

1 COMSR STEVENS

2

3 HINDMARSH ISLAND BRIDGE ROYAL COMMISSION

4

5 FRIDAY, 20 OCTOBER 1995

6

7 RESUMING 9.35 A.M.

8 MR SMITH: The program for today is continuation of  
9 Philip Jones in evidence in-chief, as it were. I would  
10 anticipate finishing by 10 or thereabouts. At 10 clock,  
11 the ALRM subpoena, which has been adjourned by yourself  
12 twice, is again returnable. And Mr Wooley is subpoenaed  
13 for 10 o'clock.

14 WITNESS P.G. JONES, EXAMINATION BY MR SMITH CONTINUING

15 Q. We are dealing with your report, Exhibit 18, you have a  
16 copy of that, don't you.

17 A. Yes.

18 Q. You had drawn the Commissioner's attention to the work  
19 down by Catherine Berndt, Dorothy Tindale and Alison  
20 Harvey of the Lower River Murray.

21 A. Yes.

22 Q. In the next paragraph you deal with, and I don't want to  
23 go into it, the question of the landscape being  
24 evocative of a woman's reproductive organs. I will  
25 return to that in a minute.

26 A. Yes.

27 Q. The large third paragraph on p.4 deals with the topic of  
28 of the emergence at this stage in the historical data  
29 and ethnographic literature of the women's business, the  
30 secret women's business. Could you tell us the thrust  
31 of what you have said there in that paragraph.

32 A. Yes. I've suggested that the great weight of  
33 anthropological evidence and historical evidence, the  
34 ethnographic evidence, taken together, leads us  
35 inescapably to a set of conclusions about the culture,  
36 such as that we can characterise the culture as being  
37 distinctive in Aboriginal Australia according to several  
38 criteria, and I've suggested that a competent

1 anthropologist, having undertaken such a survey of the  
2 literature, either as a concerted effort or perhaps  
3 having become familiar with that literature over the  
4 course of the years, if then faced with the brief or the  
5 proposition that structural elements of that set of  
6 criteria required modification, perhaps through  
7 theoretical perspectives on the one hand, or perhaps  
8 through the emergence of a contention from a party or  
9 parties on the other, that that anthropologist would, as  
10 a professional, have a very weighty task ahead. That  
11 task would involve re-examining the literature, looking  
12 for evidence that suggested that the paradigm which had  
13 been constructed for the culture required substantial  
14 re-analysis and alteration, and ultimately I think,  
15 having perhaps advanced to a conclusion which is at  
16 variance with the weight of literature which had been  
17 gathered up to that point, it would be absolutely  
18 essentially my view that a peer review of these  
19 conclusions be undertaken. This is not a simple matter  
20 of just leafing through some documents and suggesting  
21 that one can draw a different conclusion, and putting  
22 that down and then passing it off as a report. It's a  
23 very serious matter. It relates to the way in which  
24 anthropology is practised in Australia and further  
25 afield. That is, I guess, the sum of the first part of  
26 the paragraph. The second part of the paragraph, I  
27 guess, addresses ways in which you would do that in a  
28 pragmatic sense and what I have done is I have taken the  
29 suggestion that an adequate model to work from is that  
30 perhaps contained in the Northern Territory with the  
31 Northern Territory land rights procedures, or, indeed,  
32 in other States in the country, where anthropologists  
33 have very clear sets of principles and codes of practice  
34 in relation to mapping out paradigms and matching data  
35 with theory.

36 Q. Do I understand you correctly there, that you are saying  
37 that this is such a massive shift from the established

1 position, that immense scholarship is necessary to  
2 establish it.

3 A. I wouldn't say immense scholarship. I would suggest  
4 that there are accepted principles of scholarship and  
5 accepted practices, which apply certainly to Aboriginal  
6 matters in a large part of Australia, and I see no  
7 reason whatsoever why Aboriginal people in South  
8 Australia, and southern South Australia in particular,  
9 shouldn't be accorded the same access to that degree of  
10 professionalism.

11 Q. You take the view, in this particular case, that, for  
12 instance, the report of Dr Deane Fergie does not do  
13 that.

14 A. I don't see it meeting those criteria.

15 Q. In saying that, have you taken into account the  
16 questions of gender bias and the oral nature of the  
17 recording of this so called secret women's knowledge.

18 A. Could you be more specific in that question?

19 Q. In taking the view, as you did yesterday, that secret  
20 women's knowledge did not exist in this culture until  
21 1994, the suggestion that there is gender bias in the  
22 existing literature.

23 A. There appears to be almost an entire generation of  
24 anthropologists operating today who imagine that they  
25 have a monopoly on feminist anthropology and it simply  
26 wasn't practised in previous generations. I think it is  
27 quite clear from a couple of the references that were  
28 made yesterday - for example, the work of Catherine  
29 Berndt, Dorothy Tindale and Alison Harvey in the 30s  
30 and, in fact, Adelaide's position in the anthropological  
31 scene across Australia, makes it plain that feminist  
32 anthropology - at least the data gathering principles  
33 that lay behind feminist anthropology, if not the actual  
34 theoretical interpretations which are subject to the  
35 fashions and fads of contemporary politics - were well  
36 in place in the 1930s in Adelaide, and there was a very  
37 strong commitment to investigate women's life, both in a  
38 practical sense and the spiritual dimension of that life.

1 Q. The suggestion that's been made in the course of the  
2 inquiry here that the literature may not record what is  
3 passed down in an oral tradition, bearing in mind your  
4 view, what do you say about that as a reason for the  
5 late public emergence of secret women's knowledge.

6 A. I think sooner or later, people have to come to grips  
7 with the complex reality of Aboriginal Australia, and  
8 the facts that are documented right across the country  
9 which show that culture practice was not homogeneous.  
10 Attitudes to the place of women in decision making, for  
11 example, and in ceremony, was not homogeneous across the  
12 country and is not homogeneous today. And if people can  
13 get their heads around that concept, I think we would be  
14 less prone to these sorts of impasses, you might say,  
15 where a group of people on the one hand maintain one set  
16 of data, and a group on the other maintain another. I  
17 think, if there had perhaps been more of a grasp of the  
18 complexity of Aboriginal Australia on the part of three  
19 or four people involved in interpreting this culture to  
20 various agencies, none of us would be here today.

21 COMSR

22 Q. Could you just clarify that. In respect of the oral  
23 tradition, how do you apply what you have just told us.

24 A. I guess what I am saying is that what people have been  
25 steadfastly intent on defending the existence of,  
26 doesn't seem to have existed, and that therefore  
27 attempts of people to fasten onto fragments of  
28 information relating to what is, after all, a fairly  
29 universal practice in indigenous societies across the  
30 globe relating to the separation of women at times of  
31 menstruation and birth, for example, and its translation  
32 into some mystical oral tradition relating to great  
33 secrecy in the culture, is a quantum leap which  
34 shouldn't be made.

35 XN

36 Q. The type of oral tradition recorded by Dr Fergie in her  
37 report being of the dimension and importance, as  
38 particularised in her report, could that have escaped

1 the literature and the history of this culture if it  
2 existed.

3 A. I don't think it could have, no.

4 Q. Can I take you then to p.5 of your report, and the  
5 bottom of the first paragraph there on p.5. You have  
6 talked of other influences such as a plethora of new age  
7 explanations for cultural phenomena have circulated  
8 since the 1960s at least. Can you tell us whether  
9 there's literature warning of the development of this  
10 phenomena and the extent of it.

11 A. Yes, I guess there is. I mean Catherine Berndt herself  
12 signalled this in the 1960s in a paper which has been  
13 mentioned in this commission, I believe. There are two  
14 papers that she wrote which touch on this matter. One  
15 of them is in Peggy Brock's edited volume. The other  
16 one is in a volume of essays in honour of A.P. Elkin,  
17 the anthropologist. I don't have the references to  
18 hand. So I guess those are important references because  
19 they are put forward - I suppose, not warnings, because  
20 I don't think Catherine Berndt necessarily saw the  
21 emergence of these sorts of explanations as in any sense  
22 a threat to culture or to be criticised on any sort of  
23 hierarchical basis in relation to people's earlier  
24 beliefs. She was simply noting the fact that, as  
25 Aboriginal people incorporated European world view  
26 during their history, that inevitably there would be  
27 some transfer of ideas across and between the cultures.  
28 Since those articles, I suppose, within Australian  
29 anthropology there have been a number of other analyses  
30 of these aspects. There has been a body of literature  
31 directed towards the emergence of millenarianism as a  
32 cult within societies, particularly in Arnhem Land and  
33 north-western Australia, so that, for example, stories  
34 of Captain Cook in places where he patently never even  
35 thought of visiting, Ned Kelly in the Kimberley and so  
36 on. I mean, I am not suggesting that these are  
37 ridiculous ideas, but they are what Aboriginal people do  
38 in those cases, is take very potent European symbols,

## P.G. JONES XN (MR SMITH)

1 historical figures such as Jesus Christ, Captain Cook,  
2 Ned Kelly, and incorporating them within their own world  
3 view. So there is literature about that. The work of  
4 Erich Kolig, for example, has examined that, and more  
5 recently the work of Tony Swain, an historian of  
6 religion, has examined not so much these more recent  
7 developments, but has looked back into the 19th century  
8 into south-eastern Australia and has suggested that the  
9 emergence of figures such as Ngurunderi as a very  
10 prominent religious figure in the culture, quite  
11 possibly had something to do with contact with European  
12 missionaries and so on.

13 Q. So the -

14 A. Perhaps I could just finish by saying there is another  
15 strand of, you could call it literature, that one finds  
16 in metaphysical bookshops and newsagencies to some  
17 extent. I'm talking about magazines and journals which  
18 suggest that the way forward for human kind is  
19 essentially a great bonding experience, and that if we  
20 can get back to basic spirituality we will all be better  
21 off, including reference to earth Goddesses. And what  
22 seems to characterise a lot of this literature is  
23 reference to the landscape as essentially a feminine  
24 quality, which is periodically despoiled by patriarchal  
25 industrial societies which tended to build bridges  
26 across it or cart roads through it, and so on.

27 CONTINUED

- 1 Q. Your point there then is that those influences can  
2 corrupt a culture.
- 3 A. I wouldn't use the term `corrupt'. I mean, I just think  
4 that -
- 5 COMSR
- 6 Q. What term would you use.
- 7 A. Influence a culture and perhaps affect a culture, but  
8 even that is perhaps misleading, because it is very  
9 often the culture that is remaking itself as it goes  
10 along. To use the term influence or affect, it connotes  
11 a kind of passive culture which is acted upon by these  
12 influences. My suggestion is that in Ngarrindjeri  
13 culture today there are a number of individuals who are  
14 very actively remaking and influencing their culture in  
15 ways that are quite positive.
- 16 Q. At the top of p.6 you deal with this question of  
17 development and evolution of tradition. Can I ask you,  
18 however, to focus on the emergence of secret women's  
19 business. You say there that `The emergence of secret  
20 women's business, in this case, has been without any  
21 apparent points of contact with the known content of  
22 traditional culture.'
- 23 A. Yes.
- 24 Q. To put that in the vernacular, do you mean to say there  
25 that women's business, that is, secret women's knowledge  
26 or secret women's business has come, as it were, out of  
27 left-field.
- 28 A. I think the American baseball analogy is appropriate,  
29 yes.
- 30 Q. Is it your position that it has been invented in the  
31 real sense of invented.
- 32 OBJECTION Ms Pyke objects.
- 33 MS PYKE: I object. What is the real sense of  
34 invented? Lets have a bit of a definition.
- 35 XN
- 36 Q. Deal with that proposition, then, and explain it if you  
37 want to use your own words.
- 38 A. Yes, for me it is a tricky concept. I would be

1 reluctant to reduce the process to a phrase like  
2 invention, but I do think that, if one was to look for  
3 points of contact with the enormous corpus - I shouldn't  
4 use that word, I suppose - the enormous amount of  
5 documentation relating to the culture, the spirituality,  
6 the mythology of Ngarrindjeri culture, society, that one  
7 would expect that any reference to the landscape which  
8 connected with that body of tradition would manifest  
9 itself in a different way to the concept of secret  
10 women's business.

11 Q. You have mentioned on p.5 the map of Tindale, have you  
12 not.

13 A. Yes.

14 Q. A map of Aboriginal sites.

15 A. Yes, I have.

16 Q. Looking at this map produced to you.

17 COMSR: Is this a public map?

18 MR SMITH: Yes.

19 XN

20 Q. Is that the map to which you were referring on p.5.

21 A. Yes, it is.

22 Q. It is replete with Aboriginal names, I think, is it the  
23 coastline of Hindmarsh Island shown there.

24 A. Yes, this map is an extract from a larger map which  
25 itself is an extract from a series of maps, which  
26 probably taken together contain several hundred  
27 Aboriginal names.

28 Q. You have mentioned the map in your report in the context  
29 of discussing how rich in culture Hindmarsh Island is,  
30 in any event, haven't you.

31 A. Yes.

32 Q. Does the map have any significance, however, in terms of  
33 the question of the male ancestor and any influences of,  
34 shall I say, femininity in relation to the island.

35 A. It is a difficult question to answer, but there are at  
36 least one of the names on this map referring to an event  
37 or an episode taking place in the Ngurunderi epic, which  
38 taken or put together with the documented fact that a



1 number of sources refer to the path of Ngurunderi  
2 passing adjacent to Hindmarsh Island, across the Murray  
3 Mouth, along the Coorong peninsula, from southeast to  
4 northwest, indicates that Ngurunderi's fear of influence  
5 at least extended to Hindmarsh Island. This in turn  
6 suggests that the almost total feminisation of Hindmarsh  
7 Island in recent months has been undertaken against the  
8 wind, you might say.

9 EXHIBIT 18E Tindale's map of Hindmarsh Island  
10 tendered by Mr Smith. Admitted.

11 Q. One very last topic. You make mention right at the end  
12 of the opinion section of your statement of the  
13 barrages.

14 A. Yes.

15 Q. The point made there by you about the barrages is, what  
16 exactly is the thrust of the point you are making there  
17 about the effect of the barrages.

18 A. In summary I suppose the literature - the ethnographic  
19 literature suggests, as it does elsewhere in Aboriginal  
20 Australia where fresh and salt water meet, that this  
21 phenomenon has cultural implications of quite a  
22 substantial nature. That people in the Lower Murray  
23 area tended to align themselves in terms of the  
24 topography and the fresh and salt water dichotomy and  
25 that this alignment was significant in the culture and  
26 is expressed in the mythology that is recorded.  
27 Particularly an article or a legend, I suppose you would  
28 call it, recorded by at least three sources, to my  
29 knowledge - Alison Harvey, Norman Tindale and the  
30 Berndts - relating to a fishing legend of the  
31 Ngarrindjeri people, which underlines or brings to the  
32 surface this dichotomy. Now, what the barrages  
33 effectively did is prevent the mixing of fresh and salt  
34 water. So, at a time in the 1930s, I would suggest that  
35 the effect of the barrages was, in traditional terms,  
36 if.  
37 We look back and say that that event maybe had occurred  
38 several hundred years ago, somehow, that I would suggest

1 that that would have had quite cataclysmic effects on  
2 the culture. At least effects which would have had to  
3 have been accommodated in some fairly radical ways.

4 Q. And yet the barrages didn't have that effect so far as  
5 the literature -

6 A. We don't know of it. The claim has been made that  
7 Aboriginal people were disempowered from making their  
8 opinions felt, at that time. But I would find that  
9 difficult to suggest - a difficult conclusion to draw,  
10 because of the very close contact that several  
11 anthropologists had with Ngarrindjeri people, at that  
12 time.

13 MR SMITH: I have no further questions of Mr Jones.

14 COMSR: You ask Mr Jones to step down?

15 MR SMITH: Yes, I ask Mr Jones to step down.

16 WITNESS STANDS DOWN

17 MR SMITH: Perhaps I could ask your secretary  
18 whether or not a file from ALRM has been produced to  
19 you, this Commission?

20 Could you tell us whether that has occurred?

21 COMSR: No, I understand that no file has been  
22 produced.

23 Are you calling for its production?

24 MR SMITH: I ask that Sandra Saunders's name be  
25 called in the hearing room or in the environs of the  
26 hearing room.

27 NAME OF SANDRA SAUNDERS CALLED OUTSIDE HEARING ROOM.

28 NO APPEARANCE

1 MR SMITH CALLS

2 FRANCES ELLEN ANDERSON SWORN

3 EXAMINATION BY MR SMITH

4 Q. I think you are on duty in the court precincts today as  
5 court orderly, are you not.

6 A. Yes, I am.

7 Q. I think you have called the name Sandra Saunders in the  
8 hearing room and in the environs of the hearing room.

9 A. Yes, I have.

10 Q. Has there been any response.

11 A. No response.

12 NO CROSS-EXAMINATION

13 NO FURTHER QUESTIONS

14 WITNESS RELEASED

15 COMSR: There is no-one here to produce the  
16 file.

17 The file has not been produced and accordingly Mr  
18 Wooley will have to give his evidence without the  
19 benefit of his file.

20 That, of course, is a circumstance that I will take  
21 into account, when he gives his evidence.

22 Meanwhile, any consideration of the issues which  
23 arise out of the failure to produce the file will be  
24 deferred, as it is necessary for this Commission to  
25 press ahead with the hearing of the evidence, at this  
26 time.

27 Mr Wooley, I think, has been summoned to give his  
28 evidence?

29 MR SMITH: Yes, he has.

- 1 MR SMITH CALLS  
2 TIMOTHY JAMES WOOLEY AFFIRMED  
3 EXAMINATION BY MR SMITH  
4 Q. I think you intend to give evidence in this Inquiry in  
5 response to a subpoena, do you not.  
6 A. That's correct.  
7 Q. Do you produce that subpoena to the Inquiry.  
8 A. Yes, I do.  
9 EXHIBIT 221 Subpoena tendered by Mr Smith.  
10 Admitted.  
11 Q. I think you are a solicitor employed by the Aboriginal  
12 Legal Rights Movement Incorporated here in Adelaide, are  
13 you not.  
14 A. That's correct.  
15 Q. You are an admitted barrister and solicitor of the  
16 Supreme Court of South Australia, is that right.  
17 A. Yes, that's correct.  
18 Q. I think you were admitted on 4 December 1978.  
19 A. Yes.  
20 Q. I think you have provided a statement to this Commission  
21 in connection with work you did for the Aboriginal Legal  
22 Rights Movement Incorporated for, amongst other people,  
23 the Lower Murray Aboriginal Heritage Committee, is that  
24 right.  
25 A. Yes, that's correct.  
26 Q. Looking at the statement produced to you, do you  
27 recognise that as a copy of the statement which you have  
28 provided to the Inquiry.  
29 A. Yes, I do.  
30 EXHIBIT 222 Copy statement, dated 19 October 1995,  
31 tendered by Mr Smith. Admitted.  
32 Q. Have you a copy of that in front of you.  
33 A. Yes, I do.  
34 Q. If you look at the attachment TJW 1, I think you have  
35 there set out, have you not, your curriculum vitae.  
36 A. Yes.  
37 Q. Including your qualifications and formal qualifications.  
38 A. Yes, that's right.

- 1 Q. And then a second attachment sets out your experience.  
2 A. Yes, that's right.  
3 Q. I won't go through it, but I think you, in the early  
4 part of your statement, detail your experience in  
5 respect of Aboriginal heritage issues.  
6 A. Yes, that's right.  
7 Q. You make the point, I think, on p.2, that, in working in  
8 the area in which you have worked, you have gained  
9 experience and working knowledge of both the Heritage  
10 Act South Australia (1988) and the Aboriginal & Torres  
11 Strait Islanders Heritage Protection Act (1984).  
12 A. That's correct.  
13 Q. As is necessary for a lawyer practising in this field,  
14 you have had to appreciate the significant differences  
15 between Commonwealth and State legislations in this  
16 area, is that right.  
17 A. Yes, that's right.  
18 Q. At the time you were served with the subpoena in this  
19 matter, you did not, I think, have in your possession  
20 the documents described in the subpoena. Namely 'Files,  
21 copies of files, records including case notes for  
22 clients of the Aboriginal Legal Rights Movement  
23 pertaining to the opposition to the construction of the  
24 Hindmarsh Island bridge', is that right.  
25 A. That's correct. The only thing I now have are some  
26 diaries, personal diaries.  
27 Q. You prepared your statement with the assistance of your  
28 memory, is that right.  
29 A. Yes.  
30 Q. Your diaries.  
31 A. Yes.  
32 Q. To the extent that they could help you and some  
33 documentation provided to you by this Commission.  
34 A. That's correct.  
35 Q. That documentation I think was correspondence which has  
36 passed from you, working for the ALRM, to various  
37 agencies, including both the State and Federal  
38 Ministers, is that right.

