32 identification. It was delivered into my custody.

33 COMSR: That's right.

34 MR SMITH: And there was opposition to the letter
35 being used, because of Federal Court proceedings. So,
36 that letter may be the subject of some more evidence
37 this morning, or this afternoon.

38 MR MEYER: I don't think I am in any different

M.M. AMON XXN (MR ABBOTT)

1 position to Mr Abbott. If Mr Smith agrees to hold it
2 and it has been identified, we are happy with that.

3 In relation to the confidentiality issue, we have
4 put some submissions to Mr Smith that we don't think
5 there is a confidentiality order at all in relation to
6 the Federal Court proceedings. And that the argument
7 put forward by Mr Tilmouth on the occasion of the
8 production of the Mouth House letter to the effect that
9 there was a confidentiality order made by O'Loughlin J
10 we say is, in fact, wrong. The reality of the situation
11 is I tendered, as counsel, the relevant documents in the
12 Federal Court proceedings and I tendered them openly and
13 without any orders. I won't put the entire argument
14 now. Sufficed to say that, as the matter proceeded,
15 because of the same problem that this Royal Commission
16 has had in relation to s.35 declarations, there were
17 s.35 declarations sought in relation to a limited number
18 of documents. And they were documents that emanated
19 principally either from consultants or the State
20 Department. And the Minister was approached and Mr
21 Collett, acting for Mr Milera and Ms Norvill, the
22 Aboriginal respondents to the proceedings, got
23 instructions from their clients in relation to various
24 matters. S.35 declarations were made in relation to
25 those documents. And there were conditions on their
26 release to counsel, etc. Those documents obviously have
27 a tag of confidentiality, for that reason, but no other
28 documents, in our submission, finished up with any tag.

29 COMSR: You are saying including this document?

30 MR MEYER: Including this document.

31 COMSR: And the other document, that is in the
32 custody of Mr Smith?

33 MR MEYER: Yes, and, at the end of the day, when
34 this matter becomes relevant - and it would be more
35 appropriate to do so when relevant counsel are here - we
36 can go through the transcript - because we have
37 extracted all the relevant pages - and go through the
38 transcript from the commencement of proceedings to the

M.M. AMON XXN (MR ABBOTT)

1 end which culminated in O'Loughlin J asking each counsel
2 in turn whether they had any further concerns in
3 relation to the orders that had been made in respect of
4 various documents. And, as I said, the documents about
5 which they were concerned were identified and there were
6 no concerns expressed in relation to the other
7 documents. Mr Palyga was my instructing solicitor and
8 sat and watched while we went through all of those
9 Proceedings and counsel involved was Ms Layton, acting,
10 at that stage, for the Minister and Mr Collett, acting
11 for Mr Milera and Ms Norvill, instructed by the ALRM.
12 The only other counsel was Mr Hugh Abbott. He was
13 acting for some land owners and had no part to play in
14 relation to those particular issues. So, he just
15 acquiesced in the position.

16 That is my summary of the events and, in due course,
17 the transcript will be put before you and we can deal
18 with it.

19 MR ABBOTT: That is why I suggest that the letter be
20 marked for identification and, then, after you have
21 heard argument, you can decide whether you will accept
22 it or not. At present, if it is merely marked, it is
23 not accepted by the Commission and it is marked as a
24 first step towards ventilating the issue of whether you
25 accept it as an exhibit or do not accept it and I ask
26 that it be marked.

27 MR KENNY: I must say, I wasn't anticipating this
28 argument today and I have no instructions.

29 COMSR: I wasn't either.

30 MR KENNY: I wasn't present, if I remember
31 correctly, when Mr Tilmouth objected to the previous
32 letter. I might say that I don't have specific
33 instructions, but I will tell you what I say is my
34 understanding of the matter.

35 I am not saying this is absolute proof, but my
36 understanding was that the s.13 documents, if this was
37 one of them, were subject to an order of confidentiality
38 and that, as far as I am aware, that order has not been

M.M. AMON XXN (MR ABBOTT)

1 lifted. And I understood on the last occasion I think
2 counsel assisting was to write to the Commonwealth and
3 enquire as to its attitude on the release of the
4 document. I have no idea what the outcome of that was
5 or alternatively to make an application to the court for
6 the lifting of that confidentiality order. If there is
7 a confidentiality order in relation to this particular
8 document, then I would suggest that there has been a
9 breach of that confidence, because I understand from
10 that Mr Abbott wasn't a party to those proceedings and
11 it wasn't, as I understand it, released to him. So, I
12 would urge you to be very cautious in dealing with this
13 matter and perhaps simply I ask that this issue be stood
14 over until there is some clarification, particularly
15 from the other parties who were present in those Federal
16 Court proceedings. I understand that they have a
17 different view to Mr Meyer, but, again, I say I don't
18 have specific instructions in relation to that.

19 COMSR: Mr Kenny, I have been more than cautious
20 up to date. I haven't even marked the first one for
21 identification.

22 MR ABBOTT: I don't see any difference in marking it
23 for identification and releasing it to Mr Smith. The
24 fact is I have produced it and the witness has
25 identified it and I don't want to take the matter any
26 further until you have heard argument. I see no
27 difference in law in it being marked for identification
28 and released to Mr Smith. It might as well be marked on
29 the transcript.

30 COMSR: That depends on what the argument is as
31 to whether or not any use whatsoever can be made of it.

32 MR SMITH: Yes.

33 MR ABBOTT: But, if no use can be made of it,
34 Presumably it will be returned to me.

35 MR SMITH: Yes, the advantage in that course is
36 simply that, if the difficulties between the State and
37 the Commonwealth about this letter cannot be resolved,
38 then the letter won't go into the record and you will

M.M. AMON XXN (MR ABBOTT)

- 1 not take it into account. If they can be resolved, it
2 doesn't need Mrs Amon to come back and say `Yes, that is
3 the letter.'
- 4 COMSR: Yes, she has already done that.
- 5 MR SMITH: That is the advantage. She has already
6 done it. So, therefore, it ought to be marked and
7 released out to me.
- 8 COMSR: Previously it was only marked, I think,
9 by the witness, or someone putting -
- 10 MR SMITH: That is the Mouth House letter?
- 11 COMSR: Yes.
- 12 MR SMITH: Yes.
- 13 COMSR: Putting a signature or initials or
14 something on it, I understand, so that it never actually
15 got to the stage of my marking it for identification on
16 that occasion.
- 17 MR SMITH: Yes.
- 18 MR KENNY: Just as a suggestion, perhaps if the
19 witness could sign the back of it and place it in a
20 sealed envelope and then hand it to Mr Smith?
- 21 COMSR: I think handing it to Mr Smith might
22 be -
- 23 MR KENNY: I am concerned that there is one further
24 breach of confidentiality if there is an order.
- 25 MR SMITH: The problem is not the confidentiality
26 order. My friend is mistaken about that. It is a wider
27 problem of discovery and the use of discovered
28 documents. That is the problem.
- 29 Could I ask you to mark the letter and have it
30 released to me?
- 31 MR MEYER: And that cures Mr Kenny's problem. If
32 it is marked and released to Mr Smith, it is limited.
- 33 COMSR: Perhaps we could have some indication of
34 its date, at least?
- 35 MR SMITH: Yes, it is 12 May 1994, the letter
36 itself.
- 37 COMSR: In any event, if it is marked for
38 identification, it doesn't come before me for

M.M. AMON XXN (MR ABBOTT)

- 1 consideration.
- 2 MR SMITH: No.
- 3 MFI 204 Letter, dated 12 May 1994, marked 204
- 4 for identification.
- 5 MR SMITH: I ask that, subject to all those
- 6 reservations, Mrs Amon be released.
- 7 COMSR: Yes, with the understanding that she may
- 8 be required.
- 9 MR SMITH: By Ms Nelson.
- 10 COMSR: By Ms Nelson.
- 11 MR SMITH: Yes, or may not. And she will return to
- 12 me the documents that have been requested.
- 13 COMSR: Yes.
- 14 COMSR
- 15 Q. You understand that, do you.
- 16 A. Yes, I do.
- 17 Q. You have been released.
- 18 A. All right.
- 19 Q. But there is the possibility that you may be required to
- 20 return.
- 21 A. Yes.
- 22 Q. For further cross-examination.
- 23 A. Sure.
- 24 WITNESS STANDS DOWN

K.E.R. ALPORT XN (MR SMITH)

1 MR SMITH CALLS

2 KATE ELIZABETH RUMBALD ALPORT SWORN

3 EXAMINATION BY MR SMITH

4 Q. I think you are a curatorial officer at the South
5 Australian Museum, is that correct.

6 A. That's correct.

7 Q. You have held that position now for approximately ten
8 years.

9 A. Yes.

10 Q. I think, in connection with a particular incident, you
11 provided a statement to the Commission about what you
12 saw on that day.

13 A. I did.

14 Q. Looking at this document produced to you, do you
15 recognise that as a copy of your statement signed by you
16 on 28 July 1995.

17 A. That is so.

18 EXHIBIT 205 Statement of witness, K.E.R. Alport,
19 dated 28 July 1995, tendered by Mr
20 Smith. Admitted.

21 Q. As your statement makes clear, you well-know Steven
22 Hemming and Doreen Kartinyeri.

23 A. I do.

24 Q. And a number of other staff members in the Anthropology
25 Division, including Philip Jones.

26 A. Yes.

27 Q. And Philip Clarke.

28 A. Yes.

29 Q. You recall a day, do you not, when a letter was sent to
30 the Federal Minister from the museum.

31 A. Yes, I do.

32 Q. You were in the lunch room I think when this matter
33 first arose.

34 A. That's right.

35 Q. Can you tell us who was in the lunch room with you.

36 A. Margaret Amon and Steven Hemming and Doreen Kartinyeri.
37 There may have been others, but I don't recall
38 specifically.

- 1 Q. I think there was a discussion in the lunch room.
2 A. That's right.
3 Q. There obviously would have been, I suppose, but, in
4 particular, it related to the Hindmarsh Island bridge
5 dispute, did it not.
6 A. Yes.
7 Q. Who was talking about it. Everybody, or -
8 A. No, I can recall that Doreen came into the room and was
9 talking with Steve about it. I wasn't involved in that
10 conversation.
11 Q. Can you remember, although you weren't involved in it,
12 can you remember the gist of it. Was it concerning, in
13 particular, about the Hindmarsh Island bridge.
14 A. It was concerning sending a letter to Mr Tickner.
15 Q. What did you then observe or hear.
16 A. I saw a letter in Doreen's hand. I wasn't party to that
17 conversation, so I wasn't paying particular attention.
18 Q. Mr Hemming, what was his involvement, if any, in the
19 letter, that you could see.
20 A. He was involved in a conversation with Doreen. He was
21 being supportive, would be how I would describe it, and
22 I think he had some suggestions, but she had a letter
23 already written in her hand.
24 Q. Were the suggestions focused on the letter.
25 A. I think so.
26 Q. What else do you remember happening on that day.
27 A. Some discussion about the letter. As I say, I wasn't
28 listening, in particular. I think it was just perhaps
29 some wording in the letter.
30 Q. Then did you observe anything happening, anything
31 further happening about the letter.
32 A. They did leave the room and I wasn't aware of what
33 happened after that.
34 CONTINUED

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K.E.R. ALPORT XN (MR SMITH)
XXN (MR ABBOTT)

1 COMSR

2 Q. This was an open conversation, if I can put it that way.

3 A. No, but it's a small room. I was just able to hear a
4 little bit.

5 CROSS-EXAMINATION BY MR ABBOTT

6 Q. Can you assist us with the date. Would it have been 12
7 May.

8 A. I can't be specific about the date.

9 Q. Was it in May.

10 A. Yes, it was in May.

11 Q. 1994.

12 A. Yes.

13 COMSR: Subject to the proviso that Ms Nelson
14 may be interested in cross-examining you, you are
15 released.

16 NO RE-EXAMINATION

17 NO FURTHER QUESTIONS

18 WITNESS RELEASED

D.A. WILSON XN (MR ABBOTT)

1 WITNESS D.A. WILSON, FURTHER EXAMINATION BY MR ABBOTT

2 Q. You are still on your oath, you haven't been released.

3 The oath you took before still binds you.

4 A. Yes, yes.

5 Q. Do you have your statement with you.

6 A. No, I haven't.

7 COMSR: There are two statements actually.

8 There is one statement that has several portions
9 deleted.

10 MR ABBOTT: Yes, I am talking about the undeleted
11 one.

12 STATEMENT PRODUCED TO WITNESS

13 XXN

14 Q. I want to ask you some questions about what we have
15 called the Mouth House letter.

16 A. Yes.

17 Q. In your statement it is at p.18, in para.3.31, I think
18 it is.

19 A. Yes.

20 Q. You told us before that the women had decided that a
21 letter should be sent to Mr Tickner to protest against
22 the bridge, and your belief was that it was Eileen who
23 suggested you should do this.

24 A. Yes.

25 Q. Do you remember Eileen then writing out a letter.

26 A. Yes, I do.

27 Q. And this was at the Bunkhouse, as you've described it.

28 A. Yes, it was, yes.

29 Q. Have you now found out another name for what you have
30 termed the Bunkhouse.

31 A. Yes, I have.

32 Q. What is it.

33 A. The Pines.

34 Q. It is a place called The Pines on Hindmarsh Island.

35 A. Yes, it is.

36 Q. Eileen McHughes then started writing on a piece of
37 paper.

38 A. Yes, she did.

D.A. WILSON XN (MR ABBOTT)

1 Q. You initialled or marked a letter before, when you
2 previously gave evidence.

3 A. Yes, I did.

4 Q. I want to ask you some questions about how much she
5 wrote at any one time, and what parts were written in
6 your presence and what time. Could you look at the
7 document you referred to before.

8 MR SMITH: That is the document which was released
9 into my custody on 11 August, so I produce that.

10 MR KENNY: I do rise at this stage. Mr Tilmouth
11 made objections to this document on the last occasion.
12 It was not received into evidence. As I understand the
13 position, the document still hasn't been clarified. It
14 appears the direction it is leading to is to present
15 evidence about that letter to you, possibly in breach of
16 an order of the Federal Court.

17 Perhaps if there is another museum witness
18 available, I would ask that this witness be stood down
19 until 2.15. Mr Tilmouth will be back then. The reason
20 he is not here at the moment is that we were not advised
21 that this witness would be called today.

22 I can indicate that I didn't speak to Mr Smith, but
23 I did speak to Miss Eszenyi, who was here yesterday, and
24 her indication was that the agenda today would be staff
25 from the museum. So we were not prepared in relation to
26 the arguments for this letter or, indeed, in terms of
27 questions of cross-examination of this witness in
28 relation to the letter.

29 MR ABBOTT: Mr Kenny can rest assured I will not be
30 seeking to tender it. Merely to have it marked again,
31 after I have asked questions about it.

32 COMSR: I think he apprehends you might be
33 trying to get in its contents.

34 MR ABBOTT: I will not be trying to get in its
35 contents. I will need to refer to the first words,
36 which are totally innocuous, in one section, and the
37 last words of a particular section to delineate the area
38 I am looking at. It will not in any way involve

D.A. WILSON XN (MR ABBOTT)

1 attempting to get in, via oral evidence, the words that
2 are written here.

3 MR KENNY: If he is reading out parts of it, I
4 don't think it matters what interpretation Mr Abbott
5 puts on it. It is still the presentation to this
6 commission of what is part of that document.

7 COMSR: The witness can, of course, give
8 evidence concerning her recollection of this matter in
9 any event.

10 MR KENNY: Certainly, but not with the document in
11 front of her, I say.

12 MR ABBOTT: I submit she can. It is her document,
13 she signed it. She is entitled to say what form it was
14 in when she saw it, and that is what I want her to give
15 evidence about. When and if the document itself goes
16 into evidence, then that section of her evidence will be
17 relevant and you can see, madam, what parts were added
18 in her absence.

19 MR KENNY: I say I wouldn't accept it was her
20 document. I would concede she may have signed it, but
21 that doesn't necessarily make it her document. That is
22 the only point I wish to make.

23 COMSR: On the assurance that we are not going
24 to get the contents of the document in in this method,
25 that you are simply attempting to discover the form of
26 the document at the time, I propose to allow the
27 question.

28 XXN

29 Q. The document that you have at present consists of two
30 pages.

31 A. Yes.

32 Q. When you first saw Eileen McHughes writing at the
33 Bunkhouse, now known as The Pines, how much did she
34 write.

35 A. Well, I thought that she wrote two thirds of the page.

36 Q. Do you see two thirds of a page in her handwriting
37 before you.

38 A. Yes.

D.A. WILSON XN (MR ABBOTT)

- 1 Q. Is it that part which begins 'The Ngarrindjeri women'
2 and which ends 'Doing this to us.'
3 A. Yes.
4 Q. Does that currently form two thirds of the first page of
5 this document.
6 A. Yes.
7 Q. How long did it take for Eileen McHughes to write that
8 two thirds of a page.
9 A. I guess it took about half an hour to three quarters of
10 an hour, because we were all having input into what
11 words she should write down. That's why it took so
12 long.
13 Q. It wasn't just a case of you signing it. You actually
14 had some input in this two thirds of a page.
15 A. Yes. Yes, I did.
16 Q. When Eileen McHughes had finished the two thirds of the
17 first page, did you see her then writing on a second
18 page.
19 A. Yes, she started to write the second page, yes.
20 Q. You see before you a second page.
21 A. Yes, I do.
22 Q. Headed by the words 'Women's business'.
23 A. Yes.
24 Q. There is then a paragraph of five lines.
25 A. Yes.
26 Q. Did you see her writing that.
27 A. No, not the whole five lines, no.
28 Q. At the Bunkhouse, how much of the second page did you
29 see her writing.
30 A. Well, I saw her start the second page.
31 Q. Did you see her write the words 'women's business'. Was
32 that done in front of you.
33 A. No, she was sitting a couple of tables away from me when
34 she was writing it.
35 Q. When you left the Bunkhouse - you have told us that you
36 left the Bunkhouse - had some names been put on this
37 document.
38 A. Yes, there had.

D.A. WILSON XN (MR ABBOTT)

1 Q. On p.2 of this document there are a number of names.

2 A. Yes.

3 Q. Written by Eileen McHughes.

4 A. Yes.

5 Q. And underneath, a number of signatures.

6 A. Yes.

7 Q. Including yours.

8 A. Yes.

9 Q. Were the names of the women on p.2 written on it by
10 Eileen McHughes at the Bunkhouse.

11 A. Yes.

12 Q. Were some of the signatures, but not all of the
13 signatures, placed on this document at the Bunkhouse.

14 A. Yes.

15 Q. Are you able to tell us which of the signatures were not
16 placed on this document at the Bunkhouse.

17 A. Shirley Trevorrow's wasn't placed on it at the Bunkhouse
18 because she was at the Mouth House, and Patti Kropinyeri
19 wasn't there when Doreen told us about the business, so
20 she signed the document at the Mouth House too. The
21 last two signatures.

22 Q. Patti had come to the Mouth House later that afternoon,
23 I think.

24 A. Yes, she had.

25 Q. In any event, at the Bunkhouse, The Pines, I think you
26 saw Eileen McHughes give two pages of this document
27 before you, to Sarah Milera.

28 A. I didn't actually see Eileen give it to Sarah, no, but I
29 knew Sarah had it.

30 Q. You knew Sarah had it because you went with her.

31 A. Yes, I took her over to the Mouth House.

32 Q. At that stage, and with reference to the document before
33 you, was it your understanding that it consisted of the
34 first page, namely, two thirds of the first page only -

35 A. Yes.

36 Q. And the second page, but not all the signatures that are
37 now on it.

38 A. Yes.

D.A. WILSON XN (MR ABBOTT)

- 1 Q. Having got to the Mouth House, you have told us that
2 Shirley and George Trevorrow were there, Doug Milera,
3 Vic Wilson and Tim Wooley - whom you knew as a lawyer
4 from the ALRM.
5 A. Yes.
6 Q. You have also told us that some five or ten minutes
7 later the other women who had been at the Bunkhouse
8 arrived in a bus.
9 A. Yes, they did.
10 Q. You had gone over in a car with Sarah Milera.
11 A. Yes, I had.
12 Q. But not all the women, when they came over to the Mouth
13 House, came in.
14 A. No.
15 Q. Some went for a walk.
16 A. Yes.
17 Q. Some did other things.
18 A. Yes, that's right.
19 Q. I think shortly after you arrived, as you have told us,
20 Doreen told Sarah to show the letter to Tim Wooley.
21 Wooley told you there wasn't enough in the letter to
22 stop the bridge.
23 A. Yes, that's right.
24 Q. Then you told us Doreen responded by saying `Well, what
25 else can we put?'
26 A. Yes.
27 Q. Then Doreen said to Patti Kropinyeri `Here Patti, write
28 this down'.
29 A. Yes, she did.
30 Q. On the document you have got at present in front of you.
31 A. Yes.
32 Q. What did you understand Patti wrote down, without
33 reading it out, just identify the lines. First of all,
34 what page are you referring to.
35 A. To p.1.
36 Q. And immediately under the first two thirds, are there
37 three lines.
38 A. Yes.

- 1 Q. The first line begins `Kumarangk'.
2 A. Yes.
3 Q. And the third line ends with the words `women's
4 business'.
5 A. Yes.
6 Q. Are they the three lines that you saw - that Doreen
7 directed Patti Kropinyeri to write down.
8 A. Yes.
9 Q. At the time when that was done, put aside how it looks
10 now, can you tell us whether it was done at the top of a
11 page, at the bottom of a page.
12 A. I think it was done - she started at the top of the
13 page.
14 Q. It was done on a fresh page, wasn't it.
15 A. Yes.
16 Q. On this document it is not at the top of a page.
17 A. Yes, I know.
18 Q. Nor is it on a fresh page, is it.
19 A. No.
20 Q. Are you able to tell us how those three lines came to be
21 transposed to below the two thirds of the page that you
22 had seen Eileen McHughes write out.
23 A. No, I wouldn't have a clue.
24 Q. To use the vernacular, someone has done a
25 paste-and-scissors job on this.
26 A. Yes, I would say so.
27 Q. Are you able to tell us who did it.
28 A. No, I'm not.
29 Q. The rest of what is on p.1 of this document, you
30 understand to be a direct quote from Dr Neale Draper's
31 report.
32 COMSR: We are not going to get chapter and
33 verse of that?
34 MR ABBOTT: No, it is an exhibit before you.
35 COMSR: I know that is an exhibit before me, but
36 this letter isn't an exhibit before me.
37 MR ABBOTT: No. I am just identifying it. It comes
38 from p.1 of Dr Draper's report.

D.A. WILSON XN (MR ABBOTT)

- 1 COMSR: That is getting pretty close.
2 MR ABBOTT: I want to know if she knows how that got
3 on this document. That is all.
4 XXN
5 Q. Do you know how that got on p.1 of this document.
6 A. No, I don't.
7 Q. I think that after Doreen told Patti Kropinyeri to write
8 the three lines you have told us about - and I will not
9 go into the conversation that took place until this
10 matter is clarified, so I may need to ask some questions
11 later on at another time - Vic Wilson pointed to a
12 colour aerial photograph of the island on the wall of
13 the shack.
14 A. Yes.
15 Q. Vic said 'Look at that map up there'.
16 A. Yes.
17 Q. Did Doug Milera then say something.
18 A. Yes.
19 Q. What did he say.
20 A. He told us -
21 OBJECTION Ms Pyke objects.
22 MS PYKE: We have had all this evidence before.
23 This has all been done before.
24 MR ABBOTT: I don't want to seek again what we had
25 before.
26 XXN
27 Q. In any event, as a result of that discussion between
28 Doug Milera and Doreen Kartinyeri, in your presence, did
29 you see anything then added to this letter.
30 A. No, I didn't.
31 Q. Looking at this letter then, I ask whether you can tell
32 us which of the names on p.2, that is the signatures on
33 p.2, were added at the Mouth House.
34 A. Shirley Trevorrow's name was added, and so was Patricia
35 Kropinyeri.
36 CONTINUED

D.A. WILSON XN (MR ABBOTT)

- 1 OBJECTION Mr Kenny objects.
- 2 MR KENNY: Again this is giving evidence about what
3 is contained in the document. This is about the third
4 time, despite his assurance that he wouldn't.
- 5 COMSR: Unless the document goes in, of course,
6 it will mean nothing.
- 7 MR ABBOTT: Exactly.
- 8 COMSR: Very little.
- 9 MR KENNY: It's public. It has been made public
10 what names are on those letters. I don't know how those
11 people feel and what their position is.
- 12 MR ABBOTT: It's already been given in evidence,
13 it's already been made public months ago.
- 14 COMSR: Yes, the witness, although I can't make
15 use of it -
- 16 MR KENNY: When the evidence was given months ago,
17 I understand we were excluded. If my objection comes
18 late, it is for that reason.
- 19 COMSR: It wasn't made public at that stage. I
20 can't recall -
- 21 MR KENNY: It was in private session.
- 22 MR ABBOTT: It was made public to counsel at that
23 stage, not public to you.
- 24 MR KENNY: No, I don't think it was. I was
25 excluded as a male from those earlier sessions. I
26 wasn't present. I was given a list of what was said,
27 only about my clients, and I think that statement really
28 was along the lines of `Victor pointed to the map'.
- 29 MR ABBOTT: I don't think we're -
- 30 MR KENNY: I've since had the transcript of some of
31 that evidence, not all of it, some of it is still, as I
32 understand it, suppressed, because my transcript has
33 gaps in it, but I have not had the opportunity to object
34 or raise the points before, is simply the point I'm
35 making.
- 36 COMSR: I suppose the difficulty for the time
37 being can be got over by suppressing from publication
38 any mention of the names that have been referred to as

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1 being in the letter. As I say, it is of limited use to
2 me at this stage, the evidence as to the contents of the
3 letter, because I don't know the contents of the letter
4 unless and until it becomes an exhibit.

5 MR ABBOTT: I have another copy of this document.
6 I'm just wondering, so there can be no doubt about it, I
7 think I have sufficiently identified the parts that I
8 wish to refer to. For the benefit of my learned friend
9 Mr Kenny, at p.664, open hearing, Ms Shaw dealt with the
10 names, went through the entire list, and asked about
11 them in the presence of Mr Tilmouth, went through the
12 entire list of names that are printed there and the
13 signatures and asked who they were and what relationship
14 they were to this witness.

15 COMSR: You see, the witness was present. She
16 is entitled to give evidence as to what took place when
17 she was there. The document can't -

18 MR KENNY: Certainly, but it's a question of if she
19 remembers who signed it and where, it's not a question
20 of whether she can read from the document.

21 MR ABBOTT: You're criticising me for breaching the
22 contents. All I'm saying is that part of the contents
23 escaped without visible complaint some months ago in the
24 presence of Mr Tilmouth.

25 MR KENNY: I don't know if that was before or after
26 Mr Tilmouth raised his objection to this letter, but
27 there certainly was an objection raised.

28 COMSR: I can't recall at this stage -

29 MR KENNY: We won't take that objection.

30 XN

31 Q. I will not ask you any further questions about what was
32 said about the conversation that led to the compilation
33 of this document, but am I correct, then, in assuming
34 that when you left with Sarah Milera to go to Signal
35 Point, that your understanding was that there was three
36 pages, the two pages that had taken place at the
37 Bunkhouse, and a third page which at least had three
38 lines on it that you'd seen Patty Kropinyeri write on

1 it.

2 A. Yes.

3 Q. Did you see any of these three pages again, that is in
4 the immediate future, like the next hour or two hours or
5 day.

6 A. No, I didn't.

7 Q. In relation to this document as it is at present
8 consisting only of two pages, the bottom section which
9 I've told you comes from Dr Draper's report, appears now
10 to have been incorporated in it in a way which, to the
11 casual reader, would indicate you are a signatory to an
12 endorsement of that position.

13 A. Yes.

14 Q. Were you aware of the contents of Dr Draper's report.

15 A. No, I wasn't.

16 Q. Had anyone explained those matters at the bottom of p.1
17 to you.

18 A. No, they hadn't.

19 Q. When you signed this document, were you signing as an
20 endorsement of that view at the bottom of p.1.

21 A. No, I wasn't.

22 MR ABBOTT: There is a minute, which is suppressed,
23 the one that my learned friend several months ago was
24 going to get instructions on, the Lower Murray Nunga's
25 Club. The minute is -

26 COMSR: Was that the one, as at the time when
27 Mrs Wilson gave her evidence, there was no evidence as
28 to whether or not those minutes of meeting had been
29 accepted or confirmed?

30 MR ABBOTT: Yes. It's either Exhibit or MFI 52.
31 Exhibit 52, it is an exhibit, but it was received, I
32 think, eventually because of Mr Kenny's client's either
33 refusal or disinclination to give any instructions on
34 it. It went in eventually, and is suppressed.

35 COMSR: The question is now whether - it has
36 gone in as unendorsed minutes at the present stage. The
37 question is whether or not those minutes were ever
38 endorsed or confirmed.

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- 1 MR ABBOTT: I want to ask some questions about it.
2 XN
3 Q. Looking at Exhibit 52, the Minutes of the Lower Murray
4 Nunga's Club which you obtained, I think, in the week
5 commencing Monday 1 August 1994, did you not.
6 A. Yes.
7 Q. Are these minutes purporting to be the minutes of
8 meeting of the Lower Murray Nunga's Club held on
9 Saturday 30 July at the Nunga's Centre in Murray Bridge.
10 A. Yes.
11 Q. I think you didn't attend that meeting.
12 A. No, I didn't.
13 Q. Did you attend a subsequent meeting of the Nunga's Club.
14 A. Yes, I did.
15 MR KENNY: On the face of it, it doesn't appear
16 that Exhibit 52 is actually meeting of the Lower Murray
17 Nunga's Club.
18 MR ABBOTT: She has identified it it as such.
19 Sorry, it's the Ngarrindjeri Action Group. My learned
20 friend, Mr Kenny, is correct, for once.
21 COMSR: I notice you're taking no objection.
22 MR ABBOTT: He and I have a good rapport.
23 COMSR: Despite appearances to the contrary.
24 MR ABBOTT: We're men enough to have a drink
25 afterwards.
26 COMSR: Let's clarify the situation.
27 MR KENNY: I have not had a drink after with Mr
28 Abbott. In case someone wants to believe that I have
29 been drinking with Mr Abbott, let me make it very clear:
30 I may have, some 10 years ago, probably more, might have
31 had a drink with Mr Abbott.
32 COMSR: I accept that you're protecting your
33 good name. However, let's proceed with the matter.
34 XN
35 Q. To take up where I was corrected this is, in fact, a
36 meeting of the Ngarrindjeri Action Group. You know of
37 that Ngarrindjeri Action Group, do you not.
38 A. Yes, I do.

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- 1 Q. How does that fit in with the Lower Murray Nunga's Club.
2 A. Well, the Ngarrindjeri Action Group was formed, it was
3 some women from Adelaide and some women from Murray
4 Bridge, in conjunction with the Hindmarsh Island affair,
5 so it was just a committee that was formed to deal with
6 the Hindmarsh Island affair.
7 Q. Was it formed under the auspices of the Lower Murray
8 Nunga's Club.
9 A. No, it wasn't.
10 Q. Were you part of the Ngarrindjeri Action Group.
11 A. No, I wasn't.
12 Q. Did you attend a meeting of the Ngarrindjeri Action
13 Group at the Nunga's Club in August 1994.
14 A. Yes, I did.
15 Q. Were minutes distributed to the meeting and approved by
16 the meeting.
17 A. Yes, there was.
18 Q. Looking at Exhibit 52, was this distributed to the
19 meeting at which you were present.
20 A. Yes, it was.
21 Q. Did the Ngarrindjeri Action Group approve those minutes
22 at that meeting at which you were present.
23 A. Yes.
24 Q. Were you handed a copy of these minutes, that is Exhibit
25 52, in the same form as the fax copy that you received.
26 A. Yes, only it didn't have the letters cut off from the
27 edge. It was a complete copy.
28 Q. A better copy.
29 A. Yes.
30 COMSR
31 Q. Just so that I'm clear, you attended the meeting and you
32 were handed a fresh copy of the minutes of the meeting.
33 A. Yes.
34 Q. Those minutes were then confirmed.
35 A. Yes, they were.
36 XN
37 Q. The last time you had those formally approved minutes in
38 your possession was when you left your copy of them on

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- 1 the desk in the main office area of the administration
2 section of the Nunga's Club.
- 3 A. Yes, that's right.
- 4 Q. Shortly after the meeting -
5 A. Yes.
6 Q. - at which they had been approved.
7 A. Yes.
- 8 Q. You haven't seen them again, apart from the copy in this
9 exhibit.
10 A. That's right.
- 11 COMSR: What's the group, that committee,
12 referred to as?
- 13 MR ABBOTT: It's the Ngarrindjeri Action Group.
14 COMSR
- 15 Q. Is that a subcommittee of the Nunga's Club?
16 A. No, it's not. It was formed in Adelaide here with some
17 of the women from Konanda, which was Val Power and
18 Shirley Piersley and Vi Deuschle, and they formed that
19 committee with some of the women from Murray Bridge.
20 XN
- 21 MR ABBOTT: In view of the fact that the minutes
22 have been approved and are not merely draft minutes but
23 accepted and adopted by the Ngarrindjeri action group, I
24 ask that the suppression from publication previously
25 imposed be lifted.
- 26 COMSR: It's a long time since I've had a look
27 at the contents of this.
- 28 MR KENNY: I asked that further discussion on this
29 point be adjourned until 2.15. I would need to seek
30 some clarification on a particular point, and perhaps
31 speak to Mr Tilmouth about it.
- 32 MR ABBOTT: Are there any question you want to ask
33 my client on it before?
- 34 MR KENNY: I don't wish to ask any questions at
35 this stage. I do have questions, but I don't want to
36 ask them at this stage.
- 37 COMSR: We have reached the stage where - hasn't
38 the witness been cross-examined by all?

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- 1 MR ABBOTT: The witness has been cross-examined by
2 all, and I'm anxious that she finish her
3 cross-examination as soon as humanly possible. I
4 formally seek to have marked for identification what we
5 have referred to as the Mouth House letter, the one that
6 was handed up initialled by this witness, released into
7 the custody of Mr Smith. I ask that it be formally
8 marked for identification, and that you and counsel
9 assisting and interested parties have it so that you can
10 hear argument as to its admissibility as an exhibit.
- 11 COMSR: It hasn't as yet been marked. Yes, well
12 it's marked on the same basis that I don't propose to
13 receive it until I'm persuaded that it's proper to do
14 so.
- 15 MFI 206 Mouth House letter tendered by Mr
16 Abbott. admitted
- 17 MR ABBOTT: In the unlikely event that any counsel
18 here doesn't have a copy, presumably copies can be made
19 to at least assist for the purposes of argument.
- 20 MR KENNY: Of the letter? Sorry, I was reading the
21 minutes again. I don't have a copy of that and would
22 appreciate a copy.
- 23 MR ABBOTT: I can make a copy available providing -
- 24 COMSR: Is this letter - I haven't looked at it,
25 but is it subject to any considerations under s.35?
- 26 MR ABBOTT: Not any more, I would have thought.
- 27 MR KENNY: It hasn't exactly been published.
- 28 COMSR: No, and I don't propose to look at it.
- 29 MR ABBOTT: The section, if you accept that part of
30 it is a direct lift from Dr Draper's report, would be
31 subject to s.35.
- 32 MR MEYER: I think that's right.
- 33 MR ABBOTT: But the rest of it, on my reading of it,
34 would not involve s.35 or, if it did, it would be
35 material already in the public domain.
- 36 MR MEYER: Just so we don't get into trouble, if a
37 section is lifted from Dr Draper's report, that is one
38 of the reports that was subject to s.35 in the Federal

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1 Court proceedings so, for consistency, you would deal
2 with that section at least by saying it's a s.35
3 document, because that divorces that section, then, from
4 any arguments about confidentiality.