1 A. Yes, that's correct.

2 Q. Looking at this bundle of correspondence produced to  
3 you, would you look at that bundle of correspondence  
4 with the aid of the index and confirm, if you can, that  
5 that is correspondence which has passed between  
6 yourself, in connection with this matter and, for  
7 instance, State and Federal Ministers for Aboriginal  
8 Affairs and other entities to do with the construction  
9 of the bridge.

10 CONTINUED

1 A. Yes, I recognise that correspondence.

2 Q. I think you're recorded in one place as 'Tom Wooley'.

3 A. Yes, that's right.

4 EXHIBIT 223 Bundle of correspondence tendered by Mr  
5 Smith. Admitted.

6 Q. As your statement says, you first became aware of what's  
7 been described as the Hindmarsh Island bridge affair at  
8 a meeting at Camp Coorong held on 11 and 12 October  
9 1993, is that so.

10 A. Yes, that's so.

11 Q. You attended that meeting as an employed solicitor of  
12 ALRM to provide legal advice to the community on a  
13 variety of matters.

14 A. Yes, that's correct.

15 Q. You learned about the Hindmarsh Island matter in a  
16 conversation, I think, with George Trevorrow on that  
17 occasion, is that right.

18 A. Yes, that's correct.

19 Q. As you say at p.6 of your statement, that was raised by  
20 George Trevorrow with you as a heritage protection  
21 issue.

22 A. Yes.

23 Q. The bundle of correspondence which you've just looked  
24 through, Exhibit 223, is it the case that the  
25 correspondence, generally speaking, in that bundle  
26 supports the proposition that, so far as your knowledge  
27 was concerned, the topic of secret women's knowledge or  
28 secret women's business did not come to your attention  
29 until approximately April 1994.

30 A. The correspondence does support that, yes.

31 Q. Is that the case, that indeed that that concept, that  
32 cultural concept of secret women's knowledge in  
33 connection with Hindmarsh Island, was not drawn to your  
34 attention by anybody until about April 1994.

35 A. I believe that that matter does touch on the question of  
36 privilege to some extent, and I believe I have a duty  
37 not to answer that question unless ruled otherwise.

38 Q. Could you elaborate on that for us so that we can

- 1 examine the claim for privilege.
- 2 A. Well, I believe that I'd be divulging instructions to
- 3 give details - well, to give an answer to that question.
- 4 COMSR
- 5 Q. If you can't tell us what happened, was there an
- 6 occasion on which you first heard of the concept.
- 7 A. Yes, there was.
- 8 Q. What was the date of that occasion.
- 9 A. The date of that occasion was 15 April 1994.
- 10 XN
- 11 Q. Can I take you to p.9 of your statement, which begins to
- 12 touch upon the question of your attendance on Hindmarsh
- 13 Island and, in particular, relates to a meeting at the
- 14 Mouth House, is that right.
- 15 A. Yes, that's correct.
- 16 Q. By that time, I think you had received a copy of the
- 17 Draper report, is that right.
- 18 A. Yes, that's correct.
- 19 Q. Are we talking here about a document dated 29 April
- 20 1994.
- 21 A. Yes, we are.
- 22 Q. You had, prior to 9 May 1994, conversations from time to
- 23 time with Dr Draper.
- 24 A. Yes, I had.
- 25 Q. The meeting of, amongst other people, ladies, Aboriginal
- 26 ladies, and also members of the Lower Murray Aboriginal
- 27 Heritage Committee at the island on 9 May was, I take
- 28 it, arranged beforehand.
- 29 A. Yes, it was.
- 30 Q. It was arranged when in relation to it taking place.
- 31 A. I can't say exactly when it was arranged, but I became
- 32 aware of it the week before, the fact that it would take
- 33 place, I became aware of that.
- 34 Q. You were asked to attend, were you.
- 35 A. Yes, I was.
- 36 Q. By whom.
- 37 A. Members of the Lower Murray Aboriginal Heritage
- 38 Committee, either Victor Wilson or George Trevorrow. In



1 fact, it could have been both.

2 Q. In the lead-up to this event, you were acting as  
3 solicitor for whom, who were your clients.

4 A. My clients at that stage were the members of the Lower  
5 Murray Aboriginal Heritage Committee in a narrowed  
6 sense, and I also regarded all Ngarrindjeri people who  
7 had an interest in upholding the heritage protection as  
8 a wider client group, given that the heritage committee  
9 purported to act on behalf of the community.

10 Q. So the Lower Murray Aboriginal Heritage Committee, your  
11 primary clients if I can call them that, who were they  
12 as you understood it.

13 A. Victor Wilson, George Trevorrow, Doug Milera, Robert Day  
14 Sr, Tom Trevorrow, Sarah Milera, Shirley Trevorrow,  
15 although she didn't play a very active role, and Bill  
16 Abdullah, he didn't play a very active role either. Did  
17 I say Tom Trevorrow as well?

18 Q. I'm not sure.

19 A. Tom Trevorrow. And Henry Rankine, yes.

20 Q. The purpose of the meeting at Hindmarsh Island on about  
21 9 May was what.

22 A. It was to take instructions, give advice about a number  
23 of matters.

24 Q. You arrived, I think, on 9 May at about 10 a.m., is that  
25 right.

26 A. Yes. I arrived at Amelia Park at 10 a.m. to meet with  
27 Sergeant Morrison and Inspector Ryan in accordance with  
28 an earlier arrangement.

29 Q. Indeed they did meet with you, did they, those two  
30 police officers.

31 A. Yes. We adjourned to the Goolwa police station where we  
32 spent some time discussing certain matters.

33 Q. I think you were discussing, were you not, the fact that  
34 there was a protest scheduled for later on that weekend.

35 A. That's right. Later that week it was expected that  
36 construction may commence and that Aboriginal people  
37 might be involved, and there was concern about people  
38 being arrested and, in particular, put in custody;

- 1 Aboriginal people put in custody.
- 2 Q. So you spoke to the police about those matters.
- 3 A. Yes, that's correct.
- 4 Q. I think you then travelled to Hindmarsh Island from
- 5 Goolwa.
- 6 A. Yes.
- 7 Q. Crossing on the ferry.
- 8 A. Yes.
- 9 Q. You arrived at a place call The Pines, I think, is that
- 10 right.
- 11 A. Yes. I think it has a number of - it's been called a
- 12 number of things; the Bunkhouse, I also know it as Camp
- 13 Ngurunderi, that's what the sign said at the entrance.
- 14 Q. You arrived about what time.
- 15 A. I arrived around about one, one to 1.30. I had trouble
- 16 finding it initially.
- 17 Q. I think The Pines is located a short distance from the
- 18 ferry landing, is it not, about a kilometre off the main
- 19 road.
- 20 A. Yes, that would be right. It's on the northern side of
- 21 the main road that goes down the centre of the island.
- 22 Q. Were you in company with anyone else or by yourself.
- 23 A. I was with Allan Wanganeen, an Aboriginal field officer
- 24 who attended in particular to speak to the police.
- 25 Q. You went to The Pines by arrangement, I take it.
- 26 A. Yes, that's where I thought the meeting was to take
- 27 place.
- 28 Q. When you arrived at The Pines, were there some
- 29 Aboriginal people about the place.
- 30 A. Yes. There were mainly women, women I recognised from
- 31 Murray Bridge. There were three generations of women,
- 32 as it were; the people I recognised, their daughters and
- 33 granddaughters.
- 34 Q. Can you name some of these people for us.
- 35 A. Yes. I recall seeing Isabel Norvill there, Leah
- 36 Rankine, Eileen McHughes, I can remember seeing those
- 37 three people. I saw other people that I recognised, but
- 38 didn't know well or by name.

- 1 Q. Was George McHughes there, another -  
2 A. Yes, George was there, he is an Aboriginal field  
3 officer.  
4 Q. So, all told at The Pines when you arrived there at  
5 about one to 1.30 p.m., how many people, Aboriginal  
6 people, would you say were there.  
7 A. There were about a dozen people. There could have been  
8 slightly more, but around about that number.  
9 Q. Now I think, as your statement makes clear, you were  
10 told there that the meeting was to take place at the  
11 Mouth House.  
12 A. That's correct.  
13 Q. I think you were given some instructions on how to get  
14 there.  
15 A. Yes, that's correct.  
16 Q. You took some refreshment, is that right.  
17 A. That's right.  
18 Q. You had some soup or something like that.  
19 A. Yes.  
20 Q. You then drove to the Mouth House, did you not.  
21 A. Yes.  
22 Q. Again, were you in company with the field worker Allan  
23 Wanganeen, or by yourself.  
24 A. No, I was by myself at this stage. Allan went with  
25 George McHughes back to Adelaide, as I understand it.  
26 Q. Did you know the location of the Mouth House, did you.  
27 A. I didn't know the location. Someone, and I can't recall  
28 now exactly who it was, gave directions.  
29 Q. Now you arrived, you say, at the Mouth House at about  
30 sometime after 2 p.m.  
31 A. Yes, between two and three.  
32 Q. Had you been to the Mouth House before.  
33 A. No, this was the first time.  
34 Q. Did you understand who was occupying or tenanted the  
35 Mouth House at that stage.  
36 A. Yes, I understood that Doug and Sarah Milera were  
37 staying there.  
38 Q. Now when you got there, there were other people in the

- 1 Mouth House, were there not.
- 2 A. Yes, that's correct.
- 3 Q. Can you name them for us.
- 4 A. Yes. I recall seeing Victor Wilson, George Trevorrow,  
5 his wife Shirley, Doug Milera, I remember seeing Doreen  
6 Kartinyeri, there were two other women that I recognised  
7 from previous community meetings, but I didn't know  
8 their names, and I think that Sarah Milera was there at  
9 that stage, but I can't be one hundred per cent sure  
10 about Sarah.
- 11 Q. So you went inside, of course.
- 12 A. Yes.
- 13 Q. Looking at the plans of the Mouth House, Exhibit 27, do  
14 you have two documents in front of you there.
- 15 A. Yes.
- 16 Q. One is a rough sketch, and the second one is a neater  
17 sketch, is that right.
- 18 A. That's correct.
- 19 Q. Have a look at that exhibit. Do you agree that that's  
20 approximately the layout of the Mouth House in terms of  
21 furnishings etc. as you recall it on 9 May.
- 22 A. Yes, save for the table, which was moved closer, in the  
23 same sort of line but closer to the fridge, so that it  
24 was, well, the main body of it was closer to the photo  
25 that is showing there to the right of it. In addition,  
26 the bed in what is the bedroom on the left-hand side -  
27 I'm trying to orientate north/south - the bedroom on the  
28 left-hand side of the diagram had its bed closer to the  
29 sea, in fact it was on the sea wall, the seaside wall of  
30 the room.
- 31 Q. Can you orientate the plan for us then. The sliding  
32 doors, I take it, face the sea, do they not.
- 33 A. Yes, directly to the mouth.
- 34 Q. So is that south.
- 35 A. Roughly, I think.
- 36 Q. Roughly you think.
- 37 A. That's right.
- 38 Q. Were there aerial photographs displayed, first of all,

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- 1 in the main living room there in the central part of the  
2 building.
- 3 A. Yes. There's photo one and photo two, I recall seeing  
4 both of those.
- 5 Q. I will show you those, or I will show you what you may  
6 agree are those in a moment. There is a third  
7 photograph depicted in the bedroom on the western end of  
8 the house. Did you happen to go into that bedroom at  
9 any stage.
- 10 A. Yes, I went in there.
- 11 Q. Was there an aerial photograph there, can you tell us.
- 12 A. Yes, I think there was.
- 13 Q. Looking at aerial photograph number one, which is  
14 Exhibit 29, can you say that that was photograph one as  
15 marked near the table in the main living room area.
- 16 A. It certainly looks like the one I saw there.
- 17 Q. Have a look now at Exhibit 30, which is photograph  
18 number two.
- 19 A. Yes.
- 20 Q. Are you able to say is that indeed photograph two as  
21 marked on the plan, Exhibit 27, near the lounge at the  
22 western end of the living room.
- 23 A. I'm reasonably sure that's photo two.
- 24 Q. Finally, would you look at Exhibit 31, which is  
25 photograph number three. It's suggested that this  
26 photograph was in the bedroom in the south-western  
27 corner of the house.
- 28 A. Yes, I recall seeing that.
- 29 CONTINUED

- 1 Q. When you first arrived at the house, can you tell me was  
2 Dorothy Wilson present.
- 3 A. No, she wasn't.
- 4 Q. In relation to your stay at the Mouth House, did she  
5 arrive and when.
- 6 A. Yes, Dorothy arrived approximately an hour to an hour  
7 and a half after I first got there.
- 8 Q. Can you tell us whether Dorothy arrived with Sarah or  
9 not - Sarah Milera, I mean.
- 10 A. I am not absolutely sure if she arrived with Sarah. She  
11 may have. The reason I say that is because I was in the  
12 bedroom. I'd been making telephone calls to various  
13 people, and I came out of the bedroom and I saw Dorothy  
14 for the first time very close to the bedroom doorway,  
15 and I hadn't seen her before I went in there. I hadn't  
16 noticed her anyway.
- 17 Q. However, had you necessarily before noticed Sarah  
18 Milera.
- 19 A. No, I hadn't noticed Sarah Milera either, that I can  
20 recall.
- 21 Q. When you arrived and entered the Mouth House, there were  
22 present the people you've mentioned, I take it, Victor  
23 Wilson, George Trevorrow, Shirley Trevorrow, Doug  
24 Milera, Doreen Kartinyeri.
- 25 A. I didn't quite catch the first part of that question.
- 26 Q. When you arrived at the Mouth House, I think you have  
27 told us, and correct me if I am wrong, that the people  
28 there, so far as you could recall, were Victor Wilson,  
29 George Trevorrow, Shirley Trevorrow, Doug Milera, Doreen  
30 Kartinyeri.
- 31 A. That's right. There were two other people there who I  
32 didn't know the names of. I recognised them as having  
33 been at a previous community meeting, but I certainly  
34 didn't know their identity.
- 35 Q. Have you retained Exhibit 27, the plan.
- 36 A. Yes.
- 37 Q. Tell us where they were then, those people you remember  
38 positively being there. Where were they located.

- 1 A. I recall that Doreen was seated on a chair in the  
2 south-eastern corner, that is, near where the table is  
3 drawn on this diagram. Shirley and her husband were  
4 around the table, as were the two women that I don't  
5 know the names of. I recall that Doug and Victor were  
6 moving around, but they were sitting on the lounge for  
7 most of the meeting that I had prior to Dorothy turning  
8 up.
- 9 Q. When you got there, you took up a position where.  
10 A. I took up a position close to the lounge, not quite in  
11 the corner, but I tried to position myself so that I had  
12 a reasonably good view of most people. I had to turn my  
13 head to the left to speak to the people on the lounge,  
14 but most other people I could speak to easily.
- 15 Q. When you got there was anything formal underway.  
16 A. No, there was nothing formal underway.
- 17 Q. You made the point, there was just some general  
18 conversation taking place. Is that all.  
19 A. Yes, it was general conversation.
- 20 Q. I think, after your arrival, you provided the gathering  
21 with some legal advice. Is that right.  
22 A. Yes, that's correct.
- 23 Q. Would you tell us on what topics. I don't want to delve  
24 into it, but on what topics did you provide advice.  
25 A. Yes, I provided advice on the section 23 authorisation  
26 that had been handed down on 3 May. I talked about the  
27 operation of the Commonwealth Act. In fact, I talked  
28 about the differences in operation between the State and  
29 Commonwealth Act, and I talked about section 10 of the  
30 Commonwealth Act.
- 31 Q. This section, when you were advising these people, that  
32 went on for what period of time, approximately.  
33 A. Interspersed with the advice and instructions - I might  
34 say, I got instructions along the way - were phone calls  
35 that related to the advice and the instructions.
- 36 Q. They were phone calls made by you.  
37 A. Yes, that's correct.
- 38 Q. From another location in the house, was it.

- 1 A. Yes, it was phone calls from the bedroom on the western  
2 side, the room in which photo 3 is located.
- 3 Q. Can you look at Exhibit 197, a volume of DOSAA documents  
4 and, in particular, the document marked 130.
- 5 A. Yes, I see document 130.
- 6 Q. Document 130 is a minute relating to the section 23  
7 authorisation under the Aboriginal Heritage Act.
- 8 A. Yes.
- 9 Q. A minute from the State Minister dated 3 May 1994.
- 10 A. Yes, that's correct.
- 11 Q. I think you had been faxed that document, had you not,  
12 with the conditions attached thereto, prior to this  
13 meeting.
- 14 A. No, I hadn't. It was a document that was actually not  
15 in my possession, but counsel who were instructed at  
16 that time I think received it on the 9th, some time  
17 during that day.
- 18 Q. Were the phone calls you've told us about, and I don't  
19 want to delve into what they were, were they with  
20 counsel.
- 21 A. Yes, they were with counsel.
- 22 Q. That is Mr Collett.
- 23 A. Yes.
- 24 Q. They concerned, for instance, this section 23  
25 authorisation.
- 26 A. Yes, that's correct.
- 27 Q. After making one of those phone calls, I think you  
28 returned to the living room to find that Dorothy Wilson  
29 had arrived. Is that right.
- 30 A. Yes, that's correct.
- 31 Q. And perhaps also with Sarah Milera.
- 32 A. Yes, I don't discount the fact that Sarah may well have  
33 turned up at that time. Certainly Sarah was there at a  
34 later stage. I clearly remember that.
- 35 Q. At some stage in this gathering, a letter was produced  
36 to you, was it not.
- 37 A. Yes, that's correct.
- 38 Q. Who produced it to you.



- 1 A. A letter was produced by Sarah Milera.
- 2 Q. Are we talking now at about the time when you registered  
3 the fact that Dorothy Wilson was present that this  
4 occurred.
- 5 A. It was not immediately after that fact. After I had my  
6 - it was the last phone call I made, I returned to the  
7 room, I noticed for the first time Dorothy standing near  
8 the doorway. I relayed the detail of the telephone  
9 conversation, got some further instructions from my  
10 clients, and then at that time a letter was produced.
- 11 Q. So Dorothy Wilson had just arrived, and perhaps also  
12 with Sarah Milera.
- 13 A. Yes. I recall that there was someone else with Dorothy.  
14 She was standing next to someone else that I didn't  
15 immediately recognise, and I don't believe that person  
16 had been in the room either prior to me going to make  
17 that phone call.
- 18 Q. Sarah Milera, you think produced a letter.
- 19 A. I'm certain that she produced a letter.
- 20 Q. Can you describe what it looked like, the letter, when  
21 it was produced to you.
- 22 A. It was taken out of a handbag that was smaller than A4  
23 size and it was folded over once or twice. I can't  
24 remember how many times.
- 25 Q. That was given to you.
- 26 A. That's correct.
- 27 Q. What did you do with it.
- 28 A. I read it.
- 29 Q. Did you do that at the table in the living room.
- 30 A. Yes, I did. I moved from the chair to the table. I  
31 mean, the chair in the south-western corner of the room  
32 near the lounge to the table.
- 33 Q. That letter that was produced to you, did you understand  
34 that to be a letter addressed to the Federal Minister.
- 35 A. Yes, it was addressed to the Federal Minister.
- 36 Q. Can I just ask you some questions about the situation.  
37 At that point in time in the Mouth House, Sarah and  
38 Dorothy had arrived and with them some other people.