5 COMSR: Yes. I'm concerned about the release of
6 this letter, except to those persons who have signed the
7 undertaking required by me before I will release any
8 s.35 matter. As I've got a fresh authorisation there, I
9 am requiring a fresh undertaking to be signed in the
10 circumstances.

11 MR ABBOTT: We would be happy to sign.

12 MR SMITH: I will arrange that, and prudence would
13 suggest that that portion of that letter at least is
14 s.35 material.

15 COMSR: I think the whole letter, in fact. We
16 are not going to splice it up into portions.

17 MR SMITH: No. Indeed.

18 MR MEYER: It was suggested in the Federal Court
19 proceedings that, in fact, it was part of the Draper
20 report, so it wasn't treated in that way in those
21 proceedings. I'm saying that as a matter of precaution,
22 but it wasn't treated that way in the Federal Court.

23 MR ABBOTT: Let me be clear; my client does not want
24 suppressed from publication what she signed, and what
25 she thought she was signing.

26 COMSR: But there are a lot of signatories to it
27 and, not only that, it is the document which is in issue
28 at the present time.

29 MR ABBOTT: Certainly. I'm just telling you, so
30 that as far as it contains, unbeknown to her at the
31 time, material which we now find was in Dr Draper's
32 report, that I would have thought could be excised in
33 due course.

34 COMSR: Nothing is going to be excised. The
35 fact of the matter is that the letter is not before me
36 and it will not be before me until I am satisfied that I
37 can receive it. Any counsel that requires access to it
38 for the purpose of addressing an argument to me can only

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1 do so the basis of a further undertaking as to
2 confidentiality, and it's for the limited purpose only
3 of addressing arguments to me on its admissibility.

4 MR ABBOTT: Are you asking about the status of the
5 cross-examination?

6 COMSR: Yes.

7 MR ABBOTT: My understanding is that the
8 cross-examination, other than Mr Tilmouth reserving the
9 right to cross-examine on this letter, has been
10 completed by all parties.

11 MR KENNY: And also in relation to her suppressed
12 evidence on the previous occasion. I did not have the
13 suppressed evidence when we were considering the
14 question of cross-examination, so it's essentially the
15 period around 9 May that we had very little information,
16 and we now do have the evidence since the suppression
17 order has been lifted, but particularly with respect to
18 this letter, if this letter is to become an exhibit
19 before you, then no doubt that will affect our
20 cross-examination. If it doesn't, it will also affect
21 our cross-examination concerning the meeting at the
22 Bunkhouse. We therefore would ask that until the letter
23 is clarified, that we not be required to cross-examine
24 this witness further.

25 MR ABBOTT: We would oppose that. We submit the
26 cross-examination should take place now, today, so that
27 my client can go away from this Commission knowing that
28 she has finished being questioned. She has been at the
29 beck and call of this Commission, and I say that not in
30 any derogatory sense, but for some months -

31 COMSR: Yes, it has been an extended period of
32 time.

33 MR ABBOTT: It's been a considerable strain to her,
34 and she would like to finish as soon as possible. I
35 would submit that my learned friends, all of them, if
36 they have any further questions, should ask them, and we
37 should all do our best to finish the cross-examination
38 so that she can get on with her life.

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1 MS PYKE: Can I make one comment? I understood,
2 on the last occasion, because of the way in which the
3 evidence from this witness had been led, that is by her
4 own counsel, that there will be re-examination - I think
5 at that stage it was going to be by Ms Simpson - on the
6 basis that if there was anything which arose out of the
7 re-examination, other counsel would have an opportunity
8 to ask questions because of the way in which the matter
9 had unfolded, and I just -
10 CONTINUED

- 1 MR SMITH: Could I interrupt my learned friend,
2 because Ms Simpson has got questions to ask of this
3 witness in private session, which will take us until
4 lunchtime. Mr Tilmouth will be back at 2.15 and
5 hopefully we will be able to finish Dorothy Wilson's
6 cross-examination.
7 So, does that satisfy everybody?
- 8 COMSR: I don't think it satisfies Mr Kenny
9 whose point is that, unless the situation in respect of
10 the admissibility of the evidence is clarified, you are
11 not in a position to determine how best to cross-examine
12 the witness on that material. I think that is it.
- 13 MR SMITH: Mr Tilmouth will be back at 2.15 and
14 this witness won't be finished until then. So, what if
15 we just keep going now and get this private session
16 examination over now?
- 17 COMSR: Private session restricted to women
18 only?
- 19 MR SMITH: Women only.
- 20 COMSR: And that must be in terms of the s.35
21 authorisation, which would restrict the session only to
22 female counsel and female parties, I would think.
- 23 MR ABBOTT: Yes, female parties.
- 24 MR MEYER: We don't have female counsel here. I am
25 happy to leave Mrs Chapman here, who won't take notes.
- 26 MR KENNY: I just clarify the time that it will be
27 closed, until 2.15?
- 28 COMSR: Yes.
- 29 HEARING CONTINUES IN PRIVATE

Closed hearing

11.10.95

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1 RESUMING 2.23 P.M.
2 HEARING CONTINUES IN PUBLIC
3 COMSR: We have Mrs Wilson in the box. I think
4 the intimation was we had finished all the
5 cross-examination of Mrs Wilson other than any
6 cross-examination that you might have, Mr Tilmouth. We
7 have now resumed in public session.
8 MR MEYER: I do have a couple of questions
9 relating to the membership of Ngarrindjeri Action
10 Group now that those minutes have been dealt with, and
11 some limited questions on the reconciliation meeting on
12 28 May 1994. I haven't previously cross-examined Mrs
13 Wilson, but I indicated I had no questions, they are the
14 only two matters I have to touch upon, and I am happy to
15 do that after Mr Tilmouth.
16 MR STRATFORD: You will remember that I was here when
17 Mrs Wilson was last in the witness box. I reserved the
18 right to ask some questions and I would now like to ask
19 a few questions, but limited only to the incident at the
20 Mouth House.
21 I ask the questions being conscious that it is
22 possible that Mr Tilmouth will object to the questions
23 on the grounds of his clients' claim to legal
24 professional privilege. I indicate I will try to avoid
25 matters that might be associated with questions of
26 privilege, but that is a matter we will have to address
27 as we come to.
28 COMSR: I am not too sure of the status - when
29 Mr Tilmouth says his clients' claim, I take it we are
30 talking about the Lower Murray Aboriginal Heritage
31 Committee.
32 MR STRATFORD: That is so.
33 COMSR: That is an issue that hasn't yet been
34 resolved. I haven't heard who the committee is, what
35 its composition is.
36 MR STRATFORD: This is one of the difficulties that I
37 have in asking Mrs Wilson some questions. That is an
38 issue that hasn't been resolved. The other difficulty

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1 that I have is that I wasn't here for this morning's
2 session. I must say that was due to a misunderstanding.
3 Mr Smith told me last night that Mrs Wilson would give
4 evidence today, but when he read out his list of
5 witnesses today he didn't mention Mrs Wilson.

6 I asked his instructing solicitor what had happened
7 there, and I was told Mrs Wilson wouldn't be returning
8 to the witness box until after section 13 documents had
9 been dealt with. So I took myself back to my office,
10 and that is why I wasn't here for this morning's
11 session. There was obviously a problem with
12 communication.

13 COMSR: Your cross-examination will be limited
14 only to those matters which affect your client?

15 MR STRATFORD: Yes, and with particular reference to
16 the Mouth House. I do not intend to ask any questions
17 at large, but just to 9 May 1994, and, as I indicated to
18 you, I will endeavour to phrase the questions and ask
19 the witness to answer the questions in such a way that
20 we do not offend any privilege that Mr Tilmouth's
21 clients might have.

22 MR ABBOTT: I don't urge my friend to frame his
23 questions in any way, because I cannot possibly see how
24 any questions he puts to my client can offend Mr
25 Tilmouth's privilege, if he has any.

26 COMSR: Yes, that is an issue yet to be
27 resolved. If anyone has a privilege, I suppose it is
28 the committee of the Lower Murray Aboriginal Heritage
29 Committee, not any members for the time being, surely.

30 MR TILMOUTH: That is my submission, of course, as I
31 put it this morning. I raised this very early in the
32 transcript. Would it be convenient to deal with it on
33 this basis? My instructions and Mr Stratford's
34 instructions are that this essentially was a meeting of
35 the Lower Murray Aboriginal Heritage Committee, with Mr
36 Wooley giving legal advice, but it is clear, of course,
37 that there were other things going on as well.

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- 1 COMSR: And a much wider audience present than
2 that.
- 3 MR TILMOUTH: That is the way it has been presented.
4 My main concern at the moment is that I am not seen to
5 be waiving any question of privilege on this issue. If
6 I let the cross-examination go ahead, subject to
7 specific objections, I am concerned that it is not going
8 to be argued later on we waived privilege over the
9 issue. That it be used against us, if you understand
10 what I mean.
- 11 COMSR: Yes. Your application to appear before
12 me was that you were seeking leave to appear on behalf
13 of certain individuals, and you made that clear on the
14 first day and later when you sought leave to appear.
15 You said that you were appearing on behalf of those
16 named individuals.
- 17 MR TILMOUTH: Yes, but I also mentioned they were
18 executive members of the committee at that stage.
- 19 COMSR: Yes, you did from time to time mention
20 that.
- 21 MR TILMOUTH: There was no corporate body at that time
22 so it could only have been individual members. But my
23 concern for the moment was 9 May, this meeting at the
24 Mouth House, two of my clients were there, and they were
25 there, let us say, at least partly for legal advice as
26 committee members.
- 27 COMSR: I don't have any evidence to that
28 effect.
- 29 MR TILMOUTH: They are my instructions. I have made
30 that point before. I am simply concerned at this stage,
31 if we allow it to go ahead ahead it will be used later
32 for a waiver of privilege.
- 33 COMSR: You want to make it quite clear that you
34 are in no way waiving any privilege that your clients
35 may have in respect of this issue.
- 36 MR TILMOUTH: That is right. If a specific issue
37 arises that might touch the privilege issue or
38 otherwise, of course, I will make the objection. I

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1 understand that it has been put on a wider basis outside
2 the area of the ambit of privilege. I understand that,
3 but of course at times it might have the capacity to
4 intrude. I will make that specific objection. But by
5 allowing Mr Stratford to go ahead now, I am making it
6 clear I am not intending in any way that there be a
7 waiver of the privilege.

8 COMSR: I will certainly note that.

9 MR SMITH: Can I add to that, if Mr Stratford is
10 going to cross-examine Mrs Wilson concerning what was
11 said and things that were done in the Mouth House on 9
12 May, I would be asking him not to restrict his
13 examination at all.

14 I would contend strongly that communications between
15 a solicitor and a client in the presence of others - and
16 there were plainly others there - is evidence of the
17 absence of the necessary confidentiality, and privilege
18 could not attach. I can give you a shelf of authority
19 for that proposition.

20 COMSR: In any event, I understand Mr Tilmouth
21 to be saying that he simply wants it to be noted that he
22 is not waiving any privilege or any objection he may
23 have in respect of that.

24 MR TILMOUTH: Simply by not objecting to Mr
25 Stratford's questions at the moment.

26 CROSS-EXAMINATION BY MR STRATFORD

27 Q. I want to ask you some questions associated with the
28 meeting at the Mouth House on 9 May 1994. Do you
29 understand that.

30 A. Right, yes.

31 Q. As I understood from your earlier evidence to the
32 commission you in fact attended the Mouth House on two
33 occasions on that day. Is that right.

34 A. No, I didn't.

35 Q. It was my understanding that you attended the Mouth
36 House on two occasions in a car, and on one occasion
37 only you alighted from the car. Is that right.

38 A. On May the 9th are you talking about?

- 1 Q. Yes.
- 2 A. No, I only went to the Mouth House once.
- 3 Q. You didn't go to the Mouth House on two occasions by
4 motor car.
- 5 A. Not on May 9th, no.
- 6 Q. Perhaps I misunderstood your earlier evidence. In any
7 event, I want to ask you some questions on the occasion
8 when you did attend at the Mouth House and you did
9 alight from the motor car. Do you understand that.
- 10 A. Yes.
- 11 Q. First of all, I want to ask you some questions to get a
12 sequence of the events that occurred. Do you
13 understand.
- 14 A. Right.
- 15 Q. It is my understanding of your earlier evidence that
16 when you entered the Mouth House there was some sort of
17 discussion in progress at that time.
- 18 A. No, there wasn't any discussion when I entered the house
19 - the shack.
- 20 Q. When you entered the house, were there a number of
21 people present in it.
- 22 A. Yes, there were.
- 23 Q. Did the people comprise both males and females.
- 24 A. One female was there when I entered the house, yes.
- 25 Q. Who was that female.
- 26 A. Shirley Trevorrow.
- 27 Q. You entered the Mouth House with whom.
- 28 A. Sarah Milera.
- 29 Q. So when you and Sarah entered, that made three women
30 present at that time, did it.
- 31 A. Yes, it did.
- 32 Q. At some subsequent time, did Dr Kartinyeri enter the
33 Mouth House.
- 34 A. Yes, she did.
- 35 Q. Did any other women join you at the Mouth House.
- 36 A. Yes, they did.
- 37 Q. Which other women came into the Mouth House.

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- 1 A. Judy Kropinyeri, Iris Sparks, Doreen Kartinyeri and
2 Patti Kropinyeri.
- 3 Q. Did the other women come in as a group or did they come
4 in separately or in pairs.
- 5 A. No, the others - the other four women came in together.
- 6 Q. When you first entered into the Mouth House, how many
7 men were present.
- 8 A. There was Doug, George and Victor and Tim Wooley.
- 9 Q. So that is Doug Milera, George Trevorrow, Victor Wilson
10 and Tim Wooley, is that right.
- 11 A. Yes.
- 12 Q. During the time you were in the Mouth House, did any
13 other men join you.
- 14 A. No.
- 15 Q. After you entered the Mouth House, it is my
16 understanding that you, together with Sarah Milera, went
17 into a bedroom of the house, is that correct.
- 18 A. Yes, we did.
- 19 Q. Was that something that happened shortly after you
20 entered the house.
- 21 A. Yes, it was.
- 22 Q. Were you in the bedroom for some little time.
- 23 A. We were in there I guess for a couple of minutes.
- 24 Q. After you left the room, did you then return to the main
25 living area of the house.
- 26 A. Yes, we did.
- 27 Q. At some time then after you returned to the main living
28 area, was a letter produced.
- 29 A. When we came out of the bedroom, Doreen asked Sarah to
30 show Tim the letter, yes.
- 31 Q. Was that some time after you returned into the living
32 room.
- 33 A. No, when we came - as soon as we walked out the bedroom,
34 Doreen asked Sarah to show the letter to Tim.
- 35 Q. So that happened shortly after you returned to the room.
- 36 A. Yes, it did.
- 37 Q. The letter was produced by Sarah Milera to Dr
38 Kartinyeri.

1 A. No, it wasn't. It was given to Tim Wooley. It was
2 asked to be given to him.

3 Q. Without telling me anything about any discussion that
4 might have ensued, was the letter shown to Tim Wooley
5 and was there then a chat about it.

6 A. Yes.

7 Q. I will return to that discussion in just a moment. Was
8 it after that that there was some discussion about an
9 aerial photograph that was on the wall of the shack.

10 A. Yes.

11 Q. What I put to you is a sequence of how things occurred
12 on that day, is that right.

13 OBJECTION Mr Abbott objects.

14 MR ABBOTT: If it is being put on the basis that
15 this is the sequence and nothing else occurred in
16 between these events, then it should be made clear. I
17 am particularly concerned that my learned friend is
18 putting that the letter was shown to Tim Wooley,
19 discussion about it, and then the next event was that
20 there was discussion about the photograph, because
21 that's not what the witness said in her statement, and
22 she ought to have her statement with her.

23 It is misrepresenting her evidence to suggest that
24 that is the only sequence. True it is that the
25 discussion about the photo occurred after the discussion
26 about the letter, but if the question is designed to -

27 COMSR: I think what Mr Stratford is putting is
28 that those events happened in that particular sequence.
29 Is that what you are putting? Rather than that they
30 were the only events.

31 MR STRATFORD: I am happy to take up the point my
32 friend makes, and I am happy to ask a further question
33 of Mrs Wilson.

34 MR ABBOTT: Can Mrs Wilson have her statement before
35 her as well in case she needs to refer to it.

36 MR STRATFORD: Certainly if the witness could be shown
37 Exhibit 34.

38 QUESTION REPHRASED

1 XXN

2 Q. At this stage, without asking you to refer to that
3 statement, unless you feel the need to refer to it, can
4 you tell me whether or not the events that I have
5 mentioned to you occurred in the order that I have put
6 them to you.

7 A. What after the discussion with Tim Wooley?

8 Q. Yes.

9 A. Doreen asked Patti Kropinyeri to write down something on
10 the pad that she gave her.

11 Q. So what you would say is that between the discussion
12 about the letter, there was some further writing entered
13 onto the letter.

14 A. Yes.

15 Q. And then the photograph was addressed.

16 A. Yes.

17 Q. Is that right.

18 A. Yes, that's right.

19 Q. I suppose you have given a number of statements, and
20 given a number of interviews in relation to the matters
21 that are before this commission, and, in particular, the
22 events of the Mouth House. Is that right.

23 A. If you like to call one, two, three, statements, yes.

24 Q. Amongst the statements that you provided, did you
25 provide, by way of an interview with a Prue Goward, a
26 statement on 22 May 1995.

27 A. With who? I'm sorry, I didn't hear.

28 Q. A person by the name of Prue Goward employed by the ABC.

29 A. No, I have not given a statement to the ABC.

30 Q. Do you remember giving an interview over the radio in
31 May of 1995.

32 A. No, I've never given an interview over the radio.

33 Q. Could I just ask you to look at this document that I now
34 produce and show to you. Could I ask you to scan that
35 particular document. Perhaps I could just ask you to
36 read only the first three pages, because the rest of
37 that particular record seems to relate to other people.

1 MR ABBOTT: My learned friend said this was on the
2 radio. Could this have been a television interview?

3 The witness said she has never given an interview on the
4 radio. If he asks her whether it was on television, he
5 might get another answer.

6 XXN

7 Q. Have you read the first three pages of that document.

8 A. Yes, I have.

9 Q. Having read those first three pages, does that help you
10 remember whether or not that was a record, first of all,
11 of an interview you had with a person by the name of
12 Prue Goward.

13 A. No, it doesn't. I can't recall ever talking to Prue
14 Goward. Can you tell me where she is from?

15 Q. I believe she is with the ABC Radio National, but I am
16 not 100 per cent sure about that. But, in any event,
17 now that you have read those three pages, it doesn't
18 help you remember giving such an interview. Is that
19 what you are saying.

20 A. No, a lot of people rang me up and spoke to me, and I
21 said to them that I didn't want to make anything - a
22 public thing about it, I had said what I wanted to say
23 to Channel 10 and that was it.

24 COMSR

25 Q. Did you give an interview to anybody, whether on radio
26 or television.

27 A. Yes, I did.

28 Q. And is that a record of the interview you remember
29 giving.

30 A. No, I don't recall this. Not at all.

31 XXN

32 Q. Can I ask you, having read that record there, does it
33 accord with your present recollection of events that
34 occurred at the Mouth House on 9 May 1994.

35 A. Yes, it does.

36 Q. Perhaps taking it a piece at the time, could I ask you
37 just to refer to the bottom part of the first page where

1 there is a reference to a meeting of women. Do you see
2 that.

3 A. Yes.

4 Q. That appears to be the meeting of the women that was
5 held at the Bunkhouse, doesn't it.

6 A. Yes, it does.

7 Q. That is a fact, isn't it, that the women had a meeting
8 to talk about why the island was sacred to them.

9 A. Yes, it was.

10 Q. There is some information set out there about what you
11 were told. Do you see that.

12 A. Yes, I do.

13 Q. Then the record indicates that you went over to a shack
14 where the men were. Do you see that.

15 A. Yes.

16 Q. That is a reference, isn't it, to the Mouth House shack.

17 A. Yes.

18 Q. Is that right.

19 A. Yes, that's right.

20 Q. Then this is attributed to you 'At the shack where the
21 lawyer was'. Do you see that.

22 A. Yes.

23 Q. And that's true, isn't it, it was the shack where the
24 lawyer was.

25 A. Yes, it was.

26 Q. The lawyer is Mr Wooley that you mention, is that right.

27 A. I didn't mention Mr Wooley by name. I said 'A lawyer
28 from Aboriginal Legal Rights'.

29 CONTINUED

D.A. WILSON XXN (MR STRATFORD)

- 1 Q. I thought, in answer to my earlier questions to you this
2 afternoon, you indicated that Mr Wooley was one of the
3 men present at the Mouth House shack when you arrived
4 there.
- 5 A. Yes, he was.
- 6 COMSR: I think the witness is making the point
7 she didn't tell anyone Mr Wooley by name.
- 8 A. That's correct.
- 9 XXN
- 10 Q. But the reference here in this particular record that
11 you have in front of you, where it refers to a lawyer,
12 it is, in fact, a reference to Mr Wooley, isn't it.
- 13 A. Yes, it is.
- 14 Q. The record goes on to say `We showed the letter to the
15 lawyer'. Do you see that.
- 16 A. Yes.
- 17 Q. That's what happened, isn't it.
- 18 A. Yes.
- 19 Q. It goes on to say `He said, in his opinion, he didn't
20 think that was enough to stop the bridge'.
- 21 A. Yes.
- 22 Q. That's what he said in effect, isn't it.
- 23 A. Yes.
- 24 Q. It then goes on to say `The men spoke, asked us to have
25 a look at the map on the wall'. Do you see that.
- 26 A. Yes.
- 27 Q. That's what happened, isn't it.
- 28 A. Yes.
- 29 Q. It goes on to say then, `And I want to make it quite
30 clear the lawyer was no way involved in telling us to
31 look at the map on the wall like it's been suggested'.
32 Can you see that.
- 33 A. Yes.
- 34 Q. Is that the fact also.
- 35 A. Yes.
- 36 Q. That is that the lawyer, namely Mr Wooley, didn't have
37 anything to do with the map on the wall.
- 38 A. That's right.

D.A. WILSON XXN (MR STRATFORD)

1 Q. Then the record goes on to say, just for the sake of
2 completeness, 'The man from the heritage committee asked
3 us to look at the map on the wall, and suggested to us
4 that the map looked like a woman's private, and that's
5 the way they put it to us'. Do you see that passage.

6 A. Yes.

7 Q. Is that then, generally, what happened in relation to
8 pointing out of the photograph on the wall.

9 A. Yes.

10 Q. I don't want to take you through the remainder of that
11 interview chapter and verse, but I ask you to look at it
12 and I ask you to say generally whether or not the
13 contents of that particular document accord with your
14 present recollection of what occurred at the Mouth
15 House.

16 A. Yes, it does.

17 MR STRATFORD: I seek to tender that document.

18 OBJECTION Mr Abbott objects.

19 MR ABBOTT: I object to it being tendered because
20 this witness does not identify or claim it as her own
21 document. I don't want my friend to have to go to the
22 trouble of calling Ms Goward, but I'd like to reserve
23 the position because, first of all, it's only the first
24 three pages that are relevant, not the rest of it, and I
25 submit that if anything is to be tendered, it should be
26 the first three pages, and I'd be happy -

27 COMSR: Certainly in the absence of any
28 admission by the witness that she did give that
29 interview, it's only that part of document, if any, in
30 which she says 'I agree that that's a correct record'.

31 MR STRATFORD: I'm happy to take my friend's second
32 point, that is it would only be the first three pages
33 that should be accepted as an exhibit. As to his first
34 point, the plain fact of the matter is that Mrs Wilson
35 acknowledges that the contents are true. It's on that
36 basis that the document ought to be received, but given
37 that his client acknowledges it is true, if he wants me
38 to call someone to establish it -

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- 1 COMSR: He doesn't.
- 2 MR ABBOTT: I was going to continue to say I'm happy
3 for it to go in if it's on the basis that the witness
4 agrees that she had a conversation and this accurately
5 records it, then she agrees with the truth of what is in
6 it so far as the first three pages are concerned.
- 7 COMSR: So far she has agreed it accurately
8 reflects what she observed on that occasion.
- 9 MR ABBOTT: I'm happy for it to go in on that basis.
- 10 MR MEYER: The content isn't the issue, just
11 whether she said it on the radio.
- 12 COMSR: We're not concerned to follow that for
13 any reason, are we?
- 14 MR STRATFORD: No.
- 15 COMSR: What is being tendered now, the first
16 three pages?
- 17 MR STRATFORD: What is being tendered is the first
18 three pages of the document presently in front of Mrs
19 Wilson.
- 20 EXHIBIT 207 First three pages of the record of
21 interview with Prue Goward tendered by
22 Mr Stratford. Admitted.
- 23 XXN
- 24 Q. I just want to ask you some further questions about when
25 the letter was produced and the way in which it was
26 produced. Do you understand what I'm interested in now.
27 This is the letter that was produced at the Mouth House.
- 28 A. Yes.
- 29 Q. When the letter was produced for Mr Wooley's
30 consideration, did he move across to the table in the
31 Mouth House.
- 32 A. No, he did not. It was handed to him sitting in the
33 chair where he was when we walked in.
- 34 Q. I want to suggest this to you, that when the letter was
35 handed to Mr Wooley for his consideration, that he moved
36 across to a table that was in the Mouth House -
- 37 A. No.
- 38 Q. If you'd just listen to my question, then you can

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1 disagree with it afterwards, but I just want to put a
2 proposition to you. I want to suggest this to you; that
3 when the letter was handed to Mr Wooley, he walked
4 across to the table that was in the main area of the
5 house, and that others gathered around him to look at
6 the letter on the table. Do you agree with that.

7 A. No, I don't.

8 Q. You tell me what you say happened to the letter after it
9 was handed to Mr Wooley.

10 A. It was handed to Mr Wooley, Mr Wooley looked at it and
11 he said he didn't think we had enough information in
12 that letter. Then Doreen took the letter from Tim
13 Wooley, she was standing in between Tim Wooley in the
14 chair and Patty Kropinyeri sitting at the table, and she
15 was the one that got the letter from Tim Wooley, and she
16 handed it to Pat Kropinyeri and she said 'What else can
17 we put down there', and then she told Patty to write.

18 Q. But as far as what happened to the letter after it was
19 handed to Mr Wooley is concerned, he remained seated and
20 he appeared to you it read it, is that right.

21 A. Yes.

22 Q. When the letter was produced, was it produced from
23 someone's handbag.

24 A. Sarah gave - I believe Sarah had it in the briefcase
25 that she carries. She took it out, yes, she took it out
26 of the briefcase that she had.

27 Q. That's your present recollection, it was a briefcase not
28 a handbag.

29 A. Yes. She only carries a briefcase, she doesn't carry a
30 handbag.

31 Q. Did someone say something like, this to Mr Wooley, 'We
32 have got a letter here to send to Tickner'. Did someone
33 say something like that to him.

34 A. Doreen said to Sarah 'Give Tim the letter so that Tim
35 can read the letter that we are going to send to Mr
36 Tickner'.

37 Q. Do you have a recollection of hearing anyone say to Mr
38 Wooley 'We have got a letter here for Tickner'.

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- 1 A. No. Doreen said to Sarah, 'Show Tim the letter that
2 we're going to send to Mr Tickner'.
3 Q. That's your recollection.
4 A. Yes.
5 Q. Did someone say to Mr Wooley something like this 'Can
6 you tell us what you think.'
7 A. No, I don't recall anybody saying that.
8 Q. Do you have any recollection of anyone saying something
9 like 'Will it be good enough'.
10 A. No.
11 Q. I suppose some conversation could have gone on in
12 relation to the letter that you didn't hear or no longer
13 remember.
14 A. I guess it could have been, yes.
15 Q. In reply, did Mr Wooley say something like this 'In my
16 opinion, there isn't enough information in the letter
17 for a peg for Tickner to hang his hat on'. Do you
18 remember Mr Wooley saying something like that.
19 A. No.
20 Q. Do you remember Mr Wooley saying something like this, 'I
21 am aware that there is other information available'. Do
22 you remember him saying something like that.
23 A. No.
24 Q. Do you remember him saying something like this 'However,
25 it is a matter for you and what you can divulge'. Do
26 you remember him saying something like that.
27 A. No, I don't.
28 Q. Do you think those words might have been spoken by Mr
29 Wooley and you didn't hear them. Is that possible.
30 A. I think if he would have spoke those words, I would have
31 heard them.
32 Q. Are you quite sure about that.
33 A. Yes, I am.
34 Q. Shortly after the conversation about the letter,
35 whatever it was, did Sergeant Peter Morrison arrive at
36 the Mouth House.
37 A. Well, he arrived there, yes.
38 Q. My question really is this; did he arrive at the Mouth

D.A. WILSON XXN (MR STRATFORD)

- 1 House shortly after some conversation about the letter,
2 and this conversation, of course, involving Mr Wooley.
- 3 A. No. He didn't arrive shortly after, because we had
4 already, Patty had already started writing some things
5 down on the paper.
- 6 Q. So the additions to the letter, whatever they were, had
7 been commenced before Sergeant Morrison arrived, is that
8 correct.
- 9 A. Yes.
- 10 Q. When Sergeant Morrison arrived, did someone go and speak
11 to him.
- 12 A. Yes, they did.
- 13 Q. Did the conversation with Sergeant Morrison take place
14 outside the house.
- 15 A. Yes, it did.
- 16 Q. I want to suggest this to you, that Mr Wooley and
17 several others went outside the house to talk to
18 Sergeant Morrison. Would you agree with that.
- 19 A. Yes, I would.
- 20 Q. I want to suggest to you that after Mr Wooley and others
21 went out, different people came out to speak to the
22 sergeant and went back inside. Do you understand my
23 question.
- 24 A. No.
- 25 Q. What I'm meaning to suggest to you is that people went
26 out to speak to Sergeant Morrison and went back into the
27 house, and other people went out and spoke with him and
28 went back into the house.
- 29 A. No, I don't recall that.
- 30 Q. So is it your recollection that Mr Wooley and someone
31 else went out and spoke to Sergeant Morrison.
- 32 A. Victor, Doug and George went outside, and so did Sarah,
33 to talk to the police officer.
- 34 Q. Were you still in the Mouth House whilst the discussion
35 was taking place outside with Sergeant Morrison.
- 36 A. No, I came back from down by the shore.
- 37 Q. Sorry.
- 38 A. I came back from the shore when they were all outside

1 talking.

2 Q. Can you tell me at what stage it was that you went down
3 to the shore. Was it shortly after Sergeant Morrison
4 arrived.

5 A. No, it was before he arrived.

6 Q. So when you give evidence about Sergeant Morrison's
7 arrival, it's evidence that you don't have as first hand
8 evidence, is that right.

9 A. Yes it is. I saw him arrive when I was coming up from
10 the shore.

11 Q. For how long before you saw Sergeant Morrison had you
12 been absent from the Mouth House.

13 A. I was walking back to the Mouth House when he pulled up
14 and he walked into the yard.

15 Q. Yes, I understand that, but how long before that event
16 occurred, that is the event when you saw Sergeant
17 Morrison pulling up, had you been absent from the Mouth
18 House.

19 A. About 10 minutes, 10 or 12 minutes, I guess it would
20 have been.

21 Q. When you saw Sergeant Morrison pull up outside the Mouth
22 House, it was then that you saw Mr Wooley and others
23 come out to speak to him, is that right.

24 A. No, Doug and Victor and George came out first, and then
25 someone went and sang out to Tim, and Tim came out
26 after.

27 Q. When all that occurred, you were still walking towards
28 the Mouth House, were you.

29 A. No, by that time, by the time they sang out to Tim, I
30 was out on the back verandah.

31 COMSR

32 Q. Could I clarify one thing. How far from the Mouth House
33 is the shore that you're taking about. When you say you
34 went to the shore, how far away is it.

35 A. I guess it would be from this wall to that wall down
36 there away from the shack (INDICATES).

37 MR MEYER: 20 metres.

38 COMSR: Say between 20 and 30 metres.

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(MR TILMOUTH)

1 MR STRATFORD: Perhaps it can be measured in the break
2 by Mr Meyer. He can have it recorded in the transcript
3 first thing in the morning.

4 MR MEYER: I undertake to do that for Mr Stratford.
5 XXN

6 Q. When you returned to the Mouth House and got to the area
7 of the back door as you described, did you re-enter the
8 Mouth House.

9 A. No, I never.

10 Q. Did you then leave with Mrs Milera in her motor car.

11 A. Yes. She asked me to take her into Goolwa, and I took
12 her to Goolwa.

13 Q. Sorry, it wasn't her motor car, it was your motor car
14 wasn't it.

15 A. Yes, it was.

16 Q. Mrs Milera asked you to take her somewhere else.

17 A. Yes.

18 Q. Was that shortly after you arrived back at the Mouth
19 House.

20 A. Yes, it was.

21 Q. When you left, was Mr Wooley and a number of other men
22 speaking with Sergeant Morrison outside the Mouth House.

23 A. Yes.

24 CROSS-EXAMINATION BY MR TILMOUTH

25 Q. I want to ask some questions about the same day,
26 beginning with the Bunkhouse, but could you take my
27 questions in relation to that, I don't want to go into
28 what was said in the Bunkhouse because I'm asking you
29 questions as a man. Do you understand what I'm saying.

30 A. Yes.

31 Q. I only want to deal briefly with it in this way; before
32 you and Sarah went over to the Mouth House, there had
33 been a meeting of the women at the Bunkhouse on the
34 other side of the island, hadn't there.

35 A. Yes.

36 Q. That was a meeting, as I understand it, solely of
37 Aboriginal women.

38 A. Yes.

1 Q. Aboriginal Ngarrindjeri women.

2 A. Yes.

3 Q. Is it true - and again appreciating I don't want to ask
4 you all about the words that were used - but is it true
5 that after that meeting it was understood by you and
6 others that there were some things that were discussed
7 by the women that couldn't be talked about to men. Is
8 my question clear.

9 A. No. Can you ask it again?

10 Q. Part of the reason for having that meeting with only
11 women present was because things were to be discussed
12 that only women could discuss.

13 A. Yes, I would say that.

14 Q. Obviously that they couldn't talk about with men.

15 A. Yes.

16 Q. Of course when the letter was brought over to the Mouth
17 House, that meeting had concluded as I understand it.

18 A. Yes.

19 Q. The question that was then being exercised is the letter
20 or the submission that should go to Mr Tickner -

21 A. Yes.

22 Q. - on behalf of the women.

23 A. Yes.

24 Q. When you arrived at the Mouth House, as you've told the
25 Commissioner earlier and Mr Stratford a few moments ago,
26 Mr Wooley was there, wasn't he.

27 A. Yes.

28 Q. Did you know at that stage that he was a lawyer.

29 A. Yes, I did.

30 Q. You knew that beforehand.

31 A. Yes.

32 Q. You identified him, of course, as a lawyer for the
33 Aboriginal Legal Rights Movement.

34 A. Yes, I did.

35 Q. From your side of things, your understanding, did you
36 understand that he was advising the Lower Murray
37 Aboriginal Heritage Committee about the question of the
38 bridge and submissions to Mr Tickner and so on.

- 1 A. No, I didn't know that.
- 2 Q. You had no idea.
- 3 A. No.
- 4 Q. Did you have any idea beforehand what he was there for.
- 5 A. No. I didn't even know he was there until I walked into
- 6 the room.
- 7 CONTINUED

- 1 Q. But, once you walked into the room, you knew him as Mr
2 Wooley, the lawyer.
- 3 A. Yes.
- 4 Q. You knew, when you walked into that room, as well,
5 didn't you, that Victor Wilson and George Trevorrow at
6 least were members of that Committee.
- 7 A. What committee is that?
- 8 Q. The Lower Murray Aboriginal Heritage Committee.
- 9 A. Yes, I did.
- 10 Q. And Doug Milera was, too, wasn't he.
- 11 A. Yes.
- 12 Q. And some of the other women were, as well.
- 13 A. Not to my knowledge they weren't.
- 14 Q. Not to your knowledge.
- 15 A. No, the only woman I knew on the Committee was Leah
16 Rankine.
- 17 Q. These events in the Mouth House that you have given
18 evidence about until the police arrived didn't take all
19 that long, did they. It wasn't a matter of hours that
20 all these events in the Mouth House took place.
- 21 A. No, it wasn't hours.
- 22 Q. Can you give us any idea how long it was, from when you
23 first arrive, Sarah produces the letter and then the
24 police arrive.
- 25 A. I guess it would have been about - roughly about an
26 hour.
- 27 Q. About an hour.
- 28 A. It might have been a bit more, a bit less.
- 29 Q. And the situation I think is that people were coming in
30 and out at times. It wasn't the same people there in
31 the same place all the time, was it. Some women came
32 over later, for example, some people went outside.
- 33 A. All the women came together, yes, but some went down, I
34 guess some didn't come in. They didn't all come in
35 together. Some came in after, yes.
- 36 Q. Is it true at times that you saw Mr Wooley speaking with
37 Mr Trevorrow, George Trevorrow and Victor Wilson.
- 38 A. No, I didn't see him speaking to them. No-one was

- 1 speaking when we walked in.
- 2 Q. I wasn't meaning to confine it to the point of time that
- 3 you walked in. I meant the whole period at the Mouth
- 4 House.
- 5 A. No, I didn't see him talking to George in the Mouth
- 6 House.
- 7 Q. What about Doug, did you see him speaking to Doug, at
- 8 all.
- 9 A. No, I didn't see him.
- 10 Q. That was in the main room of the house, was it.
- 11 A. Yes, it was.
- 12 Q. Where Mr Wooley was.
- 13 A. Yes.
- 14 Q. And you weren't in there all the time, were you.
- 15 A. Beg your pardon?
- 16 Q. You weren't in that room all this time, were you.
- 17 A. No, I went out when the map was being - part of the map
- 18 was being pointed out to me, yes.
- 19 Q. I think you said earlier you went into the bedroom for
- 20 some time, as well.
- 21 A. When I first walked in, I walked straight into the
- 22 bedroom, yes, and then I went into the main room, yes.
- 23 Q. The order of events seems to be clearly that Doreen had
- 24 dictated the additions to be made to the letter before
- 25 any question of the map arose. Is my understanding
- 26 correct.
- 27 A. The first three paragraphs, yes, she did.
- 28 Q. You knew, of course, as a member of the community, Doug
- 29 Trevorrow, didn't you.
- 30 A. Who?
- 31 Q. George Trevorrow.
- 32 A. Yes, I know George.
- 33 Q. You have known him for many years.
- 34 A. Yes, I have.
- 35 Q. At that time, of course, you knew that George sometimes
- 36 used a walking stick.
- 37 A. Yes.
- 38 Q. A special walking stick he had with a snake on it he

1 often used, didn't he. A snake crawling up the length
2 of the stick.

3 A. Yes.

4 Q. Very characteristic for George to use it, wasn't it.

5 A. Yes, well -

6 Q. Did he have it there that day.

7 A. I have always seen George with a walking stick. I have
8 never seen him without it, yes.

9 Q. Because you knew he had a crook back, didn't you.

10 A. Yes.

11 Q. He has had it for a good number of years.

12 A. Yes, he has.

13 Q. Your evidence is, I think, that, towards the end of
14 these events, it was Victor who pointed to the map, or
15 the aerial plan.

16 A. Yes.

17 OBJECTION Mr Meyer objects.

18 MR MEYER: There are two propositions contained in
19 that. 1, it was Victor. And 2, it was towards the end.

20 So, my friend has rolled up a double-barrelled set
21 of facts.

22 COMSR

23 Q. It was George who pointed - was it towards the end of
24 the meeting that he pointed -

25 A. No, it wasn't George, it was Victor pointed to the map
26 and that was at the beginning of the letter, not at the
27 end.

28 Q. The beginning of the letter not at the end.

29 A. Of the second part of the letter, I should say, yes,
30 that was done at the Mouth House.

31 XXN

32 Q. This occasion, though, was towards the end of that hour,
33 wasn't it. It wasn't too long before the police arrived
34 that this happened.

35 A. No, that was when we first got there and then we was
36 told that it wasn't enough in the letter, so Doreen
37 asked Patty to write down some more things and she
38 dictated to Patty the first three paragraphs and then we

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- 1 were asked to look at - Vic pointed to the map and asked
2 us to look at the map. And we looked at the map for a
3 few minutes and nobody said anything. And that's when
4 Doug Milera told us what the map represented.
- 5 Q. Perhaps I can deal with it in this way, to break it up.
- 6 MR ABBOTT: I think the witness made a mistake.
- 7 MR TILMOUTH: I object, I think the evidence should
8 come spontaneously.
- 9 MR ABBOTT: Yes, maybe, but we are not bound by the
10 rules of evidence. I am concerned that she is saying
11 'paragraphs', but I don't think she means paragraphs,
12 that is all.
- 13 A. No, I don't mean paragraphs. I meant to say three
14 lines, I am sorry.
- 15 MR TILMOUTH: Now I am getting confused.
- 16 COMSR: Yes, I am afraid I didn't pick up the
17 reference to paragraphs, so I think the implication had
18 passed me by.
- 19 MR MEYER: It might help if I, as an independent,
20 say what I thought what was meant -
- 21 MR TILMOUTH: Can we proceed? We are getting glosses
22 on glosses here.
- 23 COMSR: Perhaps you can clarify it for us, Mr
24 Tilmouth.
- 25 XXN
- 26 Q. When the women came over from the Bunkhouse, there were
27 already things written on this letter, weren't there.
- 28 A. Yes.
- 29 Q. Then, at some stage after the discussion with Mr Wooley,
30 Doreen Kartinyeri dictated some more of the letter.
- 31 A. She asked Patty to write down some stuff that she was
32 dictating to her, yes.
- 33 Q. And I gather that Patty did so.
- 34 A. Yes.
- 35 Q. As dictated by Doreen.
- 36 A. Yes.
- 37 Q. So far, all of this has occurred before anybody is
38 pointing or looking up at any map or aerial photograph.

1 A. The first three lines, yes.

2 Q. At that point in time, or shortly beforehand, there had
3 been - clearly been a discussion with Mr Wooley along
4 the lines of - and this is my summary. I am not
5 purporting to use words here's - 'What we have written
6 for Mr Tickner.' And Mr Tickner has said - I beg your
7 pardon. And Mr Wilson has said 'Well, I don't think
8 that is enough.' That is just a summary. I am not
9 purporting to use the precise words. That is so far so
10 good, is it not.

11 A. Yes.

12 Q. And I know Mr Stratford has put to you whether Mr Wooley
13 used words like 'I don't think you've got a sufficient
14 peg to hang your hat on for Mr Tickner', but the effect
15 of it was, whatever Wooley said in precise words, that
16 the letter, as it was, from the Bunkhouse, in his
17 opinion, was not enough.

18 A. Yes, that's the way I understood it, yes.

19 Q. And I don't mean to be too technical when I am putting
20 this to you, but did you understand at least that Mr
21 Wooley was giving a legal opinion, at that time. You
22 would have understood him, at that time, to be acting as
23 a lawyer, wouldn't you, when he expressed that opinion.

24 COMSR: Expressed it to whom?

25 MR TILMOUTH: I am not concerned who it was to. That
26 Is not the point of my question.

27 COMSR: All right.

28 A. No, I didn't, I didn't take it that he was giving that
29 advice to us as a lawyer.

30 XXN

31 Q. Did you think he was there for any other purpose. Was
32 there anything that you -

33 A. No, I knew that Tim was a lawyer and I thought, well,
34 you know, if that was his opinion, then we didn't have
35 enough in the letter.

36 Q. It wouldn't surprise you at all that that was taken as a
37 legal - expression of a legal view rather than a
38 personal -

1 A. No, at the time it didn't, no.

2 Q. But, whatever precise words were used, it is clear in
3 your mind, isn't it, to that point there wasn't enough,
4 in his opinion.

5 A. Yes.

6 Q. And it is clear, is it not, as well, that that seemed to
7 be accepted, whatever - whether he was expressing a
8 legal opinion or otherwise, it seemed to be accepted
9 that there wasn't enough there.

10 A. Yes.

11 Q. And, at that stage, or shortly afterward, Doreen started
12 dictating, as you have described.

13 A. Yes.

14 Q. Do I understand you correctly to say that, at the time
15 that Doreen was dictating, that the three men mentioned
16 were still in the room with Mr Wooley.

17 A. Yes, they were.

18 Q. That is, George, Doug and Victor.

19 A. Yes.

20 Q. That you were in the room, of course.

21 A. Yes.

22 Q. How many other women were there, at that time.

23 A. Shirley Trevorror was there, Patty Kropinyeri, Doreen
24 Kartinyeri, Sarah Milera, Iris Sparks and Judy
25 Kropinyeri.

26 Q. And generally around the table.

27 A. No, we weren't all around the table. The table was up
28 against the wall and there wasn't much room on this side
29 of the table (INDICATES) or that end (INDICATES) or up
30 this end (INDICATES) and they had a bar thing that went
31 across this side of the room (INDICATES) so that there
32 wasn't much room all over this side (INDICATES) where
33 the table was. There was more room over that side
34 (INDICATES).

35 Q. Perhaps I put that clumsily. All these people were in
36 there group, around or near Mr Wooley.

37 A. No, they weren't round Mr Wooley.

38 Q. Who was outside the group when Doreen was dictating the

1 further material.

2 A. Mr Wooley sat over by the glass - by the sliding doors
3 (INDICATES), so he was away from us and Iris Sparks was
4 sitting over by the door going into the bedroom
5 (INDICATES). There was Sarah, Judy Kropinyeri, and
6 myself were standing behind the bar. And George and
7 Shirley were sitting behind the - up against the wall
8 (INDICATES). And Victor and Doug were standing on this
9 end of the table (INDICATES).

10 Q. How far away would that have been from Doreen, when she
11 was dictating.

12 A. The table was in between them.

13 Q. But can you give us an idea in just approximately feet
14 or yards. All I am trying to gather is, were they in
15 the immediate group, or whether they were standing apart
16 from them.

17 A. The table is about that length of the table (INDICATES),
18 so Doreen was on that side of the table (INDICATES) and
19 they were on this side of the table (INDICATES).

20 Q. They were at the table, the men.

21 A. Yes.

22 Q. When Doreen was dictating these extra words.

23 A. Yes.

24 Q. Do you remember how I started off by asking you about
25 some of the things in relation to the Bunkhouse and one
26 of them being that some of the things discussed by women
27 could not be discussed by men, or talked about by women
28 to men. That is true, isn't it.

29 A. Right.

30 Q. Isn't it the position that, in the Mouth House, the
31 question arose as to how the women could say certain
32 things to Mr Tickner, because he was a man. Didn't that
33 issue arise.

34 A. We already had written on the second page of our letter
35 that we wanted Mr Tickner to send those two women to
36 come and talk to us. So, and we didn't put the details
37 in the letter that we showed Tim Wooley. There was no
38 details about the sacred women's business.

- 1 Q. I am not asking about the sacred women's business. When
2 I want to ask about that particularly I will alert you
3 to it. I will use those words or something like that,
4 but one of the issues which had been discussed had been
5 the very issue in the Bunkhouse of 'How do we convey
6 things to Mr Tickner, when men are not supposed to know
7 about them?'
- 8 A. That's why we had written in the letter that we wanted
9 Mr Tickner to send these two women over to talk to us,
10 because we couldn't tell him.
- 11 Q. So, what I am putting to you is true, isn't it. That,
12 at the Bunkhouse, the question arose as to how you could
13 deal with the problem of Mr Tickner being a man.
- 14 A. No, we already worked that out before we went to the
15 Bunkhouse - to the Mouth House.
- 16 Q. What I am suggesting -
17 COMSR: You may be at cross purposes.
18 COMSR
- 19 Q. Had you worked it out at the Bunkhouse before you went
20 to the Mouth House.
- 21 A. That we couldn't tell Mr Tickner, yes, we had. That's
22 Why we asked for those two ladies, Veronica Pickles -
23 Van I think it was and Carol Pickles if he could send
24 them to talk to us, because we couldn't talk to men
25 about the women's business.
- 26 COMSR: Does that clarify it?
- 27 MR TILMOUTH: I think so, but I will deal with it this
28 way.
29 XXN
- 30 Q. Isn't it true that, after Mr Wooley said 'Well, I don't
31 think you have got enough', or 'It is not enough', that
32 the issue arose again how to deal with communicating
33 with Mr Tickner, because he was a man. Didn't that
34 come up again.
- 35 A. No.
- 36 Q. Not at all in the Mouth House.
- 37 A. No, Doreen said well, we can put down what she told
38 Patty to write down.

- 1 Q. I know Mr Stratford has dealt with this with you
2 already, but can I put this to you again: didn't Mr
3 Wooley say something to you like or to the women who
4 were there 'I think you know more, but it is up to you
5 whether you want to reveal it.' Something along those
6 lines.
- 7 A. No, I didn't hear him say that.
- 8 Q. At that time, of course, Mr Trevorrow, George Trevorrow,
9 was around nearby, wasn't he.
- 10 A. Yes, he was sitting at the table.
- 11 Q. And with his walking stick that he perpetually used for
12 his bad back.
- 13 A. I guess he had his walking stick with him. Yes, I
14 didn't see the walking stick with him, but I know that
15 he carries it with him.
- 16 Q. Didn't George use that stick to point to the aerial map
17 on the wall, or the aerial photograph.
- 18 A. No.
- 19 Q. You would refute that absolutely, would you.
- 20 A. Yes, I would. I didn't see George point to the map with
21 his walking stick, no.
- 22 Q. Not at all.
- 23 A. No.
- 24 Q. Obviously you disagree with that, but could I suggest to
25 you, whether it was George or Victor - perhaps I should
26 ask, can you remember whether it might have been Doug
27 who pointed to the aerial map.
- 28 A. No, Victor asked us to look at the map.
- 29 COMSR
- 30 Q. Are you saying that no-one pointed to it.
- 31 A. Yes, they said - Vic said 'Well, have a look at the map
32 up on the wall here.' And he was standing on this side
33 of the wall (INDICATES) and the map was there
34 (INDICATES) and he said 'Have a look at the map.' And
35 so we all looked at the map.
- 36 MR ABBOTT: You will recall that it is not actually
37 a map. It is a photo she is referring to.
- 38 A. Aerial - well, they referred to it as 'the map' and I

1 know now that it is an aerial photograph, yes.

2 XXN

3 Q. However it was who pointed, indicated.

4 A. Yes.

5 Q. With outstretched hands.

6 A. Yes.

7 Q. A very distinct pointing movement.

8 A. Yes.

9 Q. So, we can't agree on who it was, we can agree on the
10 occasion -

11 A. Yes.

12 Q. When it was pointed to. And I will maintain it was
13 George, but forget whether it was George or Victor,
14 wasn't something said by one of the men in pointing,
15 about the importance of Hindmarsh Island. And I am not
16 talking about sacred women's business, but wasn't
17 something general said about the importance of Hindmarsh
18 Island to the Ngarrindjeri people.

19 A. No, he asked us to look at the map and we were all
20 looking at the map and we must have been looking at it
21 for at least a minute or two and nobody answered or
22 nobody said anything. Everybody was just staring at the
23 map and that's when Doug said to us about it.

24 Q. It is your evidence, is it, that Victor pointed to the
25 map and everyone sort of blankly is sort of looking at
26 the map.

27 A. Yes.

28 Q. For a minute or two.

29 A. Yes.

30 Q. Nothing said at all.

31 A. No.

32 Q. No explanation.

33 A. No.

34 Q. And people just seemed fixated on the map in that period
35 of time, did they.

36 A. Yes.

37 Q. And you wouldn't agree that George or, for that matter,
38 Victor said that the Hindmarsh Island was important

- 1 generally to the Ngarrindjeri people.
2 A. No.
3 MR ABBOTT: In that period of two minutes.
4 MR TILMOUTH: Yes, of course in that period of two
5 minutes. That is obvious.
6 XXN
7 Q. You disagree with that entirely.
8 A. I can't recall him saying that.
9 Q. So people were glued to the map.
10 A. Yes.
11 Q. For this period, for apparently no reason.
12 A. Yes.
13 Q. Except that it was pointed at.
14 A. Yes.
15 COMSR
16 Q. They were asked to look at it, I think is the evidence.
17 A. Yes.
18 MR TILMOUTH: I understand that.
19 XXN
20 Q. But for no other reason than that they were asked to
21 look at it.
22 A. Yes.
23 Q. Isn't it the position that, in that period what had
24 happened with Mr Wooley earlier had happened again in
25 that it was said by George that, well, in these general
26 words 'It's up to the women what they want to do.'
27 Wasn't something along those lines said by one of the
28 men.
29 A. Well, it may have been, but I think I - when Doug told
30 me what the map represented, I left the room and I
31 didn't come back into the room, so they may have said
32 that after I left, but I had left the room.
33 COMSR
34 Q. You didn't hear it is what you are saying.
35 A. No, I didn't hear it.
36 XXN
37 Q. You would agree with this much, wouldn't you, that
38 whatever was to be represented to Mr Tickner was, on

- 1 your understanding, for the women to reveal and not the
2 men.
- 3 MR ABBOTT: `Reveal' may have a technical meaning.
4 If he meant it was for the women to put in the letter
5 and not the men and if he is talking about reveal in
6 that sense, then let him say so.
- 7 MR TILMOUTH: If we are going to get stuck on these
8 words all the time, we will be here all day.
- 9 COMSR: Perhaps it would be better to find out
10 exactly what the witness heard rather than her
11 understanding of what the words meant.
- 12 XXN
- 13 Q. The position was that the men indicated that whatever
14 else was to be said to Mr Tickner, it was for the women
15 to decide.
- 16 A. I didn't hear them say that, no.
- 17 CONTINUED

1 Q. Whether you heard it or not, that was the case, wasn't
2 it.

3 A. It may have been. I don't know that. I can't comment.

4 Q. Whatever the women had decided earlier at the Bunkhouse
5 was women's business, wasn't it.

6 A. Yes.

7 Q. Not for men. You have agreed with that.

8 A. Yes.

9 Q. Likewise, whatever was added to the letter at the Mouth
10 House was for the women and not for the men. You would
11 agree with that.

12 OBJECTION Mr Abbott objects.

13 MR ABBOTT: He has gone from `women's business' to
14 `for the women'. This is sophistry of the most unusual
15 sort.

16 MR TILMOUTH: The question is perfectly clear, what I
17 am putting is perfectly clear, and the witness doesn't
18 seem in the slightest bit in doubt about it.

19 COMSR

20 Q. Do you understand the question.

21 A. No, I don't.

22 QUESTION REPHRASED

23 XXN.

24 Q. Whatever was to go in that letter to Mr Tickner, this
25 very letter, was for the women to decide. You
26 understood that, didn't you.

27 A. Yes, I understood that, but I didn't understand why the
28 men gave that information to the women to put into the
29 letter.

30 Q. You would know, of course, as well, that whatever
31 knowledge the men did or didn't have about women's
32 business, that, on the one hand, it was wrong for women
33 to discuss it with men, wasn't it. That was understood
34 by your people.

35 A. No, it wasn't. It has never been.

36 Q. I am not talking about the so called secret women's
37 business. What I am saying is that whatever you women
38 talked about in the Bunkhouse -

- 1 A. Was a separate thing to what the men talked to us in the
2 Mouth House.
- 3 Q. If you just hear me out, please. Whatever you women
4 talked about in the Bunkhouse, you knew and the women
5 knew, it would be wrong for the women to discuss that
6 with the men.
- 7 A. Well, they didn't discuss it with the men.
- 8 Q. You knew as well, and it was understood by the people,
9 it would be wrong for men to discuss it, too, wouldn't
10 it. They shouldn't know about it and they shouldn't
11 discuss it anyway. That was understood too, wasn't it.
- 12 A. No, not to me. I said the men told us about the map and
13 that was put into the women's business. It should never
14 have been done.
- 15 Q. I haven't got to that stage yet. Whatever the women
16 were saying at the Bunkhouse and, indeed, at the Mouth
17 House, was for women only, wasn't it.
- 18 A. Well, if it was, then why did they say it in front of
19 men?
- 20 Q. You were there as well.
- 21 A. Yes, I was.
- 22 Q. You would understand that normally it should not be
23 discussed with men.
- 24 A. But it was, so where do we go from there?
- 25 Q. You also understood that, likewise, men should not
26 discuss those issues either themselves or with women.
- 27 A. Why?
- 28 Q. That was part of the Ngarrindjeri tradition, was it.
- 29 A. No, not to my knowledge. I didn't know that that law
30 existed in the Ngarrindjeri culture. I've never heard
31 of it before.
- 32 Q. Putting aside the question of what you say Victor said
33 about the significance of the aerial photograph or map -
- 34 A. I didn't say Victor said that. You've got it wrong. I
35 said Victor pointed to the map. I did not say that
36 Victor said that that represented anything. I said that
37 Doug said what it represented, not Victor.
- 38 Q. Doug, I beg your pardon. Putting aside that issue, the

- 1 content of what Doug said would normally be, according
2 to Ngarrindjeri people, women's business, wouldn't it.
3 It is things that men should not talk about.
- 4 A. Well, I don't know. No, I don't.
- 5 Q. Do you say that when Doug said those things, that George
6 was there.
- 7 A. Yes, George was.
- 8 Q. What about Victor.
- 9 A. Victor was there.
- 10 Q. Near the table.
- 11 A. Yes.
- 12 Q. I put it to you that Doug never said any of those things
13 at all.
- 14 A. I can remember Doug saying them.
- 15 Q. In any event, you would understand that these are sorts
16 of things that men should not talk about - the very
17 sorts of things that men should not talk about.
- 18 A. Are you saying that George said those things and not
19 Doug?
- 20 Q. No, I am saying that they weren't said at all.
- 21 A. Well, no, they were said.
- 22 Q. You would know that they are the very sorts of things
23 that men should not talk about.
- 24 A. Men talk about everything.
- 25 Q. Maybe they do, but on women's business -
- 26 A. We talk to our husbands about everything too, so, you
27 know, it is no different.
- 28 COMSR
- 29 Q. I wonder if we could clear up a confusion. On the one
30 hand, I think you have told me that you weren't aware of
31 any Ngarrindjeri tradition about women's business not
32 being spoken about, as I understand what you have said.
- 33 A. No.
- 34 Q. As I understand it, you have said you understood that
35 whatever you discussed at the Bunkhouse wasn't to be
36 spoken of in front of the men. Is that your evidence.
- 37 A. Yes, that's what Doreen told us.
- 38 Q. So are you saying the reason you understood that was

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- 1 because Doreen told you not to discuss it in front of
2 the men.
- 3 A. Yes. She said that's why we had to ask for those women
4 to come over and not Mr Tickner, because we couldn't
5 discuss that women's business with men.
- 6 XXN
- 7 Q. The other part of your evidence was that, after Doug
8 said these things, at one stage Doreen said 'Oh yes, now
9 I can see'.
- 10 A. Yes.
- 11 Q. The clear inference of that is, and you correct me if I
12 am wrong, that Doreen first got the idea from the things
13 that Doug had said.
- 14 A. Yes.
- 15 Q. I put it to you that Doreen never said any such thing,
16 or did anything to give that view at all.
- 17 A. Yes, she did. She leaned across the table and she was
18 looking at the map, and that's what she said.
- 19 Q. Was this a great surprise to her.
- 20 A. Yes, it was.
- 21 Q. And a brand new revelation.
- 22 A. Yes, it was.
- 23 Q. A brand new revelation that had not apparently existed
24 beforehand.
- 25 A. That's right. She was as surprised as what the rest of
26 us were.
- 27 Q. At that very moment on 9th May in the Mouth House.
- 28 A. Yes.
- 29 Q. And not beforehand, on what you saw and what you heard.
- 30 A. She knew - she didn't know about the map until we got to
31 the Mouth House. She didn't know about the map in the
32 Bunkhouse because we didn't discuss it in the Bunkhouse.
- 33 Q. Is it still your evidence that George and Victor were
34 nearby when she said those words 'Oh yes, I can see it now'.
- 35 A. Yes.
- 36 Q. You would disagree with me if I put it to you that she
37 never said anything like that.
- 38 A. Yes, I would disagree.

1 CROSS-EXAMINATION BY MR MEYER

2 Q. Mrs Wilson, you have given evidence in relation to what
3 you have called the Ngarrindjeri Action Group, is that
4 right.

5 A. Yes, that's right.

6 Q. Do you know who the members of that group are.

7 A. No, I don't.

8 Q. If you do, can you list any of them for me.

9 A. I don't know all the members. I can say some of them.

10 Q. Would you, please.

11 A. There was Val Power, there was Muriel Van Der Byl, there
12 was Vi Deuschle, Shirley Peasley, I know from our group,
13 Isobel Norvill was involved, Eileen McHughes, Judy
14 Kropinyeri, Leah Rankine, and there was some other women
15 that went to one or two of the meetings, but they didn't
16 go to all of the meetings. But they were mainly the
17 ones that went to all of the meetings.

18 Q. In the minutes of the meeting that have been tendered,
19 there was a reference to Patrick Byrt, wasn't there.

20 A. Yes.

21 Q. Is Patrick Byrt a member of the group.

22 A. I don't know whether he was a member, but I know that he
23 went to a few of the meetings.

24 Q. Besides Patrick, are there any other men that you know
25 of who are members of the group.

26 A. I believe Kingsley Ahang went to a couple of the
27 meetings, and there was Greg Sinclair, Kenny Sumner. I
28 think they were some of the men that went to a couple of
29 the meetings.

30 Q. All of the women that you have named, as far as I am
31 aware, are women of Aboriginal descent.

32 A. Yes.

33 Q. Are there any women who are members of the group who are
34 not of Aboriginal descent that you know of.

35 A. No.

36 Q. The other topic upon which I wish to ask you some
37 questions is in relation to what has been called a
38 reconciliation meeting which took place at Camp Coorong

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(MR KENNY)

1 on 28 March 1994. Do you remember that meeting.

2 A. Yes, I did go to a reconciliation meeting at Camp
3 Coorong.

4 Q. As I understand the position, there were both Aboriginal
5 people and non-Aboriginal people at that meeting.

6 A. Yes, we had about 60 people - 50 or 60 people show up
7 for it. I think we had about 8 or 10 Aboriginal people
8 and the rest were the white people that showed up, yes.

9 Q. The white people who showed up, were they part of any
10 particular groups or anything of that nature.

11 A. No, there was groups from all around that came to the
12 meeting. Some came from Strathalbyn, some from Murray
13 Bridge, there was a group from Meningie, I think there
14 was one from Coonalpyn. So they were from all around.

15 Q. Do you know who were actual members of those groups.

16 A. No, I don't.

17 COMSR: Is there any further cross-examination
18 of the witness before she is released?

19 MR KENNY: There is one other issue that hasn't
20 been addressed, and Mr Tilmouth didn't address it
21 because it relates to the minutes. I, in fact, had said
22 to him that I would sort out the question of the
23 minutes. I just wish to seek some clarification.

24 CROSS-EXAMINATION BY MR KENNY

25 Q. Looking at exhibit 52, the minutes of the meeting of 30
26 July 1994, do you remember we were talking about them
27 before lunch.

28 A. Yes.

29 Q. I think before lunch you said you went to a later
30 meeting of the Ngarrindjeri Action Group, is that
31 correct.

32 A. Yes.

33 Q. Do you remember the date of that meeting.

34 A. No, I don't.

35 Q. You say it is at that particular meeting you were given
36 a copy of these matters.

37 A. Yes.

38 Q. They were passed and accepted.

- 1 A. Yes, they were.
- 2 Q. Was the meeting that you went to, was that the next
3 meeting after 30 July 1994. Do you recall that.
- 4 A. Yes, it was.
- 5 Q. So would that have been soon after 30 July.
- 6 A. Yes, it was.
- 7 Q. Was it in August 1994. Do you remember.
- 8 A. Yes, it was.
- 9 Q. How many meetings were held by the Ngarrindjeri Action
10 Group in August 1994.
- 11 A. I don't know. I only went to that one that was the next
12 one from this.
- 13 Q. Could that have been 11 August 1994.
- 14 A. Yes, it may have been.
- 15 Q. It might have been a Thursday, do you recall.
- 16 A. It was in the evening, yes, I recall that.
- 17 Q. During the week, do you recall.
- 18 A. Yes, it was.
- 19 Q. Was that at the Nungas Club.
- 20 A. Yes, it was.
- 21 Q. Were you working at the Nungas Club at that stage.
- 22 A. Yes, I was.
- 23 Q. So you stayed on after work.
- 24 A. Yes.
- 25 Q. So it was definitely during the week.
- 26 A. Yes, it was.
- 27 Q. And it was shortly after -
- 28 A. This meeting, yes.
- 29 Q. Were there any other Ngarrindjeri Action Group meetings
30 close to 11 August, or around there, that you recall.
- 31 A. No, I don't. Like I said, that was the only NAG meeting
32 I went to, the one that I went to at the Nunga Centre,
33 yes.
- 34 Q. That was the only one you heard of.
- 35 A. That was the only one I went to.
- 36 Q. Did you ever hear of any others during August.
- 37 A. No, I didn't.
- 38 Q. Did you work at the Nungas Club throughout August 1994.

1 A. Yes, I did.

2 Q. So it would be pretty unlikely that the Ngarrindjeri
3 Action Group held any other meetings at the Nungas Club
4 during that date.

5 OBJECTION Mr Abbott objects.

6 MR ABBOTT: How can she speak on that?

7 MR KENNY: If she was present.

8 XXN

9 Q. Lets assume it was 11 August 1994, and that was the only
10 meeting that occurred -

11 A. That was the only meeting that I went to at the Nungas
12 Centre, was the meeting, the next meeting after this
13 one.

14 Q. After that meeting that you went to, did you hear of
15 another meeting after that one.

16 A. No, I don't recall hearing about another one, no.

17 Q. But you never went to another -

18 A. No, I never.

19 Q. Is it true that you only ever went to one Ngarrindjeri
20 Action Group meeting.

21 A. Yes.

22 Q. You say at that meeting they approved the minutes of
23 Saturday, 30 July 1994.

24 A. Yes.

25 Q. Is it possible that in fact the minutes that were
26 approved of that meeting, the one you went to, were the
27 minutes of the meeting of 18 July 1994.

28 A. No. These were the minutes that we had, that was given
29 to us when we went into the meeting.

30 Q. So you believe it was actually these that you were
31 given.

32 A. Yes.

33 Q. So you say it definitely wasn't the meetings of 18.7.94.

34 A. What I am saying is that these were the minutes that
35 were given to us.

36 Q. And the minutes you are referring to there is the
37 meeting of Saturday, 30 July 1994.

3533

RF 43M

- 1 A. Yes.
- 2 NO RE-EXAMINATION
- 3 NO FURTHER QUESTIONS
- 4 WITNESS RELEASED

1 MR SMITH: The previous witness, Mrs Amon has
2 produced the activity report in relation to the fax
3 machine. I hand out copies to my learned friends on the
4 basis that, should it need explanation, she is here and
5 can explain it. It may be that it is obvious to
6 everyone and I can just put it into evidence.

1 I hand up the original to you.

2 DOCUMENT HANDED TO BENCH

3 Remember Mrs Amon said that she checked the activity
4 report? I've taken the liberty of marking the section
5 with the yellow sticker, which is no part of the
6 exhibit. You will see there that she said that the fax
7 ultimately didn't get away until the following day, so
8 if we go down the list, item number 14 is the fax with
9 the result `okay', and the telephone number there for Mr
10 Tickner, or the fax number, is actually not the number
11 that got through, and that's probably why the fax never
12 got through, there was an extra `2' in the previous ones
13 that didn't get through, and Mr Tickner's fax number is
14 probably (062) 73 4142, because that's the one that got
15 through on 13 May with the result `okay'. If everybody
16 is happy with that, I will tender it with no more
17 explanation, or I'll have the witness explain it.

18 COMSR: Does anyone require the witness to
19 explain, or are you satisfied for the document to go in?

20 MR ABBOTT: Provided it goes it on the basis as
21 explained by my learned friend, yes.

22 MR SMITH: If my explanation of that could be
23 agreed, it will save Mrs Amon getting back into the
24 witness box.

25 COMSR: Does anyone require Mrs Amon back into
26 the witness box?

27 MR MEYER: No.

28 MR SMITH: I ask that be tendered.

29 MR MEYER: It's a print-out for 11 May to 18 May.

30 EXHIBIT 208 Facsimile transmission report for the
31 period 11 May 1994 to 18 May 1994
32 tendered by Mr Smith. Admitted on the
33 basis of the explanation as given by Mr
34 Smith without the necessity for the
35 witness to be recalled to explain it.

1 MR SMITH CALLS

2 FRANCESCA WANITA CUBILLO-ALBERTS SWORN

3 EXAMINATION BY MR SMITH

4 Q. I think you are a curator in the anthropology division
5 of the South Australian Museum, is that correct.

6 A. That's right.

7 Q. Is this your third year in that employment.

8 A. It's going on the third year, by December it should be
9 the third year exactly.

10 Q. I think, in connection with this enquiry, you've
11 supplied a statement, have you not.

12 A. That's right.

13 Q. Looking at this statement produced to you, do you
14 recognise that as a statement provided to this

15 Commission on 31 July.

16 A. That's correct, yes.

17 EXHIBIT 209 Statement of witness Francesca Wanita
18 Cubillo-Alberts by Mr Smith. Admitted.

19 Q. I think you hold the degree, do you not, of Bachelor in
20 Aboriginal Affairs from the University of South
21 Australia.