- 1 A. One other - I think one other person.  
2 Q. Whom you cannot identify at this stage.  
3 A. That's correct.  
4 Q. The other people who were already there, were the people  
5 you've previously named.  
6 A. Yes, that's correct.  
7 Q. Had anyone else arrived at this juncture.  
8 A. No, not at that stage.  
9 Q. You told us that your clients were the committee  
10 members, and you have named them, those present.  
11 A. Yes.  
12 Q. Do you say that Dorothy Wilson was your client.  
13 A. At the time I considered everyone there to be my client.  
14 MR ABBOTT: I would like it recorded that, on my  
15 instructions, Dorothy Wilson, was not his client, has  
16 never retained him, and gave him no retainer to act on  
17 that occasion. Those are my client's instructions.  
18 And has never received an account for the work.  
19 WITNESS: We don't give accounts.  
20 COMSR  
21 Q. But do you take instructions from clients.  
22 A. Yes.  
23 XN  
24 Q. So you certainly had instructions from the Lower Murray  
25 Aboriginal Heritage Committee, didn't you, because your  
26 letters are replete with references to that body as  
27 being your client.  
28 A. Yes, that's correct.  
29 Q. On what basis do you claim the other personnel present  
30 in the Mouth House as your clients.  
31 A. They were there for a common purpose, particularly - I  
32 was particularly going there to get instructions from  
33 Doreen Kartinyeri, who I knew would be there. Because  
34 the women's issue was clearly a matter known to me by  
35 that stage, I was going to get instructions from other  
36 women as well. That was one of the purposes of  
37 attending the Mouth House.

- 1 Q. You were given to understand that everyone was there for  
2 a common purpose by whom.
- 3 A. By the people that - well, I suppose Victor or George  
4 Trevorrow had given me some understanding that people  
5 would be there so that I could take instructions in  
6 relation to, well, the further section 10 application  
7 and, for that matter, the section 23 authorisation.
- 8 MR SMITH: I intend to embark upon asking Mr Wooley  
9 about the conversations that followed in connection with  
10 this letter. I think if there be any objection on the  
11 grounds of legal professional privilege, it is best that  
12 it be taken now.
- 13 XN
- 14 Q. You were handed this letter which you understood to be a  
15 letter to the Federal Minister.
- 16 A. That's correct.
- 17 Q. And I think you went to the table, did you not, with the  
18 letter.
- 19 A. Yes.
- 20 Q. And sat down and read it.
- 21 A. That's correct.
- 22 Q. Whilst that was being down, was anything else happening  
23 in the room that you remember.
- 24 A. The only thing I recall was that people gathered around  
25 closer to the table.
- 26 Q. Then it is the case, is it not, that you proffered your  
27 opinion about the letter.
- 28 A. Yes.
- 29 Q. Or said something in connection with it.
- 30 A. I gave what - I gave legal advice about the contents of  
31 the letter.
- 32 Q. You were asked to say something about the letter by  
33 somebody there, were you, or were you not, or was it  
34 just given to you.
- 35 A. I was asked.
- 36 Q. By whom.
- 37 A. I believe that it was Doreen Kartinyeri.
- 38 Q. Having read the letter, which you did do -

1 A. Yes.

2 Q. What did you say.

3 A. I believe that that's -

4 MR TILMOUTH: Can I rise? I hope to clarify things  
5 rather than confuse them. But you will remember, of  
6 course, that I act for some of those members of the  
7 committee at that time, including Victor Wilson and  
8 George Trevorror, who were there. I clearly maintain  
9 privilege for any discussion with Mr Wooley up to this  
10 point.

11 In my submission, Mr Wooley has clearly laid a very  
12 strong foundation for that situation to this point. He  
13 has now embarked upon another subject matter, which is  
14 what he calls legal advice about the letter. My  
15 instructions are to claim privilege, as I have mentioned  
16 before, but you will remember that I cross-examined, and  
17 so did Mr Stratford, on this issue.

18 I want to make it perfectly clear that the basis  
19 upon which that was embarked upon was not any waiver of  
20 privilege, but because the situation was understood to  
21 be more one of an aside which had stepped out of the  
22 confidential situation. If it is understood on that  
23 basis, I don't have an objection. But if people want to  
24 say that, in allowing this examination to continue we  
25 have waived privilege in globo, then the situation is  
26 quite different.

27 COMSR: Who are you purporting to waive  
28 privilege for?

29 MR TILMOUTH: Nobody. That's my point.

30 COMSR: Who are you purporting to represent in  
31 any claim of privilege, just the five persons you  
32 represent?

33 MR TILMOUTH: I can only strictly claim it in this  
34 inquiry for George Trevorror and Victor Wilson, but the  
35 point about what is to come now is that the situation,  
36 if it is properly categorized as an aside, free of the  
37 professional situation, then there is no problem. I am  
38 happy to deal with it on that basis. But if it is to be

- 1 argued that, by allowing this to continue, that we have  
2 waived privilege as a whole -
- 3 COMSR: Altogether.
- 4 MR TILMOUTH: Yes, then it is a different matter.
- 5 COMSR: You are not claiming privilege on behalf  
6 of your clients in respect of this particular matter,  
7 but you may in respect of others.
- 8 MR TILMOUTH: I do in respect of what happened  
9 earlier, but that hasn't been opened up by Mr Smith. He  
10 has identified it. The point I am putting on notice  
11 now, is if people want to say that this is a partial  
12 waiver, then my situation would be different. If it is  
13 regarded as an aside, free of the privilege situation,  
14 then there is no problem.
- 15 COMSR: When you say `as an aside', you mean a  
16 discrete matter on its own?
- 17 MR TILMOUTH: Yes, which is not the subject of a  
18 privileged communication, that is, a solicitor/client  
19 communication. Do you understand what I am putting?  
20 What I am saying is I am happy for this to go ahead,  
21 provided nobody says `You have waived privilege, we want  
22 the whole lot'.
- 23 COMSR: You intend, if and when the occasion  
24 arises, to argue the matter of privilege if you think  
25 that that issue is raised?
- 26 MR TILMOUTH: That is right.
- 27 MR ABBOTT: I wouldn't want my silence to be  
28 construed as acceptance of Mr Tilmouth's conditions.
- 29 WITNESS: I have some problems with respect to the  
30 people that are not Mr Tilmouth's clients, namely,  
31 Doreen Kartinyeri and the women. I certainly consider  
32 that I have a duty to uphold their privilege in relation  
33 to what was said in relation to that letter.
- 34 COMSR: I don't think Mr Abbott is asking you to  
35 uphold any privilege in respect of his clients.
- 36 CONTINUED

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1 MR ABBOTT: No, there was no solicitor/client  
2 relationship and there never has been. If Mr Wooley  
3 asserts that there was, I would like to cross-examine  
4 him on it.

5 WITNESS: Other than Dorothy Wilson, I am  
6 upholding it on behalf of those others and I considered  
7 and I still consider who were my clients, at that time.

8 COMSR

9 Q. But it is the client's privilege.

10 A. Yes, that's right.

11 Q. If they want to request that it be upheld, that is a  
12 different matter.

13 A. Yes.

14 MR STRATFORD: I was actually going to rise to speak  
15 about the other category of people who were present.  
16 That is, the category other than Mr Tilmouth's clients.

17 It seems to me that there were really two categories  
18 of people at this meeting, apart from Mr Wooley. Mr  
19 Tilmouth's clients and the people who I will call third  
20 parties.

21 I think there is only a question of privilege  
22 involved with respect to the third parties, if they  
23 sought legal advice from Mr Wooley, or Mr Wooley was  
24 there to interview them on behalf of Mr Tilmouth's  
25 clients. So that, if Mr Tilmouth's clients had asked Mr  
26 Wooley to interview and obtain information from the  
27 third parties with respect to their instructions to him,  
28 it seems to me that the privilege extends to the  
29 information gathered by Mr Wooley when he was speaking  
30 to, in effect, witnesses on behalf of Mr Tilmouth's  
31 clients. So, it does seem to me that the question of  
32 privilege, in this instance, does extend somewhat beyond  
33 the direct connection between Mr Tilmouth's clients and  
34 Mr Wooley. It does extend to the relationship, the  
35 involvement, as it were, of the other people at the  
36 meeting, because either A. They were seeking advice  
37 from Mr Wooley, in connection with matters, or B. Mr  
38 Wooley was interviewing those people for information, to

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1 seek information to support whatever instructions Mr  
2 Tilmouth's clients had provided to Mr Wooley.

3 COMSR: Why is it not possible that they were  
4 simply along there to find out what was happening?

5 MR STRATFORD: It is possible. It is possible, but the  
6 groundwork, at this stage, doesn't put them into that  
7 category. But certainly it is possible. That is why,  
8 initially, I just used the general term third parties.  
9 And what I am suggesting is that these third parties  
10 might be categorised as clients, as well, because they  
11 sought advice from Mr Wooley - we haven't got to that  
12 stage yet - or Mr Wooley was interviewing them on behalf  
13 of Mr Tilmouth's clients - we haven't got to that stage  
14 yet - or they were just interested bystanders - and we  
15 haven't got that yet. But they are matters that need to  
16 be identified and clarified before Mr Wooley can give  
17 information that he gained from these other third  
18 parties. With the exception of Mr Abbott's client, Mrs  
19 Wilson, who clearly either A. Wasn't a client, or B. has  
20 waived any entitlement which she had to privilege  
21 anyway. So, I just rise, because it is an issue that  
22 needs to be clarified.

23 I rather suggest that Mr Smith will need to ask more  
24 questions, to try and sort out what category these third  
25 parties fall into. That is, whether they are clients,  
26 whether they are witnesses, or whether they are simply  
27 bystanders. Some further questions need to be asked.  
28 And the reason why I rise to make these points is, of  
29 course, apart from Mr Tilmouth's clients, and apart from  
30 Mr Abbott's client, the other people aren't represented  
31 before you today. And, of course, a solicitor does have  
32 a duty to claim privilege on behalf of a client, if the  
33 client is not present to claim that privilege for  
34 himself or herself.

35 COMSR: Yes, if that person is a client.

36 MR STRATFORD: Is a client.

37 COMSR: Right, yes.

38 MR ABBOTT: I would like to make two comments.

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1       The first is that my learned friend, Mr Stratford,  
2       says that more questions will need to be asked. The  
3       groundwork will need to be laid. It is a pity that she  
4       didn't ask for questions and lay the groundwork when he  
5       cross-examined my client, Mrs Wilson, because none of  
6       this aspect was ever put to her. It was never suggested  
7       that she was there in a witness capacity, or that she  
8       was there as a potential client. And, for my learned  
9       friend to say that it is up to Mr Smith now to lay a  
10      groundwork begs the question. The time to lay the  
11      groundwork for such a claim to be made by Mr Wooley, his  
12      client, was in cross-examination of my client, Mrs  
13      Wilson. And the situation at present is that, on the  
14      evidence that you have received, which has been placed  
15      before you, there has never been any hint by anyone that  
16      Mrs Wilson, Mr Dorrie Wilson, was there as a 'witness'  
17      or a 'client', or that she was there to be interrogated  
18      by Mr Wooley. And, in my submission, legal professional  
19      privilege extends to confidential communications between  
20      solicitor and client, if they conform to the sole  
21      purpose test. When they are communications of whatever  
22      sort in the presence of a third party, like Mrs Wilson,  
23      they are no longer confidential and the privilege is  
24      lost.

25   MR SMITH:       This is not an occasion which attracts  
26   privilege, at all. The clear evidence on the  
27   documentation before you, and supported by Mr Wooley,  
28   himself, is that he acts for the Lower Murray Aboriginal  
29   Heritage Committee. In the correspondence which you  
30   have before you concerning Mr Wooley, there is no wider  
31   assertion than that made.

32       The law in this position is, I suggest to you, that;  
33   for legal professional privilege to apply, there must  
34   be, apart from the general precepts of privilege, which  
35   I won't go into, for legal professional privilege to  
36   apply, there must be in existence a legal adviser and an  
37   identifiable client. And it is communications between  
38   them which are privileged in the two aspects which are



1 well-known. Communications made between a solicitor and  
2 a client in the presence of others is evidence of the  
3 absence of the necessary confidentiality and privilege  
4 and privilege will not usually attach.

5 Mr Wooley, out of an abundance of caution, I  
6 suspect, claims that he could well have been acting for  
7 the other people in the Mouth House. Mr Abbott ought to  
8 be in a position to know, and I think it is quite clear,  
9 that Dorothy Wilson doesn't accept that she was Mr  
10 Wooley's client. And there are these unidentified  
11 people at the Mouth House whom Mr Wooley, in a rather  
12 nebulous way, claims were people there in respect of a  
13 common purpose and, therefore, his clients.

14 It seems that Mr Wooley and these people had never  
15 met before. In any event, I think it is clearly not a  
16 situation where privilege exists and, for that reason, I  
17 ask you to rule that the question should be answered.

18 COMSR

19 Q. Yes, on what I have heard, Mr Wooley, I don't consider  
20 this is an occasion to which legal professional  
21 privilege applies.

22 A. Very well.

23 XN

24 Q. Therefore, upon reading and considering the letter, you  
25 said what.

26 A. I said that there wasn't enough information contained in  
27 the letter for Mr Tickner to hang his hat on. I said  
28 that I was aware that they had other information and  
29 that, in essence, it was a matter for them what further  
30 information they disclosed.

31 Q. At that stage, you had read the Draper report of 29  
32 April 1994.

33 A. That's correct.

34 Q. Looking at the document, MFI 206, now before you.

35 MR SMITH: I emphasise that it is one of these  
36 contentious s.13 documents and that, in leading some  
37 evidence about this document, I accept that, if this  
38 document is not properly received by you, you can take

1 none of this into account, or I don't say none of it,  
2 but you must look at this sparingly.

3 XN

4 Q. Looking at that document, MFI 206, can I ask you, first  
5 of all, the letter which was produced to you and in  
6 respect to which you made the comments that you have  
7 just elaborated upon.

8 A. Yes.

9 Q. Were there two sheets of paper.

10 A. Yes, I recall there being two sheets.

11 Q. Did the second sheet contain signatures.

12 A. Yes, the second sheet did contain signatures.

13 Q. As well as a section of writing.

14 A. From memory, yes.

15 Q. The first sheet of paper, that had a section of writing,  
16 did it not.

17 A. Yes.

18 Q. Can you tell us, the topic that is canvassed in the  
19 document, MFI 206, on the top two-thirds of that front  
20 page, was that the topic you recall as being canvassed  
21 in the letter you saw at the Mouth House.

22 A. Yes, that's the subject matter.

23 Q. In fact, do you recognise this document, MFI 206, or at  
24 least part of it, as the letter you saw and proffered  
25 advice on.

26 A. I can't say that it was exactly the same document that I  
27 saw, but certainly the information that it contains on  
28 the first two-thirds of the first page is the same  
29 information that was contained in the letter that I saw.

30 Q. And the second page and the signatures.

31 A. Yes, the signatures appear to be - I can't - I don't  
32 recognise the signatures, but the names above the  
33 signatures certainly are familiar in terms of the letter  
34 I saw at the Mouth House. And also the reference to  
35 Carolyn Pickles.

36 Q. The bottom third of the document, MFI 206, the final  
37 paragraph of that document contains a resume of the  
38 significance of the Lower Murray lakes, Murray Mouth and

- 1 Coorong area, does it not.  
2 A. Yes, that's correct.  
3 Q. Do you recognise that as coming from somewhere.  
4 A. It looks very much like a quote from Dr Draper's report.  
5 Q. Looking at Exhibit 16, now before you, I think Exhibit  
6 16 is Dr Draper's report of 29 April 1994, is it not.  
7 A. That's correct.  
8 Q. Will you look at that and just confirm that the bottom  
9 third of the front page, of what we have called the  
10 Mouth House letter, the document MFI 206, is a paragraph  
11 taken from the Draper report of 29 April 1994.  
12 A. Do you want me to find the exact passage, do you?  
13 Q. We will find it for you.  
14 MR ABBOTT: They are all on p.1, in the middle of  
15 the page and then lower down. It is a direct lift.  
16 WITNESS: Right, yes.  
17 XN  
18 Q. Look at the second paragraph on p.1.  
19 A. Yes.  
20 Q. You confirm that.  
21 A. That's right.  
22 Q. Having said what you said about the letter, what did you  
23 do with it.  
24 A. I left it on the table.  
25 Q. Looking back at the document, MFI 206, do you recognise  
26 any of the handwriting there.  
27 A. No, I can't say I recognise the handwriting at all.  
28 Q. You left the letter on the table, did you say.  
29 A. Yes, that's correct.  
30 Q. Did you see who took it up, if at all.  
31 A. It wasn't taken up when I was present in the room. It  
32 remained on the table, as far as I'm aware.  
33 Q. In your presence, did anybody, any person write on that  
34 letter.  
35 A. No, I didn't see anyone physically writing on it.  
36 Q. What happened then.  
37 A. Some comments were made by another person in the room.  
38 Q. Who was that.

- 1 A. George Trevorrow.  
2 Q. What did he say.  
3 A. I don't know if this matter is privileged.  
4 COMSR: I think that, in so far as there is any  
5 privilege attaching, that Mr Tilmouth is not -  
6 MR TILMOUTH: No, I don't waive privilege, but the  
7 point is that I understand your ruling is that this is  
8 outside the privilege situation.  
9 COMSR: Yes, and I had understood you earlier  
10 to -  
11 MR TILMOUTH: No, I am not waiving, but I had  
12 understood this has stepped outside the situation.  
13 WITNESS: Yes, George said 'It's obvious, isn't  
14 it?'  
15 XN  
16 Q. Was he doing anything, at the time he said that.  
17 A. Yes, he was pointing with his walking stick at photo 1.  
18 Q. That is the photo which we know as Exhibit 29 on the  
19 wall near the table in the living room.  
20 A. That's correct.  
21 Q. Tell us in some detail, what did he do.  
22 A. He just - his stick is I guess something that is easily  
23 recognisable as part of George. It is a walking stick  
24 with a snake carved around it. That was something that  
25 was, I guess it did stick in my mind, as it were.  
26 Excuse the pun. He pointed with the walking stick at  
27 the photo when he uttered those words and that was all.  
28 Q. The words were, were they, 'It's obvious, isn't it?'  
29 A. Yes, he said those words or something very, very  
30 similar.  
31 Q. I beg your pardon.  
32 A. Or very similar to those words.  
33 Q. Whilst pointing with the stick to the aerial photograph  
34 near the table.  
35 A. Yes.  
36 Q. I take it your attention was drawn by this act, was it.  
37 A. Yes, I think, from what I could see, most people were  
38 looking at the photo.

1 Q. Was he pointing it - did the stick fix on anything, in  
2 particular, or did it just generally wave at the  
3 picture.

4 A. It was just an indication of look at the photo. That  
5 was what I took it to be.

6 Q. What then was said, if anything, by anybody in the  
7 gathering.

8 A. I think Victor Wilson made a comment that this was a  
9 very important area. And then I believe it was Doug  
10 Milera who said `Yes, this is a very important area. It  
11 must be protected. We, the men, have tried to get the  
12 State Government to stop it. We've taken our  
13 application to the Minister. We have picketed. We've  
14 done all these things and now it is up to you women to  
15 actually protect the site.'

16 CONTINUED

1 Q. What then happened.

2 A. At that stage, I was aware that other people were  
3 entering the room. Women started moving towards the  
4 table where the letter was, and it appeared that they  
5 were starting to look at the letter again. I got the  
6 impression that it was something that women were  
7 concerned with, so I moved away - in fact, I moved back  
8 to where my bag was, which was where I'd been earlier  
9 seated.

10 Q. Is that near the lounge at the western end of the living  
11 room.

12 A. That's correct.

13 Q. What was happening in the meantime at the table, then.

14 A. Well, I just saw women congregating around the table and  
15 there was talk, but I couldn't hear what the talk was.