22 A. That's right.

23 Q. Your studying for honours in anthropology at the moment.

24 A. That's right, yes.

25 Q. Near completion.

26 A. By 4 November I would have submitted, so yes, getting
27 close.

28 Q. Would you tell us your supervisors.

29 A. Initially my supervisor was Dr Deane Fergie and, since
30 then, I've now changed and Dr James - well, Professor
31 James Weiner.

32 Q. I think in May of 1994, you were approached by Steve
33 Hemming and Doreen Kartinyeri.

34 A. That's correct.

35 Q. For what purpose.

36 A. Well, I was approached by both Doreen and Steve in
37 regards to recording some information about Hindmarsh
38 Island, some information that was fairly sensitive and

- 1 secret, and that they asked if I'd be interested in
2 recording that information from Doreen.
- 3 Q. That was information about Hindmarsh Island, being
4 Ngarrindjeri women's sacred site.
- 5 A. That's correct, yes.
- 6 Q. When that request was made of you, in what way was that
7 done. Who attended before you, if that happened.
- 8 A. Well, I was in my office, and I was approached by both
9 Steve and Doreen, they both came into my office. I was
10 fairly busy at the time, we would have spoken for 10 to
11 15 minutes. I was unable to talk at that time or to
12 record the information, so I made an appointment for
13 Doreen to come back on the 19th between 12 and 2 to
14 record, and then in that way I would have all the
15 equipment and we would have the time, and it would be
16 done a lot easier at that time.
- 17 Q. Can I take you back to the time that they first
18 approached you, Steve and Doreen - and you can look at
19 your statement if you need to - the date they approached
20 you you have recorded in your statement as being either
21 or any one of 12, 13 or 17 May 1994.
- 22 A. That's correct.
- 23 Q. That range of dates you chose by reference to what.
- 24 A. By reference to my diary, because I'd written the
25 appointment down for 19 May in my diary, and I knew that
26 I had been approached, it definitely wasn't the day
27 before, it may have been a few days before, so I put
28 down the 12th and the 13th, being the Thursday or the
29 Friday. Monday, of course, was a public holiday,
30 Tuesday was the 17th, Wednesday I couldn't have made the
31 appointment because I had seminars, so Thursday - so
32 just by looking back, it was either the 12th, the 13th
33 or the 17th.
- 34 Q. Of May 1994.
- 35 A. That's correct.
- 36 Q. Steve and Doreen, did they say why they wanted you to be
37 involved in this way.
- 38 A. They asked me if I was interested, because they were

1 specifically looking for a woman anthropologist to
2 record this information. As in the statement as well as
3 in the conversation I had with Steve and Doreen, I made
4 it clear that I was certainly not an anthropologist, but
5 I would be willing to assist if it just involved
6 recording that information.

7 Q. You make the point in your statement, is it correct,
8 that you felt you had very little Aboriginal cultural
9 knowledge for the particular area, being the Hindmarsh
10 Island area.

11 A. That's correct. Both academically as well as
12 professionally I haven't worked in this area, therefore
13 I couldn't add or even do further investigations within
14 a short time, so I couldn't add anything at all except
15 for record the information.

16 Q. As you said before, you arranged for Doreen to meet with
17 you on 19 May between midday and 2.00, and you know that
18 because that's in your 1994 diary.

19 A. That's correct, yes.

20 Q. What happened then, was that appointment kept.

21 A. No, it wasn't. We are fairly hectic within our
22 division, so I guess later on in the day, it may have
23 been the day after, I mentioned to Steve 'Was Doreen
24 still interested in me recording this information', and
25 he said 'No', not to worry about it because they had
26 approached Dr Deane Fergie.

27 Q. Did that fuss you at all.

28 A. No, not at all. Studying part-time and working
29 full-time, and I knew that obviously Doreen, if she
30 wanted me to record the information, she would have
31 pursued it.

32 Q. However, did you get the equipment in readiness for
33 that.

34 A. Well, I did have - I knew where they were, I didn't have
35 them in my room at the time but yes, it wouldn't have
36 been too problematic to get my hands on.

37 Q. I think you had some contact with Steve Hemming
38 concerning a burial platform at around about this time,

F.W. CUBILLO-ALBERTS XN (MR SMITH)
XXN (MS PYKE)

1 didn't you.

2 A. It was - again, I didn't make any sort of note of this
3 in my diary, but it was around the end of April, early
4 May, that Steve just asked to use my computer, which had
5 our computer register of our database on it, our
6 collection database, and he was interested in a
7 particular burial platform, and he then used my
8 computer, and I asked him a few questions about it.

9 Q. He had access to your computer to obtain information
10 about a burial platform. You raised that matter with
11 one of the other anthropologists in the museum, did you
12 not.

13 A. I did, more out of curiosity. I'm from the Northern
14 Territory, and the particular group, the Larrakia
15 people, also have burial platforms, so I spoke with
16 Philip Clarke, I think it was the next day after in
17 regards to it, just to see about their practices in the
18 Lower Murray, and whether he was aware of the practices
19 up further north as well.

20 Q. Could you tell us what information you got from Philip
21 Clarke.

22 A. Well, no, I can't, really. I mean it was just a
23 conversation that I had with him in regards to it. He
24 said yes, that there was burial platform material that
25 we had in our collection and yes, he was aware of that.

26 Q. Did he, for instance, locate that for you.

27 A. No, because it wasn't my query, and in fact it was
28 Steve's query, and I was just curious over a certain
29 practice, and just discussed it further with him.

30 MR SMITH: I have no further questions. Again, it
31 may be that Ms Nelson will have an interest in this
32 witness, perhaps.

33 CROSS-EXAMINATION BY MS PYKE

34 Q. In your statement, in the last paragraph when you're
35 talking about Doreen not keeping the appointment of 19
36 May, you then say 'I approached Steve Hemming to know
37 whether Doreen still needed me to record this
38 information. He told me that Doreen was now recording

1 this information with Dr Deane Fergie'. Is that what
2 Steve Hemming said to you, that it was being recorded,
3 or that they were going to approach Dr Fergie to record
4 the information, or are you not able to accurately
5 recall exactly what was said.

6 A. No, I'm sorry, I can't. I do remember that his response
7 to me was 'No, you wouldn't need to record this
8 information with Doreen because' - and I don't know
9 whether he had organised it by that time, or whether
10 Doreen had or what, but yes, he did say that they were
11 doing it with Dr Deane Fergie.

12 Q. But you're certainly not now saying that that had
13 already been done in May 1994, as opposed to something
14 that they perhaps were going to do at some stage in the
15 future.

16 A. No, not at all.

17 Q. Could it be that so far as that conversation, in
18 particular the reference to Dr Fergie is concerned, that
19 you're mistaken as to the date of that, that Dr Fergie's
20 name may have been mentioned at some later stage, I put
21 to you more particularly in June of 1994.

22 A. No, not at all. I know that I asked Steve in regards to
23 whether Doreen wanted, and it was either the day after
24 or the day, I couldn't put a specific on that regard, to
25 the conversation, but no, I don't know what arrangements
26 Steve had made, neither Doreen, except his response to
27 me was that no, I wouldn't be required because they were
28 looking at getting Dr Deane.

29 Q. The only other question I have for you is this;
30 you've referred to the fact in your statement that Dr
31 Fergie was your supervisor for your thesis and it's now
32 Dr Weiner.

33 A. Professor Weiner.

34 Q. Is it the fact that your supervisor was changed on
35 account of Dr Fergie's commitments here, and not having
36 the time.

37 A. That's right, we had a conversation with her time being
38 consumed here with the commission, and that if I was to

F.W. CUBILLO-ALBERTS XXN (MS PYKE)
(MR MEYER)

1 expect to finish my honours this year, then it would be
2 best if I got someone else.

3 CROSS-EXAMINATION BY MR MEYER

4 Q. The witness answered a question to Mr Smith that she
5 couldn't tell us what the conversation was that she had
6 about burial platforms. I'm merely interested whether
7 that means because you can't remember or you can't
8 because you won't.

9 A. No, I can't, because I can't remember.

10 NO FURTHER QUESTIONS

11 COMSR: You may be released subject to this;
12 that Ms Frances Nelson may require you to be recalled
13 for cross-examination. We won't know for a little while
14 as to that, but you're released subject to that.

15 WITNESS STANDS DOWN

16 MR SMITH: That's all the evidence today. Could I
17 just put my friends on notice that Dr Philip Clarke is
18 the witness scheduled for tomorrow, and that the
19 commission is looking forward to people cross-examining
20 Dr Clarke and finishing Dr Clarke. He was the first
21 witness in this commission.

22 COMSR: We don't want to end up with him being
23 the last.

24 MR MEYER: Ms Nelson has started cross-examining
25 him, is my recollection.

26 MR SMITH: Ms Nelson won't be able to resume that.
27 I've spoken to my friends about that, and although she
28 will probably come back not before next week, they are
29 agreeable to pick up and do their cross-examination,
30 although it's out of order.

31 COMSR: Let me see if I follow this. Dr Clarke
32 will be cross-examined tomorrow by everyone except Ms
33 Nelson.

34 MR SMITH: Yes, unless Ms Nelson's matters are
35 suddenly resolved and she arrives here.

36 Then there's the outstanding matter of that MFI
37 exhibit.

38 MR ABBOTT: It's a tendered exhibit but suppressed.

- 1 MR SMITH: That's right. It's now completely
2 tendered, that minute.
- 3 COMSR: The question is of the suppression,
4 which will have to be considered. I don't propose to
5 make a ruling on that without having further looked at
6 it.
- 7 MR KENNY: I wanted to make some further
8 submissions. If we're going to continue to argue about
9 that, there were some further points that I wished to
10 put to you, if I may.
- 11 COMSR: What's been put to me is that the
12 suppression order should be lifted at this stage.
- 13 MR KENNY: Yes. The thing I wish to put to you is
14 that, as I understand it, all exhibits are restricted to
15 counsel and clients, except the statement.
- 16 CONTINUED

- 1 And that is the restricted statement, if I can call it
2 that, of Dorothy Wilson.
- 3 COMSR: Yes, I think we had her express approval
4 to release that.
- 5 MR KENNY: Sure, I don't have any difficulty with
6 that. And some of the transcripts of recorded
7 conversations, tape recorded conversations.
- 8 COMSR: There are some outstanding orders, where
9 people who are not connected with the matters before the
10 Commission, their names might have been used in a
11 particular way.
- 12 MR KENNY: Certainly.
- 13 COMSR: There are some outstanding matters of
14 that sort.
- 15 MR KENNY: Yes, but my understanding is all of the
16 exhibits, except those that I have mentioned, are
17 essentially suppressed. I am not permitted to give
18 copies of them to anyone else.
- 19 COMSR: That has been the practice up to date,
20 yes.
- 21 MR KENNY: Then I suggest that the practice should
22 continue for this exhibit, as well. Otherwise it is
23 very selective and, I say, deliberately damaging to my
24 clients to selectively release this document.
- 25 MR SMITH: It is not going to be released.
- 26 COMSR: It is not going to be released.
- 27 MR SMITH: It is not going to be issued or handed
28 out to anybody.
- 29 COMSR: There is always the possibility that
30 people have access to these matters from other sources,
31 is the only -
- 32 MR SMITH: There was evidence in the transcript
33 about the exhibit and the media have an interest in you
34 handling the suppression order that you have already
35 made, one way or the other, to know whether they can
36 report what is in the transcript about that exhibit. It
37 is not proposed that the document be released to the
38 public, because Mr Kenny is quite right, that would be

1 an exceptional circumstance to do that.

2 COMSR: Yes, there is always the problem, of
3 course, that one never knows what copies of a document
4 might be available from other sources. And I think that
5 is why the question of whether or not a suppression
6 order should continue has to be considered. I mean, I
7 don't know if you are following, Mr Kenny. It wouldn't
8 be handed out, even without a suppression order, but the
9 suppression order has this effect, that if in some
10 manner persons obtained a copy from another source,
11 well, in those circumstances, the suppression order
12 would protect it from publication, I would think.

13 MR KENNY: That is simply circumvented by Mr
14 Abbott's client, who has been a witness here, who has a
15 copy - obviously had a copy of it, giving it to the
16 press. I mean, if they obtain it from another source.

17 MR ABBOTT: I would like to assure Mr Kenny that my
18 client, in contradistinction to his, signed an
19 undertaking.

20 COMSR: Yes, what is the point you want to make,
21 Mr Kenny? Are you arguing for a continuation of a
22 suppression order?

23 MR KENNY: Yes, I ask that the suppression order
24 continue.

25 COMSR: I have indicated that I propose to
26 consider the document, in any case, before I make a
27 ruling on it.

28 MR KENNY: Certainly, I understood it was Mr
29 Abbott's request that it be distributed to the press.
30 They have certainly been asking for copies of it.

31 COMSR: The request is for the suppression order
32 to be lifted.

33 MR SMITH: The evidence is at about p.1046 and I
34 think the media want to know whether they can report
35 what is at about that place in the transcript, p.1043
36 onward.

37 COMSR: Right, yes. We will adjourn then.

38 ADJOURNED 4.08 P.M. TO THURSDAY, 12 OCTOBER 1995 AT 10.00 A.M.

1 COMSR STEVENS

2

3

4 HINDMARSH ISLAND BRIDGE ROYAL COMMISSION

5

6

7 THURSDAY, 12 OCTOBER 1995

8

9 RESUMING 10.15 A.M.

10 MR SMITH: As indicated yesterday, the programme
11 for today is the continuing cross-examination of Dr
12 Philip Clarke. It is envisaged that will take all or
13 most of the day. I have got some two or three questions
14 myself to ask Dr Clarke, at the outset, if I could do
15 that with your leave, so that counsel can then have that
16 material really to consider in the course of the passage
17 of the day and deal with it if they see fit to do so.

18 So, I recall Dr Philip Clarke.

19 WITNESS P.A. CLARKE ENTERS WITNESS BOX

20 COMSR

21 Q. Dr Clarke, we are in public session, of course, and the
22 usual restrictions apply, that nothing that is said in
23 the public session is to be of a nature which brings
24 into play the provisions of s.35 or otherwise discloses
25 anything that is confidential and should be held in
26 private session.

27 A. Yes.

28 FURTHER EXAMINATION BY MR SMITH

29 Q. I remind you that you are on oath from about eight weeks
30 ago or thereabouts.

31 A. I remember.

32 Q. I produce to you a document entitled 'Kaurua Higher
33 Education Journal', issued to April 1992. Can I ask you
34 to turn to a section relating to the Onkaparinga River.
35 Do you have that.

36 A. That's right.

37 COMSR

38 Q. First of all, what is the nature of that journal. What

1 is it.

2 A. It is a journal where a number of authors have published
3 papers on a variety of topics. It is produced by the
4 University of South Australia and it is entitled the
5 'Kurna Higher Education Journal', so it is a journal
6 that specifically looks at Aboriginal topics and is
7 produced from here in Adelaide.

8 Q. Having been produced, what is its circulation.

9 A. It would be used for students, researchers, general
10 public. So, it is public information. People can go
11 and look up this journal from the library.

12 XN

13 Q. Is it available for studies in schools. Do you know
14 whether it is used for that purpose.

15 A. I believe so. I believe that is the aim of the journal.
16 It is the 'Kurna Higher Education Journal', so all
17 information in it would have to be suitable for use in
18 educational facilities.

19 Q. I have asked you to locate a section on the Onkaparinga
20 River and you have turned to that. What page is that.

21 A. That is p.67.

22 Q. And it is entitled.

23 A. 'The cultural significance of the Onkaparinga River'.

24 Q. I think that document or one like it was drawn to your
25 attention on an occasion in late July of this year, is
26 that correct.

27 A. That is correct.

28 Q. By whom.

29 A. By one of the authors. This paper was written by Mr
30 Lewis O'Brien and Ms Georgina Williams of the Kurna
31 people. It was brought to my attention by Mr Lewis
32 O'Brien.

33 Q. In an informal conference with him late in July 1995.

34 A. That's correct.

35 Q. Not predominantly with him, but he was present.

36 A. That's correct.

37 Q. You have perused that section on the Onkaparinga River
38 written by Lewis O'Brien and his co-author, is that

1 right.

2 A. That's right.

3 Q. In a nutshell, that asserts what exactly.

4 A. It asserts that the Onkaparinga River represents the
5 body of a female ancestor.

6 Q. And is a women's site.

7 A. Yes.

8 Q. It asserts that because of what precisely.

9 A. Predominantly the features of the map.

10 Q. I think it features a UBD Adelaide street directory,
11 showing the configuration of the river as it enters the
12 sea at Port Noarlunga.

13 A. That's correct.

14 Q. Can I take you to p.69 under the heading `Similarity
15 between river shape and reproductive organs'.

16 A. Yes, I have it here.

17 Q. Do you see that.

18 A. Yes.

19 Q. For the sake of the record, could you read to us that
20 very small paragraph there.

21 A. The first paragraph?

22 Q. Yes.

23 COMSR

24 Q. And, just before you do: and that is a publicly
25 available document that you are reading from.

26 A. That's correct. This is a quote `The map of the mouth
27 of the Onkaparinga River region shows a connection
28 between the shape of the river and the reproductive
29 organs of a woman. A glance at an anatomy book confirms
30 this against the outline on the map. Not only did it
31 show the organs in one view, a side view, but also in
32 another view as well, which was a frontal view of the
33 reproductive organs. It followed from then that Kaurna
34 people knew much about anatomy.' There is a little bit
35 more Teichelmann and Schurmann sort of translation. I
36 don't think that is relevant.

37 Q. Just so that I am clear about this, who are the Kaurna
38 people.

1 A. The people - or they are considered to be the people who
2 lived in the Adelaide region from Cape Jervis through to
3 roughly or across the Adelaide plains on the western
4 side of the Mount Lofty Ranges through to about Crystal
5 Brook and then out to the gulf. So, a sort of slither
6 of land on the western side of the Mount Lofty Ranges.

7 Q. I don't know if you know this, but you say that was
8 intended for some classes.

9 A. Yes, this is a publication that puts forward papers to
10 be used by students and researchers.

11 XN

12 Q. Then that is asserted to be a site of significance, is
13 it not, later in the article.

14 A. That's correct.

15 Q. For what reason, apart from its similarity. If you
16 could go to p.70, at the top of the page.

17 A. There is a section titled 'A site of significance', and
18 it reads, this is a quote 'This was and still is known
19 as a site of significance for Kaurna women of the
20 Adelaide plains. While men fished on the sea side of
21 the river, the women held their ceremonies in this area.
22 Old photographs of the area, which shows sea shells
23 placed in designs on the sand near the river.'

24 Q. Then I think the article asserts some implications for
25 that land in terms of protection.

26 A. Yes, it says, this is another quote 'The Kaurna people
27 believe all sites such as these should be preserved and
28 protected.'

29 Q. And brought to the public's attention, does it saying
30 anything about that.

31 A. It says, in another quote 'From an educational point of
32 view the more that is known and told of these sites the
33 more people will understand the connection between
34 Aboriginal people and the land.'

35 COMSR

36 Q. And that is a book which, as you understand it, would be
37 used in various classes.

38 A. I don't have - well, it is the type of paper that you

1 would refer to in course hand-outs and it is written by
2 Aboriginal people. It is putting forward their view of
3 the landscape and what they want the white public -

4 Q. Yes, I appreciate that.

5 A. And it would be used by students.

6 COMSR: Yes, I think, until I have more
7 information about its circulation, I would be inclined
8 to just suppress that material, for the time being, Mr
9 Smith.

10 MR ABBOTT: Your Honour should perhaps know that one
11 of the other co-authors is Gough Whitlam. I think you
12 ought to look at the entire book, to see what sort of a
13 publication it is. It is hardly one for any closed
14 community.

15 COMSR: You appear to be looking at something
16 different.

17 MR ABBOTT: Your Honour has only been referred to
18 one article in it, but there are a number of articles in
19 it and you ought to see the work as a whole, I think,
20 before you decide.

21 XN

22 Q. Can I just get you to deal with one other topic which is
23 canvassed in that section of the publication and that is
24 the question of the aerial visualisation. I think the
25 authors deal, do they not, with the question of whether
26 or not Aboriginal people could visualise a map, if you
27 like, of the land and therefore draw conclusions from
28 it.

29 A. That's correct. They use an example from another part
30 of the State, another myth, to argue that people could
31 have this perception of the landscape that corresponded
32 to a map. There is a direct quote here `The story of
33 Lake Eyre (made from a kangaroo skin) shows a strong
34 visual image of the outline of the lake. Showing that
35 Aboriginal people can visualise a map-like view of an
36 area of land.'

37 EXHIBIT 210 Kaurna Higher Education Journal tendered
38 by Mr Smith. Admitted.

- 1 Q. Could you, by reference to other material if you need
2 to, comment on the concepts that are raised by that
3 article by Lewis O'Brien and others in that exhibit.
- 4 A. That article represents another example of what a body
5 of literature in anthropology has more or less predicted
6 would happen. There is a body of literature talking
7 about the symbolism of the landscape as being, or the
8 landscape as being symbolic of mother earth. The
9 literature I am referring to is a series of papers and
10 books written by Debra Bird Rose and Tony Swain. I have
11 a couple of extracts from those.
- 12 Q. First of all, looking at this document I produce to you,
13 which is an Encyclopaedia of Aboriginal Australia, the
14 general editor being Dr David Horton, a 1994
15 publication, is the concept you have spoken of
16 elaborated upon in that.
- 17 A. Yes, in this encyclopaedia there is an entry by Debra
18 Bird Rose titled 'Contemporary Religion', and the last
19 part, the last paragraph of this entry talks about
20 Aboriginal - modern Aboriginal spiritualism.
- 21 Q. In what way does it relate to what we have just seen in
22 the Kurna Higher Education Journal article.
- 23 A. This, combined with other things that Tony Swain has
24 written, bring to the attention of anthropologists that
25 there has been a movement over the last 20 or 30 years
26 in the Aboriginal community to appropriate from
27 nonAboriginal sources, that is, European sources, models
28 of mother earth. And, in a sense, Aboriginalise this
29 and pass it back as their own. I am talking
30 particularly and Debra Bird Rose is talking, in
31 particular, of the southeastern region of Australia.
32 This phenomenon doesn't seem to be taking hold in other
33 areas of Australia. It is predominantly the parts of
34 Australia where Aboriginal people have suffered most
35 from contact with nonAboriginal people.
- 36 Q. And the mother earth concept of Tony Swain I think is
37 found in a publication entitled 'International Review',
38 or perhaps you could identify it for us. Looking at

1 what I produce to you - and that publication is, what,
2 first of all, could you identify it for us.

3 A. It is a paper titled - this is by Tony Swain. It is
4 titled 'The Mother Earth Conspiracy: an Australian
5 Episode', and it appears in a publication, a journal
6 publication called Numen and it is volume 38 and it was
7 published in 1991.

8 Q. What is the nature of that publication.

9 A. This is a journal that focuses on the study of religion.
10 It is titled 'Numen', but it is subtitled 'International
11 Review for the History of Religions'.

12 Q. It is a publication which is in libraries and available
13 to the public on an international basis, is it.

14 A. Yes, and it is another form of an argument, a series of
15 publications that Tony Swain has put elsewhere,
16 including a couple of books.

17 Q. The thrust of the article, 'The Mother Earth Conspiracy'
18 it is called, is it not.

19 A. It is arguing that the landscape, the Australian
20 landscape, as a colonised entity, has taken on the
21 symbolic role of mother earth. And there is a quote
22 here that I think sums it up, if I am permitted to read
23 it out?

24 Q. Yes.

25 A. 'Far from being an ancient belief, it is argued that
26 Mother Earth is a mythical being who has arisen out of a
27 colonial context and who has been co-created by white
28 Australians, academics and Aborigines. Her contours,
29 in fact, only take shape against a colonial background,
30 for she is a symbolic manifestation of an "otherness"
31 against which westerns have defined themselves.'

32 COMSR

33 Q. You appreciate that it is not any role of this
34 Commission to determine whether or not the concept of
35 women's business exists or not. I am concerned with the
36 particular issue before me.

37 A. I guess I am - I am arguing that this is - this
38 literature provides an explanation for why I have argued

1 that secret sacred women's business on Hindmarsh Island
2 is a very recent phenomena. It is - through my
3 cross-examination, a lot of the questions sort of
4 resolved around previous ethnographers missing
5 something. And I am saying, well, they didn't miss
6 anything. And here is a model which is relevant to an
7 area much bigger the Lower Murray. It takes in the
8 whole of southeastern Australia. A model that explains
9 quite a bit of the formulations of the Aboriginal
10 secret sacred women's business on the Hindmarsh Island.
11 So, I think it is quite crucial to put that forward, as
12 a way of fleshing out the ethnography that we have
13 already gone through in the Commission.

14 MR SMITH: I tender those two documents, first of
15 all, the encyclopaedia, or it is an extract from the
16 Encyclopaedia of Aboriginal Australia.

17 XN

18 Q. Perhaps, before we hand that up, could you identify the
19 precise section that you would have us refer to.

20 CONTINUED

- 1 A. In the encyclopaedia.
2 Q. Yes, in the encyclopaedia.
3 A. It is in volume 1.
4 Q. I mean on the document itself.
5 A. It is the last paragraph on the entry of `Contemporary
6 Religion'. It starts on p.222 and ends on p.223. The
7 paragraph that I refer to is on p.223 on the first
8 column, second paragraph down, commencing `An emergent
9 movement of spiritual revitalisation' down to `conquest
10 of the continent.'
11 A. That's correct.
12 EXHIBIT 211 Extract from Encyclopaedia of Aboriginal
13 Australia `Contemporary Religion', and
14 extract from Numen, `International
15 Review for the History of Religions'
16 tendered by Mr Smith. Admitted.
17 Q. Is the point you are making, in essence, that your view
18 is that secret women's business is a recent invention.
19 A. In relation to Hindmarsh Island as part of the Lower
20 Murray secret sacred women's business, yes.
21 Q. And the documents, particularly the two extracts marked
22 Exhibit 211, purport to explain, if you like, what may
23 be the basis of this recent invention.
24 A. That's correct.
25 Q. Exhibit 210, that is the Kaurua Higher Education Journal
26 article by Lewis O'Brien and others, is yet another
27 example.
28 A. That's correct.
29 COMSR: Ms Pyke, you will know the nature of
30 your cross-examination better than I do. Of course,
31 with an anthropologist one has to be certain that we are
32 not going to touch on subjects which should be dealt
33 with in private hearings. I will have to be guided by
34 you as to whether or not you consider it appropriate
35 that we should be having this evidence in private.
36 MS PYKE: I do not think at this stage. If there
37 comes a point where I believe, or indeed my client
38 believes, I am heading into dangerous territory, we will

1 certainly stop at that stage and consider the matter
2 further.

3 COMSR: Yes. Anything which requires the
4 recourse to the Section 35 authorisation will naturally
5 require a closed court for that.

6 MS PYKE: Yes, it can become a little messy, but I
7 cannot see a way around it.

8 COMSR: I think Dr Clarke is alert to the fact
9 that, in his answers, he has to be careful.

10 MR MEYER: Before my friend starts, if I could just
11 say, on a completely different subject, I undertook
12 yesterday to measure the courtroom, and I have. For the
13 purposes of the evidence of Mrs Wilson yesterday, the
14 courtroom is 14.5 metres from the wall behind you to the
15 wall with the green board on it, and it is 4.4 metres to
16 the little recess at the back, and the sheriff's officer
17 assisted me in the measuring.

18 CROSS-EXAMINATION BY MS PYKE

19 Q. Before we get too far underway, there have been various
20 phrases utilised by you in the course of your statement
21 and your evidence, and indeed in your thesis. I just
22 want to clarify with you in what context you are using
23 some of these words so that I am not at cross-purposes,
24 or, if I am, I can more readily define it. The phrase
25 `women's business', when you use that, what do you mean
26 by it.

27 A. `Women's business', just by itself, I would mean any
28 business that women would conduct as women separate from
29 men, or perhaps more precisely, any business that they
30 predominantly do separate from men, which would take in
31 avoidance as well as, in its broadest sense of the word,
32 secret sacred business.

33 Q. So its more limited meaning is what women may do
34 separately from men with no context of secret and
35 sacred, but you -

36 A. It is not really my definition. It would be an
37 Aboriginal English definition.

1 Q. The phrase `secret sacred women's business', when you
2 use that phrase, in what context are you using it.

3 A. Largely on the basis of the use as it has been put
4 forward by the proponent women, that is, secret sacred
5 business that only women know and are responsible for.
6 In my evidence so far I have, in a sense, criticised the
7 use of that by the proponent women, by saying that they
8 essentially - what they are putting forward is a secret
9 secret sacred women's business, that is, secret sacred
10 women's business that only they knew about in terms of
11 even existing.

12 COMSR: We seem to have skipped one hurdle, as it were.
13 You were asking about women's business and then secret
14 sacred women's business.

15 MS PYKE: Yes. I am about to get to a third one,
16 which is secret women's business. You are right they
17 are a bit out of order.

18 XXN

19 Q. `Secret women's business'.

20 A. Have I used that at all in my statement or thesis?

21 Q. Is that a phrase that you have heard before.

22 A. As I'm sitting here, no. I would probably ask - if that
23 statement was put to me or I read that statement, I
24 would ask whether it was women's business or secret
25 sacred women's business. So I would ask for more
26 information.

27 Q. Insofar as you're concerned, secret women's business
28 isn't a terminology that you would use. You would
29 either have `women's business' or `secret sacred women's
30 business', and an extra category `secret secret sacred
31 women's business'.

32 A. No, no. It really depends on what we are describing.
33 There is a whole wide range of possible behaviour that
34 one might want to categorize. I certainly wouldn't want
35 to push all cultural activity of either gender into neat
36 little categories like that. I would look for terms
37 that were, in the manner I was going to use them, less
38 ambiguous. So it would really depend on what audience

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1 one was writing to, and what definitions had already
2 been set up in that paper. As long as people define
3 what they mean by those categories that you have just
4 outlined. Any terminology is acceptable as long as the
5 reader knows exactly what comes loaded with each of
6 those terms.

7 Q. `Business'. What is incorporated in the concept of
8 `business' in the sense of `women's business' or `secret
9 sacred women's business'.

10 A. `Business' could be very broad. It could mean ceremony,
11 it could mean practices, rituals, all manner of things.
12 Certainly not restricted to ceremonial activity.

13 Q. You have used the word `tradition'. What do you mean by
14 that word.

15 A. `Tradition' is beliefs, customs, practices in the
16 general sense. But the use of `tradition' implies some
17 form of passing on those practices, not necessarily in
18 modified form. I think that is as simple an explanation
19 as any.

20 Q. So beliefs, practices or customs that are passed on - I
21 cannot understand what you are saying.

22 A. There can be modern traditions that may relate to a
23 fairly short period of time, and there might be older
24 traditions that relate to back to a pre-European time.
25 There is a lot in between.

26 Q. So you are not using `tradition' in the sense that it
27 only relates to a period of hundreds or thousands of
28 years.

29 A. The way I would use it in the style that I most often
30 write would be - I would preface it with something like
31 `pre-European' tradition, `historic' tradition,
32 `mission' tradition. I would make it quite clear what
33 period of time, or what cultural area the tradition was
34 being linked to.

35 Q. When you use the phrase `modern tradition', what do you
36 mean by that.

37 A. In what context have I used it? Have you got an
38 example?

1 Q. You used the phrase in your answer 'modern tradition' -

2 A. A modern tradition could be one that's - I guess there
3 is no time limit to it, but one that's come into being
4 in relatively recent times. It might be 60s, 70s or
5 80s, and it has been put forward and owned by a
6 community of people as a belief, custom or practice.

7 COMSR

8 Q. Does it have to have a minimum age before something can
9 be termed a tradition, or can it be something that is
10 discussed one year and it is tradition the next, or what
11 is the situation.

12 A. There is a little bit of danger in coming up with a sort
13 of dictionary definition of 'tradition' and making that
14 - in contrast to an anthropological one, I guess. In
15 terms of an anthropological term definition of
16 'tradition', one would need to demonstrate there was a
17 community of people that owned that tradition, that
18 believed in it, and were actively involved in it in some
19 manner, that that tradition had some historical depth,
20 even if it has been just a matter of a year or two. I
21 would want, from an anthropological point of view, to
22 put a time limit, but something that - some pattern of
23 cultural behaviour that seems to be repeating itself and
24 there's knowledge by those participants that it is being
25 repeated, and there is some importance put onto that
26 repeating of that practice.

27 Q. I am still not clear. At some stage a practice becomes
28 a tradition. Is that what you are saying.

29 A. I suppose 'tradition' could be art work, it could be
30 songs, it could be tradition that men went out in a
31 certain direction to hunt. It is a really broad
32 category, and one would want to use those terms
33 carefully when embedding it in texts, to make sure that
34 the surrounding texts actually defined what 'tradition'
35 meant in that case.

36 XXN

37 Q. Tradition, as you define it, within a community, not
38 every member of the community has to have the same

1 belief, if I can put it, or practice to make it a
2 tradition.

3 A. Yes, you have come up into an even bigger problem of how
4 to define a community. One could say a community could
5 be people living at a certain settlement; or a community
6 could be, for example, all Aboriginal people who see
7 ties to particular landscape; or a community could
8 include you and I and Aboriginal people in a broader
9 Australian sense. So one would have to be - in order to
10 answer that, I would need to know what definition of
11 'community' you were really wanting me to address in
12 relation to what is a tradition.

13 Q. As a general example, there is a community of Aboriginal
14 people living at Point McLeay and some people have a
15 particular tradition, or piece of information which is
16 passed down either within their family or for some other
17 reason, and other people don't have that tradition or
18 information. I am simply putting to you it is not
19 necessary for every person in a particular community to
20 have the information or practice to enable it to be a
21 tradition.

22 A. Yes, it is a complex question, because I wouldn't, for
23 starters, agree that individual families in a small
24 rural community would be isolated enough from other
25 families living on the community. I mean, there are so
26 many interconnections that in order to define family - I
27 mean, I am throwing up all these problems of
28 definitions, but that is what anthropology is about.
29 The moment one overgeneralises about those definitions,
30 the rot sets in and the whole model goes. So I am not
31 really able to answer that, because I don't agree with
32 the model of a community in terms of it being made up of
33 rather distinct families that you have put forward.

34 Q. I will get back to that in another context. Do you
35 distinguish between practice and tradition.

36 A. Practice can be part of tradition. As I said, tradition
37 is a very broad term, even in its anthropological
38 context. So a practice that gathers some sort of

- 1 history in the sense of repeating itself can be a
2 tradition, yes, but not all practices are traditions.
- 3 Q. Is there any criteria that you would point to that will
4 distinguish a practice that has become tradition, as
5 opposed to a practice that is not tradition.
- 6 A. One would probably, first of all, take the
7 anthropologists' sort of remote position in the sense of
8 observing how communities are interacting, but at the
9 same time the communities' perceptions of what are their
10 traditions are important as well. And here I am, of
11 course, using the same terms that I said need to be
12 defined, but it would be like most anthropology, you
13 would combine outsider and insider perspectives and
14 hopefully come up with a meaningful model of what is
15 going on, and therefore being able to say these beliefs,
16 customs, practices, whatever, are traditions.
- 17 Q. Is it fair to say that the concept of what is or is not
18 tradition, is a very broad, grey area that is not
19 capable of discrete definition.
- 20 A. No, I think any competent anthropologist who was
21 injected into an ethnographic situation, even using
22 quite ranging techniques, would come up with a similar
23 model of what was going on. I mean, if that was not the
24 case, then anthropology would have nothing whatsoever to
25 offer indigenous people whatsoever. I mean, although
26 there is many factions in social anthropology, there is
27 certain things that anthropologists - social
28 anthropologists look for, and any competent
29 anthropologist would be expected to arrive at a somewhat
30 similar position at the end of their study. Although, I
31 fully agree that each person's relationship to a
32 community varies, so there will be slight differences on
33 stress, different perspectives. But depending on what
34 the aim is of the study, if the study, for example, was
35 looking at sacred sites or mythologies and things like
36 that, you would expect that there would be a core that
37 all anthropologists would come up with once they had
38 done field work.

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1 CONTINUED

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- 1 Q. The use of the term culture as you use it.
- 2 A. Again, are we talking about how - I would use culture in
3 a variety of ways depending on how I was writing.
4 Culture is, in its broadest sense, is sort of way of
5 thinking and being for a group of people, but it's still
6 open to just the same problems of putting one culture up
7 against another. I mean one person could be a member of
8 several cultures just by being part of broader
9 Australia; part of a pub culture, part of an Aboriginal
10 culture, part of a bikie subculture. It's not really a
11 term that you could map without an anthropologist
12 setting up their own definition of culture for a
13 particular example, for a particular reason.
- 14 Q. So the definition of culture changes in the
15 circumstances.
- 16 A. In the circumstances that an anthropologist uses it, but
17 it could also change in the circumstances in which a
18 member of a culture would use it as well, depending on
19 contact.
- 20 Q. I'm just really wanting to make sure, when I get to the
21 body, that I understand what you're talking about.
22 Cosmology.
- 23 A. Cosmology could be used in two main ways, although
24 closely related. I've written a number of pieces - or
25 published one as a paper, the other appears in my thesis
26 - where I'm looking at, from historical records,
27 developing a model of how Aboriginal people in the
28 preEuropean period and the early period of European
29 settlement visualise the space that they lived on, and
30 it's quite clear from the historical records, and from
31 comparative studies elsewhere in Australia, that the sky
32 world was another landscape, and one which was quite
33 closely related in terms of the events on the
34 terrestrial landscape. Cosmology, in the sense of the
35 study of that relationship, would not only provide a
36 view of the world which a cultural group would consider
37 that they were part of, but it would also map out the
38 celestial bodies. As I've said, sometimes cosmology is

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- 1 used just as a convenient term of referring to the map
2 of heavenly bodies but, in its more anthropological
3 sense, it would be mean an explanation of the model that
4 Aboriginal people had of the world that they were part
5 of, they were living in, and that cosmology could be
6 quite different from, say, a 20th century Australian
7 model of our cosmology, which would be quite different.
- 8 Q. In the sense that you use cosmology, again can that be
9 something that is a changing concept.
- 10 A. It would change, depending on how I was using it and how
11 I was defining it. In my thesis, I sort of home in on
12 the star charts but, at the same time, I do provide that
13 overview of the total landscape. I've also written a
14 number of papers about it which I could refer you to, if
15 it's necessary.
- 16 Q. No. There are various references in your evidence to
17 ethnography. What do you mean when you talk about an
18 ethnography, or doing an ethnography.
- 19 A. An ethnography would be a compilation of data that
20 relates to a particular cultural group, and it's often
21 something - it could be used in the context of an
22 anthropologist who would consult a number of other
23 ethnographies and historical sources, and doing their
24 own fieldwork, and then that anthropologist would
25 produce their own ethnography which would have had input
26 from other ethnographies of the same group, and other
27 sources of information, so it's cultural information
28 about a culture, or a subset of a culture, or a group of
29 people in general.
- 30 Q. The phrase or the words 'cultural geography', that is
31 particularly referred to in your thesis.
- 32 A. Cultural geography is a subdiscipline that is part of a
33 much broader discipline of human geography. Cultural
34 geography came into being more or less in the 1950s in
35 America, and some of the work of Norman B. Tindale falls
36 into that category. It's basically looking at how
37 culture, as a entity, relates to landscape, and how
38 ultimately there is an interplay between culture and

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1 landscape, a dialectic, whereby changes in the culture
2 can be in response to changes in the landscape and vice
3 versa, so it's a subdiscipline that focuses on the
4 relationship between culture and landscape, but
5 landscape could also be sometimes defined more broadly
6 as physical environment.

7 Q. When you talked about ethnography - sorry, just
8 backtracking - you suggested that that related to - and
9 I'm paraphrasing here, and correct me if I'm wrong - the
10 obtaining of cultural information about a particular
11 group. Are you talking about obtaining the cultural
12 information in a particular way when one does an
13 ethnography.

14 A. One would want to make sure, if they were receiving
15 ethnographic data from a number of different sources,
16 that they had a model of weighing up the relevance of
17 particular bits of data, and perhaps whether some parts
18 of that data are biased, so one would want a model of
19 how to, say, use historic data, and measure that in and
20 add that to contemporary fieldwork, for example and, in
21 a sense, that's what my thesis was about, where I was
22 relying a lot on the historical information initially,
23 and then blending that with contemporary fieldwork, and
24 then coming up with, you know, a model of a changing
25 relationship to the landscape from preEuropean past to
26 the present.

27 Q. Is the principal source of information, when doing an
28 ethnography, fieldwork and participant observation.

29 A. In many areas it has to be. If you're working in the
30 highlands of New Guinea, you can be pretty sure that the
31 historical sources are perhaps going to be a bit
32 peripheral to judging kinship and social behaviour of a
33 particular group of Melanesians, whereas in other areas
34 - and my thesis argues this - where a cultural group has
35 been in close proximity and interacting with another
36 cultural group for 150 odd years, that that historical
37 data is essential in terms of describing the
38 relationships over time between those various cultural

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1 groups. So I would not say, in general, that you could
2 say whether producing an ethnography relies on one more
3 than the other. I mean some anthropologists who are
4 doing an ethnography of some group of people in the
5 Middle Ages, for example, are certainly not going to go
6 back and do fieldwork so, you know, you rely on what you
7 can get and then, hopefully, you develop a model to tell
8 the reader what the ethnographic data can tell people,
9 tell the anthropologists.

10 Q. You've used the phrase 'social anthropology' at times.
11 What do you mean by that.

12 A. Well, social anthropology, in a sense, is the type of
13 anthropology that's taught at the University of
14 Adelaide, so a lot of the issues that lecturers, and
15 publications that come out of that department, are
16 focused on would be considered social anthropology.

17 Q. I want to know what you mean by it.

18 A. Social anthropology would be focusing on relationships
19 within a culture. It can mean, in the case of some
20 anthropologists, using historical data, it can mean
21 focusing on, you know, kinship, social inequality, but
22 all the time linking it back to concerns about culture.

23 Q. The phrase - I've just noted some phrases, I've gone
24 through various things that you've done, be it in your
25 evidence or your report - cultural anthropology.

26 A. Cultural anthropology, that relates to a rather, you
27 know, narrow band of writing, I think primarily by
28 people like Keesing. Through the first chapter in my
29 thesis, I sort of sum up the perspectives of a wide
30 range of subdisciplines. I suppose there would not be
31 much difference, on the surface at least, between a
32 cultural geographer in some situations, and a cultural
33 anthropologist. When you got down to such, what I'd
34 consider 'small fields' like that, you would really have
35 to define them by who are the main anthropologists who
36 are writing in that particular tradition in that
37 particular time.

38 Q. You also used, or indeed have been described as, 'a

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1 human geographer'.

2 A. As I have already said, cultural geography is part of
3 human geography, and some of the writing by geographers
4 - such as Buttimer from Europe, that influenced my
5 thesis - were from people who considered themselves more
6 to be phenomenologists within the human geography
7 category, so I guess, well, what I am doing when I refer
8 to myself as a human geographer, is just allowing myself
9 to be a little bit more eclectic and stand back a little
10 from cultural geography. In a sense, I can be
11 considered a social anthropologist, a cultural
12 geographer, a human geographer, I write in material
13 cultural studies, so there are many hats that one could
14 wear, depending on what position one is taking when
15 writing or engaging in some sort of scholarly exchange.
16 I could also be considered an historian in the sense
17 that I write for Aboriginal history as a journal, for
18 example.

19 Q. Well, you have indeed. When you commenced to give
20 evidence, you were described as anthropologist, human
21 geographer and historian.

22 A. From my memory, it was originally said that I was an
23 anthropologist and historian, and I corrected Mr Smith
24 and said 'Well, I can be an historian in some
25 situations', but I prefer to call myself, on the basis
26 of how my PhD thesis was submitted, and bearing in mind
27 my PhD thesis is the most significant thing that I've
28 written, and that was submitted jointly as a social
29 anthropology/cultural geography thesis, so at this
30 stage, officially, I prefer to rest on those
31 definitions, but it's wrong to pigeonhole people working
32 in this area, particularly Aboriginal studies, in any
33 particular category.

34 Q. Yes. Indeed in your evidence it was put to you this by
35 counsel assisting, 'I think you are an historian and
36 anthropologist currently in the employ of the South
37 Australian Museum, is that correct', and you said
38 'Rather than as an historian, I would rather classify

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- 1 myself an an anthropologist and human geographer, but I
2 do frequently employ the methodology of an historian'.
3 A. Yes. I accept that, yes.
4 Q. On what basis do you classify yourself as an
5 anthropologist.
6 A. As I've just said, the thesis was submitted in social
7 anthropology and cultural geography. My Bachelor of
8 Arts work was a double major in social anthropology, and
9 one of my thesis supervisors was a social anthropologist
10 - no, sorry, two of my three supervisors were social
11 anthropologists.
12 Q. Are you a member of any professional body as an
13 anthropologist.
14 A. I'm a member of the local Anthropology Society of South
15 Australia. I have, in the past, been a member of the
16 Australian Anthropology Society. I'm not presently a
17 member of that society.
18 Q. When you talk about that, are you talking about the
19 Australian Anthropological Society, the professional
20 body of anthropologists.
21 A. That's right.
22 Q. When were you a member.
23 A. It was some years ago. My interests have broadened out,
24 and I ceased paying membership and withdrew.
25 Q. Can you tell us how many -
26 A. It would be more than three years. I can't specify
27 more.
28 Q. At the time that you were a member of the Australian
29 Anthropological Society, was that at a time when it was
30 a learned society rather than a professional body.
31 A. I'm not quite sure of the distinction between `learned'
32 and `professional'.
33 Q. Have you made any recent application to become a member
34 of the Australian Anthropological Society.
35 A. No, I haven't.
36 Q. You're not bound by the rules and the rules of ethics by
37 that society, presumably.
38 A. I'm bound by much tighter rules of ethics which would be

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1 ones which are imposed within the State Government and
2 the Museum, so there's no - and also in the course of
3 doing my PhD, of course, I was bound by the ethics, the
4 various ethics codes that the university imposes on its
5 students.

6 Q. I'm just talking, at the moment, about your
7 classification of yourself as an anthropologist. My
8 reading of your thesis, for example, is that it was -
9 and I'll give you the page numbers, it might be that you
10 are so familiar with your thesis that you know it off by
11 heart - but you've described it as an exercise in
12 cultural geography.

13 OBJECTION Mr Meyer objects.

14 MR MEYER: Unless there is some distinct direction
15 that this question is going in, either Ms Pyke puts that
16 Dr Clarke isn't an anthropologist, or he is not an
17 expert, or he is not suitably qualified, rather than a
18 long and detailed charade about membership applications
19 and matters of that nature.

20 CONTINUED

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- 1 MS PYKE: I am not sure what the basis of his
2 objection is, or what relevance it is to him.
- 3 MR MEYER: Relevance and time.
- 4 MS PYKE: And this witness has come along here.
5 He has asserted himself to be an anthropologist and made
6 criticisms of my client and I would have thought that I
7 was more than entitled to question his professional
8 status, standing and qualifications. It is fundamental.
- 9 COMSR: Yes, I suppose there is a limit to how
10 far you can take it, though.
- 11 MR MEYER: If Ms Pyke is going to say this man is
12 not an expert, then let her get on and do so. If she is
13 not going to say that, this is just irrelevant. One or
14 the other.
- 15 COMSR: She is entitled to examine his
16 qualifications.
- 17 MR MEYER: Sure.
- 18 COMSR: But, of course, there must be a limit,
19 Mr Meyer.
- 20 MR MEYER: I have waited for sometime.
- 21 MS PYKE: Perhaps my friend can wait a little bit
22 longer.
23 This witness has come along and he -
- 24 COMSR: Yes, he has given me evidence as to his
25 qualifications.
26 Now, there is some challenge, is there, to that?
- 27 MS PYKE: Yes, we simply say this man is not an
28 anthropologist.
- 29 COMSR: I see, right, you are putting to the
30 witness he is not an anthropologist.
- 31 A. Can I respond?
- 32 COMSR: Yes.
- 33 A. I am curator of Anthropology at the South Australian
34 Museum. I am the senior curator. I have been employed
35 on my anthropological qualifications. My PhD, if you
36 look on the front page, is submitted in social
37 anthropology and either human or cultural geology. I
38 can remember which. I consider myself an

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1 anthropologist. The Government who employs me through
2 the museum considers me to be an anthropologist. The
3 field work techniques that I use and the literature that
4 I bring into my thesis has me as a social
5 anthropologist. So, I would have thought it was pretty
6 clear.

7 XXN

8 Q. I am suggesting to you, and let's be quite clear about
9 this, it might be clear to you, but it is certainly not
10 clear to us. You are suggesting the fact that you are
11 employed in the Anthropology Department of the museum
12 makes you an anthropologist.

13 A. I am saying, if I wasn't an anthropologist, I wouldn't
14 be employed in the current job that I am doing.

15 Q. I don't want to get too far into this, but the fact of
16 the matter is that there is a history in the South
17 Australian Museum of nonanthropologists indeed heading
18 the Anthropology Department of the museum.

19 A. All of the curators are involved in anthropology. If
20 not studying it, have studied it. My present job, and
21 it is in my statement, is the - I am employed to run a
22 project, the National Registry of Secret Sacred Objects.
23 I am constantly dealing with Aboriginal people out in
24 the field on those topics. I would not be able to do
25 that, I would not be allowed to do that, by our Director
26 of the museum, if I did not have qualifications in the
27 area of social anthropology.

28 Q. You, I suggest -

29 A. The University of Adelaide has given me a PhD in social
30 anthropology and cultural anthropology. The University
31 of Adelaide is one of the top-ranked universities in
32 Australia. Unless you think that somehow their system,
33 you know, that they give away PhDs without regard to
34 what discipline they give them away in, then, you know,
35 I think that I have pretty well made it obvious that I
36 am a social anthropologist. I can call myself other
37 things in other situations, but I am primarily employed
38 to do social anthropology. And that's what I do.

1 COMSR: If there is some specific basis on which
2 you challenge that the witness is an anthropologist,
3 perhaps we can have that put to the witness?

4 MS PYKE: Yes.

5 XXN

6 Q. I simply say that you were never, whilst your thesis was
7 supervised by someone in the Anthropology Department at
8 the University of Adelaide, you were not enrolled in
9 that Anthropology Department.

10 A. Yes, my PhD candidature has anthropology and geography.
11 Anthropology first. The fact that my paperwork was
12 mainly through the Geography Department - I turned up
13 once every 6 months to fill in a form - I really don't
14 think has any bearing. I had to put the paperwork
15 through some department. At the time I was enrolling,
16 there was not an Anthropology Department. The
17 University would not allow me to go through
18 Anthropology, so Faye Gale lured me over to Geography,
19 but insisted that I keep that connection with
20 anthropology with Kingsley Garbett as supervisor. Chris
21 Anderson, a social anthropologist at the museum, now
22 director, is my supervisor, as well. So, social
23 anthropologist has had an enormous impact on my thesis.

24 Q. Let me put this to you quite bluntly: I put it to you
25 that, being enrolled for a higher degree in the
26 Anthropology Department, doesn't qualify you as an
27 anthropologist and, in particular, in the absence of an
28 honours degree or equivalent in that Department.

29 A. I don't know on what basis I am being told that
30 information.

31 Q. I am putting that to you: do you agree or disagree.

32 A. I reject that.

33 Q. In fact, you certainly wouldn't qualify for a Fellowship
34 of the Australian Society of Anthropologists.

35 A. I would argue that I would. The fact that I haven't
36 been a member of that Society for a few years and
37 haven't reapplied I don't think is proof that somehow
38 they would not accept me. I have close connections with

- 1 a number of anthropologists who are Fellows of that
2 Society and they would - have made it quite clear they
3 would be quite willing to be referees, should I ever
4 want to return. So, I reject that statement outright.
- 5 Q. It is your understanding that you would qualify for
6 membership or for Fellowship of the Australian
7 Anthropological Society.
- 8 A. Should I wish to renew that relationship, yes, but -
9 yes, the answer is, yes.
- 10 Q. Do you know what the criteria is for that Society.
- 11 A. Since I am not interested, at this stage, in reapplying,
12 the answer, of course, is no.
- 13 Q. Do you understand that to be, now, the professional body
14 for anthropologists in Australia.
- 15 A. It puts itself forward as a professional body, but not
16 all anthropologists are members of it. I would want to
17 see evidence of what you are saying, that it is somehow
18 a club and, if you are not a member of the club, you are
19 not an anthropologist. I think that is ludicrous to
20 suggest that.
- 21 Q. I am not suggesting it is a club, I am suggesting that
22 it is the professional body and the body that
23 determines, putting it bluntly, who qualifies as an
24 anthropologist in the professional sense of the word.
- 25 A. No, I doubt whether they would see themselves in the
26 role of tapping people on the shoulder to say `You are
27 now an anthropologist.' The system, from all my
28 experience, doesn't work that way.
- 29 COMSR: Not all engineers are members of
30 engineering bodies.
- 31 MR ABBOTT: Not all lawyers of the Law Society.
- 32 MS PYKE: The other side of that comment is, not
33 everyone who works in a lawyer's office is a lawyer.
- 34 COMSR: Have we exhausted this particular topic?
35 XXN
- 36 Q. I just want to ask you about the Anthropology Society of
37 South Australia that you talk about being a member of.
38 That is what I might term a common interest group, isn't

1 it.

2 A. Special interest group.

3 Q. It is not a professional body. There is no particular
4 criteria for membership, other than a proclaimed
5 interest in anthropology.

6 A. That's correct. I mean, there are a number of
7 anthropologists who are involved in the running of the
8 Society. I think one would have to demonstrate that in
9 order to be a council member, for example, that, you
10 know, you had some, you know, strong interests,
11 professional or otherwise, in anthropology, in order to
12 be on the council. But I don't think they have got a
13 form, you know, with boxes to tick, in order to get into
14 the Society.

15 Q. I am simply putting to you, if I wanted to turn up and
16 become a member of the Anthropological Society, I could.

17 A. They couldn't stop you, no.

18 Q. It is not a body that has, for example, a code of
19 ethics.

20 A. It does have a charter, or a set of rules, but basically
21 that just sets up the interests of the Society.

22 Q. Also - and I am just getting some of these from your CV
23 - that you have referred to yourself as being, I think,
24 associated or connected with the Institute of Aboriginal
25 & Torres Strait Islander studies.

26 A. That's correct.

27 Q. What is your connection with that particular group.

28 A. Until recent - no, I am still listed there as a member.
29 I get the journal, which I have contributed to. I have
30 - the encyclopaedia that was referred to in evidence
31 sometime ago, I was asked and wrote an entry into that
32 encyclopaedia. So, I am a heavy user of their library
33 facilities whenever I am in Canberra. So, I am part of
34 the network. I have successfully got grants from the
35 Institute, for example, and managed those grants.

36 Q. Would you agree with me if I suggested to you that that
37 Institute is an interdisciplinary research institution.

38 A. Yes.

1 Q. It is not an anthropological -

2 A. Yes, it is interdisciplinary.

3 Q. Are there any particular criteria for membership of the
4 Institute or associateship -

5 OBJECTION Mr Meyer objects.

6 MR MEYER: This is just going far beyond the pale
7 of what is relevant.

8 MS PYKE: My friend might think so.

9 MR MEYER: I do think so.

10 COMSR: I understood we had exhausted this.

11 MS PYKE: Yes, that is virtually the last
12 question.

13 A. I'm not sure what the entry requirements are. Several
14 years ago when I joined, and it was a group that I
15 decided to stay connected with, I did have to
16 demonstrate some publication record and professional
17 interest in the Aboriginal studies area.

18 XXN

19 Q. You have in your evidence referred to - clearly that you
20 have worked amongst Aboriginal communities. Is it just
21 the Ngarrindjeri communities that you have worked
22 amongst, in your professional capacity, or your -

23 A. More with that community, but I have worked throughout
24 South Australia with Aboriginal communities. And, over
25 the last few years, I have worked quite a bit in the
26 northern parts of Australia, as well. So, I have sort
27 of got quite a good overview outside of the Lower
28 Murray.

29 Q. Do you consider your work or your work history to have
30 been an exclusively as an anthropologist or sometimes as
31 a geographer, a combination of both.

32 A. I didn't realise that anthropologists were - saw
33 themselves as being such a narrow band, but I utilise a
34 variety of modes of study. And, as I have said several
35 times, one can wear several hats. I am - I think it is
36 very few anthropologists these days who have only ever
37 just studied anthropology. So, I am just a little bit
38 confused by that, that question.

1 Q. Is there any difference between the methodology, for
2 example, between anthropology and geographers in the
3 context in which you are using the phrase.

4 A. There are certain techniques that a geographer would
5 perhaps be more likely to use, but, then again, that is
6 probably because they are conducting a study which the
7 aims of that study would be outside of what most social
8 anthropologists would use. For example, Professor Faye
9 Gale used a lot of quantitative techniques in terms of
10 her field work, which produced a body of data which is
11 very useful for social anthropology, but she used
12 methodology that would have her as a social
13 anthropologist, whereas my field work techniques were
14 largely steering clear of questionnaires and sort of
15 quantitative techniques. And my techniques were far
16 more akin to mainstream social anthropology.

17 Q. You said, and it is in the transcript, in response to a
18 question from counsel assisting 'Yes, I suppose I am
19 here, to some extent, representing the anthropology
20 profession.' What was the basis of that assertion,
21 that you are here representing, to some extent, the
22 anthropology profession.

23 A. There had been a lot of talk among anthropologists, both
24 within this State and outside this State, that they were
25 frankly appalled by what they believed to be in Deane
26 Fergie's report. And my personal view is that her
27 report has done an immense disservice to Aboriginal
28 people. And, from what I see in the report, it is
29 basically bad anthropology. So, I am here willing to
30 put forward my criticisms as a way of readdressing the
31 balance and to put forward a view that anthropology
32 does have a role in providing objective reports.

33 Q. I can accept if you say here that you are here
34 representing your view of whatever. I am asking you, in
35 what way do you purport to be here representing the
36 anthropology profession, as opposed to expressing your
37 view.

38 A. I did not, I never said that I had come here to

1 represent any particular group or society, as -

2 Q. I put it to you -

3 A. No, I am inserting myself into that role of saying that
4 enough is enough, from the basis of my knowledge of what
5 is going on. I think there is more, there is relevant
6 information that has not come to the surface, in terms
7 of the anthropology that this issue has generated. So,
8 I have inserted myself into that role of saying, well,
9 you know, there needs to be a more clear view. And I
10 would say anyone who would be a practising
11 anthropologist would be able to say, you know, as much
12 the same thing. To be able to put up their hand and
13 say, well, there is other information, there are other
14 perspectives and to critique reports that they may
15 believe are not truthful, or, you know, avoid - you
16 know, avoid the issues.

17 Q. I will get to that.

18 COMSR

19 Q. Just so I can follow it: you are saying that there is a
20 deep division between the anthropology profession.

21 A. No, I am saying that, as an anthropologist, that I have
22 spoken to other anthropologists. There has been some
23 concern expressed over the nature of the Fergie report.
24 Other people are perhaps not in the position like I am
25 as someone who has done anthropological work in the
26 general region to comment. I am taking on that role as
27 someone who has just done a PhD on the region to comment
28 on that. And I think I am quite entitled to.

29 XXN

30 Q. Let me make this clear: I am not suggesting that you are
31 not entitled to come here and express your views and
32 give your evidence about Dr Fergie's report. What I
33 join issue with is your assertion that you are here, to
34 some extent, representing the anthropology profession.
35 And I suggest to you that is a very misleading
36 statement, because you have not been authorised by
37 anyone to speak on behalf of the anthropology
38 profession.

1 A. But what - who is the anthropology profession?

2 Q. You used the phrase, and I read from p.155 of the
3 transcript -

4 A. Yes, I used that phrase.

5 Q. `Yes, I suppose I am here, to some extent, representing
6 the anthropology profession.' I simply put to you that
7 that is blatantly untrue. You are not here representing
8 anyone, other than you, expressing your own personal
9 opinion.

10 A. I accept the point that I am mainly, or I am here
11 representing my own views, but I still hold that one of
12 the reasons that I want to - wanted to put forward what
13 I consider to be relevant information and to critique
14 the Fergie report is the fact that I think - and I also
15 said this in the statement - I believe that it is my
16 opinion that anthropology failed the Aboriginal people
17 in relation to this issue. And that I was, by coming
18 forward and being critical of the process that was
19 undertaken, I have put myself in the position of
20 correcting that.
21 CONTINUED

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1 So it was never my intention to say that somehow a club
2 of anthropologists got together and said, you know 'Go
3 on, Clarke, go and do it'. I have never suggested that
4 somehow there were people standing behind me pushing me
5 into it. I am here on the basis of my own research and
6 my own knowledge. So I take the can for my own
7 opinions.

8 Q. I simply suggest to you you are endeavouring to give
9 yourself a status rather more than you possess in terms
10 of the giving of evidence here.

11 A. That was not my intention in that statement to make it
12 look as if I was some guru to anthropology.

13 Q. Why did you make it.

14 A. I made it from the reason I have just stated, that I
15 believe that anthropology, as reflected in the Fergie
16 report, has failed Aboriginal people and that I wanted
17 to re-address that.

18 Q. As I say, I am not joining issue with your entitlement
19 to make any view you want known for yourself, but to
20 purport to be here representing the anthropology
21 profession and make the comments that you do about Dr
22 Fergie, I say is very misleading.

23 A. All of us who appear before the commission as
24 anthropologists are representing the anthropology
25 profession. I am not suggesting that there was any
26 formal reason why I was appearing. I have not stated
27 that, as I said, there has been any process whereby I
28 was inserted in here to represent anthropology. So I
29 think you have taken an extreme interpretation of that
30 sentence.

31 Q. Because I suggest to you you are not even a member of
32 your professional body. There is no basis on which you
33 can make that assertion.

34 A. My professional body - as it has already been made
35 clear, not all anthropologists are a member of that
36 professional body. Some anthropologists probably get
37 some value for being part of it at certain stages of
38 their career. At this stage of my career I've been busy

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- 1 doing other things and not a member of it. I may be a
2 member of it in the future.
- 3 Q. I want to clarify what you are talking about here at
4 p.155, 'Anthropology has let Aboriginal people down in
5 this issue'. Do I take it by that, you are making that
6 particular assertion in regards to Dr Fergie.
- 7 A. That's correct, yes.
- 8 Q. Is that for the criticisms that you have made of her
9 methodology. Is that your basic criticism of Dr Fergie,
10 or is there some other one.
- 11 A. If you mean methodology by what's in the report, how she
12 got the information, how she interpreted it, I think it
13 is probably broader than methodology. Her very
14 findings, for example.
- 15 Q. In a nutshell, what do you understand Dr Fergie's
16 findings to be.
- 17 COMSR: There is nothing confidential about any
18 of Dr Fergie's findings.
- 19 MR MEYER: Her whole report is subject to Section
20 35, I would have thought.
- 21 COMSR: I am a bit concerned about where it is
22 taking us in public hearing.
- 23 XXN
- 24 Q. Is it your perception that Dr Fergie is alleging that
25 there is secret sacred women's business associated with
26 Hindmarsh Island. Is that, in general, your
27 interpretation of the information in her report.
- 28 A. That's the starting point for the report and the
29 finishing point.
- 30 Q. So you, having read Dr Fergie's report carefully, have
31 formed the view that that is what she asserts, that
32 there is secret sacred women's business associated with
33 Hindmarsh Island.
- 34 A. There are a number of other things in the report.
- 35 Q. I accept that. I am just dealing with this particular
36 one.
- 37 COMSR: We may have to deal with some of those
38 issues in private hearing.

1 XXN

2 A. What is the question?

3 Q. That it is your interpretation, amongst other things, of
4 Dr Fergie's report, that she alleges there is secret
5 sacred women's business associated with Hindmarsh
6 Island.

7 A. That's correct.

8 Q. I simply put it to you at this stage - and when we go in
9 private session in due course I will come back to it -
10 that no such thing is asserted in Dr Fergie's report.

11 A. I've got a copy of the report here which I have
12 annotated quite extensively. I think it probably is
13 something that would need a closed session.

14 Q. I will get to it in due course. I suggest to you that
15 the assertion of secret sacred women's business is an
16 assertion that has been made in this commission, and
17 indeed by yourself, and frankly is a fabrication by this
18 commission and by you.

19 COMSR: Are you talking about the sacred
20 business?

21 MS PYKE: The secret sacred women's business
22 associated with Hindmarsh Island I suggest is something
23 that has been fabricated.

24 MR ABBOTT: She said it was a fabrication of this
25 commission. Not in this commission, of this commission.

26 XXN

27 A. I disagree with that. I don't know beyond - it is such
28 a strange statement, I don't know how to respond, other
29 than I don't agree with it.

30 Q. Outside this commission, or your statement, where have
31 you seen the phrase `secret sacred women's business' in
32 either the Fergie report or the Saunders report.

33 COMSR: Or the Terms of Reference, I suppose.

34 XXN

35 A. Yes, it has been quite heavily used in the media, both
36 print and television, including statements by Aboriginal
37 and non-Aboriginal people.

38 Q. I suggest to you that it is not a phrase you have seen

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1 in either the Saunders report or the Fergie report.

2 A. Are we talking about phrases? Are we talking about -

3 Q. Secret sacred women's business?

4 A. Are we down to actual words as they appear in that?

5 Order? Are we talking about the actual meaning that

6 the? Content of the report -

7 Q. I will get to that in due course. I am simply putting

8 to you that nowhere has there been any assertion in the

9 Fergie report or the Saunders report that secret sacred

10 women's business associated with Hindmarsh Island

11 exists.

12 OBJECTION Mr Meyer objects.

13 MR MEYER: I have got a great difficulty with that.

14 Either Ms Pyke says we are now down to semantics, or we

15 are discussing something which is real. One or the

16 other.

17 MS PYKE: With respect, what is the interest of Mr

18 Meyer to object? And the witness is quite capable.

19 MR KENNY: I will indicate I am interested in this

20 as well. I was curious about his use of definitions and

21 I would have followed it up.

22 COMSR: So I can follow it. You are putting to

23 the witness that the phrase `secret sacred women's

24 business, nowhere appears in the Fergie report?

25 MS PYKE: The phrase, the concept, the mention of

26 secret sacred women's business.

27 COMSR: I think they are two things. First of

28 all we will deal with the phrase.

29 XXN

30 A. To answer that properly, of course, I am going to have

31 to go through and look for words, but I could offer a

32 part answer to that, that is, that in order to extract

33 what meaning Aboriginal people, particularly the

34 proponent women have been using when they have been

35 talking about -

36 Q. I am not talking about proponent women. I am talking

37 about -

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- 1 A. I am offering an explanation of how those terms have
2 come about.
- 3 Q. But I am not asking you about that. I am asking you -
- 4 MR ABBOTT: I ask that he be allowed to finish
5 answering the question.
- 6 MS PYKE: The question relates to the Fergie
7 report at the moment.
- 8 MR ABBOTT: And the Saunders report.
- 9 MS PYKE: And the Saunders report.
- 10 COMSR
- 11 Q. The present question is simply this `Do those words
12 appear anywhere in those reports. The concepts we can
13 deal with later. Just for the purposes of answering
14 this question, are you able to say whether or not those
15 particular words appear in either report.
- 16 A. Those particular words in that order?
- 17 Q. Yes.
- 18 A. Without going through the report, I cannot do that.
19 Naturally I haven't memorised the whole report.
- 20 XXN
- 21 Q. I am happy for you to sit here and look through the
22 Saunders report and the Fergie report.
- 23 COMSR: I don't know how long that is going to
24 take. Are you asserting to the witness that nowhere
25 will he find any such words?
- 26 MS PYKE: Nowhere will he find what he asserts Dr
27 Fergie concludes, that there is secret sacred women's
28 business, in the Fergie report.
- 29 MR SMITH: There is a difficulty there. Are we
30 talking about the words in conjunction with one another,
31 that is, `secret sacred women's business'?
- 32 MS PYKE: Yes. I am talking about that, because I
33 have already asked the witness earlier on about that
34 particular phrase. He has given a particular meaning
35 and a particular definition. I have asked about whether
36 that is his conclusion from Dr Fergie's report. I am
37 simply putting to him that there is nowhere in Dr

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- 1 Fergie's report where that phrase appears in any way,
2 shape or form.
- 3 MR ABBOTT: He has answered that. He said he has to
4 go through the report. Can we get onto something else?
- 5 MS PYKE: No, I want to continue with this.
- 6 WITNESS: I think it is best if I get back to that
7 question during one of the breaks. I need time to look
8 at every page and look for that sequence of words.
- 9 MS PYKE: I don't know if we are having a break.
- 10 COMSR: How long is it going to take, ten
11 minutes, or will you need longer than that?
- 12 WITNESS: Ten minutes to look at the report.
13 That's fine.
- 14 COMSR: You want to pursue that line of
15 questioning now rather than going on with another line
16 and coming back to it after luncheon break?
- 17 MS PYKE: I think I would rather keep it in
18 context.
- 19 ADJOURNED 11.45 A.M.
20 RESUMING 12.11 A.M.
21 XXN
- 22 Q. Dr Clarke, you have looked at the Fergie and Saunders
23 report during that break, have you.
- 24 A. That's correct.
- 25 Q. I want you to understand that my question relates to the
26 particular words and phrase 'secret sacred women's
27 business'.
- 28 MR ABBOTT: 'Or anything like that' she said. The
29 question that she asked before the break was 'or
30 anything like that'.
- 31 COMSR: Perhaps we have got a new question. We
32 will deal first of all with this question.
33 XXN
- 34 Q. My question relates to the phrase 'secret sacred women's
35 business'. Do you agree with me that that phrase does
36 not appear in either the Fergie report or the Saunders
37 report.