16 Q. You've already answered this, I think; you couldn't tell  
17 whether the letter was being amended or written on in  
18 any way, or could you.

19 A. No, I couldn't tell what was happening to it.

20 COMSR

21 Q. You say people had come into the room. Had anyone gone  
22 out of the room, were the men still there.

23 A. After the comments were made by Doug Milera, I got the  
24 impression that the men had actually left the room. I  
25 got the impression also that other people had actually  
26 entered, people that weren't there at an earlier time.

27 There was certainly a lot of movement. I went back to  
28 my bag and then someone called me outside.

29 XN

30 Q. When the map or the aerial photograph near the table,  
31 photograph number one, was indicated by, as you say,  
32 George Trevorrow, was there any reaction to Doreen  
33 Kartinyeri to that.

34 A. No.

35 Q. What happened then. The women were gathering around the  
36 table, other people have come in, your impression is  
37 that the men had left, what did you do.

38 A. Well, I went back to my bag because I thought I should

## T.J. WOOLEY XN (MR SMITH)

1 go home at that stage. I'd had enough, I was tired. I  
2 was then called outside and, when I got outside, I saw  
3 Sergeant Morrison and the men speaking with him. I  
4 joined them, I joined in the conversation, and I think,  
5 part way through our conversation, Sarah Milera joined  
6 us, and this was all taking place outside.

7 Q. Was Dorothy Wilson with Sarah Milera.

8 A. No.

9 Q. What happened out there.

10 A. It was more discussion about what the police would be  
11 doing on, I think it was the Wednesday of that week when  
12 it was expected that construction of the site camp would  
13 begin.

14 Q. Did you stay down on the island or at Goolwa for the day  
15 on which construction was intended to start.

16 A. No, I was in Adelaide on that day, I think that was 11  
17 May.

18 Q. Did you go back down to Goolwa on the 12th.

19 A. Yes, I went back on the following day.

20 Q. So it the case that after these events that you've told  
21 us about, you simply left the Goolwa/Hindmarsh Island  
22 area, and came back to Adelaide.

23 A. Yes. We're talking about 9 May?

24 Q. Yes, back to the 9th, sorry.

25 A. Yes, that's correct. After the conversation with  
26 Sergeant Morrison, I went back inside the living area.  
27 There seemed to be women around the table still. I  
28 grabbed my bag, I think that I asked whether or not  
29 anyone needed me, it was obvious that they didn't, so I  
30 left.

31 Q. You hadn't, though, received any instructions, had you.

32 A. Yes, I believe that I did receive some instructions  
33 during the earlier - well, I certainly received  
34 instructions. I know that I received instructions.

35 Q. What, during the earlier conversation.

36 A. Yes, during the earlier conversation.

37 Q. But in relation to the letter and whether or not it  
38 would convince the minister to make a declaration in

1 respect of the bridge, that matter was incomplete,  
2 wasn't it, so far as your advice was concerned.

3 A. Yes. I certainly didn't, at that point in time,  
4 consider the letter would be very significant, that was  
5 my judgment. I didn't see that it took things any  
6 further than the Draper - in fact it didn't go as far as  
7 the Draper report, and the Draper report was certainly  
8 with the Commonwealth minister at that stage. I  
9 certainly wasn't terribly interested in it - the letter,  
10 that is.

11 Q. The letter, as you saw it, though, did not include any  
12 reference to the Draper report, did it.

13 A. Indeed.

14 Q. But you didn't wait to see, for instance, whether or not  
15 the handing over of the matter to the women, as it were,  
16 by Doug Milera, was likely to produce any fruit so far  
17 as the minister was concerned.

18 A. Well, because of instructions I received earlier that  
19 day, I'd formed a view that really I needed to instruct  
20 a female anthropologist and that, as a man, I could  
21 never hope to really get any full instructions at that  
22 point in time.

23 Q. It was you, I think, was it not, who engaged Dr Fergie.

24 A. Yes, I did.

25 Q. That was initially to facilitate the meeting of the  
26 women with Professor Saunders during the week of 20 June  
27 1994, is that correct.

28 A. Yes, that's correct.

29 Q. You then changed your instructions to Dr Fergie, did you  
30 not.

31 A. That's correct.

32 Q. You asked Dr Fergie, I take it, on behalf of the ALRM,  
33 to provide a report to become part of the ALRM  
34 submission to the Federal minister, is that right.

35 A. I think in reality I was asking her on behalf of the  
36 clients. The representations may well have gone in as  
37 ALRM submissions, but they were really my submissions as  
38 the solicitor acting for the Lower Murray Aboriginal



1 Heritage Committee, and the women who I saw as upholding  
2 the women's tradition, so they weren't really, strictly  
3 speaking, submissions of the organisation. Although  
4 they may have been called ALRM submissions, they were  
5 really my submissions on behalf of the Lower Murray  
6 Aboriginal Heritage Committee and the women that I was  
7 representing, or felt that I was representing anyway.

8 COMSR

9 Q. Those women were those who wanted to uphold this  
10 tradition, were they.

11 A. Yes, that's correct. At that stage I identified two  
12 clearly as being in that category. One of them was  
13 Doreen Kartinyeri, who I believe I got instructions from  
14 on 9 May at the Mouth House, and Sarah Milera, who was  
15 already part of the committee, and that I was also aware  
16 that they, in a sense, represented an even wider group  
17 of women, and the representations I made to Professor  
18 Saunders were couched in those terms, and I believe that  
19 I also couched them in terms of the traditional owners,  
20 because there was another layer there as well; there  
21 were some people that weren't women that I understood  
22 were custodians of sites. There is some overlapping of,  
23 I suppose, connection or authority that I saw in my  
24 client group. It is a bit complicated.

25 Q. What you're saying is there were a couple of people you  
26 could identify, but there were a whole group of people  
27 you couldn't identify for whom you thought you were  
28 acting.

29 A. Exactly.

30 XN

31 Q. Is this a correct proposition, that the report of Dr  
32 Deane Fergie was commissioned by the Aboriginal Legal  
33 Rights Movement, and in fact the Aboriginal Legal Rights  
34 Movement sought to provide 'An anthropological  
35 evaluation of the significance of secret women's  
36 knowledge within Aboriginal tradition'. Is that what  
37 the brief to Dr Fergie was.

38 A. Yes, it was.

1 Q. From you.

2 A. Yes, it was from me.

3 Q. I think you were involved in negotiations with Telecom,  
4 subsequent to the permanent declaration in respect of  
5 the construction of the bridge, to lay a cable across  
6 the river in the area of the bridge alignment, were you  
7 not.

8 A. Yes, that's correct.

9 Q. When did that take place.

10 A. When did the -?

11 Q. When did these negotiations with Telecom take place.

12 A. Well, they started sometime last year, late last year,  
13 but they haven't really concluded.

14 Q. The laying of a cable across the river linking the  
15 mainland to the island, did you see that as rather  
16 inconsistent with the position taken in the report of Dr  
17 Fergie.

18 OBJECTION Mr Tilmouth objects.

19 MR TILMOUTH: What use is his opinion on those matters  
20 to the commission? It's just an opinion of an  
21 individual.

22 MR SMITH: I'm not going to go much further. Can I  
23 pursue that question?

24 COMSR: Just a moment. Well, yes, it may throw  
25 light on the witness' actions. I mean it does nothing  
26 more than establish what his opinion was, and that may  
27 throw some light on a course of conduct.

28 MR TILMOUTH: Well, of course, the lawyer is supposed  
29 to act on instructions, subject to certain ethical  
30 requirements.

31 COMSR: Yes.

32 XN

33 Q. Perhaps I can put it this way; you were involved in  
34 negotiations down at Goolwa with officers of Telecom in  
35 respect of the laying of a coaxial cable from the  
36 mainland of Goolwa foreshore across the island,  
37 approximately in the alignment of where the bridge was  
38 to go, is that right.

- 1 A. I physically didn't go to Goolwa to engage in the  
2 negotiations, I sent a female solicitor.
- 3 Q. You supervised them, did you, in a sense.
- 4 A. Yes, I suppose.
- 5 Q. A group of women went down, in company with Dr Fergie,  
6 for that purpose, did they.
- 7 A. That's correct.
- 8 Q. Telecom paid the expenses of this group of women and Dr  
9 Fergie.
- 10 A. Yes.
- 11 Q. And some fees for ALRM.
- 12 A. That's correct.
- 13 Q. The purpose of the consultation at Goolwa was indeed to  
14 negotiate about the laying of a cable across the river,  
15 is that right.
- 16 A. Well, I think it was actually underneath -
- 17 Q. The bed of the river.
- 18 A. - the bed, and it was, in fact, in an old conduit. That  
19 was my understanding.
- 20 ADJOURNED 11.29 A.M.

1 RESUMING 11.42 A.M.

2 CROSS-EXAMINATION BY MR ABBOTT

3 Q. I want to ask you some questions about the 9 May meeting  
4 at what we have called the Mouth House. Were you  
5 present when Dorrie Wilson gave evidence on this matter.

6 A. No, I wasn't. I'm sorry, I was present in the early  
7 stages of her evidence, yes.

8 Q. But not when she gave evidence in relation to the Mouth  
9 House.

10 A. No, that's correct.

11 Q. Have you been supplied with a copy of at least that  
12 portion of her statement which relates to this episode.

13 A. Yes, I've read her statement, the one that was tendered  
14 initially.

15 Q. I am asking you whether you have been supplied with a  
16 copy of it.

17 A. Yes, I have been.

18 Q. Do you have a copy with you.

19 A. No, I don't.

20 Q. You were present when Mr Stratford cross-examined Dorrie  
21 Wilson on this topic.

22 A. No, I wasn't.

23 Q. May I take it then that you have given instructions to  
24 Mr Stratford.

25 A. I've given instructions to Mr Stratford on a number of  
26 things, yes.

27 Q. But including the events of the Mouth House on 9 May.

28 A. Yes.

29 Q. You are aware that he was to cross-examine Dorrie Wilson  
30 on the basis of the instructions given by you.

31 A. Yes, in a limited sense, that's correct.

32 Q. What do you mean 'in a limited sense'.

33 A. That if there were going to be any questions, they would  
34 be limited.

35 Q. Why would they be limited.

36 A. Because there was no real reason to cross-examine her -

37 Q. What, because you -

38 A. At length.

- 1 Q. Because you accepted, basically, her version.  
2 A. That's not correct.  
3 Q. You do, don't you.  
4 A. Well, fundamentally I accept that she was there, but I  
5 don't accept everything that she says occurred at the  
6 Mouth House.  
7 Q. You accept what she says about coming in, about the  
8 letter being shown to you at the request of one of the  
9 persons there.  
10 A. Yes, I accept that.  
11 Q. That you examined the letter, read it through - you  
12 accept that.  
13 A. Yes, I do.  
14 Q. You accept what she says that you said something to the  
15 effect that you didn't think there was enough in the  
16 letter to stop the bridge and that more information was  
17 needed. You accept that.  
18 A. Yes.  
19 Q. You accept that there was obviously then discussion  
20 about what else was there that could be put in the  
21 letter.  
22 A. Yes, there was some discussion.  
23 Q. And that you accept -  
24 A. Sorry, I don't know if there was discussion about what  
25 else could be put in the letter. There was certainly  
26 discussion following the letter.  
27 Q. There was then one of the men present pointed to the  
28 aerial photograph of Hindmarsh Island and the Murray  
29 Mouth.  
30 A. Yes, I agree with that.  
31 Q. And said `Look at this map. What does it remind you  
32 of?'  
33 A. Those words weren't said.  
34 Q. Something to that effect.  
35 A. Well, there was no `What does this remind you of?' It  
36 was another comment.  
37 Q. `What does it look like?'

- 1 A. No, it wasn't even that. It was 'Look at that, it's  
2 obvious, isn't it?' That was the comment.
- 3 Q. Did someone say what was obvious about it.
- 4 A. No, no-one said anything.
- 5 Q. Come now. So someone said 'It's obvious' - what was  
6 obvious to you about it then.
- 7 A. That it was an important place. It was clear from the  
8 Draper report that it was an important place.
- 9 Q. So you say that 'Look at the map, it's obvious' was a  
10 reference to it just being important.
- 11 A. Well, I understood that the people in the room - namely,  
12 the women and the men present - knew what Mr Trevorrow  
13 was saying because no-one said 'I don't understand'. It  
14 appeared that people understood what was being said. It  
15 might have been a different understanding - they may  
16 have had a different understanding than I did, but  
17 certainly no-one queried the comment. It was just taken  
18 as read.
- 19 Q. It was suggested that the map looked like a depiction of  
20 women's reproductive organs, wasn't it.
- 21 OBJECTION Mr Stratford objects.
- 22 MR STRATFORD: I don't think that is the evidence that  
23 was given, and I invite my friend to refer to the  
24 passage and put the passage to Mr Wooley in a careful  
25 and considered manner.
- 26 MR ABBOTT: I will put the evidence.  
27 XXN
- 28 QUESTION REPHRASED
- 29 Q. I refer to Dorrie Wilson's statement, which is an  
30 exhibit, p.24 'The man said' - and we will go into who  
31 the man is 'Look at the map, what does it remind you  
32 of?' We all looked. He then said 'Look, it is in the  
33 shape of a woman's privates'. That's what happened,  
34 isn't it.
- 35 A. No. For a start, the person that she attributes that  
36 comment to, didn't point to the map. It was someone  
37 else who pointed to the map. Secondly, the person that

1 she attributes that statement to, didn't make that  
2 statement.

3 Q. Did anyone make that statement.

4 A. No.

5 Q. Nothing like that.

6 A. There was no reference to the aerial photograph any way  
7 resembling female anatomy.

8 Q. If that's so, perhaps you can explain how it came about  
9 that your counsel suggested to that commission that  
10 that's exactly what happened. I refer to the transcript  
11 at p.3,504, where the Prue Goward interview - you know  
12 the Prue Goward interview with Dorrie Wilson I'm  
13 speaking about.

14 A. Yes.

15 Q. You have discussed this with your counsel.

16 A. Yes.

17 Q. You weren't here, so I tell you that he put it to Dorrie  
18 Wilson `And the record goes on to say, just for the sake  
19 of completeness, "The man from the Heritage Committee  
20 asked us to look at the map on the wall and suggested to  
21 us that the map looked like a woman's private and that's  
22 the way they put it to us". Do you see that passage'  
23 said Mr Stratford to Dorrie Wilson. Dorrie Wilson said  
24 `Yes'. Mr Stratford said `Is that then generally what  
25 happened in relation to pointing out of the photograph  
26 on the wall'. The answer `Yes'. I tell you, Mr Wooley,  
27 Mr Stratford, your own counsel, made no suggestion that  
28 that wasn't right, that that was somehow wrong or  
29 incorrect. Do you find that surprising.

30 OBJECTION Mr Stratford objects.

31 MR STRATFORD: I am quite happy to wear Mr Abbott's  
32 criticism, but I don't think it is appropriate it should  
33 be put to the witness in this particular manner. It may  
34 be a criticism he can make of me in the way I have  
35 handled the matter, but it shouldn't be put to the  
36 witness in this aggressive tone to make a comment on it.  
37 It is not appropriate to this inquiry, and I object to  
38 it.

- 1 MR ABBOTT: It is a very important matter. It is  
2 all very well for Mr Stratford to fall on his sword in  
3 favour of Mr Wooley. There has to be some explanation  
4 as to why it was never suggested by Mr Wooley's own  
5 counsel that Dorrie Wilson was wrong in her recollection  
6 - put aside who it was who pointed to the map - that a  
7 man told the women to look at it, and suggested that the  
8 map looked like a depiction of women's privates or  
9 reproductive organs or whatever. I'm entitled to  
10 explore that with this witness.
- 11 COMSR: You are certainly entitled to explore  
12 it, Mr Abbott. I think objection is taken to the fact  
13 that your manner of doing so is aggressive.
- 14 MR ABBOTT: I will be less aggressive.
- 15 MR TILMOUTH: May I point out that, on my  
16 instructions, I put certain matters commencing at 3,510.  
17 They were independent instructions. I had no idea of Mr  
18 Wooley's evidence.
- 19 XXN
- 20 Q. Can you give us any explanation as to why your counsel  
21 didn't challenge Dorrie Wilson's account in this vital  
22 respect.
- 23 A. No.
- 24 Q. Did you make any note of what happened at the Mouth  
25 House on 9 May.
- 26 A. I made some notes, yes.
- 27 Q. How soon after did you first put into written form  
28 anything in relation to 9 May.
- 29 A. I actually made some notes on the day, as things  
30 happened.
- 31 Q. Where are those notes.
- 32 A. In the file.
- 33 Q. The file that ALRM won't produce.
- 34 A. Yes.
- 35 Q. They're your notes.
- 36 A. Yes, it is my handwritten note.
- 37 Q. Do they include references to Dorrie Wilson, or the  
38 person you now know as Dorrie Wilson.



- 1 A. From memory - it has been a while since I've had a look  
2 at the file - I don't think they do make mention of  
3 Dorothy Wilson, no.
- 4 Q. Do they make reference to the events that took place in  
5 Dorrie Wilson's presence.
- 6 A. No, they don't.
- 7 Q. Did you make any note at any stage of what had taken  
8 place at the time when Dorrie Wilson was present.
- 9 A. No written notes.
- 10 Q. I'm talking about a report, or letter, or -
- 11 A. No, no.
- 12 Q. So you've never committed to written form, the events of  
13 what happened when Dorrie Wilson was present, other than  
14 presumably for the purpose of informing Mr Stratford.
- 15 A. That's correct.
- 16 Q. The written instructions that you gave to  
17 Mr Stratford presumably were not given until 1995.
- 18 A. That's correct.
- 19 Q. It is on that basis that Mr Stratford presumably  
20 prepared a statement for you.
- 21 A. That's correct.
- 22 Q. Have you looked at that statement.
- 23 A. Yes, I have.
- 24 Q. In recent times.
- 25 A. You are talking about the one that was tendered today?
- 26 Q. No.
- 27 A. Well, that's the only statement that Mr Stratford has  
28 actually prepared for me that I'm aware of. I haven't  
29 seen the other statement. He may have taken notes, but  
30 I haven't seen those notes.
- 31 Q. This statement mentions nothing about anyone pointing to  
32 the aerial photograph of the area.
- 33 A. Yes, it was considered that that was a privileged  
34 matter, and we have been overruled on that.
- 35 Q. Could I just ask you some more questions on the events  
36 of that day. I will not ask what led up to Dorrie  
37 Wilson arriving, but you remember when you returned into  
38 the room, from I think you said one of the bedrooms -

- 1 A. Yes, that's correct.  
2 Q. There was Dorrie Wilson and Sarah Milera, you think.  
3 A. Yes. I'm certain that I saw Dorothy at that stage.  
4 Q. And you wouldn't deny that Sarah Milera may well have  
5 been with her at that stage.  
6 A. I wouldn't deny that.  
7 Q. Shortly after that, Sarah Milera takes from her handbag  
8 the letter.  
9 A. Yes, within 10 minutes I'd say.  
10 Q. Do you remember Doreen telling Sarah to show you the  
11 letter.  
12 A. Yes.  
13 Q. That's Doreen Kartinyeri, isn't it.  
14 A. Yes, that's correct.  
15 Q. How did Doreen Kartinyeri put it.  
16 A. I think she said 'Show Tim the letter'.  
17 Q. So Sarah opened her handbag or whatever.  
18 A. Yes.  
19 Q. Are you sure it was a handbag.  
20 A. I'm pretty sure it was a handbag.  
21 Q. Could it have been a smallish briefcase.  
22 A. It's a possibility.  
23 Q. Would you look at MFI 206, please.  
24 A. Yes.  
25 Q. The document that Sarah Milera produced from her  
26 handbag, was it identical in all respects to these two  
27 pages, other than the material on the last third of p.1.  
28 A. I think that, in fact, it may have had something on the  
29 top of the first page.  
30 Q. It did, didn't it, because it had something saying 'to  
31 Mr Tickner'.  
32 A. Yes, something like that, yes.  
33 Q. So you knew from reading it, without anyone telling you,  
34 that this was a letter that was going to be sent to Mr  
35 Tickner, didn't you.  
36 A. Well, I assumed that was correct, yes.  
37 Q. Indeed, I suggest to you that the material which is now  
38 occupying two thirds of the first page of MFI 206,

- 1 together with the name of Tickner and the address, et  
2 cetera, occupied all of the first page, for practical  
3 purposes.
- 4 A. I can't - without actually seeing the original, I can't  
5 say for sure, but it's quite possible. It is quite  
6 possible there was a little bit more on the first page  
7 in terms of text, but I can't now say. All I can say is  
8 that the contents of the first two thirds of the page is  
9 familiar.
- 10 Q. I suggest you can go further than that, and you can tell  
11 us that when you looked at the first page it appeared to  
12 be, in general terms, filled up. I'm not talking about  
13 half an inch or an inch at the bottom, but generally it  
14 was full.
- 15 A. I can't say that categorically.
- 16 Q. But that's your impression, isn't it.
- 17 A. It was my impression. Yes, that's right.
- 18 Q. On the second page of the letter was all of what we now  
19 see on it.
- 20 A. Yes, that's right. Yes.
- 21 Q. And the second page appeared as it is now.
- 22 A. Yes.
- 23 Q. You were asked by Doreen whether that was enough,  
24 weren't you.
- 25 A. I can't recall that.
- 26 Q. Something to that effect though.
- 27 A. I think someone said 'Can you tell us if this is' - yes,  
28 I think someone said 'Can you look at this and tell us  
29 if it is enough', something to that effect.
- 30 Q. It may have been Doreen who said that.
- 31 A. It could have been, yes.
- 32 Q. After you'd read it, you told the meeting that it wasn't  
33 enough, in your view.
- 34 A. Yes, that's correct.
- 35 Q. And the words you used were something to the effect of  
36 you didn't think this would be enough for Mr Tickner to  
37 hang his hat on.
- 38 A. Yes.