- 1 MR MEYER: Can we have the Fergie report defined?
2 Has Dr Clarke read the secret appendices?
3 XXN
4 Q. The Fergie report that you have read.
5 COMSR: The Fergie report without any secret
6 envelopes.
7 XXN
8 Q. I am just assuming you haven't read the secret
9 envelopes. Perhaps that is an incorrect assumption.
10 A. Of course not. In answer to those words in that order,
11 that phrase, the answer is no.
12 Q. The Saunders report also doesn't use that phrase.
13 A. I briefly looked through the Saunders report. I accept
14 that it is unlikely that it uses those exact words in
15 that order.
16 Q. I suggest to you that indeed in Dr Fergie's report, the
17 phrase `women's business' is used only once in a very
18 non-specific way, that is on p.4 of the report.
19 A. Do you want me to go back for another 10 minutes to read
20 through the document again to check that?
21 Q. Have you got it in front of you.
22 A. I have got p.4 in front of me.
23 Q. You can see the phrase `women's business' appearing
24 there.
25 A. Where on the page is it?
26 Q. P.4, about point 11. You see the phrase `Area of
27 women's business'. Do you see it there.
28 A. Have I got the same report? Is this p.4?
29 Q. Yes, of Dr Fergie's report. It says `Area of women's
30 business' at point 11, as I have just counted it.
31 A. Yes, I have got `Area of women's business'.
32 OBJECTION Mr Abbott objects.
33 MR ABBOTT: The questions that were put before the
34 break - and, if necessary, they can be read out - were
35 not restricting a search for the words `secret sacred
36 women's business, but it was also asserted by Ms Pyke
37 that those words, and nothing like them, or words to
38 that effect, did not appear in the Fergie report.

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1 MS PYKE: With respect to my learned friend, what
2 is his status to maintain this objection?

3 MR ABBOTT: That is a misleading statement.

4 COMSR: I think the best way to correct that
5 might be to seek to ask further questions.

6 MS PYKE: Mr Abbott will be able to cross-examine.

7 MR ABBOTT: I am concerned it will be several days
8 at this rate before I am allowed to ask questions. Dr
9 Clarke is being now, after the break, asked the specific
10 question `Do the words "secret sacred women's business",
11 in that order, in that sequence occur?' And he has
12 given an answer. But what is the point of all of this
13 questioning, when the phrase that exists is `women's
14 secret knowledge about the significant area of women's
15 business'?

16 MS PYKE: I object to Mr Abbott -

17 MR ABBOTT: Hear me out. The phraseology she is
18 referring to, `women's secret knowledge about the
19 significant area of women's business' is exactly the
20 same.

21 COMSR: Mr Abbott, Ms Pyke can put the question
22 as she wishes.

23 MR ABBOTT: But she ought to put it properly,
24 appropriately and fully. What is the point of asking a
25 question about, you see the two words `women's business'
26 only here and there, without reference to the
27 surrounding words? You can go through any report. I
28 just think it is a misuse of our time.

29 MS PYKE: With respect to Mr Abbott, firstly, what
30 is his status to make the objection? Secondly, there
31 has been a particular phrase and allegation bandied
32 about in this commission, asserted by this witness is
33 the net effect of Dr Fergie's report. Counsel assisting
34 have used this phrase. It has been used persistently
35 and I think it is not at all an unreasonable thing for
36 me to suggest that nowhere does that phrase appear.

37 COMSR: Does that physical phrase appear in that
38 order?

- 1 MS PYKE: That phrase. Let us not talk about
2 order. It is a phrase.
- 3 MR ABBOTT: Then you will get to whether there is
4 something to that effect appears.
- 5 MS PYKE: Mr Abbott can conduct his case as he
6 sees fit. I have extended him the courtesy of allowing
7 him to cross-examine as he wishes.
- 8 COMSR: Yes, we will never get ahead with this
9 witness if we keep up this cross-current of discussion.
10 Ms Pyke, I think that question has been answered, has it
11 not?
- 12 MS PYKE: Yes.
13 XXN
- 14 Q. I suggest to you that the word `sacred' appears in Dr
15 Fergie's report on only two occasions.
- 16 A. Yes, on p.13 and -
17 Q. Five times.
18 A. P.15.
- 19 MR ABBOTT: And p.16.
20 MS PYKE: Five times.
- 21 MR ABBOTT: And p.16, `secret sacred knowledge'.
22 The last line, `women's secret sacred knowledge'.
- 23 MS PYKE: Will Mr Abbott decline from giving
24 evidence from the bar table. He can get into the
25 witness box if he likes.
- 26 MR ABBOTT: I was just trying to help with the
27 question. I was trying to give the references you have
28 missed.
- 29 MS PYKE: I have to say that this commission
30 frankly gets out of control on account of, without being
31 disrespectful, Mr Abbott.
- 32 COMSR: Yes. Ms Pyke is conducting her
33 cross-examination in the way that she sees fit, and no
34 doubt you will get your opportunity if there are any
35 omissions that you wish to remedy.
- 36 MR ABBOTT: Yes, I will have to wait obviously.

1 XXN

2 Q. Perhaps if you have a general look, I won't take you
3 through the Saunders report, you say you've only had a
4 general look at that.

5 A. That's correct.

6 COMSR: You've had `women's' you've had `secret'
7 are you going to deal with `sacred'.

8 MS PYKE: I think we have just dealt with sacred.

9 XXN

10 Q. You are critical in your evidence of the methodology
11 that was employed by Dr Fergie.

12 A. That's correct.

13 Q. You propose a particular methodology, and I think it
14 starts at p.267 of the transcript, and you set out what
15 you say is a methodology for writing a report on
16 Aboriginal links to land, because the question put to
17 you was this, `If I've got the question correct, you
18 want to know', this is what you're saying, `An outline
19 or methodology of writing a report on Aboriginal links
20 to land', and counsel assisting says `Yes, in a general
21 way, what are the sorts of things you would give
22 attention to', and then you set out, in quite some
23 detail, what you would need to go through. Firstly, can
24 I ask you this; are you familiar with the Aboriginal and
25 Torres Strait Islander Heritage Protection Act, 1984.

26 A. Now this is - sorry, this doesn't cover movable cultural
27 property?

28 Q. Beg your pardon.

29 A. This is not the act that covers movable cultural
30 property?

31 Q. I'm just asking you are you familiar with it.

32 A. I know that it exists, yes.

33 Q. Were you aware that Dr Fergie's report related to a
34 declaration to be made by the minister pursuant to that
35 act.

36 A. Yes, I'm aware that that was the nature of the report.

37 Q. Are you aware that, under that act, there are certain
38 constraints imposed in terms of times and time frames.

1 A. I have no detailed -

2 OBJECTION Mr Meyer objects.

3 MR MEYER: There are no times and time frames,
4 that's a question of law. I would object to any
5 suggestion that there are limitations of times and time
6 frames in the Aboriginal and Torres Strait Islander
7 Heritage Protection Act. In fact, I would argue very
8 strongly to the contrary, in relation to the provision
9 of a report by Dr Fergie.

10 COMSR: Is there some section of the act you
11 want to draw my attention to?

12 QUESTION WITHDRAWN

13 XXN

14 Q. Have you ever been called upon to make any sort of a
15 report in support of an application for a declaration
16 pursuant to the Aboriginal and Torres Strait Islander
17 Protection Act.

18 A. No, I haven't.

19 Q. Would you agree with me, in general terms, that the
20 methodology that you have proposed as being the
21 appropriate methodology for writing a report in relation
22 to Aboriginal links to the land, indeed is a detailed
23 methodology.

24 A. I can't remember precisely all the words I used. I
25 doubt whether I would have given it in detail.
26 Hopefully I would have said something like that, you
27 know, the nature of the methodology used would vary,
28 depending on the location and the cultural groups and
29 other factors involved in the report, so I don't want to
30 come out with anything definitive.

31 Q. Would you agree with me, as a general principle, that
32 the general degree of enquiry and detail that could be
33 incorporated in a report would depend upon the time frame
34 within which the report had to be prepared.

35 A. I'm not sure I entirely agree with that. If one has
36 only a small amount of time, then obviously one would be
37 less ambitious with the power of the recommendation, the
38 statements, the findings of that report. In other

- 1 words, don't go out on a limb.
- 2 Q. But you agree with me that what one can do in a limited
3 period of time is different to what one could do if one
4 had a year or two.
- 5 A. Or 10 years or a hundred years.
- 6 Q. Exactly, so the way that you might go about a report
7 might be different if you had a fortnight than if you
8 had six months.
- 9 A. Depending if the stated aim is one towards assessing the
10 cultural significance, then obviously there would be
11 higher priorities in terms of the types of
12 investigations and fieldwork you would do and, if you
13 have more time, then you collect more data, and you just
14 sort of broaden the scope, if that's necessary, just to
15 bring in other material that will strengthen, you know,
16 the initial findings if one was going through a number
17 of drafts, but I would hope that there wouldn't be an
18 enormous amount of difference between, say, a report
19 done from two weeks' work as distinct from one done in
20 three or four months. I think again there would be
21 something very wrong with the techniques used if one had
22 to rely on a very lengthy time period to come up with
23 accurate results.
- 24 Q. I suggest to you that when you gave your evidence of
25 methodology - and again if you wish to refer to it, I
26 can certainly tell you that it starts at p.267 of the
27 transcript, and goes through certainly to p.274 - you
28 set out various things that you say should be done. I
29 just want to put this to you as a general proposition,
30 that the model that you have formulated in your evidence
31 is not an appropriate model to apply to the writing of a
32 report for the purposes of the Aboriginal and Torres
33 Strait Islander Heritage Act.
- 34 A. Well, without having the model in front of me, I would
35 still say that there's a certain scholarly process one
36 would go through and if, for example, there are
37 constraints, there are ways of still keeping the
38 integrity of the report, for example shortage of time,

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1 then you would hope that some form of peer review would
2 be able to strengthen your findings in order to
3 compensate for having a short amount of time. It may
4 well be that having produced a report for the purposes
5 of the act, that it would have been structured in a way
6 that answers precise questions, but the body of
7 knowledge that was produced through the research would
8 remain unchanged even if its appearance, when it's
9 presented to the minister or the people administering
10 the act, is along the lines where basically they just
11 sort of tick off the points.

12 Q. I suggest to you that in so far as you, in your model,
13 suggest a rather encyclopaedic frame, if I can put it
14 that way, you make reference to bringing all the
15 literature, genealogies and the like. That's really a
16 frame or a model that is more appropriate, for example,
17 to a land claim, and that it would not be necessary to
18 have the same degree of, for example, genealogy as one
19 would in a land claim for the purposes of a report.

20 A. I would disagree there. Genealogies of some level, even
21 fairly brief, even if they are basically referred to as
22 in the publications of Doreen Kartinyeri, are necessary
23 for the reader of that report to actually understand who
24 are the people whose interests are being discussed in
25 relation to that bit of land. I mean it goes back to
26 the problem that we were discussing earlier in terms of
27 how do you define culture, how do you define community,
28 and if it takes a fair degree of research to establish
29 who are the people, then it still has to be done. I
30 mean that's crucial particularly if, as you're
31 proposing, there's some need, somewhere along the line,
32 to say 'Well, this group of people are different from
33 that group of people in relation to what they do and
34 know'. I mean you can't avoid it.

35 Q. I'm simply putting to you this; under land claim
36 legislation, where it's necessary to establish
37 continuous link, genealogical enquiry is of far more
38 significance than the frame required under the

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- 1 Aboriginal and Torres Strait Islander Heritage Act,
2 where one is simply looking at significance according to
3 Aboriginal tradition.
- 4 A. I think the very fact that family history and
5 genealogical link have played such a role in this
6 commission shows how untrue that statement is.
- 7 Q. Sorry, I was momentarily distracted. Could you just
8 repeat that.
- 9 A. The very fact that kinship and family trees and people's
10 relatives, that data has come into the commission at
11 several points through the evidence given, is ample
12 proof, in my opinion, of the weaknesses of putting
13 forward a report to a minister which doesn't have that,
14 albeit thumbnail, sketch of the community. It's a must.
- 15 Q. I'm not suggesting there shouldn't be perhaps some
16 reference, I will get to that in due course, I'm simply
17 putting to you, to the extent that you suggest that
18 there has got to be substantial genealogical
19 information, that that might be far more important in a
20 land claim where one has to look at traditional owners
21 and the like, than it would be under - do you agree or
22 disagree with that.
- 23 A. I disagree with that.
- 24 Q. So you say that there should be as much focus on a
25 report for the purposes of the Aboriginal and Torres
26 Strait Islander Heritage Protection Act on genealogy, as
27 there would be for a native land title where continuous
28 connection of traditional ownership is a major element.
- 29 A. I'd hesitate to generalise because it's a fairly, you
30 know, complex field, and naturally reports written for
31 different reasons will have slightly different emphases,
32 but I still say that genealogy would have an important
33 role, particularly in that we are dealing with a
34 community that places a lot of stress on genealogy. I
35 mean it has been, and still is, a cornerstone of
36 defining Ngarrindjeri people, for example. It just
37 can't be avoided.
- 38 Q. Well, actually, just whilst we are on that topic, how do

1 you define Ngarrindjeri people.

2 A. In its broader sense, they are a group of Aboriginal
3 people that perceive themselves of having very strong
4 family and social historical connections to the Lower
5 Murray in particular places within the Lower Murray,
6 such as Point McLeay and some of the fringe camps around
7 places like Murray Bridge, Tailem Bend and Meningie.
8 Ngarrindjeri people don't seem to have much problem in
9 defining who Ngarrindjeri people are on that level.

10 Q. We'll get to that in a moment. Ngarrindjeri is not
11 confined to people who were brought up on Point McLeay,
12 for example.

13 A. I mean there's a grey area I suppose with other
14 Aboriginal people that have come to live on Point
15 McLeay, but from outside regions, they marry into a
16 Ngarrindjeri family, and their descendants claim to be
17 Ngarrindjeri, just through being Aboriginal and growing
18 up in that environment.

19 Q. What I was really putting to you is this, to qualify, if
20 I could put this; in that general sense, as a
21 Ngarrindjeri person, it doesn't mean that you had to
22 have been born and bred on Point McLeay, it's a far
23 broader concept than that, isn't it.

24 A. There are several ways that people can define themselves
25 as Ngarrindjeri. In some cases some people can quite
26 legitimately be called Ngarrindjeri through family
27 connections and yet, for example, have been brought up
28 living on Kooniba or Point Pearce or somewhere else.
29 There are a variety of ways, but there are sort of
30 informal rules which Ngarrindjeri people use to sort of
31 negotiate amongst themselves exactly who is in and who
32 is out, and it may change through someone's lifetime,
33 but Aboriginality is certainly the major aspect, and
34 then links to the landscape through family trees coming
35 up next.

36 Q. Certainly that's right and - I use the general sense of
37 the word - 'blood line' is the major way of tracing
38 whether one belongs on the Ngarrindjeri tribe.

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1 A. It is one major element in that, yes.

2 Q. Is what you say this; that other people might see
3 themselves, and indeed be seen in the community, as
4 Ngarrindjeri if they have married into the community.

5 A. I mean we are getting into a grey area. Some people who
6 had spent a fair bit of their lifetime in that region
7 could claim that, and it would be acceptable. Other
8 people, perhaps other Aboriginal people, would perhaps
9 prefer not to be defined themselves, even though their
10 children might be defined as Ngarrindjeri.

11 Q. Wellington, the town of Wellington, Ngarrindjeri people
12 extend as far as Wellington.

13 A. This is where there's a bit of a difference, I suppose -
14 well, there is a difference between the mapping of what
15 we know about preEuropean Lower Murray groups, which
16 today we have defined as Ngarrindjeri groups, with where
17 Ngarrindjeri people live today, so in the preEuropean
18 period, the exit of the Murray river into Lake
19 Alexandrina was a cut-off point. Ethnographies were
20 describing another language from people from Wellington
21 up-river but, in more historical times, many
22 Ngarrindjeri people have moved to Murray Bridge, and
23 they have claimed that territory, for want of a better
24 way of looking at it, and they have built up a very
25 strong historic connection with Murray Bridge, so the
26 boundaries are somewhat flexible, if you look at them
27 that way. There were various movements in the
28 preEuropean period, and some movements in the
29 postEuropean period.

30 Q. Can I put it this way; there might be some general rules
31 or concepts about Ngarrindjeri, and they are by no means
32 black and white - I don't mean that, perhaps I could use
33 a different colour - it's a fudged concept at certain
34 levels.

35 CONTINUED

1 A. No, I think that is taking it a bit too far. It is a
2 concept that people negotiate in a variety of contexts.
3 My thesis works on the assumption - or not the
4 assumption, demonstrates that there is quite a bit of
5 continuity among a wide range of peoples. You can trace
6 their descent to Lower Murray, about their definition of
7 being Ngarrindjeri. Sometimes it would be a definition,
8 for example, of people who come back to Raukkan, as they
9 call Point McLeay, to bury relatives, for example.
10 Various activities like that help to keep the concept of
11 Ngarrindjeri fairly tight.

12 COMSR

13 Q. Is there a heart or a centre or a focus of Ngarrindjeri
14 community.

15 A. For a long time it was Raukkan, that is, Point McLeay,
16 but there are other Ngarrindjeri families who have built
17 up very strong connections to places like the fringe
18 camps around some of the towns. And they could, quite
19 rightly, argue that they are, for them, more important
20 sites, but they would still recognise Point McLeay as
21 being a very important place for all Ngarrindjeri
22 people.

23 XXN

24 Q. In your thesis you provide several definitions, if I can
25 put it that way. And I use that in the most general
26 sense of the word. And, for example, at p.52 of your
27 thesis, you talk about 'Ngarrindjeri is a term of
28 identity. Aboriginal people who acknowledge a close
29 relationship to the Lower Murray region, whether living
30 there or not, generally call themselves Ngarrindjeri.'

31 A. That is the gist at one level of what I have been
32 saying, yes.

33 Q. And, at p.63 of your thesis, you said this 'I estimate
34 that there are between 2 and 3,000 people alive today
35 who could define themselves as being Ngarrindjeri by
36 virtue of birth or as a direct descent from the Lower
37 Murray. Today many of the people who formerly lived at
38 Point McLeay still retain a link to that community.'

1 Virtually all Aboriginal people I have met who claim a
2 kinship with Point McLeay define themselves as
3 Ngarrindjeri.'

4 A. In some contexts they would define themselves as
5 Ngarrindjeri. It is a very powerful, modern culture
6 form.

7 Q. And your assessment of 2 on to 3,000 Ngarrindjeri people
8 being alive today, is that still a figure that you
9 believe to be accurate. And, I mean, I am not having a
10 go at you about it, or anything like that, but that is
11 around about the -

12 A. Yes, I built on the work of Professor Faye Gale. There
13 is a map in the thesis, which puts down her data and my
14 data. And, from memory, I contrast the population of
15 people who live in the Lower Murray with the population
16 of total Aboriginal people who perceive themselves as
17 having very strong links to the Lower Murray landscape.
18 It is very hard, with the imperfect census data that is
19 available, to come up with precise figures, but I would
20 hold that that, you know, approaching 3,000 would be an
21 accurate figure.

22 Q. I won't read this all out to you, but, in your thesis,
23 at p.80, you define the area recognised by Brown, Berndt
24 and Tindale - I am just summarising here - you describe
25 an area along the north banks the Lake Alexandrina, Lake
26 Albert, the southern banks of Lake Alexandrina, the
27 Coorong and Wellington on the Murray River, the eastern
28 banks of Murray Bridge: are they the sorts of areas that
29 we are talking about.

30 A. Is this in relation to a map of dialects that I had in
31 my thesis?

32 Q. Yes, you talk about the political units - the main
33 Ngarrindjeri language, the political units recognised
34 by, you talk about Brown, Berndt and Tindale.

35 A. That is a result of a compilation. There is not an
36 absolute perfect fit with all those sources, but pretty
37 close.

38 Q. In fact, you have a, what I might call, I'm not sure

1 what you would call it, I have referred to it as a
2 figure, map that is part of your thesis, figure 2.9,
3 showing the Ngarrindjeri descent groups, or in their
4 preEuropean period.

5 A. Yes, and that was a map that I had drawn up in the
6 latter stages of writing the thesis, just before the
7 Berndt Yaraldi volume became available. Rather than
8 refer heavily to the Berndt manuscript, I just made
9 scanty reference to it in a couple of places through the
10 thesis, but did not modify any of the maps, because it -
11 although it added a few more descent groups, it didn't
12 overall change the pattern.

13 Q. In your various researches and enquiries, this 2 to
14 3,000 Ngarrindjeri people, are they scattered through
15 South Australia, these days.

16 A. Again, that map that I referred to earlier does
17 graphically demonstrate that. I forget the exact
18 proportions. If you have got the figure in front of
19 you, you should be able to work that out. I would
20 certainly say that there are quite a few Ngarrindjeri
21 people who are now living in the Adelaide area and the
22 suburbs, particularly to the north and south. But bear
23 in mind that it is a population that does move about, so
24 families that live in the southern suburbs now may be
25 living at Murray Bridge or even Point McLeay sometime in
26 the next ten years. It is -

27 Q. I suppose what I am putting to you is this, that, in
28 numerical terms, the Ngarrindjeri people are
29 comparatively small. I mean, 2 to 3,000 people is not a
30 large -

31 A. In terms of indigenous people in South Australia, it is
32 a very large group.

33 Q. I am just talking generally speaking. Just about
34 indigenous people. It is numerically a small group of
35 people, isn't it, 2 to 3,000 people.

36 A. I am just not sure what model you are using. There
37 would be other groups that would be very much smaller.

38 Q. Those 2 or 3,000 people are fairly diversely spread in

- 1 South Australia, aren't they.
- 2 A. No, I wouldn't say that. As I have said, there is a
3 very strong component of them living in the Lower Murray
4 region. There are - there is another component that are
5 - live further up the river, but still in very close
6 contact with people in the Lower Murray. People living
7 in - further up in the riverland. And there are people,
8 you know, living around Adelaide. And smaller groups of
9 people, again, who have married into families perhaps
10 based elsewhere in southern South Australia, but they
11 are not - it is not a random distribution, by any means.
12 I think there is a very strong pattern there and I refer
13 to that pattern in the thesis.
- 14 Q. How many people these days live on Point McLeay.
- 15 A. I think roughly or approaching 200 is the figure that
16 people tend to use down there. I'm not sure exactly
17 what it is at this moment that I speak, but of that
18 order.
- 19 Q. Is that one of the larger Ngarrindjeri communities, now.
- 20 A. No, I would say it is - well, when you say community it
21 sort of implies that Point McLeay people don't ever see
22 Murray Bridge people, for example, but -
- 23 Q. No, I am not suggesting that -
- 24 A. Ignoring that community in terms of a resident group,
25 residency group, no, it would be smaller, for example,
26 than Murray Bridge I imagine. I am sure the ATSIC
27 annual reports would have or do have quite good figures
28 on where people are living and in what towns.
- 29 Q. I am just asking you -
- 30 A. Yes.
- 31 Q. On what basis are you telling us it is a substantial -
- 32 A. It is substantial or major and it is probably more major
33 in the sense that it is an Aboriginal run community and
34 it is predominantly Aboriginal people who live there and
35 socialise, interact. Whereas, in a place like Murray
36 Bridge, people are spread out, Aboriginal people are
37 spread out.
- 38 Q. You have talked about the word 'tradition' and I think

1 you have said earlier that tradition doesn't necessarily
2 connote something that goes back hundreds of years.

3 A. Or 40,000.

4 Q. Or 40,000. It can be a much shorter time frame.

5 A. Yes, and I am not implying that, you know, older
6 traditions are more valid than newer ones, if there is
7 enough, you know, cultural activity, belief, you know,
8 force behind those traditions.

9 Q. Just digressing slightly, I omitted to ask you this:
10 when did you first obtain a copy of Dr Fergie's report.

11 A. It would have been when I - when the Commission was
12 announced and I was approached by counsel assisting.

13 Q. Can you give me some time frame of that.

14 A. It was only months ago. I assume that we are talking
15 about early July, but I wouldn't want to be pinned down
16 to it, of this year.

17 Q. Of 1995.

18 A. That's correct.

19 Q. Until then, you hadn't read it.

20 A. No, I had got a summary of it from Deane from that, I
21 think it was the 11 July 1994 conversation over the
22 phone that I have then given evidence to, but, in terms
23 of the writing, no.

24 Q. What do you say was the summary that Deane gave you on
25 11 July 1994 of what was in her report.

26 A. I have already given quite a bit of evidence -

27 Q. I am just asking you now.

28 COMSR: Ms Pyke -

29 MS PYKE: I am just talking about the summary of
30 the report.

31 COMSR: We don't go over evidence that has
32 already been given. If there is something new that you
33 want to extract -

34 MS PYKE: I don't understand the witness to have
35 given evidence of Dr Fergie giving a summary of her
36 report to him on the 11th.

37 COMSR: I thought you just put to him he has
38 given quite a bit of evidence in relation to that.

1 COMSR

2 Q. What is the situation. Have you given any evidence
3 previously regarding the summary that you were given of
4 Dr Fergie's report.

5 A. That's correct, yes, I have.

6 XXN

7 Q. I put it to you that whilst in your evidence - and it
8 starts at p.245 of the -

9 COMSR: It is so long ago since the witness has
10 given his evidence, perhaps the best thing would be for
11 him to have the evidence before him.

12 MS PYKE: I am simply putting this, unless I have
13 not read the evidence of this witness correctly, I
14 didn't understand him to be saying that Dr Fergie gave
15 to him a summary of her report. And, if that is what
16 he is now saying, I would like him to tell me what Dr
17 Deane Fergie summarised to him.

18 COMSR: If he has already told it, I don't think
19 we have got time to -

20 MS PYKE: That is what I am saying. I have read
21 the transcript and I can't see where this witness has
22 alleged that Dr Fergie summarised her report to him.

23 COMSR: Perhaps if we ask the witness.

24 COMSR

25 Q. Can you remember whether you have given evidence to that
26 effect.

27 A. It doesn't appear from here that I have given evidence
28 of exactly what is in Dr Fergie's report.

29 Q. No, you are being asked, have you given evidence of the
30 summary that Dr Fergie gave you of her report. I
31 understood you to say you were given a summary of her
32 report.

33 A. I can't find the words `Fergie's report', looking
34 through the transcript, so, I would have to say that I
35 was given an overview of what had happened leading up
36 to, what was it, 11 July, in terms of Dr Fergie's
37 meetings which produced the report, but I can't actually
38 see that I have referred specifically here to the Fergie

1 report.

2 XXN

3 Q. Indeed, I suggest to you that that conversation, at the
4 time that you had that conversation with Dr Fergie,
5 firstly, you hadn't previously discussed with her, prior
6 to that date on 11 July, her report.

7 A. That's correct. I had no conversation with her, prior
8 to that.

9 Q. And I suggest to you that the only information that you
10 had, prior to your discussion with Dr Fergie - you had
11 some information from the media.

12 A. Are we talking about prior to that?

13 Q. Yes, prior to your conversation with Dr Fergie on 11
14 July.

15 A. I mean, there were, sure, the media. But there were
16 discussions within the division, including between Dr
17 Doreen Kartinyeri and myself. There was discussions I
18 had with Steve Hemming, Philip Jones, Francesca Alberts.
19 I would certainly say that it wasn't just the media.
20 There was quite a buzz going on in the division and when
21 by chance I got Deane on the phone, I pumped her for as
22 much information as I could get.

23 Q. I suggest to you that it wasn't a matter of you pumping
24 Dr Fergie for as much information as you could get.
25 When you opened the conversation with her, you
26 immediately attacked her for the content and conclusion
27 of her report.

28 A. No, I think the attack came later in our conversation.
29 And, at any rate, you know, Deane and I are quite
30 capable of attacking each other without taking it too
31 personally. So, I wouldn't say no sooner had I got her
32 on the phone I launched into her. I wanted information
33 and I offered her advice. Whether she, well, took it or
34 not was up to her, but it was a - it was heated in the
35 sense that, you know, both of us were talking with some
36 force, but I wouldn't say that, you know, I had launched
37 into an all out attack on her, by any means.

38 Q. I suggest to you that, even in your own evidence that

- 1 you gave in chief here, that you said that 'I put it to
2 her', and this is at p.248 of the transcript, 'that I
3 thought it was actually a poor claim. That I didn't
4 believe in the existence of the women's business as it
5 has been gleaned from the media.'
- 6 A. That sounds correct. Sorry, what line is that?
- 7 Q. P.248, I think it is, at line - about line 33.
- 8 A. Yes, but I am not saying that I picked up the phone and
9 straight away told her that it was a poor claim. I
10 mean, there was an exchange going on and I gave her my
11 opinion.
- 12 Q. But you agree with me, at that stage, you hadn't read
13 her report.
- 14 A. That's correct. I had not read her report, until some
15 months ago.
- 16 Q. Were you aware, at that stage, that she had consulted
17 with a number of women.
- 18 A. That's - the conversation got on to that topic and I
19 have already given evidence about that part of it, but
20 I was particularly interested in knowing exactly what
21 - the, sort of, political dynamics of the production of
22 it, because of my scepticism.
- 23 ADJOURNED 1 P.M.

1 RESUMING 2.24 P.M.

2 Q. We were dealing, before lunch, with the conversation on
3 11 July between yourself and Dr Fergie. I had asked you
4 if you had read Dr Fergie's report at that stage, and
5 you said no. You referred to the fact that you believe
6 she had given you a summary of what was in her report.

7 A. That's correct.

8 Q. Had you read the report of Professor Saunders prior to
9 11 July 1994.

10 A. No, I hadn't.

11 Q. Do you recall how it came to be that you spoke to Dr
12 Fergie. Had she telephoned you, or had you -

13 A. As I have already said when giving evidence, the phone
14 was ringing in another office, it was on Kate Alport's
15 desk. I lent over and answered it, and, as it happened,
16 it was Deane Fergie, who had obviously been ringing Kate
17 Alport, not myself.

18 Q. Do you recall Dr Fergie saying to you on that occasion
19 when you identified yourself - you recall identifying
20 yourself.

21 A. Yes.

22 Q. That she had tried to telephone you the preceding week
23 in relation to the Hindmarsh Island thing, but you
24 weren't there.

25 A. No, no such thing was ever said.

26 Q. Is it the situation that you categorically deny that
27 that was said by Dr Fergie.

28 A. That's right.

29 Q. Wouldn't be mistaken about it or perhaps you are not
30 recalling it accurately.

31 A. No, I can remember being surprised that she hadn't tried
32 to contact me. So the answer is that I have perfect
33 knowledge that that was never spoken.

34 Q. I put it to you that, in fact, Dr Fergie opened the
35 conversation with you by telling you that she had tried
36 to telephone you the preceding week and that you weren't
37 there.

P.A. CLARKE XXN (MS PYKE)

- 1 A. I mean, if it is a major issue, I can go back through my
2 diaries to see where I was, but she did have my home
3 phone number, she could have rung me at home because she
4 had rung me at home on other occasions, and she could
5 also have left a message at the museum, which I would
6 have seen coming in either early in the morning or, if I
7 had been out, late at night.
- 8 Q. I was asking about that particular conversation. You
9 simply say that that is just totally untrue, that Dr
10 Fergie told you she tried to contact you.
- 11 A. To the best of my knowledge, I would say that's untrue,
12 yes.
- 13 Q. Is it the case that it might have been said and you are
14 not now able to recollect it. There is a difference,
15 isn't there.
- 16 A. If it had been said, it would have affected my memory of
17 what had been said in that I was surprised that I hadn't
18 been approached, informally or otherwise, just to have a
19 chat about it. So had she said she'd been trying to get
20 in contact with me, I would have remembered it.
- 21 Q. I suggest to you that what then happened was that you
22 immediately started to attack Dr Fergie about the issue
23 of Hindmarsh Island and women's business, as you put it.
- 24 A. It would have been the topic of conversation very early
25 on. I think 'attack' is too harsh a word. I would have
26 - there would have been a challenge and she would have
27 answered it, and we would have - a debate would have
28 been going on on the phone, but I had, back then, a type
29 of relationship with Deane where you'd expect those
30 types of arguments and they weren't taken personally.
- 31 Q. I suggest to you that you launched into, what Dr Fergie
32 would describe as, a tirade to her about the issue of
33 women's business and your views about it.
- 34 A. She could possibly have been overwhelmed with the new
35 facts - or facts which were new to her that I gave her,
36 but I think that's probably a bit strong. She was
37 answering me and I was answering her. It wasn't a
38 completely one-way conversation.

1 COMSR

2 Q. Would you describe it at least as a vigorous debate.

3 A. Yes, I would, yes.

4 XXN

5 Q. I suggest to you what had happened was this: that you
6 hadn't read Dr Fergie's report, you hadn't read
7 Professor Saunders' report, and you launched into an
8 attack upon Dr Fergie about what you thought it was that
9 she might have said.

10 COMSR: The witness has been asked that a few
11 times now. I think he has said by now, on a few
12 occasions, that he wouldn't describe it as an attack,
13 that that is too strong a word.

14 XXN

15 Q. Whether we describe it as an attack or something else, I
16 suggest to you the net effect was that you, without
17 having read Dr Fergie's report or without having read Dr
18 Saunders' report, made vigorous criticisms of what you
19 considered Dr Fergie had done.

20 A. While the discussion was going, of course, Dr Fergie was
21 telling me what she had done. I mean, I wasn't - the
22 conversation didn't come out of a vacuum. It wasn't a
23 one-way conversation. It was a two-way conversation. I
24 threw something up, then she answered; she maybe threw
25 something up, I answered. It was not as you have just
26 suggested.

27 Q. I suggest to you that, in fact, you started the
28 discussion about what you believed Dr Fergie's claims
29 were, and from the beginning of the conversation told
30 her that you didn't believe the women's business claim.

31 A. That would be correct. I would have, very early on,
32 challenged her, and that, in the type of relationship we
33 had, would be quite expected. She would have been able
34 to challenge me on something that I had written or said,
35 and it wouldn't have been taken personally.

36 Q. What I am putting to you is that you challenged her when
37 you hadn't read what she had written.

1 A. I challenged her not on the basis of whether the report
2 was correct or not, because I hadn't read it by then. I
3 was challenging her on what information she could give
4 me, and then what I would then do with that information
5 and my overview, through having worked in the Lower
6 Murray region for a very very long time. So I don't
7 think I have got anything to defend in the sense of the
8 way I conducted that phone conversation. It was an
9 exchange between two scholars, and I didn't go off
10 half-cocked, as you are suggesting, in the sense that I
11 hadn't read the reports, because at that stage the
12 reports were only just starting to become very relevant,
13 because it was only just after the - whatever date it
14 was - just after the July declaration. What I was
15 trying to get out of the conversation were - and my
16 notebook reflects this - I was trying to get to the crux
17 of what was the nature, even if only in broad terms, of
18 the cultural knowledge that was being used, the cultural
19 knowledge that I have described as 'secret sacred
20 women's business', that was used for the declaration.

21 Q. All I am putting to you is that you were not embarking
22 upon a scholarly exchange, as you would have us believe.
23 You were questioning and joining issue with what you
24 believe Dr Fergie had said without, indeed, ascertaining
25 from her what she said. You had jumped to conclusions,
26 is what I am putting to you.

27 A. No, that's not true at all. The conversation was an
28 exchange of information, and I was reacting as the
29 information was exchanging.

30 COMSR: I think we have explored this and the
31 witness has answered that question.

32 MS PYKE: Yes, I am moving on.

33 XXN

34 Q. I put it to you, you said to Dr Fergie along these lines
35 'We know this is recent invention', talking about the
36 women's business.