- 1 Q. Whatever the words were, it is clear that the effect is  
2 as Dorrie Wilson said, and I will read out to you what  
3 she said 'Tim looked up and said he didn't think there  
4 was enough in the letter to stop the bridge and that we  
5 needed to have more information in the letter'. That's  
6 a fairly accurate description of the effect of what you  
7 said, isn't it.
- 8 A. I suppose that is correct, yes.
- 9 CONTINUED

- 1 Q. You say that you were aware they had further  
2 information.
- 3 A. That's right.
- 4 Q. You have told us that that further information that you  
5 were aware that they had come to you by a perusal of the  
6 Draper report.
- 7 A. Yes, that's right. Yes, partially that.
- 8 Q. Anything else.
- 9 A. Instructions that I had taken earlier that day from  
10 Doreen Kartinyeri led me to believe that there was more  
11 information that I didn't have.
- 12 Q. But she didn't specify it.
- 13 A. No, that's right, she - I couldn't get the information,  
14 because of my gender, basically.
- 15 Q. Earlier that day, Doreen had told you that there was  
16 more, did she.
- 17 A. She didn't - well, I believe that that was actually a  
18 part of a privileged conversation.
- 19 Q. You have started telling us about it now, so you might  
20 as well finish.
- 21 OBJECTION Mr Stratford objects.
- 22 MR STRATFORD: I object to the question on the grounds  
23 that it is a matter for legal professional privilege. I  
24 understand your earlier ruling when I rose to speak on  
25 it, but, with the greatest respect, I mention again that  
26 privilege is the client's privilege and, for it to be  
27 claimed and for it would be waived is a matter for the  
28 client. It is not a matter for persistent questions of  
29 this witness in the hope that he will give some answers.
- 30 COMSR: Yes, it is not clear to me, of course,  
31 that there was anyone other than the two of them present  
32 at this earlier conversation. It is not a conversation  
33 which is, as I understand it, taking place in front of a  
34 number of other persons.
- 35 MR STRATFORD: Yes, but you will remember the context  
36 in which the question was put. Mr Abbott put to the  
37 witness that Doreen Kartinyeri asked for some advice on  
38 the letter and Mr Wooley gave some advice on the letter.

- 1 Clearly it is a matter for legal professional privilege.  
2 It is a matter that Mr Abbott shouldn't enter into, so I  
3 object to the question.  
4 MR ABBOTT: I will put it another way.  
5 QUESTION REPHRASED  
6 XXN  
7 Q. Whether Doreen Kartinyeri was your client or not, at  
8 this time, that is, 9 May 1994, she was an employee of  
9 ALRM, wasn't she.  
10 A. Doreen?  
11 Q. Yes.  
12 A. No way. She was employed by the museum, I understood.  
13 That was my understanding.  
14 Q. Hadn't she left, or been seconded from that employment  
15 to ALRM.  
16 A. Certainly that was certainly not my knowledge, within my  
17 knowledge.  
18 Q. Hadn't you seen her on a daily basis at ALRM.  
19 A. No. At that time?  
20 Q. At that time, yes.  
21 A. No.  
22 Q. Let's look at the MFI 206.  
23 A. Yes.  
24 Q. If one assumes that at least these were part of the  
25 instructions, using your view that you had clients,  
26 women clients, and that this is part of the material  
27 that they wanted to be passed on to the Minister, I  
28 suggest that Doreen had told you nothing in addition to  
29 this, prior to you making those comments about MFI 206.  
30 OBJECTION Mr Stratford objects.  
31 MR STRATFORD: That is another way of asking 'What were  
32 your instructions?' Really, all the witness can do is  
33 indicate to you the occasion of privilege and, in so  
34 doing, indicate, in a general way, the topic, but  
35 specification on the topic and the exact subject matter  
36 are legal professional privilege. He can say 'I gave  
37 some advice on s.23', or 'I gave some advice on s.10',  
38 to set the scene so you can make on ruling on it. But,

1 in the context of what was discussed in connection with  
2 these headings is something that falls within the area  
3 of legal professional privilege.

4 As I indicated before, Dr Kartinyeri and others who  
5 may have been seeking Mr Wooley's advice aren't  
6 represented at the table. And, so, it is because of  
7 that and Mr Wooley's obligation to claim privilege for  
8 those clients who are unrepresented, that privilege is  
9 claimed.

10 MR ABBOTT: I will rephrase my question.

11 QUESTION REPHRASED

12 XXN

13 Q. Don't answer this, Mr Wooley, in case Mr Stratford  
14 objects. You said that you had had a discussion prior  
15 to being handed this letter and making the comments you  
16 have told us you made on it. You had a discussion with  
17 Doreen Kartinyeri. Was one of the topics of that  
18 discussion the extent to which she had information which  
19 might be made available to Mr Tickner.

20 A. Yes, in a general sense, that was a topic.

21 Q. Did she ask your advice.

22 A. No, she didn't ask my advice.

23 Q. So, she was just telling you, in a general sense, that  
24 she had some information.

25 A. I already knew that.

26 Q. Did the comments she made in the morning prior to you  
27 receiving the letter add anything to that, to your  
28 knowledge.

29 A. No, they didn't.

30 Q. When did you start acting for her.

31 A. I believe that I started acting for Doreen that day, the  
32 6th.

33 Q. At about what time.

34 A. When I saw her, whatever that was. When I first engaged  
35 her in conversation about this matter.

36 Q. Did you ask whether you could act for her.

37 A. I didn't need to ask.

38 Q. Did she ask you to act for her.

1 A. I understood that she was there to, in fact, give me  
2 instructions. There was nothing of a formal nature that  
3 took place.

4 Q. You understood that, but did she tell you that she was  
5 there to give you instructions. Did she say, not those  
6 words, but anything to that effect.

7 A. There was nothing said, as such. It was implied that  
8 she needed, or she was part of the group that were  
9 seeking heritage protection and that, as I was the  
10 solicitor acting on the matter, that she was either a  
11 client, or as a witness, at very least. But -

12 COMSR

13 Q. I am not quite clear I follow the mechanics of this, Mr  
14 Wooley. Do you act for a person who comes asking, as  
15 you say, for protection, without ascertaining whether or  
16 not that may represent the view of any significant  
17 number of the community.

18 A. In relation to this matter, I had already been appraised  
19 of the fact that Doreen Kartinyeri had considerable  
20 knowledge and that she was someone that I certainly  
21 needed to speak to, to get further information from, in  
22 relation to the s.10 application.

23 Q. Yes, but, in coming to the conclusion that you were  
24 acting for anyone in respect of a particular issue, do  
25 you consult with the community in anyway, to ascertain  
26 that that is what their views are on the matter.

27 A. I don't consult. I mean, I don't consult with the  
28 community, but it was clear to me, from questions that  
29 she was asking me, that she was seeking my legal advice  
30 about certain matters.

31 Q. She personally.

32 A. Yes, she personally. And a direct conversation that I  
33 had, at the time, in my mind, put the relationship in  
34 the category of solicitor/client, because of the direct  
35 advice that she was seeking, the advice that I was  
36 giving her.

37 XXN

38 Q. Mr Stratford has been acting for you since the



1 commencement of this Royal Commission.

2 A. That's correct.

3 Q. And I take it you then gave him instructions as to who  
4 your clients were.

5 A. Yes.

6 Q. And he announced his appearance on your behalf.

7 A. Yes.

8 Q. And he also announced who your clients were, didn't he.  
9 You were here.

10 A. Yes.

11 Q. Do you remember him saying this, at p.202 -

12 A. Actually, I don't think I was here on the first day, but  
13 still anyway go on.

14 Q. He said that 'Mr Wooley is a solicitor employed by the  
15 ALRM and he initially took instructions from the Lower  
16 Murray Aboriginal Heritage Committee back on 12 October  
17 1993. He continued to act for that Committee through  
18 until this Royal Commission came into being.' That is  
19 all correct, isn't it.

20 A. That's correct.

21 Q. He then dealt with the fact that the ALRM, through you,  
22 acting for the Committee of the Lower Murray Aboriginal  
23 Heritage Committee had engaged in correspondence with  
24 anthropologists Draper, Deane and Saunders. And then Mr  
25 Stratford said this 'From about 20 June 1994, he was  
26 acting for five senior women, as well as for the  
27 Heritage Committee.' Who were those five senior women  
28 that you started acting for, from 20 June.

29 A. In addition to Sarah Milera and Doreen Kartinyeri, whom  
30 I believe I was acting for at an earlier time, were the  
31 additional three women that Dr Fergie, who was acting as  
32 my agent, identified, through the process of her  
33 involvement with the women. And they are Edith Rigney,  
34 Maggie Jacobs and Connie Roberts.

35 Q. You have been acting for Doreen Kartinyeri since 20  
36 June, have you.

37 A. My view, in actual fact, is that I had been - I had, in  
38 fact, been acting for Doreen from an earlier time.

1 Q. How is it that your counsel could stand up and say that,  
2 from about 20 June, you were acting for five senior  
3 women, if the fact is that you now claim that it was as  
4 at 9 May.

5 A. I think what has happened is that, as I have had more  
6 time to reflect and think about it, I have actually had  
7 a more - had a clearer picture of exactly who my clients  
8 were and the various stages they became clients.

9 COMSR: Mr Abbott, this all goes to the issue,  
10 does it, of the legal professional privilege?

11 MR ABBOTT: Yes, I want to ask him about the details  
12 of the conversation he had with Doreen Kartinyeri  
13 earlier on 9 May on the basis that Doreen Kartinyeri, in  
14 no sense, could be his client. Never claimed to have  
15 been his client. And now, at this late stage, he now  
16 says, having thought about it, he has got a clear idea,  
17 now, who his clients were. Apparently he didn't have  
18 that idea, back in July of this year.

19 COMSR: From what Mr Wooley said, he was under  
20 the impression that he was giving legal advice to Dr  
21 Kartinyeri, whether or not, at that stage, she would be  
22 categorised as a client. There may be other reasons, of  
23 course, why something should be kept confidential -

24 MR ABBOTT: Yes -

25 COMSR: Under the Terms of Reference, but -

26 MR ABBOTT: Yes.

27 XXN

28 Q. I ask you, so that it can be ruled on, Mr Wooley, could  
29 you please tell us what Doreen Kartinyeri said to you  
30 and what you said to Doreen Kartinyeri, prior to the  
31 entry of my client, Dorothy Wilson, to the Mouth House,  
32 on 9 May.

33 OBJECTION Mr Stratford objects.

34 MR STRATFORD: I object to that question on the basis  
35 of legal professional privilege. On the basis that  
36 Doreen Kartinyeri was Mr Wooley's client, at that time,  
37 seeking advice and receiving advice. And I object to  
38 it. As I indicated to you in one of my earlier

1 submissions on the question of legal professional  
2 privilege, others that were at the Mouth House that day,  
3 other third parties, could properly be categorised as  
4 clients, or as witnesses. So, it may be that Dr  
5 Kartinyeri, if she is not a client, is at least a  
6 witness. Mr Wooley was there seeking information from  
7 her in relation to the Lower Murray Aboriginal Heritage  
8 Committee's application. So, in that sense, she was a  
9 witness from whom he was seeking assistance to support  
10 his client's claim, if, indeed, she wasn't a client  
11 herself. So, I strenuously object.

12 MR ABBOTT: Could I ask Mr Stratford to tell us, a  
13 witness to what?

14 MR STRATFORD: Do you want me to answer that,  
15 Commissioner?

16 COMSR: A witness in the application that was to  
17 go before the Minister?

18 MR STRATFORD: Obviously I haven't taken instructions  
19 on this and Mr Abbott is very keen to make sure that I  
20 have got my instructions right, but I would have thought  
21 there would be several possibilities. One would be  
22 legal action that might have been considered likely from  
23 certain developers involved in the Hindmarsh Island  
24 bridge affair. I would have thought that was one  
25 possibility. Another possibility, I would have thought,  
26 was a judicial review of the s.23 notice. The next  
27 possibility, I would have thought, would be applications  
28 pursuant to ss.9 and 10 of the Aboriginal & Torres  
29 Strait Islander Protection Act. I would have thought  
30 there were plenty of areas where litigation would have  
31 been considered.

32 COMSR: Yes, there might be a number, but there  
33 is one thing I would like to clarify with the witness.

34 COMSR

35 Q. This conversation that you had with Dr Kartinyeri, was  
36 that, as it were, a public conversation in front of the  
37 whole room, or something that you were having as between  
38 the two of you.

- 1 A. It was in front of the whole room, but it was between  
2 the two of us, as well, if you know what I mean? It was  
3 a one-on-one, but in front of other people who I, at  
4 that time, considered were within the client group.  
5 That there was a common interest, as it were. That they  
6 had a common interest with.
- 7 Q. Yes, I know, but you can be talking within a room full  
8 of people and still be having a private conversation, as  
9 it were.
- 10 A. No, it wasn't a - it was able to be overheard by others.
- 11 MR ABBOTT: It would seem to me to be very far  
12 removed from a solicitor/client relationship.
- 13 COMSR: I don't know whether Mr Stratford wishes  
14 to get some particular instructions as to in what  
15 capacity the witness was speaking to Dr Kartinyeri,  
16 whether as a potential witness?
- 17 MR ABBOTT: Perhaps I will leave it and allow him to  
18 get those instructions, if he wishes to, and move on to  
19 something else.
- 20 COMSR: Yes.
- 21 MR ABBOTT: And come back to it later on.
- 22 COMSR: Not too much later, I hope, Mr Abbott.
- 23 MR ABBOTT: No, I have got a number of questions.  
24 XXN
- 25 Q. Do you know Patty Kropinyeri.
- 26 A. I don't - I can't say that I know Patty Kropinyeri.
- 27 Q. As I understand your evidence, when you came out into  
28 the room, the numbers had increased from seven to nine  
29 or ten.
- 30 A. That would be correct, yes.
- 31 Q. You have given us the list of women who were there, of  
32 people who were there, first of all. Five of whom you  
33 could identify and two of them were unknown to you.
- 34 A. That's correct.
- 35 Q. Are you sure Doreen was one of the five.
- 36 A. I am absolutely sure of that, yes.
- 37 Q. One of the two whom you were unable to identify may have  
38 been Patty Kropinyeri.

1 A. Yes, that's correct.

2 Q. So, when you came back and when the letter was produced,  
3 at Dr Kartinyeri's urging from Sarah Milera's  
4 receptacle, there were some nine or ten people -

5 A. Yes.

6 Q. In the immediate environ.

7 A. Yes, that's correct.

8 Q. Do you remember Doreen saying, after you said something  
9 about Mr Tickner needing more and this wasn't enough, or  
10 not enough - not a big enough peg to hang his hat on -  
11 do you remember someone else saying 'Well, what else can  
12 we put?'

13 A. No, I can't actually remember that. I remember there  
14 was silence and then George Trevorrow pointed at the  
15 aerial photograph and he made the comments that I quoted  
16 before.

17 Q. 'What does this look like?'

18 A. No, he said 'it's obvious, isn't it?' That's all he  
19 said.

20 Q. I suggest that it was Vic Wilson not George Trevorrow  
21 who pointed to the map and he didn't use George  
22 Trevorrow's stick. Vic used his hand or finger.

23 A. No, I would disagree with that.

24 CONTINUED

1 Q. All right, we differ on that point. Prior to one of the  
2 men pointing to the coloured aerial photograph, do you  
3 recall Doreen saying to one of these two, unknown to  
4 you, women 'Here, Patty, write this down', or something  
5 like that.

6 A. No, there was no attempt to write anything down at that  
7 stage. In fact, I didn't see anyone write anything, but  
8 it was only after the conversation with the men that the  
9 women moved back to the table where the letter was,  
10 because the letter was right in front of me when the  
11 pointing to the aerial photograph was going on.

12 Q. You see, you may not have heard Dorrie Wilson's  
13 evidence, all her evidence on this topic, but what we  
14 have heard so far is that two pieces of paper were  
15 handed to you for your comment. You've told us about  
16 MFI 206 and how it differs now from what you saw, and  
17 that a further sheet of paper was written on which  
18 contained the material which is lifted from the Draper  
19 report as you've identified which now appears on the  
20 first page of MFI 206.

21 A. I certainly didn't see that happen.

22 Q. If Doreen said to Patty Kropinyeri 'Here, write this  
23 down' and Doreen told Patty the business about Kumarangk  
24 meaning fertility, and Patty wrote 'Kumarangk is the  
25 Aboriginal word for fertile (pregnancy). That is also  
26 the name of Hindmarsh Island' which is as we see in the  
27 first three lines of the new material on p.1, didn't you  
28 see it happen.

29 A. I didn't see it happen. It didn't take place in my  
30 presence.

31 Q. It may have taken place in your presence, but you didn't  
32 see it taking place in your present.

33 A. Quite, yes.

34 Q. Did you see the letter leave the Mouth House.

35 A. No. The last time I saw it was on the table. I was  
36 leaving the table to go back to my bag, the women in the  
37 room crowded around the table, and it appeared that they  
38 were looking at the letter. I was then called outside.