37 A. I wouldn't have used those exact words, but words to
38 that effect.

1 Q. You said this to her `We know of particular
2 conversations in which Doreen heard things that allowed
3 her to put this story together'.

4 A. Sorry, is this my statement you are reading from?

5 Q. Yes.

6 A. Can I have a look at that? I am just wondering about
7 the context.

8 Q. I am putting to you that you said to Dr Fergie `We know
9 of particular conversations in which Doreen heard things
10 that allowed her to put this story together'.

11 MR MEYER: The witness has obviously misunderstood.
12 He thinks Ms Pyke is quoting from a statement of his
13 rather than putting a conversation.

14 COMSR: I think the witness thinks you are
15 putting to him something that he has previously given by
16 way of a statement.

17 XXN

18 Q. I am not putting that to you. I am putting to you that
19 Dr Fergie says that that is what you said to her `We
20 know of particular conversations in which Doreen heard
21 things that allowed her to put this story together'.

22 A. It doesn't sound like the way I would have put it. I
23 accept, in principle, that we would have been discussing
24 mechanisms by which information could have come together
25 which led in that direction, but it would have been a
26 fairly brief part of the conversation.

27 Q. Whether it was a brief part or not, do you recall saying
28 something like that to Dr Fergie, that you knew of
29 particular conversations in which Doreen had heard
30 things that allowed her to put this story together.

31 A. It's possible that I said that, and, if I did say that,
32 I would have been referring to the evidence I have
33 already given in relation to the kummari, meaning
34 pregnant, and Kumarangk, the place name. But my memory
35 on that aspect of the conversation is not that good.
36 After all, I was intent on getting information off of
37 her. So I accept that some of the information that I

1 fed back to Deane, you know, my memory may not be 100
2 per cent on.

3 COMSR

4 Q. I am not quite clear now whether you say you remember
5 it, or you don't remember it, or you are challenging it.

6 A. I don't remember saying those words, no.

7 XXN

8 Q. In terms of conversations at which Doreen was present,
9 to your knowledge, you have told us just then about the
10 one in relation to Kumarangk and pregnancy. Is there
11 any other conversation that you can recall, from your
12 knowledge, at which Doreen was present that might have
13 allowed her to put the story together.

14 A. Sorry, which story together?

15 Q. In relation to women's business.

16 COMSR: The witness has said he doesn't recall
17 saying that. On what basis are you now putting to him
18 that there were conversations that would allow him to
19 make that statement?

20 MS PYKE: I understood him to say earlier that he
21 recalled a conversation at which Doreen was present and
22 he might have alluded to that.

23 XXN

24 Q. Is there any other conversation at which you were
25 present.

26 A. Sorry, conversation?

27 Q. That you believe may have resulted in Doreen forming a
28 view about women's business.

29 A. There are a number of conversations that I had with
30 Doreen in those early months, and often through what she
31 was saying, the stress she put on things, I felt as if I
32 was getting a bit of an idea of what was going on.
33 There are other examples of things that I had spoken
34 with Doreen, which were historical facts that she
35 interrupted in terms of building her own model, which,
36 in my opinion, I depart from, but they are conversations
37 not related to Hindmarsh Island specifically.

1 Q. Do you recall Dr Fergie saying to you, words to the
2 effect of, her assessment was not based simply upon
3 Doreen's word.

4 COMSR: This is in that same telephone
5 conversation?

6 XXN

7 Q. In that same telephone conversation.

8 A. I can't remember it being put like that. We certainly
9 spoke of one other woman who was involved in terms of
10 being a custodian - I would actually extend that to two
11 other women that she was talking about were involved.
12 That would be Mrs Connie Roberts and Mrs Maggie Jacobs,
13 if that's the answer you are looking for.

14 Q. Do you recall Dr Fergie telling you that 35 women
15 authorised Doreen as their spokesperson on the matter.

16 A. Yes, I can remember her saying that, and it would have
17 been at that point I would have challenged that.

18 Q. You say you would have or did you.

19 A. I would certainly challenge that. Whether it was at
20 that point in the conversation -

21 Q. What was your challenge to that when Dr Fergie had said
22 to you that 35 women had authorised Doreen as their
23 spokesperson.

24 A. I asked her for a rundown, who they were. In fairness
25 to Deane, she obviously didn't have the report in front
26 of her, so she didn't get very far down the list. I
27 threw up a few names, which she didn't - she couldn't
28 confirm were on that list, and I suggested that they
29 were important people to talk to about it, and then the
30 conversation drifted on to another topic.

31 Q. According to your evidence that you gave to counsel
32 assisting in your evidence in-chief, you recalled giving
33 three names to Dr Fergie. One was the daughter of
34 Pinkie Mack.

35 A. Correct.

36 Q. What did you believe to be the relevance of the daughter
37 of Pinkie Mack. Why were you mentioning her to Dr
38 Fergie.

P.A. CLARKE XXN (MS PYKE)

- 1 A. She was alive back then, of course. She was very well
2 regarded in the community. She was, if not the oldest,
3 pretty close to the oldest at that particular time. She
4 was fairly active, she had been a midwife at one stage
5 of her life, and a lot of Aboriginal people remembered
6 her for being a midwife. So she would be a natural
7 person. So she was mentioned in that context.
- 8 Q. You offered the name of Dulcie Wilson.
- 9 A. That's correct.
- 10 Q. Why did you select Dulcie Wilson as someone that you
11 believed should be consulted.
- 12 A. She's a very senior person in her own right. She was
13 involved in ATSIC for the region and very highly
14 regarded in the community, and I think I knew enough of
15 her views to think that she would be a good balance. I
16 mean, my suggestion of these names was not solely to
17 undermine what Deane Fergie put across, but I would
18 argue that in this type of report one is obliged to get
19 the complete range of views on the issue, and, by
20 putting in those names, I was suggesting how she could
21 go about doing that.
- 22 Q. You say 'a good balance'. Why did you think that Dulcie
23 Wilson would be a good balance.
- 24 A. She is very level-headed, very highly regarded in the
25 community. Also I had been down to Millicent on several
26 occasions with Dr Doreen Kartinyeri and Steve Hemming
27 when Mrs Dulcie Wilson had challenged Doreen Kartinyeri
28 on some of the things that she had put in her books.
29 Rather than saying that Mrs Wilson was right and Doreen
30 was wrong, I was putting forward those names as a
31 balance to enable a greater variety of opinion on the
32 matter.
- 33 Q. Were you aware at that stage whether Mrs Wilson had been
34 recently bereaved.
- 35 A. I knew Lindsay Wilson very well, and, yes, naturally, I
36 did know.
- 37 Q. Were you aware at that stage that she wasn't taking,
38 basically, any part in public life.

- 1 OBJECTION Mr Meyer objects.
2 MR MEYER: That wasn't put by Ms Pyke to Mrs Wilson
3 in her cross-examination. If that proposition is going
4 to be put forward, it should have been put to her.
5 MS PYKE: Mrs Wilson's own evidence was that she
6 had been recently bereaved and she wasn't at that time
7 taking any interest in public life.
8 MR MEYER: But the inference in the question was
9 that she had withdrawn, that suddenly Dr Fergie knew
10 that, therefore, there was no deliberate approach to Mrs
11 Wilson.
12 CONTINUED

P.A. CLARKE XXN (MS PYKE)

- 1 MS PYKE: With respect to Mr Meyer -
2 COMSR: I don't read that into it, I simply read
3 that Ms Pyke is putting to the witness something that
4 came out of the evidence of Mrs Dulcie Wilson. My
5 recollection is she said that apart from a couple of
6 engagements that she had agreed to some 12 months prior,
7 that she really was taking no active part in social life
8 at that time.
- 9 MR ABBOTT: That's right.
10 XXN
- 11 Q. Were you aware of that.
12 A. What's the question?
13 Q. Were you aware of that at that time.
14 A. I wasn't aware that she had implemented a policy of
15 that, if that's the way you want to put it. I had
16 corresponded with Mrs Dulcie Wilson through that period,
17 and I would say if she was rung up for informal advice,
18 that she would have given it. I think an issue as
19 important as the issue of women's business, however you
20 define that, on Hindmarsh Island, that she would have
21 answered it.
- 22 Q. Bertha Gollan, why was it that you mentioned her name to
23 Dr Fergie.
24 A. She's another senior Ngarrindjeri woman, and although I
25 don't know Mrs Gollan anywhere near as well as Mrs
26 Dulcie Wilson and the daughter of Pinkie Mack, I was
27 aware that she was - I'd met her on a few occasions and
28 that she was highly regarded in the community, and I
29 offered that name.
- 30 Q. From your knowledge of either of these women, had you
31 formed the view that they were women who had a good
32 knowledge and grounding in Ngarrindjeri history and
33 culture.
34 A. Sorry, all three women are we talking about?
35 Q. No, Dulcie and Bertha.
36 A. I would regard that they had excellent knowledge on
37 those topics.
38 Q. That's both of them, both Dulcie Wilson and Bertha Gollan.

1 A. Yes.

2 Q. Looking at the report of Dr Fergie, Exhibit 5, and if
3 you turn to the appendix, appendix one.

4 A. Is this on p.26?

5 Q. Yes, you will see there a list that Dr Fergie compiled.

6 I will just deal with Part A of the list in the first
7 instance. Rhonda Agius, do you know her.

8 A. Yes.

9 Q. Is she a Ngarrindjeri woman.

10 A. Yes, she is. I'm just trying to think of the family
11 tree but yes, she would be a Ngarrindjeri woman.

12 Q. Do you know her. Would you consider her to be senior in
13 terms of years.

14 A. No, not in terms of years.

15 Q. Do you know how old she is.

16 A. I would guess at about, perhaps approaching 50.

17 Q. Veronica Brodie, do you know Veronica Brodie.

18 A. Yes, I do.

19 Q. A Ngarrindjeri woman.

20 A. Well, lately she's claimed to be Kaurna. There's
21 newspaper evidence in relation to Port Adelaide camp and
22 lakalinyeri homeland movement.

23 Q. At any time, have you considered her to be a
24 Ngarrindjeri woman from your knowledge, or from what she
25 said to you.

26 A. In some connection she would probably claim to be a
27 Ngarrindjeri woman but really, because there is some
28 variation, you would have to ask her that.

29 Q. I'm just asking you of your understanding. I will move
30 on to the next one, Kathy Burgermiester, do you know
31 her.

32 A. Yes, I'm pretty sure I've met her on a couple of
33 occasions.

34 Q. Do you know her to be a Ngarrindjeri woman.

35 A. Again, I thought she had had recently emerged under the
36 banner of being a Kaurna woman. I've not ever heard her
37 claim, or others claim her to be a Ngarrindjeri woman,
38 although I don't discount that is possible.

1 Q. Vi Dueschle.

2 A. Well, I was surprised to see her name there, because I
3 had been used to considering her and other people,
4 considering her to be a Moandik woman from the sort of
5 Kingston South-East region.

6 Q. So are you saying that you don't understand her to be a
7 Ngarrindjeri woman.

8 A. Well, that's correct, yes, I don't understand her to be
9 a Ngarrindjeri woman, although there are probably
10 circumstances, parts of her family tree that she could
11 play up if she wanted to be included in such a group,
12 but I'm not aware of those links. I've always known of
13 her as being a Moandik woman.

14 Q. Is it the situation that if one was looking at
15 genealogy, that some people would have connections with
16 various tribal groups.

17 A. Well, probably most Ngarrindjeri people would have one
18 or two links outside of the Lower Murray region.

19 COMSR: I just wondered, I don't know how many
20 names we have got to go, but whether we can ask the
21 witness which of them he does consider to be
22 Ngarrindjeri, and we might just - I'm just thinking of
23 the time as much as anything - and then we could deal
24 with the others.

25 MS PYKE: Let me deal with it this way.

26 XXN

27 Q. Are there any names on that list that you don't know in
28 some way or other.

29 A. There are a few people here that I'm only vaguely aware
30 of, because they are much younger than me, but I'm
31 aware, through their surname and their parents, that
32 they are from Point McLeay or Meningie. There is a few
33 people that have grown up at Point McLeay but are
34 originally from Point Pearce, other places. There is
35 Shirley Piersley, who has got her links down at the
36 Kingston Moandik end.

37 Q. I'm just asking at this stage whether there are people
38 there that you don't know.

- 1 A. Don't know in what sense?
- 2 Q. Is there anyone on that list that you don't know or
3 don't know of.
- 4 A. I mean all of these people I would have met or been
5 aware of. In some cases there are people whose exact
6 family trees I wouldn't know that well.
- 7 Q. Are there any people on that list that you say don't
8 have any connection with the Ngarrindjeri community on
9 any of the criteria that you referred to earlier in your
10 evidence this morning.
- 11 A. Well, the two most notable ones are Shirley Piersley and
12 Vi Deuschle because they are, apart from Mrs Connie
13 Roberts and Doreen Kartinyeri, they are the two women
14 who are mentioned in the body of the report, whereas the
15 majority of these people are not mentioned, apart from
16 being part of the 35.
- 17 Q. I don't know that I've actually understood the answer.
- 18 A. Perhaps I'll break it down.
- 19 COMSR
- 20 Q. I haven't followed it either. Are there any there that
21 you would say are not Ngarrindjeri women.
- 22 A. Well, I would say Vi Deuschle and Shirley Piersley, from
23 my knowledge of Ngarrindjeri family trees, would appear
24 not to have strong claims to be Ngarrindjeri, although
25 there may be circumstances whereby it's acceptable to
26 have, you know, to come under the Ngarrindjeri banner,
27 if you like.
- 28 XXN
- 29 Q. Would you agree with me that in terms of where these
30 women come from to your knowledge, by that I mean where
31 they are living now or at the time that we were talking
32 about, back in June of 1994, they come from different
33 areas, there are different areas represented in that
34 group of women.
- 35 A. Sorry are we talking about the whole group of 35.
- 36 Q. Geographically, yes, in the State of South Australia.
- 37 A. Yes, I would say there are people from several
38 locations, including Adelaide and the Lower Murray.

1 Q. There are, would you agree with me, a cross-section of
2 age groups in that group of people, ranging from the
3 young, perhaps in their 20s to 30s, through to the 60
4 pluses.

5 A. I'm just trying to work out how many 60 pluses there
6 are. There's a couple, but I would say that it's
7 overbalanced towards younger people rather than older
8 people.

9 Q. Indeed, I suggest to you that there is, in fact, a
10 balance of age groups there, some being in their 60s,
11 some in their 50s, some in their 40s, some in their 30s,
12 and a couple who are under 30.

13 A. No, I don't think it's a very balanced list,
14 particularly in view of, you know, the nature of the
15 discussions and the framing of who can hear and who
16 can't. I think it needed many more people the other
17 side of 60, 65.

18 Q. Perhaps you better tell us this, how many of these
19 people on this list do you say are over 60 or
20 thereabouts.

21 MR ABBOTT: We have had evidence of this.

22 MS PYKE: I'm asking this one because he is the
23 one that is asserting there should be more.

24 A. I think Mrs Sheila Goldsmith would be in the category of
25 being over 60, 65. Mrs Margaret Jacobs. Doreen
26 Kartinyeri isn't. There's a group of people there that
27 are obviously around the 50s mark, which I'm finding
28 difficult to push there one way or another. Margaret
29 Roberts, I'm assuming here that would be Mrs Connie
30 Roberts, she would be up in that age group.

31 COMSR

32 Q. Which age group.

33 A. The 65 plus. I have difficulty seeing any others there,
34 except there might be one or two more which might just
35 get into that category.

36 XXN

37 Q. In any event, you disagree with my proposition to you,
38 that that group of women as outlined in appendix one is

1 representational of various age groups of Ngarrindjeri
2 women.

3 A. Yes, I would, but had the report detailed exactly who
4 this group were in the sense of how they had been
5 selected and what the process was, then I would be
6 willing to concede that this group of 35 women could
7 speak for the roughly one thousand plus Ngarrindjeri
8 women alive today.

9 Q. What, are you saying you'd need for information about
10 how they were selected.

11 A. I think the report would need to satisfy to the reader
12 that this group did, in fact, represent the views of
13 that much larger group, yes.

14 Q. Are you suggesting that Dulcie Wilson and Bertha Gollan
15 are any more representational of Ngarrindjeri views than
16 the women referred to in appendix one.

17 A. Appendix one, Group A?

18 Q. Yes.

19 A. They would have been - they certainly would have added
20 to the representation.

21 Q. That wasn't what I asked you. Do you say that they are
22 any more representational of Ngarrindjeri women than the
23 women referred to in the list.

24 A. I don't think any two individual women could ever
25 represent the whole large group, unless they had been
26 through some sort of formal election or choosing in the
27 sense of the fact that Mrs Dulcie Wilson had been
28 elected into her ATSIC position. She would certainly
29 give the report much weight, because she had the obvious
30 respect and following of a large number of Ngarrindjeri
31 women.

32 COMSR

33 Q. Is there any process that you're aware of by which the
34 Ngarrindjeri determine who may speak for them on various
35 issues.

36 A. Well, there is no formal process. There are a number of
37 council meetings and committee meetings, and often there
38 is some overlap on the membership, but then often people

1 will defer to a much older, senior Aboriginal person to
2 at least give advice, even if they were to be actively
3 involved.

4 Q. There is no traditional way, it's a process of committee
5 now.

6 A. Yes. I mean it's a carry-over from the mission period,
7 the way that Aboriginal people and their affairs have
8 been managed through the 20th century.

9 XXN

10 Q. Are you aware of any process whereby Aboriginal groups
11 elect or authorise someone to be their spokesperson.

12 Have you been present when something like that has been
13 done at a group or a meeting.

14 A. I've been at council meetings in Aboriginal communities
15 and, on occasions, people say 'Well, let so and so deal
16 with that', but that person who was dealing with it
17 would be expected, at the next council meeting, to
18 answer for his or her actions. I mean I'm not saying
19 that I've necessarily got the answers to how one would
20 do a report such as this very quickly and generalise it
21 as something that all Ngarrindjeri women would have
22 supported. I would have argued that such a process so
23 quickly just couldn't be done.

24 Q. Putting it bluntly, it would be impossible to do that
25 whatever your time frame, I suggest to you.

26 A. No. In the museum we're often faced with consultations
27 with communities on a variety of issues to do with
28 resources in our care, and it does take time, but I
29 think the community can come to a consensus, even if
30 it's one whereby it happens mainly by default, that is
31 that there would be a number of meetings inviting a wide
32 range of people, and the people who are interested have
33 turned up and have had input, but the process still
34 documents the fact that other people had opportunity to
35 have input into it. As long as a wide range of people
36 have had the opportunity to have input, then yes. Often
37 you might have to fall back on just the people that have
38 emerged to take a keener interest in the issue.

1 Q. I suggest to you that, in the Ngarrindjeri community,
2 there is certainly a concept of certain people being
3 authorised or having the right to speak on behalf of
4 others.

5 A. I'm not sure what you mean by 'right'. I mean, there
6 are people who have knowledge that would be considered
7 to be quite pertinent to a certain issue, but I would
8 want more information in terms of what the issue would
9 be in terms of saying, well, that person's got the
10 right. I mean, my experience is that, like all
11 communities, all societies, that there is quite a deal
12 of, you know, politicking on certain issues. And the
13 tall poppie syndrome is such that there is reluctance,
14 you know, to ever let one person have too much say on a
15 particular issue because of some fear that perhaps their
16 family would be overfavoured or for a whole variety of
17 reasons or maybe that they would favour their particular
18 settlement overly in the decision making processes. So,
19 there is always a lot of care that people take in terms
20 of issues as they come up, who is going to have more of
21 a running with that issue, put it that way.

22 Q. I simply put to you this: that it is not unusual in the
23 Ngarrindjeri community for a person to be authorised,
24 elected or voted to speak on a particular topic on
25 behalf of others.

26 A. I would say in terms of, as this report puts forward,
27 'all Ngarrindjeri women' I would think that is
28 absolutely extraordinary to have one person who has been
29 elected to speak for all Ngarrindjeri women on this
30 matter. So, I don't know of any other example that
31 matches this one.

32 Q. What I am simply putting to you and all that is
33 contained in Dr Fergie's report is that the meeting,
34 that meeting on 19 or 20 June, elected a spokesperson
35 and authorised Doreen Kartinyeri.

36 A. That meeting of 35, we are not talking about 1,000 odd
37 women, we are talking about 35 have elected Doreen
38 Kartinyeri to speak.

1 Q. Yes.

2 A. Yes, well that - without more detail in terms of what
3 actually happened in the meeting, and I might say that,
4 apart from three or four of the people on the list, the
5 rest of the names don't appear at any point in the main
6 body of at least what is here. We have just got to
7 assume that, you know, there was a show of hands. And,
8 you know, 35 -

9 Q. I am not asking to you assume anything, I am just
10 putting as a concept to you and please feel free to
11 disagree with it if you want to, that, in the
12 Ngarrindjeri community, it is not unknown for someone to
13 be elected as a spokesperson at a particular meeting or
14 a particular event or a gathering.

15 COMSR: For the whole community?

16 MS PYKE: For the group.

17 XXN

18 Q. For the whole meeting.

19 COMSR: For the group of 35?

20 XXN

21 Q. For the group in which they find themselves.

22 A. For the group of 35 women, it is - it wouldn't be
23 unusual for a group of 35 Ngarrindjeri people to elect a
24 spokesperson to represent that group, but I know of no
25 example of someone being elected to represent all
26 Ngarrindjeri people.

27 Q. I just want to make sure I am understanding you. Are
28 you saying you don't have a difficulty with the concept
29 of a group of 35 people electing someone to speak on
30 their behalf, but you have a difficulty with the concept
31 of electing someone to speak on behalf of all
32 Ngarrindjeri people. Am I understanding you correctly.

33 A. Obviously these women did, did elect Doreen Kartinyeri
34 to speak for all Ngarrindjeri. What I am staying is,
35 outside of this group of 35, obviously that is in
36 dispute. So, you talk about - you are using
37 'Ngarrindjeri women', on one hand, to mean the 35 and
38 then apply it to mean the whole community. That's where

1 I am getting caught up.

2 Q. Where do you get the idea or the notion that that
3 meeting elected Doreen Kartinyeri to speak on behalf of
4 all Ngarrindjeri women as opposed to the women that were
5 present at the meeting. Is it something that you have
6 read.

7 A. It is implied in the report.

8 Q. Where is it implied in the report.

9 A. Again, I am going to need time to go through the report
10 if I am asked questions in such detail.

11 Q. In your thesis, and this is at p.424, when you were,
12 indeed, explaining the concept of - I will give the
13 context in which you said it 'When writing my thesis, I
14 decided, except in some rare cases where individuals
15 were widely known within the Lower Murray community for
16 their ownership of certain accounts, all oral sources of
17 ethnographic data should remain anonymous.' Then you
18 say 'Although this appears to be an intellectual
19 appropriation on my part.' You then go on to give
20 various explanations as to why you have done that and
21 you say this 'Often there is a perception that only
22 certain people in the community have the rights to speak
23 on certain matters.' Do you remember saying that.

24 A. Again, I would have to look at the sentence on either
25 side, at least.

26 MS PYKE: I am happy if the witness wants to be
27 shown his thesis, it has been exhibited, at p.424.

28 A. Sorry, what line is this? I am on p.424. Is it right
29 towards the bottom?

30 XXN

31 Q. I have got this just noted in my notes. It is on
32 p.424. I can't actually give you the line number.

33 MR ABBOTT: Halfway down the page.

34 A. Yes, I have got the line. Sorry, what is the question?

35 XXN

36 Q. I am just putting to you this: it is the situation that
37 that does arise, where some people are seen as being
38 more appropriate or to have a greater right to speak on

1 behalf of certain matters than others.

2 A. It is more along the lines of people having a fear of
3 ridicule. So, if one was talking about - for example,
4 if we were mapping the sites of buildings, sheds, wells
5 and things at a particular fringe camp site, then there
6 always, with the informants, there would be some concern
7 that they, you know, defer it to someone who had spent a
8 bit more time there or was a little bit older, as an
9 adult. And, therefore, had better knowledge. It is not
10 so much ownership rather than a fear of ridicule. And
11 that was the reason why it was made pretty clear to me
12 that - from a number of Aboriginal people, that I should
13 not set them up by linking their name to particular
14 facts that I am - may want to use in the thesis.

15 Q. In terms of that group of women referred to in appendix
16 1, para.A, Doreen Kartinyeri was reasonably senior.

17 A. Senior in the sense that she had a public service
18 profile and was very active in Adelaide. Aboriginal
19 affairs, in general. So her personality is such that
20 she's, you know, a very strong-minded person. So, I
21 would accept that, with a group of such women, that with
22 her museum background and publications, of publishing of
23 genealogies that - and, you know, with her personality,
24 that she would, you know, emerge to be a strong voice in
25 such a group.

26 Q. And also her age. I mean, she is approaching 60, isn't
27 she.

28 A. I believe she is 60, but I'm not sure of the exact age.
29 Yes, well, it is an age where certainly the younger
30 women here would have looked up to her, of course.

31 Q. Getting back to this conversation with Dr Fergie: you
32 have provided to the Commission, which was indeed
33 tendered, certain pages of your notebook. It seems to
34 be around 11 July. They are MFIs 8, 9 and 10. I'm not
35 sure which one it is.

36 MS PYKE: I wonder if the witness might be just
37 shown those MFIs?

38 COMSR: Perhaps while we are waiting, Ms Pyke,

- 1 have you any idea how long you will be in
2 cross-examination?
- 3 MS PYKE: At least this afternoon.
- 4 COMSR: I take it we won't be repeating anything
5 that has already been canvassed in the evidence, Ms
6 Pyke?
- 7 MS PYKE: One hopes not, but, of course,
8 cross-examination often requires one to look at what has
9 been said in evidence and test that that is the -
- 10 COMSR: I remind you, of course, we are not here
11 to test the witness's memory. We are here to gather
12 information.
- 13 MS PYKE: It might be to gather information, but
14 this witness has made certain criticisms of my client.
- 15 COMSR: Yes, I certainly intend that you should
16 have every opportunity to put to the witness the matters
17 involving your client.
- 18 XXN
- 19 Q. Have you got the pages 145.
- 20 A. Yes.
- 21 Q. On the left-hand side part of your notes seem to read
22 this `Ngarrindjeri women elected Doreen Kartinyeri as
23 spokeswoman.'
- 24 A. No, it actually says `35 NG', being short for
25 Ngarrindjeri `women elected Doreen Kartinyeri as
26 spokeswoman.'
- 27 Q. `And Connie Roberts was ' - I can't -
- 28 A. `Hard on any information being made public.'
- 29 Q. And then `Doreen got Deane Fergie to work as an
30 anthropologist.'
- 31 A. That's right, that's an accurate reading.
- 32 Q. Where did that information come from. That latter
33 `Doreen got Deane Fergie to work as an anthropologist.'
- 34 A. If it didn't - if I didn't have that knowledge
35 beforehand, it certainly was reinforced through the
36 conversation.
- 37 COMSR
- 38 Q. With whom.

1 A. With - the conversation with Deane Fergie.

2 XXN

3 Q. What, are you saying that Deane Fergie told you that
4 Doreen had got her to work as an anthropologist.

5 A. Words to the effect. I mean - words to that effect. I
6 think I have already given in evidence that I am a bit
7 unclear exactly when it was that I heard that Doreen
8 Kartinyeri was working with Deane Fergie. In hindsight,
9 it was probably related to the conversation that I had
10 with Francesca Cubillo-Alberts. I heard her testimony
11 yesterday.

12 Q. Let me put it to you that Dr Fergie never suggested to
13 you that Doreen had got her to work as an
14 anthropologist.

15 A. My notes are brief. The notes are written for me to
16 sort of develop some idea of what was going on. I can't
17 sort of formally deny that or agree with that.

18 Q. Does this purport to be, on p.144, a summary of part of
19 what took place in the conversation, or is it just your
20 notes.

21 A. The model I use, just to make it easier for you, is I
22 always start writing on the right-hand side of the
23 double spread. As I am writing it, I frequently feel
24 the need to either sum up or insert something else. You
25 can see on that page I - that I have inserted other
26 information. And sometimes I even go back some weeks or
27 months later to add in another reference. If I do that,
28 I always initial and date the addition. So, the course
29 of the notes is to follow the right-hand side and look
30 back on the left-hand side in my notebook just for extra
31 information. For example, you can see, on p.146, which
32 is the left-hand side, I have got extra bits of
33 information, which I then arrow in to certain parts of
34 the main text. This is pretty much a standard, you
35 know, approach of writing in a notebook that at least
36 several of us in the museum have. The Tindale journals,
37 for example, follow exactly the same model.

38 Q. You have in your note on the right-hand on p.145 `Doreen

- 1 claimed that Hindmarsh Island is a birthing site. From
- 2 what I can gather, this is on the basis of references I
- 3 gave her 'Kumarangk, Hindmarsh Island', and I can't read
- 4 what then is over on p.147.
- 5 A. Sorry, where do you lose it? 'And the sim', which means
- 6 similarity 'of this place name to the word Kumarangk,
- 7 which a few Elder Ngarrindjeri women still use to mean
- 8 pregnant.'
- 9 CONTINUED

- 1 Q. Where did you gather your information from that Doreen's
2 claims came from the references you gave her because you
3 put 'I gather from this' or 'I gather this is on the
4 basis of'. You must have gathered that from somewhere.
- 5 A. I have already given evidence of the way that came
6 about, through talking about my interaction with Dr
7 Doreen Kartinyeri. First of all, being approached by
8 her to give her information, and I gave her information.
9 Then later on when we caught up with each other she drew
10 the connection between between Kumarangk and the word
11 kummari. That information I put in the notebook. Then
12 the next paragraph is 'I spoke to Deane today'. So I
13 can - I am not suggesting, from the way these notes are
14 structured that I have got that from Deane Fergie.
- 15 Q. Is it fair to say you haven't got it from anyone else.
16 That is you drawing inferences and conclusions from your
17 conversations with Doreen.
- 18 A. Yes, I have just said that she was the one who drew that
19 connection, so.
- 20 Q. You refer in your notes, and indeed it is contained in
21 your evidence at p.249, where you said 'I said that the
22 women's business as it relates to Hindmarsh Island is an
23 invention of tradition'. Question 'Then what did she
24 say'. You said 'She said that it was a possibility that
25 some aspects of the women's business were an invention
26 of tradition. She said that she was aware of the
27 literature that I was referring to. However, she said
28 that she believed that there was still some basis to the
29 women's business.' I suggest to you that Dr Fergie
30 didn't suggest to you that some aspects of the women's
31 business were an invention of tradition.
- 32 A. I deny that. That is what was discussed.
- 33 Q. I suggest to you that Dr Fergie never used the phrase
34 'women's business'.
- 35 A. Well, I mean, after this length of time, I would have to
36 say I'm not exactly sure the exact words that she would
37 have used. I believe she used those words, but beyond
38 that -

1 COMSR

2 Q. Do your notes refer to any such expression.

3 XXN

4 Q. If you go to p.149 of your notes, you say this `Deane
5 accepts my reinvention of tradition type problems.'

6 A. Yes, that's what's written here.

7 Q. I suggest to you that Dr Fergie never suggested to you
8 that the women's business was an invention of tradition,
9 and that what she said to you on the topic of tradition,
10 after in fact it was raised by you, was that she
11 conceded that tradition can be invented, and that is a
12 logical possibility of tradition. In essence, she was
13 conceding that tradition could be invented, but it was
14 her view that there hadn't been an invention of
15 tradition in this particular case.

16 A. There are several problems with what you are saying. In
17 the statement here I make it quite clear that she - this
18 is Deane Fergie - still believed there was some basis to
19 the women's business, even though you are disputing
20 whether she used those words. I have not said that she
21 conceded that the whole thing was an invention of
22 tradition. However, I am saying that she conceded that
23 there was some element of invention of tradition in it.
24 And that's what I am referring to in my notes when I say
25 `Dean accepts my reinvention of tradition type
26 problems.'

27 Q. You said in your evidence at p.250, line 7, of the
28 transcript, that she had the view that not much work had
29 been done in the region. You were talking about -

30 A. Yes, it is on line 5 on this page. That's right, she
31 had the view that there had been not much work, and I
32 offered names of people who had worked in the area.

33 Q. According to you, you say `She came back with the
34 statement that in her opinion' the names that you had
35 given `hadn't been working in the feminist
36 anthropological tradition and therefore she didn't
37 consider that she needed to refer to those works in any

1 major way in order to do the work that she was or had
2 just done in relation to women's business on Hindmarsh
3 Island.'

4 A. That's correct.

5 Q. I suggest to you that Dr Fergie never used or said words
6 to the effect that they hadn't been working in the
7 feminist anthropological tradition, and that was not a
8 phrase that she used.

9 A. I hold that the words that are in here, in my statement,
10 are as close to how I remember what she said. I believe
11 that statement to be true. That's my memory of what she
12 said.

13 Q. You agree with me that in the notes that you have in
14 front of you dealing with 11 July, certainly in the copy
15 that I have been given, there is no mention of Dr Fergie
16 referring to a feminist anthropological tradition.

17 A. Yes, and that's not surprising, because my notes were
18 primarily aimed at the ethnographic end of our
19 conversation, that is, the bits of information that
20 helped me work on a model that explained to me what was
21 going on. So, in hindsight, I should have written more
22 down, but this notebook is primarily for things
23 ethnographic, and that's what's in the notebook. So,
24 you are quite right, that actual statement which we are
25 talking about now is not in the notebook.

26 Q. I suggest to you that Dr Fergie didn't tell you that she
27 didn't consider that she needed to refer to those works
28 in that context, that they hadn't been working in the
29 feminist anthropological tradition.

30 A. And again I say that that is my memory of what was said.

31 Q. I suggest to you that what Dr Fergie said to you was
32 that the early material - and she was talking about what
33 you had suggested to her - suffered from a male bias.

34 Do you remember her saying something like that to you.

35 A. That may well have been said, but I distinctly remember
36 the feminist anthropological tradition.

37 Q. I just put to you quite bluntly, that is simply not so,
38 that Dr Fergie never ever used that phrase to you.

1 A. And I deny that.

2 Q. Do you have any understanding of what is meant by the
3 feminist anthropological tradition. Is it a phrase that
4 you have heard before.

5 A. Again, I have been asked that in giving evidence from
6 counsel assisting.

7 Q. I am asking you now.

8 COMSR: But we cannot go over the whole
9 evidence.

10 MS PYKE: The alternative is I find it in the
11 evidence and put it to him and take it from there. I
12 think it is quicker if he just answers the question.

13 MR ABBOTT: Do you have any problem with the answer
14 he has given?

15 COMSR: If you are going to put something to the
16 witness as a proposition, by all means go ahead and put
17 it.

18 XXN

19 Q. Is there such a thing as a feminist anthropological
20 tradition, as far as you are aware.

21 A. In its broad sense, yes.

22 Q. Is it your view that Dr Fergie is a feminist
23 anthropologist.

24 A. Whether she uses those words -

25 Q. I am asking you about your view.

26 A. Yes, she would consider herself to be an anthropologist
27 who looks at feminist issues in her field work, and
28 presumably her writings.