- 1 Q. When did you next see the letter, or any part thereof.  
2 A. I didn't see it - well, I saw a copy of it turn up in  
3 the s.13 documentes.  
4 Q. But not before then.  
5 A. No.  
6 Q. No part of it before then.  
7 A. Not that I can recall, no.  
8 Q. The s.13 documents, you mean the Federal Court.  
9 A. Yes, that's correct.  
10 Q. The one that you saw then, did that have a front cover.  
11 A. Yes, I think the exhibit in the Federal Court did have a  
12 front cover, yes, that's correct.  
13 Q. MFI 206, when you next saw it in the Federal Court  
14 proceedings, was in its current form.  
15 A. Yes, that's correct.  
16 Q. It was obvious between you last seeing it at the Mouth  
17 House and it turning up in the Federal Court, someone  
18 had done, to use the colloquial expression, a `paste and  
19 scissors' job on it; they had had cut up the first page  
20 to cut off the original header top and they had inserted  
21 this other section in the bottom of the first page.  
22 OBJECTION Mr Tilmouth objects.  
23 MR TILMOUTH: How can Mr Wooley comment on that?  
24 MR ABBOTT: Because it's obvious to him -  
25 MR TILMOUTH: It's a matter of comment, not a matter  
26 of evidence. I object to him asking a lay opinion.  
27 MR ABBOTT: Mr Wooley is the only witness who can  
28 tell it how it was when he last saw it, and how it was  
29 when he next saw it.  
30 MR TILMOUTH: Ask for the facts, not the opinion. I  
31 objection to him asking that.  
32 MR SMITH: Mr Tilmouth shouldn't be objecting to  
33 this.  
34 COMSR: It's something that a lay person can  
35 properly be asked to comment on. He is not being asked  
36 when, where or how, but simply did it, from its  
37 appearance, look at though.  
38 MR TILMOUTH: I've made my point, I don't see any

- 1 weight in it at all.  
2 XXN  
3 Q. Could you answer the question.  
4 A. I'd agree that it looks like it's been added to,  
5 correct, and something's been taken off.  
6 Q. Cut up and added to.  
7 A. Yes.  
8 Q. Can you help us as to how and when that happened.  
9 A. No, I can't.  
10 Q. Or who did it.  
11 A. No.  
12 Q. Did you have a copy of the Draper report down there that  
13 day.  
14 A. I don't think I did. It might have been in my bag, but  
15 I certainly didn't bring it out if I did have it.  
16 Q. Did you see anyone else with a copy of the Draper  
17 report.  
18 A. No, I didn't see anyone else with a copy of it.  
19 Q. If we assume on that very day, 9 May, this bottom  
20 section of MFI 206 got on to this first page.  
21 A. Yes.  
22 Q. Then either someone's got a very good memory of what is  
23 in Dr Draper's report, or someone's had access to Dr  
24 Draper's report to lift a section out of it.  
25 A. Yes, I agree both propositions would be possible, yes.  
26 Q. Did you hear any discussion that would assist in  
27 elucidating this mystery.  
28 A. No.  
29 Q. You never gave anyone or showed anyone your copy of the  
30 Draper report that day.  
31 A. Not that day. I'd given Victor Wilson a copy of the  
32 Draper report on 4 May, he may have given copies to  
33 other people, I just can't tell.  
34 Q. You don't know whether he did or didn't have one with  
35 him on that day, 9 May.  
36 A. No, that's correct. Certainly the Draper report was  
37 never produced in front of me. I didn't see it there.  
38 Q. Did Vic Wilson have a bag, a briefcase, a folder, any



1 papers.

2 A. He may have. When I got there, they were all there, the  
3 people that I've just described. They may have had  
4 bags.

5 Q. And papers.

6 A. That's right.

7 Q. Of the matters that are set out at the bottom of MFI  
8 206, beginning with `Kumarangk is the Aboriginal word  
9 for fertile (pregnancy). That is also the name of  
10 Hindmarsh Island', down to the bottom of the page which  
11 I won't read out, did you have any discussion with  
12 anyone about any of these matters on 9 May.

13 A. Yes, I did have a discussion, in a general sense, about  
14 the Draper report.

15 Q. With whom.

16 A. Well -

17 OBJECTION Mr Stratford objects.

18 MR STRATFORD: That again must be something that falls  
19 under the umbrella of legal professional privilege, he  
20 is discussing what he discussed with the people that  
21 were there, presumably his clients.

22 MR ABBOTT: I'm entitled to ask him `With whom' to  
23 find out if it's a client or not.

24 MR STRATFORD: I'm happy with that.

25 XXN

26 Q. With whom or, if the in presence of more than one, could  
27 you tell us.

28 A. The conversation was really directed at the whole of the  
29 room, but I was in particular - the conversation in  
30 particular was directed to Doreen Kartinyeri.

31 Q. At what point in time on the day was this.

32 A. This was within the first hour of attending at the Mouth  
33 House.

34 Q. Therefore in the absence of my client.

35 A. Yes, correct.

36 Q. I don't want to revisit the matter, but is that the same  
37 matter in respect of which we have already had a debate  
38 as to whether you should be required to answer the

1 questions. Is that the same conversation we're talking  
2 about.

3 A. It's part of it, yes.

4 Q. Do you know whether Dr Doreen Kartinyeri had a copy of  
5 the report.

6 A. No, I don't, no.

7 Q. I will return to that discussion, if I'm entitled to,  
8 after you've had the opportunity of giving instructions  
9 to your counsel. After, on your recollection, George  
10 Trevorrow pointed and said 'It's obvious, isn't it, look  
11 at the photo', was there a sort of stunned silence then.

12 A. There was - I mean no-one, well, no-one immediately  
13 spoke, and then Victor Wilson said something.

14 Q. Do you remember what it was.

15 A. Victor made a comment about the island being very  
16 important and it had to be protected - well, the area I  
17 think, being very important.

18 Q. Yet, no-one said what was obvious, can you tell us that.

19 A. No, no-one actually said it. To my mind, they knew what  
20 he was talking about. It was that obvious to them,  
21 anyway.

22 Q. And to you, as you've told us, what was obvious was that  
23 this was just generally a site that needed to be  
24 protected.

25 A. Well -

26 Q. Nothing more than that.

27 A. I my thoughts were actually focusing on what Draper had  
28 said.

29 Q. That it was a site that needed to be protected.

30 A. Well, that was one of the aspects, yes.

31 Q. What else were you focusing on then.

32 A. I think they are possibly s.35 matters, but certainly I  
33 was focusing on a quote that Draper had made about the  
34 significance in a general sense, namely the reason it  
35 was an important place. That was my thought, anyway.

36 Q. But no-one articulated anything like that, other than  
37 just saying it was important.

38 A. Exactly. No-one articulated it.

- 1 Q. You've heard the claim uttered publicly by Doreen  
2 Kartinyeri that, looking at a coloured photograph of the  
3 Hindmarsh Island/Murray Mouth, there is a claim of a  
4 resemblance to what you see to being a reproduction of  
5 women's reproductive organs.  
6 A. Sorry, which claim is this?  
7 Q. Have you heard a claim that Doreen Kartinyeri has made,  
8 that the depiction of the area in fact resembles women's  
9 reproductive organs.  
10 A. I hadn't actually heard Doreen having made a claim along  
11 those lines.  
12 Q. You hadn't.  
13 A. I haven't personally, no.  
14 Q. You haven't read the Fergie report.  
15 A. I've read the Fergie report.  
16 Q. You're not aware that that is one of the claims that  
17 Doreen Kartinyeri made to Dr Fergie.  
18 A. No, I certainly didn't gain that from reading the  
19 Fergie.  
20 Q. Just on the Fergie report, you commissioned it.  
21 A. That's correct.  
22 Q. Did you get a copy of it.  
23 A. Yes.  
24 Q. Including the confidential appendices.  
25 A. I got them in a sealed envelope.  
26 Q. How many copies of the Fergie report did you get.  
27 A. I got one copy.  
28 Q. How many copies did ALRM get.  
29 A. Well, that was it.  
30 Q. That's only ever been it.  
31 A. Yes, well, to my knowledge, anyway.  
32 Q. The two sealed appendices, have they been opened at ALRM  
33 to your knowledge.  
34 A. No, they were in - well, there was one envelope that  
35 came with the report.  
36 Q. Which you were told had two appendices in it.  
37 A. Yes, well, it was apparent from what was on the outside.  
38 Q. Did you discuss with Dr Fergie about the fact that she

1 had supplied to you a report which contained two  
2 appendices, apparently in one sealed envelope, that you  
3 couldn't look at.

4 A. Yes, I had a discussion.

5 Q. Would you tell us about it please.

6 A. I believe it is a privileged discussion.

7 Q. On the basis of what.

8 A. That she was my agent. I commissioned her to do a  
9 report about my clients and that, in essence, she was my  
10 alter ego.

11 Q. So you assert privilege on behalf of those who were your  
12 clients, namely the Lower Murray Aboriginal Heritage  
13 Committee members.

14 A. Well, in particular at that stage.

15 Q. Just yes or no. You assert privilege on behalf of the  
16 members of the Lower Murray Aboriginal Heritage  
17 Committee, for whom you acted, not to answer questions  
18 about your discussions with Dr Fergie about the sealed  
19 envelope.

20 A. It was actually the women who I acted for at that time  
21 by that stage.

22 Q. Who were they.

23 A. Doreen Kartinyeri, Connie Roberts, Maggie Jacobs, Sarah  
24 Milera and Edith Rigney.

25 Q. But had the report been commissioned on their behalf.

26 A. It had been commissioned via ALRM, yes.

27 Q. You will pardon me for asking this question, but all the  
28 documentation which exists with reference to that report  
29 states only, I suggest, that you were acting on behalf  
30 of the Lower Murray Aboriginal Heritage Committee in  
31 commissioning that report from Dr Fergie.

32 A. Well, I haven't seen the documentation in some time but  
33 clearly, in my own mind, it was being commissioned on  
34 behalf of the Lower Murray Aboriginal Heritage Committee  
35 acting for or representing this wider group, and also in  
36 particular the women that Dr Fergie had identified when  
37 she went to Goolwa on 19 and 20 June.

38 Q. Did you get instructions from any of these five women

- 1 about who could see the envelope, the contents of this  
2 one envelope.
- 3 A. No, those instructions came through Dr Fergie.
- 4 Q. Did you get instructions.
- 5 A. Not personally, but Dr Fergie got them on my behalf.
- 6 Q. But you never did.
- 7 A. Well, in a sense, I got them through Dr Fergie.
- 8 Q. But you never sat down with any of these five women and  
9 said something to the effect `We have got this sealed  
10 envelope, what are your instructions about who can see  
11 it'. You never obtained those instructions.
- 12 A. Well, I did obtain those instructions via Dr Fergie who,  
13 as I say, was acting as my agent. I actually  
14 commissioned her.
- 15 Q. Did you give her a letter of instructions.
- 16 A. I think - well, there may well be a formal letter, I  
17 can't -
- 18 Q. But that would be on the file which has not so far been  
19 produced. (NOT ANSWERED)
- 20 MR STRATFORD: Presumably it was sent to Dr Fergie, so  
21 I presume she'd have it.
- 22 XXN
- 23 Q. A copy of it.
- 24 A. Yes.
- 25 Q. The envelope itself, to your knowledge, was never opened  
26 before it was sent off to Mr Tickner from the time you  
27 got it.
- 28 A. Well, I got a copy, and I believe that Dr Fergie sent  
29 another one to Robert Tickner.
- 30 Q. What happened to the Fergie report, the copy of the  
31 Fergie report with the envelope, sealed envelope  
32 containing the two appendices which was the ALRM copy.
- 33 A. It was kept in a locked safe, as it were, a locked safe  
34 filing cabinet.
- 35 Q. When have you last seen that.
- 36 A. Gosh, I think it was last year, I can't recall exactly.  
37 Yes, it was - I don't know the exact date, but it was  
38 some considerable time ago, it was during the ADJR

1 proceedings I think.

2 Q. Have you spoken to Mr Tuckwell about the event of 9 May.

3 A. No, I haven't spoken to Mr Tuckwell about 9 May, not  
4 that I can recall, anyway.

5 CONTINUED

- 1 Q. You have now told us, in relation to the Fergie report  
2 and the two secret appendices, that there is an original  
3 and one copy which ALRM held, at least last year. Are  
4 there any other copies. Presumably Dr Fergie has got  
5 one.
- 6 A. I don't know of any other copies.
- 7 MS PYKE: I just indicate I don't know on what  
8 basis Mr Abbott has made his presumption.
- 9 MR ABBOTT: Sound anthropological practice, if  
10 carried out in this case, would predicate that Dr Fergie  
11 would have a copy.
- 12 COMSR: That is a matter that we may or may not  
13 hear about in due course.
- 14 XXN
- 15 Q. I now want to ask you about a meeting that you attended  
16 of 15 April.
- 17 A. Yes.
- 18 Q. Do you remember that meeting.
- 19 A. Yes, I do - well, I had two meetings that day.
- 20 Q. The first meeting was with Mr Rathman, was it not.
- 21 A. There was - well, the first meeting on that date, if I  
22 recall, included Mr Rathman, but was also with the  
23 Minister, Dr Armitage.
- 24 Q. It was a meeting in addition to Mr Rathman and Dr  
25 Armitage.
- 26 A. Sorry, Dr Armitage was at this meeting?
- 27 Q. Yes.
- 28 A. Yes, I can recall that one.
- 29 Q. Some 25 people.
- 30 A. Yes, that would be right.
- 31 Q. That meeting was chaired by Dr Armitage, and it related  
32 to the section 23 application that had been made and  
33 granted.
- 34 A. At that stage, I don't think the application being  
35 granted, the authorisation being granted, if you are  
36 talking about the Minister for Transport's application.
- 37 Q. Yes.

## T.J. WOOLEY XXN (MR ABBOTT)

1 OBJECTION Mr Stratford objects on grounds of  
2 relevance.

3 MR STRATFORD: I just inquire of Mr Abbott what this  
4 has to do with any of his clients? It seems to me he  
5 has strayed right outside the instructions that he may  
6 or may not have from his clients. It seems to me to be  
7 irrelevant to him and I object to it.

8 COMSR: How is this going to be relevant to the  
9 issue -

10 MR ABBOTT: Very relevant, because this is the first  
11 time that Mr Wooley says he has heard of women's  
12 business being raised in relation to this area.

13 COMSR: Mr Wooley's evidence is quite clear,  
14 isn't it, that before a particular date he hadn't heard  
15 about it?

16 MR ABBOTT: Yes, and on 15 April he had heard about  
17 it. Since I am acting for those who suggest that this  
18 women's business was fabricated, I am entitled to ask  
19 him the circumstances in which he heard about it. I  
20 will be very brief. I submit I am at least entitled to  
21 canvass this important aspect of Mr Wooley's evidence,  
22 because counsel assisting only just touched on it very  
23 briefly.

24 COMSR: But it doesn't involve going into  
25 details of the meeting, does it?

26 MR ABBOTT: No, it doesn't involve going into the  
27 details of the meeting.

28 XXN

29 Q. You remember the occasion we are talking about.

30 A. I can recall the meeting with Dr Armitage, yes.

31 Q. Prior to meeting with Dr Armitage on 15 April, you  
32 hadn't heard of women's business at all with reference  
33 to this area at all, had you.

34 A. I hadn't, no.

35 Q. After the meeting, Dr Draper met with a group of men,  
36 some of whom you were acting for.

37 A. Dr Draper was there, so was Sarah Milera.

38 Q. Whereabouts was that meeting.



- 1 A. That was at the Department of State Aboriginal Affairs.  
2 Q. So you were still there.  
3 A. Yes.  
4 Q. I suggest it was at that meeting, which immediately  
5 preceded the Armitage meeting, that you first heard of  
6 the existence of women's business in relation to this  
7 area.  
8 A. It was later that day, yes.  
9 Q. Not at the meeting where Dr Draper was spoken to by a  
10 number of men and women in your presence.  
11 A. Dr Draper had been present at an earlier time, but Dr  
12 Draper wasn't present throughout the meeting. He came  
13 in and went out.  
14 Q. At what meeting was it, on 15 April, was it, that you  
15 first heard about the existence of women's business in  
16 relation to this area.  
17 A. It was a meeting I had with my clients who included -  
18 well, they were members of the Lower Murray Aboriginal  
19 Heritage Committee, and they included Sarah Milera.  
20 Q. Where was this.  
21 A. It was the boardroom of DOSAA.  
22 Q. Who was present.  
23 A. From memory, there was Robert Day, George Trevorrow,  
24 Victor Wilson, Doug Milera, Sarah Milera, I think  
25 Shirley Trevorrow may have been there, Henry Rankine may  
26 have been there, and I think there were some other women  
27 that were there, but I can't recall who they were.  
28 Q. Dr Draper, was he there.  
29 A. Not at the time that I learnt of the women's business.  
30 Q. But during the course of that meeting, was he there when  
31 the existence or otherwise of the women's business was  
32 discussed.  
33 A. He was there for - he was there at a later stage, after  
34 I'd heard from my clients.  
35 Q. Of the existence, the first time, of women's business in  
36 relation to Hindmarsh Island.  
37 A. It was the first time I heard about it, yes.  
38 Q. Val Power was there.

1 A. No.

2 Q. Was anyone else there, for example, from DOSAA.

3 A. Not at that time. Given that it was at DOSAA -

4 Q. In the boardroom.

5 A. In the boardroom, we certainly spoke to the CEO at one  
6 stage, but about other matters, other matters not to do  
7 with the issue that you're talking about.

8 Q. The CEO is Mr Rathman, isn't it?

9 A. That's right?

10 Q. You had had a discussion with him, hadn't you.

11 A. I'd spoken to Mr Rathman about a number of things,  
12 that's right.

13 Q. One of which was on the topic of whether or not your  
14 clients could come up with anything more to support the  
15 actions which you wanted taken in relation to Hindmarsh  
16 Island.

17 A. I can't recall that conversation.

18 Q. Do you deny that you had such a discussion on 15 April  
19 with Mr Rathman.

20 A. I could have had that discussion with Mr Rathman.

21 Q. That was one of the purposes why the meeting was  
22 convened in the boardroom at DOSAA, wasn't it, to see if  
23 the clients could come up with anything else.

24 A. It was not a matter of coming up with anything else. It  
25 was a matter of - I mean, the situation was that we had  
26 been told that day that the Minister wasn't going to  
27 afford State protection, and it was a matter of  
28 reassessing the situation, because we'd been acting on  
29 the basis that the State Act would provide protection  
30 with the information that had been presented.

31 Q. And the situation that had pertained after the Armitage  
32 meeting was that the State Act hadn't provided the  
33 protection that you thought it might, and so another  
34 plan had to be adopted.

35 A. It wasn't a matter of another plan. It was talking  
36 about the options, namely - well, I believe that it was  
37 a privileged meeting in any event. I don't want to go  
38 into the details, but -

1 Q. But, in any event, whatever the discussion was about  
2 women's business, on this occasion, 15 April, one thing  
3 is plain, it was in the presence of a whole lot of men.

4 A. Well, general topic, yes. There was no detail.

5 Q. I put it to you that one of the issues which was  
6 discussed was the channel area of the river and its  
7 significance to women.

8 A. I can't recall that being the issue. They weren't my  
9 instructions, not at that time anyway.

10 Q. Was the suggestion that the area looked like women's  
11 reproductive organs mentioned.

12 A. Not in my presence.

13 Q. Was the suggestion made by Dr Draper canvassed, that  
14 this was the meeting of the waters.

15 A. Not on that occasion, that I can recall.

16 Q. Did you not indicate to Dr Draper that it might be an  
17 area that he could take up.

18 A. No. Dr Draper was already engaged in a survey of the  
19 area with some of my clients. It wasn't a matter of him  
20 taking up anything. He was already engaged.

21 Q. You know the expression 'meeting of the waters' appears  
22 in Dr Draper's report.

23 A. Yes, that's correct.

24 Q. When did you first hear of that, before you got the  
25 report or after.

26 A. I think that I read about it - I think I may well have  
27 heard about it earlier, prior to the report.

28 Q. From whom.

29 A. Well, that was a privileged conversation, but I heard it  
30 from Dr Draper, who was actually working with my clients  
31 at that time.

32 Q. How long before the date of the Draper report. We know  
33 the Draper report is dated 29 April 1994. It is Exhibit  
34 16.

35 A. I'm not absolutely sure about this, but, if I did hear  
36 it prior to the Draper - prior to reading the Draper  
37 report, it would have been on or about the 18th, I  
38 think, possibly 18 April.

1 Q. What happened on 18 April.

2 A. I took further instructions from my clients.

3 Q. You wrote a letter -

4 COMSR: This general topic, you say that this is  
5 still covered by your clients -

6 MR ABBOTT: Yes, my clients' interests in  
7 elucidating the date on which the story about the  
8 women's business being specific to Hindmarsh Island and  
9 the surrounding areas first swam into anyone's ken.

10 COMSR: This witness? I don't know that you  
11 can -

12 MR ABBOTT: Yes, this witness.

13 MR STRATFORD: I object to this line of questioning  
14 anyway. The plain fact of the matter is that Mr Wooley  
15 has told you when he first heard of women's business in  
16 a general way. He really can't say any more than he  
17 heard about it on 15 April. That really should be an  
18 end of the matter.

19 COMSR: There is surely no contention about  
20 that, Mr Abbott. The witness has said that prior to  
21 that date he first heard about it. If that's the  
22 information you are seeking, that's the information we  
23 have.

24 MR ABBOTT: Very well.

25 XXN

26 Q. One of the letters that was tendered as part of your  
27 statement is letter number 10, a letter from you to Mr  
28 Tickner dated 20 April. Do you have that letter.

29 COMSR: That is after the 15th.

30 MR ABBOTT: Yes, it is after the 15th April.

31 XXN

32 Q. In that letter you say on p.2 `In the course of the past  
33 four days, my clients have reluctantly divulged some  
34 secret sacred information about the Hindmarsh Island,  
35 the lakes and the Coorong area, including the sea, in an  
36 attempt to more clearly show the effect of the features  
37 upon their cultural integrity and tradition. They have  
38 given me instructions to disclose this information to

- 1 you to assist your assessment of the importance of this  
2 matter for Aboriginal people and, in particular, the  
3 Ngarrindjeri people'. Then you set out a quote, which I  
4 am not going to read. Where did that come from.
- 5 A. That quote was something I got from my clients with the  
6 assistance of Dr Draper, who was actually working with  
7 them at the time.
- 8 Q. But it is a lift from the Draper report, isn't it, which  
9 didn't come into existence until 29 April.
- 10 OBJECTION Ms Nelson objects.
- 11 MS NELSON: It is dated 29 April. It doesn't  
12 necessarily mean it didn't come into existence before  
13 then.
- 14 XXN
- 15 Q. But do you recognise that what is set out in this letter  
16 appeared in a report which you didn't get, I assume,  
17 until some time after 29 April from Dr Draper.
- 18 A. It is certainly similar. The phrases are similar to  
19 some of the information in the Draper report, I would  
20 agree with that. I mean, I would be surprised if it  
21 wasn't, given that it came from Dr Draper.
- 22 Q. I suggest to you this is not your clients' words. It is  
23 Dr Draper's words, and that this information came, if it  
24 came from your clients, from the pen of Dr Draper.
- 25 A. Certainly they are Dr Draper's words, but I wouldn't  
26 disagree with that.
- 27 Q. Had Dr Draper sent you a letter or a memo which  
28 contained this information on p.2 of this letter. He  
29 must have, musn't he, for you to put it in the letter.
- 30 A. It was something provided to me. I mean, the  
31 information was this - it was certainly a privileged  
32 conversation. I was certainly giving advice.
- 33 Q. We know that, but privilege has been waived.
- 34 MR TILMOUTH: By who?
- 35 MR ABBOTT: By his clients.
- 36 MR TILMOUTH: Not for my part.
- 37 XXN
- 38 Q. The letter reads `They have given me instructions to

## T.J. WOOLEY XXN (MR ABBOTT)

1 disclose this information to you'. Who are the clients  
2 who have given you instructions, since Mr Tilmouth is  
3 concerned about it.

4 A. People that I mentioned before, that were there on the  
5 15th.

6 Q. The Lower Murray Aboriginal Heritage Committee, for whom  
7 Mr Tilmouth acts.

8 A. Mr Tilmouth, as I understand it, doesn't act for Sarah  
9 Milera, and she was certainly there, and the situation  
10 was that the clients were concerned that Dr Armitage and  
11 the South Australian Government hadn't been taking their  
12 claim seriously enough, and that they had reluctantly  
13 divulged information that they had been holding back,  
14 information that was very sensitive. As you might  
15 appreciate with Aboriginal people, they are reluctant to  
16 reveal information. It was clear to me, from my  
17 instructions, that they were hoping to rely on the  
18 archaeological and historical significance, but when  
19 that had failed, as it were, it was necessary to reveal  
20 information that they had, but were keeping back because  
21 it was sensitive.

22 Q. Reveal or create, I suggest.

23 OBJECTION Ms Nelson objects on the ground this  
24 witness cannot answer question.

25 MR ABBOTT: He might be able to. He has chosen to  
26 use the word 'reveal'.

27 MR TILMOUTH: What part of your instructions enable  
28 you to put that?

29 MR ABBOTT: All of my clientss have instructed me  
30 that, in their view, this claim of secret sacred women's  
31 business, site related to Hindmarsh Island, was made up  
32 in April 1994.

33 MR TILMOUTH: How can Mr Wooley know that?

34 MR SMITH: Can I just interrupt to say, I don't  
35 think you have to put up with a barrage of objections  
36 from everybody at the bar table. Mr Wooley is  
37 represented by Mr Stratford, and we should be only  
38 hearing from him in respect of anything that is

1 contentious or proposed to be inadmissible. So I  
2 suggest that you don't allow counsel to berate you with  
3 an array of objections from the body of the bar table.

4 COMSR: I am concerned with the question that  
5 has been put to the witness, as to whether or not he is  
6 in a position to answer that question.

7 MR ABBOTT: That is why I have drawn his attention  
8 to this letter, which is a waiver of privilege. It is a  
9 release of information to Mr Tickner. No claim of  
10 privilege could possibly be made in respect of it. I  
11 want to know where it comes from, and the answer is it  
12 came from Dr Draper, at least in the immediate sense.

13 And I want to know in what form: was it a letter, a  
14 report, a one page document, or whatever.

15 COMSR: You are withdrawing the previous  
16 question?

17 MR ABBOTT: Yes.

18 XXN

19 A. The situation was that it was something that was  
20 presented in note form by Dr Draper to the meeting.

21 Q. Of what date.

22 A. I believe it was either the 15th or 18th. One of those  
23 two days.

24 COMSR: That is consistent with the evidence the  
25 witness has previously given.

26 XXN

27 A. Clearly, my understanding was that it was something that  
28 he distilled from taking their instructions, and he put  
29 it in anthro-speak, if I can use that term.

30 Q. Very good choice of words.

31 A. He showed them this passage to get their consent. In  
32 fact, Sarah Milera looked at it. She was happy with it.  
33 I was then given instructions that this could be  
34 divulged, and, as you can see, it was.

35 ADJOURNED 1.00 P.M.

1 RESUMING 2.15 P.M.

2 MR STRATFORD: You might recall that earlier we were  
3 talking about the relationship between Mr Wooley and Dr  
4 Kartinyeri and the matter was left in abeyance for me to  
5 take instructions from Mr Wooley over the luncheon  
6 adjournment as to how he perceived his relationship with  
7 Dr Kartinyeri. And my instructions are that he regarded  
8 Dr Kartinyeri as his client at the meeting at the Mouth  
9 House on 9 May. And, as you would appreciate, from my  
10 earlier submissions, I say it doesn't make any  
11 difference anyway whether she was there as a client or  
12 as a third party generally interested in the meeting  
13 that was going on. So, I say it is the same result  
14 either way. That is, whatever discussion Mr Wooley had  
15 with Dr Kartinyeri should be regarded as subject to  
16 legal professional privilege.

17 If you want to hear from me any more in relation to  
18 that issue of third party and legal professional  
19 privilege, it seems to me to be quite clearly  
20 established on the authorities, particularly when a  
21 meeting is in place, a meeting with a common purpose.  
22 And you will recall, of course, that it is the occasion  
23 that is privileged and it is the occasion of this  
24 meeting that should be privileged in its entirety, in my  
25 submission.

26 There are references to third party privilege in the  
27 rather recent book on 'The Law of Privilege', by  
28 McNichol. And there is a useful passage, on p.45,  
29 dealing with third party communications. And the  
30 author, in that particular publication, says this:  
31 'The second limb of legal professional privilege ... or  
32 anticipated litigation.'

33 It goes on to refer to a matter of Nickmar and the  
34 author says that:  
35 'That particular case confirms that legal professional  
36 privilege protects communications between third parties  
37 and the lawyer or the client.'

38 But what I am saying here is that, at its highest,



1 Dr Kartinyeri was in a solicitor/client relationship  
2 with Mr Wooley and, therefore, the communication should  
3 be a privileged one. At its lowest, Dr Kartinyeri was  
4 there as a third party, as part of the common purpose of  
5 the meeting and any discussion between Mr Wooley and Dr  
6 Kartinyeri should also be held the subject of legal  
7 professional privilege.

8 So, regardless of the relationship, I say the result  
9 is the same.

10 COMSR: Is that provided the occasion itself was  
11 a confidential one?

12 MR STRATFORD: Provided the occasion was an occasion  
13 when legal advice was being sought and instructions were  
14 being given and so on. And that is clearly the purpose  
15 of this meeting being listed in the first place,  
16 arranged in the first place.

17 So, the answer to the question that was posed this  
18 morning is that my instructions are that Dr Kartinyeri  
19 was a client of Mr Wooley's and that, in any event, even  
20 if she was not a client, she was there as a third party  
21 to provide instructions to him for his common purpose of  
22 taking instructions from his clients. And, accordingly,  
23 either result means that it is the subject of legal  
24 professional privilege.

25 And they are my submissions on the topic.

26 Perhaps I should mention one other matter. I know  
27 my friend Mr Abbott will want to respond to that, but  
28 there is one other matter I would mention and that was  
29 in relation to the questions that I put to Mrs Dorothy  
30 Wilson the other day. And that is an issue that I would  
31 like to speak on, before we resume this afternoon also,  
32 but I will give Mr Abbott the answer chance to respond  
33 to my submissions in relation to the privilege question  
34 first.

35 MR SMITH: If I could just say something?

36 COMSR: Yes.

37 MR SMITH: I think also you need to take into  
38 account, when deciding whether there is a privilege

1 attaching to this conversation, that, if Doreen  
2 Kartinyeri has put these matters into the public arena,  
3 herself, you need to take that into account. We don't  
4 know, of course, what it is that was discussed, but I  
5 think that is relevant to deciding whether or not this  
6 witness, on her behalf, can claim privilege for these  
7 matters.

8 I just put that to you, in case the whole topic is  
9 already in the public arena, through Doreen Kartinyeri.  
10 In which case, the privilege would be waived.

11 MR ABBOTT: Mr Stratford, I think, has misunderstood  
12 what I was suggesting he do during the lunch hour and  
13 the fact that he has come back and saddled up two horses  
14 on Mr Wooley's behalf was not a consequence which I  
15 thought would occur. I rather thought that they would  
16 go and see Doreen Kartinyeri and ask for her views, as  
17 she is the purported client. And I would like to ask Mr  
18 Wooley what, if any, attempts have been made to see A.  
19 Whether Doreen Kartinyeri claims to be the client, and  
20 B. Whether she wishes to maintain a claim of privilege.  
21 The claim of privilege, at all times, is the client's,  
22 not the lawyer's and the person who ought to be  
23 asserting this, in view of the question mark which hangs  
24 over it, is Doreen Kartinyeri.

25 MR STRATFORD: I don't know if I can help there, but it  
26 is my understanding that, at one stage, when Ms Layton  
27 was before you, she provided the Commission with a  
28 letter to which there were some other letters attached.  
29 And I think those other letters were from people who had  
30 indicated to you that they didn't waive privilege.

31 I don't think I have a copy of the letter. I'm not  
32 sure if one of those letters is from Dr Kartinyeri. If  
33 there is such a letter from her and she doesn't claim  
34 privilege, then I suppose that answers Mr Abbott's  
35 question, but I'm not sure.

36 COMSR: I can't specifically recall it, but it  
37 probably wasn't -

38 MR STRATFORD: It may be something that I have -

- 1 COMSR: A matter of immediate concern, at that  
2 time.
- 3 MR STRATFORD: No, my recollection is that it formed  
4 part of a letter that -
- 5 MR SMITH: As to the production of the file.
- 6 MR STRATFORD: I see, as to the production of the file.  
7 My memory is not entirely accurate, but not too bad,  
8 nonetheless. It is attached to the letter sent to you,  
9 Commissioner, dated 10 October.
- 10 COMSR: I was thinking you were talking about  
11 something more remote in time.
- 12 MR STRATFORD: No, it was 10 October and it is a letter  
13 from the Chairperson and the Treasurer and others of the  
14 Aboriginal Legal Rights Movement and it has attached to  
15 it some other letters that have been signed by people to  
16 whom the ALRM has written.
- 17 COMSR: That's right, yes.
- 18 MR STRATFORD: And one of the people is Dr Kartinyeri  
19 and she - I don't know her signature, but she appears to  
20 have signed the bottom of the letter dated 2 August.  
21 And dated the letter or dated her signature 2 August,  
22 indicating that she certainly doesn't waive privilege,  
23 but I suspect that that is really more in relation to  
24 the file, but I should think that is a reasonable  
25 indication of her attitude to the privilege issue  
26 anyway.
- 27 COMSR: It may be, although, on the other hand,  
28 one could argue that, having specified that it is the  
29 file, that she has excluded the others.
- 30 MR STRATFORD: I think it would be a reasonable  
31 assumption to assume that Dr Kartinyeri and the others  
32 wouldn't be waiving privilege.
- 33 MR ABBOTT: I will respond.  
34 First of all, you don't pick up clients like a  
35 magnet attracts iron filings. A solicitor and client  
36 relationship comes into existence as a result of a  
37 conscious attempt of both parties to create it. The  
38 reason for that is that the very relationship gives rise

1 to this rare privilege which is not granted between  
2 priest and penitent, doctor and patient, or any other  
3 circumstance whatsoever other than solicitor and client.

4 And, for it to arise, in my submission, there must be  
5 clear and unequivocal evidence that Doreen Kartinyeri  
6 was the client, that Mr Wooley was the solicitor and  
7 that, rather than just handing out gratuitous advice  
8 around the place to those that wanted to receive it, or  
9 make himself available generally to be consulted by  
10 those who chose to consult him, that is not the creation  
11 of a solicitor and client relationship. I say that not  
12 in criticism of Mr Wooley, because he is entitled to be  
13 there and ALRM are entitled to provide a lawyer. But,  
14 if they send a lawyer along to a meeting, whether it be  
15 at the Nungas Club, the Mouth House, Kalparin, or  
16 anywhere else, and that lawyer makes himself available  
17 generally to give advice to members, people who are  
18 there to seek it, it cannot said that that establishes a  
19 solicitor/client relationship to anyone that avails  
20 himself of that free service. And I submit that that,  
21 at its highest, is what has happened here. Mr Wooley  
22 has been available. It is well-known, I would suggest,  
23 that he was there to assist, if asked. And the mere  
24 fact that Doreen Kartinyeri chose to speak to him does  
25 not create a solicitor/client relationship.

26 COMSR: Yes, I don't know if anyone else wants  
27 to be heard.

28 COMSR

29 Q. But it seems to me that that must be so, Mr Wooley.

30 That, indeed, I have found it a little difficult to  
31 follow what you are putting to me in respect of acting  
32 generally for the community. For people to whom you  
33 haven't spoken and from whom you have no instructions,  
34 but you consider them part of your clients.

35 A. In relation to Doreen Kartinyeri, if I can just further  
36 advance the position there? I expected to see Doreen  
37 Kartinyeri there that day.

38 Q. No doubt.

1 A. To get - but to specifically get information from her.

2 Q. Yes.

3 A. She wasn't just one of the group generally speaking.

4 She was there, in my mind, specifically to give me  
5 information that would be used in the furtherance of the  
6 next steps that we would take. And it looked, at that  
7 stage, like it would be to further pursue the s.10  
8 application. So, it was very important to speak to her  
9 specifically in relation to that. And that she was - it  
10 was an -

11 Q. You understood that she would be giving you some  
12 information.

13 A. Yes, I understood that she would be down on Hindmarsh  
14 Island, at that time. I saw that as a perfect  
15 opportunity to actually speak to her as well as a wider  
16 group. I had hoped to also speak to a wider group, but  
17 one of my main purposes in going down there was to get  
18 some further information -

19 Q. From Dr Kartinyeri.

20 A. From Dr Kartinyeri, in particular.

21 COMSR: I don't think, on that basis, I could  
22 say that she, therefore, became a client.

23 MR STRATFORD: But it is the other leg of my  
24 proposition that Mr Abbott hasn't addressed. I say  
25 that, even if she wasn't a client, the situation is  
26 still privileged, because she was a person providing  
27 instructions and information to Mr Wooley for the  
28 purpose he was down there -

29 COMSR: On behalf of his clients.

30 MR STRATFORD: On behalf of his clients. It would be  
31 like if, because I was working hard at the Commission  
32 here I was having some matrimonial difficulties at home  
33 and I consulted Mr Smith about it and then I had spoken  
34 to someone else about it -

35 COMSR: I don't want any confessions, Mr  
36 Stratford.

37 MR STRATFORD: But, you see, there is this privilege,  
38 the topic can be discussed and some advice might be

1 taken from a third party. That is information that must  
2 be held part of the legal professional privilege. And,  
3 as I say, that it exists and is clearly defined is set  
4 out in precise detail in this book by McNichol 'The law  
5 of Privilege'. It deals specifically with the third  
6 party privilege situation and it is something that is  
7 clearly recognised. And I say here it matters not  
8 whether Dr Kartinyeri is a client or a third party in  
9 the terms contemplated by the author. The result is  
10 the same. Legal professional privilege must apply.

11 COMSR: Yes, but what I was putting to Mr Wooley  
12 was, if the occasion on which you obtained the  
13 information was an occasion where there wasn't any  
14 confidentiality, for instance, if you were talking about  
15 your matrimonial problems in front of everyone at the  
16 bar, that would scarcely be confidential, would it?

17 MR STRATFORD: I would agree with that.

18 COMSR: So, we have a situation where, as I  
19 understand it, there were persons present who were not  
20 clients of Mr Wooley's on this occasion.

21 COMSR

22 Q. Or have I misunderstood the situation.

23 A. I thought they were clients, at the time, because they  
24 all seemed to have a common interest. Namely, the  
25 heritage protection issue. And that's why they were  
26 there. If they hadn't been there, they wouldn't have  
27 been interested in the heritage protection issue.

28 COMSR: No doubt they were bound together by a  
29 common interest, but some may have been clients and some  
30 not. And some may have had one point of view and some  
31 may have had another. But are you saying that this  
32 occasion was an occasion of confidentiality?

33 MR STRATFORD: Yes, I am. And that is my submission.  
34 I say it is an occasion which attracts legal  
35 professional privilege. Mr Wooley went down there to  
36 obtain instructions and provide advice to his clients  
37 and take instructions from others who had information in  
38 relation to the central issue that the clients were

1 interested in. I say that there is this common purpose  
2 for the meeting and, because of that common purpose, the  
3 meeting itself should be held confidential as under the  
4 umbrella of legal professional privilege.  
5 CONTINUED

- 1 COMSR: Is not this the same meeting where  
2 previously I have ruled that legal professional  
3 privilege didn't apply?
- 4 MR STRATFORD: I don't know if you ruled that in  
5 relation to any submission that I made. I think that  
6 that was part of an exchange you had with Mr Tilmouth.
- 7 COMSR: On the basis that the persons there were  
8 not in the category of clients but were more, one might  
9 say for the purpose of argument, strangers.
- 10 MR STRATFORD: I'm prepared to categorise them as third  
11 parties, people who were going to provide information to  
12 Mr Wooley in support of matters he was conducting on  
13 behalf of his clients.
- 14 COMSR: If this was a conversation between Mr  
15 Wooley and Dr Kartinyeri which was taking place, as it  
16 were, so that it could be heard by all who were present,  
17 and among those present are third parties, I would think  
18 then it's not protected by the privilege under those  
19 circumstances.
- 20 MR STRATFORD: With respect, I would disagree with that  
21 particular view. In fact, if Dr Kartinyeri, who had  
22 been invited to this meeting to provide information to  
23 the direct clients of Mr Wooley, gave information to the  
24 clients, it would still attract privilege. Even if she  
25 spoke to everyone who was there, it would still attract  
26 privilege, in my submission, because what she was doing  
27 was providing information to Mr Wooley which he could  
28 use to advise his clients.
- 29 COMSR: So you say notwithstanding that other  
30 persons may have been present.
- 31 MR STRATFORD: Yes.
- 32 MR ABBOTT: The Nickmar case doesn't stand for that  
33 proposition being advanced, namely if a lawyer goes out  
34 and interviews witnesses, the occasion is entirely  
35 privileged. Indeed, that can't be the situation. It's  
36 not a communication which is privileged, and it's not a  
37 communication to which legal professional privilege  
38 attaches. It's never been the rule that a lawyer going



1 out and making investigations on behalf of a client has  
2 a privilege attaching to everything he says to the  
3 person being investigated or the person who he sees in  
4 the course of those investigations. It can't be so.  
5 Otherwise, we'd send lawyers out and not insurance  
6 investigators on the basis that anything that happened  
7 could never be the subject of questions.