29 Q. Are you suggesting that that is something exclusive, or
30 in her work generally at times that might be the case.

31 A. I would - I am not aware that Dr Fergie has actually
32 published an awful lot, but I would say, from my
33 knowledge, particularly when she was my tutor in
34 anthropology way back in the early 1980s, and having sat
35 through seminars when she has been discussing papers and
36 things, that that's a fair comment from my position.

37 Q. You then, at p.251 of the transcript, say this `We never
38 got to the point in the discussion of defining secret

- 1 sacred women's business or women's business.'
- 2 A. Sorry, what line is this?
- 3 Q. Lines 1 and 2.
- 4 A. Page two hundred and?
- 5 Q. 51.
- 6 A. It starts on p.250.
- 7 Q. Yes, bottom 250 over to 251. I suggest to you that the
- 8 concept of the secret sacred women's business was not
- 9 raised in your discussion.
- 10 A. Again, I can't remember the exact words. They are the
- 11 words that I understood the description of what she was
- 12 putting forward. That's my way of summing up the
- 13 conversation. Whether she used `secret women's
- 14 business', `sacred women's business', `women's business
- 15 which is secret', `women's business that can't be known
- 16 by men' - I mean, the permutations are endless. So
- 17 surely I have got the right to, rather than come up with
- 18 one of 50 possible terms she used, to actually state in
- 19 my statement how I remembered it in terms of the meaning
- 20 that she was conveying.
- 21 Q. I simply put it to you that that was never suggested by
- 22 Dr Fergie to you.
- 23 A. What, those words?
- 24 Q. Yes.
- 25 A. Or the actual meaning of those words?
- 26 Q. Let's ask you what you consider the meaning of those
- 27 words to be. What do you mean by secret sacred -
- 28 A. I have given evidence today -
- 29 Q. Let me ask you again. What do you mean by secret sacred
- 30 women's business.
- 31 COMSR: Are you asking him what he means, or
- 32 what he understood from the conversation?
- 33 MS PYKE: I understand him to be saying that's his
- 34 interpretation of what was said in this conversation
- 35 with Dr Fergie on that day. So I just want to pinpoint
- 36 exactly what he meant by that in the context of that
- 37 conversation.

1 COMSR

2 Q. What was there in that conversation that caused you to
3 write those words down as a shorthand way of recording
4 it.

5 A. That there was sacred knowledge that could only be known
6 by women, was only known by women, and that it was
7 therefore secret, that this knowledge was immensely
8 powerful, and there is a whole protocol involved,
9 therefore, discussing it in terms of anthropologists,
10 Aboriginal people, the works.

11 XXN

12 Q. Are you saying that's what Dr Fergie said to you in this
13 conversation.

14 A. That's what I understood her to be saying, and, again, I
15 don't know the exact words she meant. She could have
16 used any of 50 different permutations of those words, as
17 she has several times in her report varied exactly the
18 way that she describes it.

19 Q. You had your conversation with Dr Fergie. You have
20 since read her report.

21 A. It is possible that I read the report after I had
22 written my statement. I can't remember in the order of
23 which -

24 Q. Is your understanding of what Dr Fergie said to you back
25 in July 1994, consistent with what you have read in her
26 report. In essence, are you satisfied that you
27 understood what Dr Fergie was saying in July 1994 is the
28 same thing that she has said in her report.

29 A. Yes. Most of the things that I noted down, most things,
30 that is, that I can remember as I am sitting here, are
31 reflected in the report. So the report still had a lot
32 of surprises for me, but what I put down in the notebook
33 by and large is reflected in the report.

34 Q. The conclusion or inference that you have drawn that has
35 led you to use the phrase 'secret sacred women's
36 business' as your summary of what Dr Fergie has been on
37 about, if I can put it in the colloquially, is it fair
38 to say that your perception is that Dr Fergie has

1 described a body of knowledge or belief that is gender
2 exclusive.

3 A. Sorry, you have to run that past me again. You mean
4 corpus of knowledge.

5 Q. Body of knowledge, corpus. I don't really mind whether
6 you use the Latin or the English.

7 A. Sorry, could you ask that question again?

8 Q. Yes. When you say that you have drawn the conclusion
9 from what Dr Fergie has said to you, that she is talking
10 about secret sacred women's business, do you interpret
11 her to be saying that there is a basic cultural division
12 which is gender exclusive in terms of a body of
13 knowledge.

14 A. Yes, she is implying that, in a sense, there are two
15 separate communities. I might add, that is one of the
16 reasons I keep using 'secret sacred women's business',
17 because it is such a confusing thing if I adopt any
18 other approach, in that people won't know whether I am
19 talking about avoidance beliefs that may be just women's
20 business or may be just secret women's business. In
21 order to make it quite clear what I am talking about, I
22 have had to adopt 'secret sacred women's business'. So
23 I think it is a bit unfair to criticise myself and
24 others for doing that, because we are trying to - or I'm
25 trying to be as clear as possible what it is every time
26 women's business is mentioned. If I let it slip or had
27 variations of it, there would be an extra two or three
28 days of questions from you actually asking me what I
29 meant when I said in my statement, or giving evidence.
30 So I am forced to keep on using 'secret sacred women's
31 business' to make it quite clear what it is that I'm
32 talking about.

33 Q. Let me put it bluntly. What we understand you to be
34 saying is this: That secret sacred women's business
35 connotes a fundamental and gender exclusive cultural
36 division in respect of the ceremony and knowledge of a
37 society. Have I understood that correctly.

3630

RF 44L

P.A. CLARKE XXN (MS PYKE)

- 1 A. Are you asking me whether that's my interpretation, or
- 2 is that my interpretation of what Deane is interpreting?
- 3 CONTINUED

P.A. CLARKE XXN (MS PYKE)

1 Q. The difficulty I have is this; you have used the phrase
2 `secret sacred women's business', not Dr Fergie. You've
3 agreed with that.

4 COMSR: Not in exactly that sequence.

5 MS PYKE: That phrase. I have a bit of difficulty
6 with this. That is a particular phrase used
7 consistently throughout this commission. It's a
8 particular phrase, it features in this witness's
9 evidence, it features in his statement.

10 COMSR: I think he has explained the basis, now
11 we're trying to clarify it.

12 MS PYKE: I'm trying to clarify. `We', as in Dr
13 Fergie - her instructions to me are `Look, I think this
14 is what Dr Clarke is saying', and I just want to make
15 sure that this is indeed what you mean by secret sacred
16 women's business, as you've interpreted it.

17 A. Sorry, because it's not my model of secret sacred
18 women's business in terms of the Lower Murray, I'm
19 rejecting -

20 XXN

21 Q. No, I'm not asking you for your model. You have
22 interpreted Dr Fergie as saying there is secret sacred
23 women's business. I'm just trying to work out, because
24 that's not a phrase that Dr Fergie has used, what you're
25 actually saying.

26 A. She is saying, from my understanding, that there is a
27 corpus of knowledge that is owned by women and
28 restricted to women. It's knowledge that women engage
29 in separately from men. Now she doesn't make it clear
30 whether there is any overlap between that and a presumed
31 opposite, which is secret sacred men's business. Her
32 report is strangely absent in terms of putting her body
33 of knowledge, however she defines it - I believe that
34 she varies the way that she defines it in terms of
35 words, if we're going to pick up on semantics - she
36 doesn't actually put that into a constellation of how it
37 sits with other knowledge that would be regarded in any
38 way as secret, creating the cosmos, whatever, so it's a

1 fundamental problem with her report that, in a sense,
2 you're asking me to in effect tidy up for her in the
3 report.

4 Q. Let me assure you, I'm not asking you to tidy up
5 anything. I'm just asking where you have leaped to the
6 secret sacred women's business from Dr Fergie's report,
7 because it's a phrase that doesn't feature in her
8 report, I'm endeavouring to find out.

9 COMSR: Are you asking the witness how he came
10 to that phrase from Dr Fergie's report?

11 MS PYKE: What he means by it.

12 A. I thought I just answered it.

13 XXN

14 Q. Can I ask you this, following on from something else
15 that you said; is it your belief that if there is secret
16 sacred women's business, Ngarrindjeri women's business,
17 there must be the corollary that there must be secret
18 sacred men's business.

19 A. It's a logic that I would reject had I got to that
20 stage, but one would, that could be - and this is as far
21 as I'll go - this could be an assumption of someone
22 reading that report, but I certainly would not push that
23 to anyone.

24 Q. I know you don't agree with it, but it's basically your
25 interpretation that Dr Fergie's report has this gender
26 division of exclusive knowledge.

27 A. It would be appear to have that, yes.

28 COMSR

29 Q. Does it go so far as not only is it exclusive knowledge,
30 but the fact of there being such knowledge is
31 confidential to only a few persons.

32 A. Yes. There's quite a bit in the Fergie report about who
33 can know the knowledge, whether a white anthropologist
34 can sit in on the meeting that discuss the knowledge.
35 There is quite a bit of discussion about who has access
36 to that knowledge and, from that discussion, I think my
37 conclusion is fair.

1 XXN

2 Q. It's your view, isn't it, that what really is happening
3 is that there's been what's called the Central
4 Australian - well, I'll quote to you exactly what you've
5 said in your evidence. You said this, 'I had put
6 forward a model of the Central Australian influence upon
7 Doreen Kartinyeri, and mentioned to her the influence
8 that Doreen had on her through her extensive connection
9 with people from the Ooldea West Coast region of South
10 Australia'.

11 A. That's correct.

12 Q. So this is where you have the concept that there's been
13 some importation of western desert concepts.

14 A. Yes. She's appropriated them in terms of the Lower
15 Murray region.

16 Q. What do you see as being the western desert influence or
17 concept that has been imported.

18 A. The separation of cultural knowledge into the dichotomy
19 of male versus female. I mean there are other aspects
20 to that in terms of people from northern areas being
21 associated with the issue, the Hindmarsh Island issue.

22 Q. I just want to understand this; when you talk about the
23 dichotomy, what are you talking about in so far as the
24 western desert is concerned.

25 A. This is an area where I could offend people in the
26 western desert.

27 COMSR: In that case, as a matter of fact, the
28 terms of the authorisation we currently have would cover
29 revealing any matters contrary to s.35, but extended
30 beyond the issues -

31 MR ABBOTT: I think the question is what do you mean
32 by dichotomy. It means division. XXN.

33 Q. In that context, what I'm trying to understand from you
34 is this; are you saying in the Central Australian or
35 western desert influence, there is a clear division
36 between male and female traditions, practices and
37 beliefs.

38 A. There are clear divisions in some aspects of their

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- 1 society, and particularly the ceremonial, but I wouldn't
2 want to go any further because there is a lot of
3 sensitivity with western desert groups.
- 4 Q. I don't want the detail, I just want the concept of the
5 aspects of those divisions. Is what you're saying this;
6 there is secret sacred women's business in the central
7 desert, and secret sacred men's business.
- 8 A. And secret sacred business in general.
- 9 Q. You say that Doreen Kartinyeri has extensive connections
10 with the West Coast region of South Australia.
- 11 A. Is that a question?
- 12 Q. Yes.
- 13 A. What page?
- 14 COMSR: Are we going to cover some new issue
15 now, are we?
- 16 MS PYKE: Yes.
- 17 COMSR: We are not just going to recapitulate
18 evidence.
- 19 MS PYKE: No.
- 20 XXN
- 21 Q. You refer to the fact that Doreen, in your view, has
22 some West Coast of South Australia influences on her.
- 23 A. I've said that in my statement. I mean I'm not
24 disputing that, but I don't want to say that I've said
25 something that turns out that I haven't. Have you got a
26 line number that I can refer to?
- 27 Q. It's on p.251.
- 28 A. I mean I can see, yes, as I've already said, the
29 influences that Doreen had on her through her extensive
30 contact with the Ooldea people from the west coast
31 region of South Australia.
- 32 Q. Are you suggesting that Doreen has in some way been
33 responsible for the importing of this secret sacred
34 women's business concept into Ngarrindjeri culture.
- 35 A. It's a strong possibility.
- 36 Q. Upon what do you base that.
- 37 A. From my personal knowledge of Doreen, I can think of
38 other occasions whereby she's reacted to things in a way

1 that appeared more consistent with a west coast, western
2 desert model of separating people in terms of male and
3 female business. There are a couple of quite good
4 examples, but I'd almost certainly offend western desert
5 people because I'd have to refer to -

6 COMSR

7 Q. I don't want you to do that.

8 A. That's the difficulty that I have.

9 Q. As I say, I don't think in the terms of the
10 authorisation would cover that.

11 A. I can say this; in the past, Doreen has asked me for
12 information on certain things, photocopies, and I posted
13 them up there, and she had to get her partner to check
14 through them before she could look at them.

15 XXN

16 Q. You see I'm just interested, in particular, in this
17 secret sacred women's business concept. Is there
18 anything that Doreen said to you that causes you to
19 think that she had -

20 A. She had mentioned this category of knowledge in relation
21 to activities that were going on where she was staying
22 in the Mid North, and she was coming into contact with
23 quite a few people from the northern parts of the State
24 while she was living up there, still working for the
25 museum.

26 COMSR: Is this an area of knowledge which is
27 sensitive? If we get into areas of knowledge which are
28 sensitive, then of course the appropriate thing is to
29 let me know, or to defer discussing them until we are in
30 closed session.

31 XXN

32 Q. I don't want to go into the detail, but is what you're
33 saying this; because Doreen has mixed or had connections
34 with people from Central Australia and is aware of
35 secret sacred women's business and secret sacred
36 business generally in Central Australia, that that means
37 that that has influenced her to construct the same model
38 for the Ngarrindjeri people.

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- 1 A. I think it's been a strong influence on her existing
2 models for sure. I'm not saying one replaces the other,
3 I mean culture is not like that.
- 4 Q. I'm simply putting this to you; you've really got no
5 idea, have you, you're just guessing because Doreen has
6 got a connection with the central desert that has caused
7 her to construct a model.
- 8 A. It would be before the Hindmarsh Island issue, it had
9 been the influence of her central Australian - sorry,
10 the Central Australian influence on Doreen had been a
11 topic of conversation that I'd had with other people,
12 this is before the Hindmarsh Island issue, and I can
13 think of other examples which to me pretty well
14 demonstrate that that is more than likely what was going
15 on, so I did have an idea of what was going on.
- 16 Q. I suggest to you it's a substantial quantum leap to say
17 that someone has a knowledge of something because they
18 are moving within a community.
- 19 A. I just said her practice in the sense of how she was
20 relating to things was also - I mean I'm not talking
21 just about knowledge, I'm talking about her practice of
22 how she dealt with certain incidents, things that were
23 being sent up, so it's not just knowledge, her practice
24 was confirming that for me.
- 25 Q. You say this, and again this is in your conversation
26 with Dr -
- 27 COMSR: You've covered an area that I'm not
28 quite certain how one should deal with it. There is the
29 mechanism where we can move into private session.
- 30 MS PYKE: I'm not asking for any specifics or any
31 details, I'm just dealing with general concepts, and I
32 understand the witness has not endeavoured to give any
33 specifics or details. I think it's common knowledge
34 that there are traditions in Central Australia which
35 would be termed secret and sacred and gender exclusive.
- 36 COMSR: In any event, I think that the witness
37 has covered the point that he thinks that there is a
38 process of importation, if I could put it that way. I

- 1 don't know how you'd phrase it, Dr Clarke.
2 XXN
3 Q. I'm simply putting to Dr Clarke that there is really no
4 basis for his conclusion in that regard.
5 A. I've just given evidence to suggest there is quite a bit
6 of basis to that.
7 Q. In your notes at p.148 -
8 MR ABBOTT: Could the transcript record in some way
9 that Dr Clarke is unwilling, indeed in open session or
10 perhaps at all, to give details, so it's not hanging up
11 there. I don't want the comment made that he just made
12 a bald assertion, Dr. Clarke made it clear that it's
13 not a bald assertion.
14 MS PYKE: I'm happy to go into closed session for
15 Dr Clarke to explain the basis on which he says Doreen
16 Kartinyeri has imported Ngarrindjeri traditions by
17 giving particular examples, in particular with reference
18 to secret sacred women's business.
19 MR SMITH: There is a problem with us doing that.
20 S.35 doesn't embrace a discussion of Aboriginal culture
21 other than in the Lower River Murray.
22 COMSR: The authorisation only applies in
23 respect of Ngarrindjeri.
24 MS PYKE: That's the difficulty that's been
25 asserted by this witness, that there's been an
26 importation from the western desert or the central
27 desert, and I'm not able to test what he says.
28 CONTINUED

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- 1 He is making a specific allegation and we are left not
2 being able to do anything about it.
- 3 MR ABBOTT: Have you got instructions that that is
4 not so?
- 5 COMSR: Yes.
- 6 MR ABBOTT: I mean, it seems to me that he makes
7 this comment. If it is not anthropologically sound,
8 then presumably Ms Pyke could say so, but I fail to see
9 how she could otherwise challenge it. If she could say
10 no anthropologist would say that, because is is not
11 anthropologically sound, but to say that you are going to
12 refute the suggestion that Doreen Kartinyeri has
13 imported, presumes you would have instructions from
14 Doreen Kartinyeri, which she hasn't got.
- 15 COMSR: Yes, there is that difficulty, of
16 course, you are supposed to be cross-examining on the
17 matters that directly affect your -
- 18 MS PYKE: My client is directly affected. She has
19 said to Dr Clarke that she does not believe that that is
20 the case. Dr Clarke is making an assertion. My client
21 doesn't accept it, doesn't believe it to be so, but, if
22 Dr Clarke - I am entitled to test the basis of his
23 assertion, because he is saying 'Look, I have said to Dr
24 Fergie that, as far as I am concerned, Dr Fergie's in
25 error. That what we have is Doreen Kartinyeri importing
26 a model from the western dessert, Central Australia,
27 into Ngarrindjeri culture. Therefore you, Dr Fergie,
28 are wrong.' That is clearly what his evidence is.
29 Surely I can contest that?
- 30 COMSR: Yes, you can't test it under the terms
31 of the authorisation I have.
- 32 MS PYKE: Yes, I know.
- 33 COMSR: By delving into specifics of the culture
34 of other areas.
- 35 MS PYKE: And I suggest that that highlights one
36 of the deficiencies of this Royal Commission. It is
37 easy to get up there and make assertions and allegations
38 about beliefs of the proponent women and to criticise my

- 1 client and her report and I can't delve into one of the
2 prime bases that this witness says justifies his
3 criticisms.
- 4 MR ABBOTT: Won't this be a matter for submissions?
5 COMSR: Yes, I think so.
- 6 MR ABBOTT: At the issues joined between Dr Fergie
7 and Dr Clarke. He has his view. He is unable to give
8 chapter and verse, because of the s.35 restriction, if
9 he wanted to. Therefore, his evidence is not tested, to
10 that extent and no doubt Ms Pyke will make a submission.
- 11 COMSR: Yes.
12 MS PYKE: I am just suggesting that it is a
13 glaring gap in my capacity to properly represent my
14 client's interest.
- 15 COMSR: You can put what your client's
16 instructions are to the witness and get that far.
- 17 MR ABBOTT: All I can say about that is it is no
18 more glaring than the gap we are going to have when we
19 can't delve into the envelopes.
- 20 MR SMITH: My learned friend could explore with Dr
21 Clarke the instances. All that Dr Clarke cannot do and
22 this Commission cannot hear is evidence that or
23 information that the divulgence of which would be a
24 breach of Aboriginal tradition in another area other
25 than the Lower River Murray, that is the restriction,
26 but, beyond that, the matter can be explored.
- 27 COMSR: Yes, but the nature of it is such that I
28 think that we would of necessity have to explore that in
29 private session in case we find ourselves in difficulty.
- 30 MR SMITH: We are not permitted to even get into
31 difficulty. We have got no s.35 authority which permits
32 us to explore information the divulgence of which would
33 be a breach of Aboriginal tradition from another area
34 than the Lower River Murray and that is no fault of
35 this Commission.
- 36 MR ABBOTT: And that would mean that Dr Clarke
37 presumably couldn't give any examples of Dr Kartinyeri's
38 behaviour which inferentially one might then use to say

1 this represents or is relevant to secret behaviour in
2 another community.

3 MR SMITH: It is really a peripheral matter, I
4 would have thought.

5 MS PYKE: It is not peripheral. It is a clear
6 assertion as to one of his criticisms of Dr Fergie. It
7 is not peripheral.

8 XXN

9 Q. Again getting back to this conversation, I suggest to
10 you that, in addition to telling you that Doreen
11 Kartinyeri was one of the women who had the knowledge,
12 Dr Fergie mentioned to you that Connie Roberts was one
13 of the custodians of the knowledge. Do you remember -

14 A. That is Mrs Margaret Roberts on the list, yes, we did
15 speak about her.

16 Q. Connie Roberts, I suggest to you -

17 A. We would have used -

18 COMSR: The witness just said that.

19 A. Yes.

20 XXN

21 Q. You said it was Maggie in the list, but you agree -

22 A. No, it is Margaret Roberts on the list I believe. That
23 is her formal name.

24 Q. I suggest to you that Dr Fergie said to you that Connie
25 Roberts was one of the custodians and you said to Dr
26 Fergie that was unlikely, because Doreen and Connie
27 were, in effect, in antagonistic positions in the
28 context of Ngarrindjeri culture.

29 A. I have got no memory of saying that and also I can't
30 think of a conflict which would have put those two at
31 opposite ends. So, I deny that, that I said anything
32 like that.

33 Q. Any suggestion that you have suggested that Doreen and
34 Connie have some antagonistic position in the
35 application of Ngarrindjeri culture is quite wrong.

36 A. Again, I can't think of a single example where those two
37 people have ever had any sort of acknowledged argument,
38 so I would have to say no, that is a fault of the

1 memory.

2 Q. Presumably then you wouldn't recall Dr Fergie going on
3 to say to you that indeed that fact or that position
4 that you had put to her was evidence to confirm her
5 judgment rather than disconfirm it.

6 OBJECTION Mr Abbott objects.

7 MR ABBOTT: `You wouldn't recall' implies that that
8 was said. The question is wrong. You can ask the
9 witness `Did Dr Fergie say that?'. But suggesting `You
10 won't remember this when I put it to you', is a -

11 COMSR: You got that answer.

12 MS PYKE: He says that the first proposition
13 wasn't put.

14 COMSR: It wasn't put, therefore, logically, the
15 next wouldn't follow.

16 MS PYKE: I will rephrase it, if Mr Abbott wants
17 me to.

18 XXN

19 Q. I put it to you, do you recall Dr Fergie saying
20 something to the effect that that was evidence to
21 confirm her judgment rather than disconfirm it. That
22 is, the difference in position between Doreen and
23 Connie.

24 A. Sorry, I still can't understand. What confirms what? I
25 have said that there was no - I can - I have no memory
26 of talking about any animosity between the two. Now,
27 what is it that -

28 Q. Do you have any memory of Dr Fergie making comments to
29 you about Doreen and Connie and their positions
30 vis-a-vis one another confirming her judgment rather
31 than disconfirming it.

32 A. I have got no memory of there being a discussion between
33 the relationship between those two people.

34 Q. Can you recall in that conversation that you had with Dr
35 Fergie on the telephone that she said to you something
36 to the effect of that the process of authorisation that
37 she had observed was an important test of whether
38 something could be considered a tradition.

- 1 A. That was a topic discussed, but it wasn't framed in that
2 manner. I think I have already given evidence towards
3 what - how it was framed. And it was I was questioning
4 the validity of the group decision in relation to what
5 was being said and in terms of Hindmarsh Island and she
6 replied along the lines of, as long as she had 35
7 Ngarrindjeri signatures, signatures from Ngarrindjeri
8 women, that was enough.
- 9 Q. Can you remember her saying something to the effect of
10 that that authorisation process was an important test of
11 whether something could be considered a tradition.
- 12 A. No, I have no memory of it being put in those precise
13 terms, no.
- 14 Q. Do you recall Dr Fergie saying to you in that
15 conversation that there had been significant
16 disagreement about whether or not to disclose the
17 knowledge and that there was no questioning of the
18 authenticity of the material.
- 19 A. No, I can't remember that aspect. That aspect became
20 clear when I eventually was in a position to read the
21 Fergie report.
- 22 Q. In terms of that particular conversation that we are
23 talking about -
- 24 A. No, I can't remember.
- 25 Q. So it might have been said, you just don't -
- 26 A. I doubt whether it was said.
- 27 Q. Why do you doubt that.
- 28 A. Because I have no memory of it and it would have been
29 important information in terms of me getting an idea of
30 what was going on.
- 31 Q. Your note at p.144 refers to - and it is one I quoted to
32 you earlier - '35 Ngarrindjeri women elected Doreen
33 Kartinyeri as spokeswoman. Connie Roberts was hard on
34 any info being made public.' Do you agree with me that
35 certainly seems to indicate that there was some
36 difference in position between Connie and Doreen, at
37 least on that topic.
- 38 A. No, when I was writing it I certainly didn't write it as

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1 if there was an argument about that. You know, Connie
2 Roberts - sorry, Mrs Margaret Roberts had a position
3 where she was - from the information I received, that
4 she had a position that was hard on any information
5 being made public, as I say there. And, you know,
6 Doreen was spokeswoman on that issue. I mean, the two
7 statements are not necessarily against each other to the
8 extent that it implies that Doreen wanted to do one
9 thing and Mrs Roberts wanted to do another. I mean, a
10 spokeswoman to whom?

11 Q. I am just reading from your notes.

12 A. No, I am questioning the, you know, the validity of a
13 suggestion that my notes suggest that Doreen Kartinyeri
14 and Connie Roberts were arguing. I mean, I can't see
15 how one necessarily means the other.

16 Q. You have made reference in your evidence in relation to
17 yourself as having an informal -

18 COMSR

19 Q. Might this matter well be something you are a bit
20 sensitive about.

21 A. It could be.

22 MS PYKE: Perhaps the time for sensitivity has
23 passed. It might have been appropriate at the - it was
24 said in open session, at p.151 of the transcript.

25 MR ABBOTT: It is line 26.

26 A. I have got p.151, yes.

27 MR ABBOTT: Line 26.

28 XXN

29 Q. You said this -

30 MR ABBOTT: I don't think it should be read out.

31 A. Yes, if it is line 26, that is an area which there would
32 be or I can demonstrate quite a bit of sensitivity in
33 relation to even fairly recent contact including a short
34 field trip I had to Central Australia. So, it was made
35 quite clear to me that, from Aboriginal representatives
36 outside of this State, that they did not appreciate any
37 reference to on-going projects in relation to the topic
38 of this answer. So, any discussion on this (INDICATES)

- 1 is most certainly going to offend Aboriginal people in
2 Central Australia.
3 COMSR
4 Q. Are you saying that that is information which should be
5 suppressed, because of its sensitivity.
6 A. Yes, it came - this information came up during the
7 cross-examination of Mrs Fisher and counsel assisting
8 corrected her interpretation of what I said, but any
9 sort of variation from what is said here is likely to
10 once again cause offence in Central Australia.
11 CONTINUED

- 1 Q. As it appears there, is it offensive?
- 2 A. It was offensive and that fact was relayed to me. Even
3 though it has the appearance of being publicly available
4 information, in the context of it being given in this
5 highly formal setting, it did offend Aboriginal people
6 in Central Australia and that factor -
- 7 Q. What I am trying to elicit is would any further
8 publication of it be offensive to them.
- 9 A. I believe it would.
- 10 Q. That is what I am asking, whether you are suggesting
11 that that should now been suppressed from publication to
12 prevent any further dissemination of the information on
13 the basis that it is confidential and would offend the
14 sensibilities of the people concerned.
- 15 A. Yes.
- 16 MR SMITH: I would apply for you to do that, since
17 this matter has arisen. I was aware that it caused
18 problems before. It lay dormant until now. I was
19 content to leave it there.
- 20 COMSR: What page and what lines are we now
21 suggesting?
- 22 MS PYKE: It is p.151, lines 23 to 32.
- 23 COMSR
- 24 Q. Does that cover it.
- 25 A. Yes, it does.
- 26 MR ABBOTT: You should also suppress from
27 publication the discussion about this today, because we
28 wouldn't want the discussion today not suppressed and
29 those lines suppressed.
- 30 COMSR: I will make an order then suppressing
31 from publication, lines 23 to 32 inclusive of p.151 of
32 the evidence, and any discussion or reference to those
33 matters arising from today's transcript.
- 34 MS PYKE: If I want to ask any questions about
35 that, it will be in closed session?
- 36 COMSR: Yes. There are a few matters that you
37 will have to clear up in closed session. Unfortunately,
38 the nature of this inquiry is such that it is necessary

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1 to make these suppression orders from time to time.

2 There have been an unusual large number of suppression
3 orders in the course of this hearing, but it arises from
4 the nature of the hearing.

5 XXN

6 Q. In answer to a question from counsel assisting, this was
7 again in the context of methodology, the question was
8 asked at p.271 of the transcript `Do traditional owners,
9 bearing in mind that there is linkages with land that
10 are being reported upon, is it necessary to establish
11 some contact with tradition owners. A. It would be'.
12 As a result of your various researches, do you have a
13 view about who the traditional owners are of the
14 Ngarrindjeri people in relation to -

15 A. My answer is in relation to many parts of Australia. In
16 terms of the Lower Murray, there are a few places of
17 historic importance that particular families would
18 consider that they had most say about. In terms of
19 mythological traditions, there are one or two fragments
20 of myths that were - one or two Aboriginal people own in
21 the sense that they say that their version is the
22 correct version. I am thinking in relation to quite
23 lengthy cross-examination that I had in terms of the
24 Thukabi, the Turtle Dreaming, that aspect was covered -
25 and, I am sorry, I have forgotten the original question.

26 Q. You were answering that question in terms of methodology
27 about the way in which you would go about preparing that
28 report. I understood your answer to that question to be
29 that it was necessary to establish some contact with
30 traditional owners, and I understood that was in the
31 context of the concept of women's business or secret
32 sacred women's business. My question to you is this.

33 A. Yes.

34 Q. Have you got any thought about who the traditional
35 owners might be.

36 A. As I say here, there are still anthropological records
37 such as the ones the museum hold which still indicate
38 possible owners in the present day community. So there

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1 is quite a heavy reliance, so I am told, even with many
2 land claims, in terms of archival information that
3 relates to family trees. There is also contemporary
4 field work, which I also go on to say here 'There is
5 also contemporary field work of establishing those
6 traditional owners'. So there is another level of data.
7 I mean, they may produce quite a bit of conflicting
8 information, but that conflicting information in itself
9 may be indicative of other processes going on. So I am
10 not suggesting for every square centimetre of the Lower
11 Murray there is a traditional owner that you could get
12 to by going through anthropological records and asking
13 people, but there are certain places, through
14 anthropological records in particular, or mainly in the
15 case of the Lower Murray, that could be traced to
16 particular individuals from last century. One could
17 work out who the descendants are of that particular
18 individual, and come up with a list of names of people
19 who, through the anthropological records at least, could
20 demonstrate a link, however distant, to that particular
21 part of the landscape.

22 Q. To get back to what I asked, you have got no particular
23 view yourself about who the traditional owners of
24 Hindmarsh Island -

25 A. I was involved as an informant for Rob Lucas' report,
26 and I suggested some family surnames of people who,
27 through knowledge of history, we can place very early on
28 in that general sort of Goolwa/Hindmarsh Island clayton
29 vicinity, and those names appear in that report. From
30 memory, the names of Rankine, Walker, Sumner, and
31 possibly one of the Rigneys, although the family name
32 does not come from that area. But there are those names
33 in the Lucas report. They were names that both Steve
34 Hemming and I would have - or did suggest to Rob Lucas,
35 that if that was to go that way, they were the families
36 to begin with. There may well be other families,
37 particularly with intermarriage over 150 years odd. It
38 could well be that even 30 or 40 per cent of

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- 1 Ngarrindjeri people would have some link to one of those
2 families, and therefore could demonstrate some link to
3 that landscape, however diffuse. So it becomes a
4 problem when there was a pre-European model or process
5 whereby people gained their country, and then we come to
6 the mission phase of the community and their descent
7 patterns are along European lines, and then we sort of
8 change. So, in a sense, if one was to use that approach
9 in the Lower Murray, they would be trying to mesh a
10 European descent system into a pre-European one. But
11 even so, I think it would be justified in terms of
12 negotiating - consulting with the Aboriginal community
13 about a particular part of the landscape.
- 14 COMSR: Are you able to give some indication how
15 much longer you are likely to be, what areas you propose
16 to -
- 17 MS PYKE: I have got a few areas, some of the
18 literature and various bits and pieces to put. I would
19 say probably the morning.
- 20 COMSR: The morning? What witnesses have we?
- 21 MR SMITH: Philip Jones tomorrow.
- 22 MS PYKE: I have got some difficulty pressing on,
23 due to other commitments and so has Dr Fergie.
- 24 COMSR: Could you give some indication of what
25 particular areas?
- 26 MS PYKE: Some of the matters in relation to
27 issues raised in Berndt and Berndt. Certainly some of
28 the other publications. I have abbreviated it somewhat.
29 Reputations don't come cheaply, and we are here to -
- 30 COMSR: I appreciate that. I am wondering how
31 much of it is a matter that we have already traversed in
32 the witness's evidence. I do not want to recapitulate
33 that. I take it you are putting new matters to him.
- 34 MS PYKE: Putting new matters, but also putting,
35 to a degree, my instructions. I don't want to be in the
36 unfortunate position of when Dr Fergie gives evidence -
37 as I am told there is a summons on the way -
- 38 COMSR: Let me say this, where professional

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1 witnesses are concerned and they have requested, as
2 professional witnesses frequently do, that they be
3 served with a subpoena - and it is understandable that
4 they do so because it is a process that is a form of
5 protection for them - if we are asked to do so here the
6 commission will certainly issue a subpoena, and we have
7 been asked by the professional witnesses to do so. It
8 is the usual course of practice.

9 MS PYKE: As I said to you all along, Dr Fergie is
10 not in a position to attend here without a summons.

11 COMSR: That is understandable, most
12 professional witnesses take that point of view. I must
13 admit, for a long time I resisted the issue of any
14 summons at all, but I have been persuaded that, as it is
15 the usual and acceptable course certainly in the courts,
16 it is the most usual course to pursue, that,
17 notwithstanding, my earlier reluctance, where a
18 professional witness indicates that they wish a subpoena
19 to issue, I consider it is appropriate to do so. I
20 suppose it is much the same with witnesses from the
21 media. It is quite usual that they request a subpoena
22 to attend. That is another thing that is done in the
23 normal course of events.

24 MS PYKE: To be blunt about it, there has been
25 heaps of time wasted for heaps of reasons. It might
26 seem to some of us a rather substantial amount of the
27 evidence seems highly irrelevant, but that is not for us
28 to determine. All I can say from my client's
29 perspective, we don't wish to be truncated, abbreviated,
30 told that we have to hurry up.

31 COMSR: I would agree with that, certainly. It
32 is just that I want to get some appreciation of what is
33 involved so that we know how to arrange the witnesses.

34 MS PYKE: I would have said the morning, but one
35 of the benefits of course is one can always try to cut
36 it down overnight.

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- 1 COMSR: If there are direct questions that you
- 2 want to put to the witness, perhaps it is appropriate to
- 3 put them straight to him
- 4 ADJOURNED 4.35 P.M. TO FRIDAY, 13 OCTOBER 1995 AT 10 A.M.