8 COMSR: If this is a meeting at which persons  
9 who don't claim that it was a privileged occasion, and  
10 who are not in the category of either client or witness  
11 or informant, were present, and the information is being  
12 made freely available to them, I don't think it is an  
13 occasion of privilege.

14 MR STRATFORD: I understand.

15 COMSR: You understand on the basis that you  
16 might not agree with it, but you understand.

17 MR STRATFORD: I respectfully disagree with it, as  
18 politely as I possibly can.

19 COMSR: I understand that Mr Stratford.

20 MR STRATFORD: It does seem to me - you remember I'm  
21 advancing this claim of privilege on behalf of others  
22 apart from Mr Tilmouth's client. Mr Tilmouth can speak  
23 for those people.

24 COMSR: I appreciate that.

25 MR STRATFORD: I'm really only speaking for those  
26 people who aren't here and who aren't represented,  
27 because it's my view that a solicitor has the right to  
28 claim privilege in the situation that we're in here.

29 That's why the claim is advanced. Really, I don't want  
30 to take up any more of your time, I can't do more than  
31 put it to you and, if you're against me, well, as  
32 gracefully as I can, I will get on with it.

33 COMSR: There may be another argument as to why  
34 it should be confidential. In any case, I don't know  
35 the nature yet -

36 MR STRATFORD: It's one of the problems that we have in  
37 not hearing from the Australian Government Solicitor in  
38 relation to the s.10 application to see if it's a matter

- 1 associated with that. That might put a different  
2 complexion on it.
- 3 COMSR: I might have to steer clear of that.
- 4 MR STRATFORD: We're not hearing from anyone on that.  
5 Obviously it involves the s.10 matter.
- 6 COMSR: I've been very conscious of the fact  
7 that I have to be cautious in that area.
- 8 MR ABBOTT: I will make sure that if that arises,  
9 we'll steer clear of it. May I take it, then, that I  
10 have permission to ask the question.
- 11 COMSR: Yes.
- 12 MR STRATFORD: Can we sort out the parameters of the  
13 question being asked.
- 14 XXN
- 15 Q. It relates to the 9 May discussion that you had with  
16 Doreen Kartinyeri earlier in the day. (NOT ANSWERED)
- 17 COMSR: This isn't at the meeting.
- 18 MR ABBOTT: Yes, at the Mouth House.
- 19 MR STRATFORD: Does that mean that you've ruled that  
20 legal professional privilege does not attach to any part  
21 of the meeting at the Mouth House?
- 22 MR ABBOTT: She hasn't ruled that. Indeed, I  
23 haven't asked your client to tell us about his  
24 discussions with George Trevorrow and others who were  
25 clearly, on his say-so, clients. Just Doreen  
26 Kartinyeri. I sought a ruling in relation to his  
27 discussion with Doreen Kartinyeri, not at large in  
28 relation to everyone at the Mouth House.
- 29 MR STRATFORD: All I'm trying to do is clear up the  
30 parameters.
- 31 COMSR: Yes, it's not always easy to clarify.
- 32 XXN
- 33 Q. I'm referring to a discussion you had earlier on at the  
34 Mouth House on 19 May with Doreen Kartinyeri. She  
35 approached you in the presence of others.
- 36 A. Well, she asked me questions.
- 37 Q. What did she ask.
- 38 A. She enquired about the s.23 authorisation, there was

- 1 conversation about that. I, in fact, made enquiries of  
2 her. To actually say exactly what I said could well be  
3 a s.35 problem, because I more or less paraphrased, I  
4 guess, the quintessential element of Draper.
- 5 Q. You asked her whether she knew about it.
- 6 A. I didn't say that, I said that I had an understanding,  
7 and I put my understanding.
- 8 Q. To assist us, is that the understanding that you've  
9 subsequently set out in the letter.
- 10 A. Sorry, which letter are we talking about?
- 11 Q. That's the letter of 20 April, the one I put to you just  
12 before lunch.
- 13 A. Yes, certainly. I just need to go to it to be  
14 absolutely certain.
- 15 Q. I'm trying to identify the material so that we don't  
16 have to mention it in open hearing. It's number 10 in  
17 the list of documents attached to your statement.
- 18 A. Actually it wasn't that, it wasn't exactly that.
- 19 COMSR
- 20 Q. Was it in substance something like it.
- 21 A. If I can just have a look at the Draper report, I could  
22 possibly point you to it.
- 23 XXN
- 24 Q. Yes, that would be acceptable. Exhibit 16 is the Draper  
25 report. (NOT ANSWERED)
- 26 MR SMITH: The draft Draper report in this bundle  
27 of documents should be suppressed. Well, it's an edited  
28 version of the report of 29 April, which is already an  
29 exhibit and has been suppressed.
- 30 COMSR: Right. This is a suppression order in  
31 respect of it?
- 32 MR SMITH: I think it might be number 16.
- 33 COMSR
- 34 Q. If you could just point to the excerpt and not read it  
35 aloud.
- 36 A. Yes, certainly. I think it's mentioned a couple of  
37 times in Dr Draper's report, but if you go to p.4, 3.3.

1 XXN

2 Q. That, I think, is public, it's the section of the  
3 meeting of the waters.

4 A. It's the bit afterwards, in particular the -

5 COMSR

6 Q. Let's not read it line by line.

7 A. I won't read it. The third line, I suppose, commencing  
8 `creation', through to `region'. I made a reference  
9 that I understood that the area was important to  
10 Ngarrindjeri people in those terms, and that I said to  
11 her -

12 MR ABBOTT: Well, I submit that's in the public  
13 domain, it's not more than some of what is in the  
14 Saunders report. Do you have the Draper report,  
15 paragraph 3.3, line 3 from the word `creation' to  
16 `region', it's about 12 words.

17 COMSR: Is it necessary in any case?

18 MR ABBOTT: No.

19 XXN

20 Q. So you spoke to Doreen Kartinyeri on that topic.

21 A. Yes. In fact said to her that I was aware that  
22 Hindmarsh Island was important in this regard, and that  
23 it was important to all Ngarrindjeri people in that  
24 regard.

25 Q. You were aware because Dr Draper had told you.

26 A. No, I'd read the Draper report. We are talking about 9  
27 May?

28 Q. Yes.

29 A. I received the Draper report on 4 May. I said to her  
30 that it was important that more detail of the  
31 significance was actually revealed so that it would give  
32 Tickner more substance, that it was important that the  
33 detail come out, in a sense.

34 Q. What did she say.

35 A. She got quite upset and she said - in fact, before that,  
36 I also said to her that, in the Northern Territory,  
37 Aboriginal people, women, in these sort of gender  
38 specific issues, sometimes made honorary women of

1 certain men so that they could impart gender specific  
2 information, and that that was a practice in land  
3 claims, where an Aboriginal woman might tell one man  
4 only this very special information, and that no other  
5 man might know about it, but because this one man was  
6 important to make a decision to, in essence, save a  
7 site, that man could be told. I said `You may have to  
8 tell, if no other man in the world hears about this, you  
9 may have to tell Tickner'. She got very upset and said  
10 there was no way in the world that she was telling  
11 Tickner this information, no man could know it, that it  
12 was very, very important, and that she'd tell it to a  
13 woman, but not a man, and I suggested that she could  
14 speak to Mr Tickner's female adviser, and I said at that  
15 stage, well, I thought I should, `I think I shall  
16 arrange a female anthropologist to deal with the matter  
17 because it's really outside of my capability to get  
18 information', and I also said that if Mr Tickner did get  
19 involved, I thought a female reporter should be  
20 appointed.

21 Q. This is all before George Trevorrow points his walking  
22 stick at the map and says `What does it look like'.

23 A. Yes, this was all before then.

24 Q. Did you reduce this discussion to any note form.

25 A. No, I didn't.

26 Q. So there is no notes in existence of it.

27 A. I'm just thinking about that. I may have actually made  
28 notes of that. I certainly didn't make notes about  
29 reference to the letter and the pointing at the aerial  
30 photograph, which I, well, I considered that peripheral,  
31 in a sense, to my main purpose for being there, and the  
32 main purpose was to find out more information to put to  
33 Minister Tickner. I must admit I came away disappointed  
34 that I didn't get much information, but I respected what  
35 I was being told, and realised that certainly women had,  
36 you know, women had to be involved in it, and also I  
37 guess I also realised, or I hadn't realised earlier but  
38 it brought it home to me, that the fact that I was a man

1 dealing with this issue had probably inhibited a lot of  
2 this information coming out.

3 Q. I suppose you were pretty disappointed, then, that all  
4 the women could come up with was MFI 206 which, in your  
5 view, was not enough, and that was even after you had  
6 this discussion with Doreen Kartinyeri.

7 OBJECTION Mr Stratford objects.

8 MR STRATFORD: I object to that question. As I  
9 understand it, MFI 206 is the letter that was sent off  
10 to Mr Tickner. Now I haven't got a copy of that, but my  
11 understanding is that that was prepared at least in two  
12 parts, so I think for the question or any question to be  
13 put to Mr Wooley in relation to the letter, my friend  
14 should at least try and identify which part of that he  
15 is referring to because, as I understand the evidence Mr  
16 Wooley has given, he never saw what has been referred to  
17 by my friend Mr Abbott as the paste and cut on the  
18 front, whatever it was.

19 XXN

20 Q. I meant the letter MFI 206 as you saw it.

21 A. I wasn't disappointed. I realised that it showed their  
22 reluctance to reveal information that I knew they had  
23 because of Draper, and that it really did show a  
24 complete reticence on their part, and the reason I  
25 disregarded it as being important was because it didn't  
26 take it any further than Draper.

27 Q. You now know that even though it was rewritten, all that  
28 additionally included was lifts of material out of  
29 Draper.

30 A. Yes. Like I say, I think that my comments possibly made  
31 them think about putting more, but even when it came to  
32 that they were, I think, cautious enough to only put a  
33 lift from Draper.

34 Q. That, of course, is speculation.

35 A. Like a lot of other things.

36 Q. When did you first hear of a claim that there was some  
37 similarity between the area of Hindmarsh Island and  
38 women's reproductive organs.

- 1 A. I think it may have been in the media, I'm not sure.
- 2 Q. It's not a claim that has ever been voiced to you by
- 3 Doreen Kartinyeri.
- 4 A. No. I mean I think - I must say that in relation to the
- 5 instructions I received with respect to the significance
- 6 of the area to women, they came through Dr Fergie. The
- 7 9 May meeting confirmed for me that I had to employ
- 8 someone, a woman, a specialised woman, to get this
- 9 information, and that really it wasn't for me to do any
- 10 more than receive a report, and my instructions, I
- 11 guess, came synthesised through an anthropologist.
- 12 Q. Can you put a date on it, then, even though it was in
- 13 the media, perhaps a month, when you first learned the
- 14 claims of a comparison of the area with female anatomy.
- 15 A. I find that very difficult at this point in time,
- 16 because there's been so much media interest, and this
- 17 comment has been made so many times.
- 18 Q. We can be certain of this; it was after Tickner made his
- 19 25 year ban.
- 20 A. Yes, I think, yes. I'd agree with that, yes.
- 21 Q. Have you heard of the other claim that was ventilated in
- 22 the public, namely that women went to Hindmarsh Island
- 23 to abort foetuses.
- 24 A. I actually first heard about that claim in the Federal
- 25 Court proceedings.
- 26 Q. In late 1994.
- 27 A. Yes, that's right.
- 28 Q. You hadn't heard it before.
- 29 A. No, I actually hadn't heard that before.
- 30 Q. Have you heard of the Ngarrindjeri Lands and Progress
- 31 Association.
- 32 A. Yes, I've heard of that.
- 33 Q. What are they.
- 34 A. From what I understand, it's a community organisation,
- 35 incorporated body, that works out of Meningie. They run
- 36 Camp Coorong, I think, they run cultural tours, it does
- 37 a number of things. I'm not completely au fait with its
- 38 operation.

- 1 Q. Were you acting for them in May 1994.
- 2 OBJECTION Mr Stratford objects.
- 3 MR STRATFORD: I object to this question. It certainly
- 4 can't have anything, I don't think it's got anything to
- 5 do with the enquiry, let alone Mr Abbott's clients. I
- 6 can't see the relevance at all, so I object to the
- 7 question.
- 8 MR ABBOTT: If he wasn't acting for them, it may
- 9 have some relevance.
- 10 CONTINUED



## T.J. WOOLEY XXN (MR ABBOTT)

- 1 COMSR: I don't know that that's a basis.  
2 MR ABBOTT: I ask that I be permitted to ask whether  
3 he was acting for them.  
4 XXN  
5 A. In what regard?  
6 Q. In any regard in May 1994.  
7 A. Not that I know of. I certainly gave George Trevorrow  
8 some advice about an NLPA matter at some stage. That  
9 was fairly brief advice.  
10 Q. I don't want to ask you what it was.  
11 A. But May 1994, I don't think so. I'm not absolutely sure  
12 though.  
13 Q. The meeting at the Mouth House that you were at, who had  
14 asked you to go there.  
15 A. It was either George or Victor. I think it was Victor  
16 actually.  
17 Q. Are you aware who had arranged the meeting.  
18 A. I understood that Victor Wilson organised the meeting.  
19 Q. And you were aware that Doreen Kartinyeri would be  
20 there.  
21 A. Yes, that's right.  
22 Q. Were you aware that the Ngarrindjeri Lands and Progress  
23 Association had arranged the meeting through Victor.  
24 A. No, I hadn't been aware of that.  
25 Q. And that they brought Doreen Kartinyeri to the meeting.  
26 A. No.  
27 Q. And that DOSAA paid for it.  
28 A. No, I didn't know that either.  
29 Q. You had no hint then that a letter was going to be  
30 prepared for Tickner on that day.  
31 A. No, I didn't - I certainly didn't realise that the women  
32 were going to produce a letter, but when it was  
33 produced, it was a matter for them. It wasn't a matter  
34 for me.  
35 Q. Of the names of the women on MFI 206 - there are some 16  
36 names.  
37 A. Yes.

1 Q. A large number of those persons, to your knowledge, were  
2 not at the Mouth House.

3 A. Yes, I'd agree with that - well, certainly not whilst I  
4 was giving advice.

5 Q. Apart from discussions with Doreen Kartinyeri you've  
6 told us about, and discussions in the presence of women  
7 that you have told us about, did you have any other  
8 discussion with any other woman on that day.

9 A. Any other woman on that day?

10 Q. Yes, 9 May. I am not talking about casual chitchat.

11 A. You mean in terms of giving legal advice?

12 Q. In terms of discussing matters referable to this Royal  
13 Commission, Hindmarsh Island and its suggested  
14 sacredness and secret knowledge in relation thereto.

15 A. No, I can't recall anything outside of the Mouth House.

16 Q. You have told us that you weren't aware of MFI 206 in  
17 its final form until you were involved in the Federal  
18 Court proceedings.

19 A. Yes, that's correct.

20 Q. You weren't aware that anyone had gone off to fax the  
21 letter to Mr Tickner.

22 A. No. Like I say, soon after I read the letter, the  
23 discussion - it wasn't a discussion, the pointing to the  
24 aerial photograph and the comments by the men were had,  
25 I very shortly thereafter went outside -

26 Q. But I am just suggesting to you that, having given your  
27 professional opinion - this, in essence, wouldn't be  
28 enough for Tickner - are you telling us that you were  
29 never subsequently consulted as to whether, in any  
30 modified form, it might be enough.

31 A. That's correct.

32 COMSR: You are not going to go over matters  
33 that have already been covered?

34 MR ABBOTT: No.

35 XXN

36 Q. You were aware that at the time of the meeting of 15  
37 April, that's the meeting with Armitage, and thereafter  
38 in the DOSAA boardroom, you had been informed, I think a

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1 couple of days previously by ATSIC, that further  
2 information would be needed, in essence, if the Minister  
3 was to do anything. Do you remember the letter or the  
4 fax of 12 April.

5 A. Fax of 12 April? Whose fax to who, sorry? I don't know  
6 what, off the top of my head, you are talking about.

7 COMSR: A lot of this, of course, must traverse  
8 the ground of the application to the Minister. As you  
9 are aware, I am trying to be extremely cautious in that  
10 area.

11 MR ABBOTT: I will phrase it another way. I will  
12 put it in State terms.

13 XXN

14 Q. You had a discussion before the meetings of 15 April  
15 with members of the Department of Aboriginal Affairs,  
16 did you not, at which you discussed the issue that  
17 Tickner had, at that time, insufficient information for  
18 a declaration and needed more, and what had been  
19 presented was not enough.

20 OBJECTION Mr Stratford objects on the grounds of  
21 relevance and it being dangerously close  
22 to the problems with s.10 of the Federal  
23 legislation.

24 COMSR: This is surely not in issue. The  
25 witness has said the time from which he became aware.

26 MR ABBOTT: Yes, it is the time from which he became  
27 aware, but I want to ask him the time at which he became  
28 aware that what they had was not enough, how closely  
29 that was related to the first claim of women's business.

30 COMSR: Perhaps we can put that to the witness  
31 in those terms.

32 XXN

33 Q. Do you agree that the disclosure to you, or the  
34 revelation, as you call it, was revealed to you, the  
35 existence of women's business associated with Hindmarsh  
36 Island and the area in general, within days of your  
37 learning, in one way or another, that the information

1 that had been supplied to Mr Tickner was not enough for  
2 him to make a declaration.

3 A. No. I think that that's a distortion of what - I don't  
4 mean any disrespect, I think that view is a distortion  
5 of what really was occurring. The situation was, if I  
6 can just explain it, the information that we presented  
7 to the State Government was based on historical and  
8 archaeological information, and it was that information  
9 that would not have been sufficient for Mr Tickner to  
10 make an order. The reason is that there is a distinct  
11 difference -

12 Q. We don't have to go into the reasons.

13 MR TILMOUTH: Let him answer.

14 MR ABBOTT: I am happy for him to answer. I just  
15 didn't want him to trespass upon matters that might be  
16 objected to. If you are insisting that he answer, let  
17 us have the answer.

18 COMSR

19 Q. It is not a problem in terms of Section 35 or any other  
20 matter where cautiousness is concerned.

21 A. I hope not. I don't think it is. I mean, the situation  
22 is this, that really you have a State piece of  
23 legislation that is much wider in its application than  
24 the Federal legislation. It covers historical - it  
25 protects historical and archaeological sites of  
26 significance, even though they might not be part of the  
27 living tradition. If you look at the Commonwealth Act,  
28 the Commonwealth Act doesn't give that protection. The  
29 significance of the 15th is this, at about that time it  
30 became patently obvious that the State Government was  
31 not going to provide protection under the State Act.  
32 Therefore, we had to look at the Commonwealth Act more  
33 seriously. The Commonwealth Act would not accord us  
34 protection on the information that we had provided to Dr  
35 Armitage, because you have to -

36 Q. It covered different things. It wasn't as wide as the  
37 State Act.

- 1 A. That's right. You actually have to prove different  
2 things under the Commonwealth scheme. You have to  
3 actually show that it is part of a living tradition. Of  
4 course, when you are talking about living tradition, you  
5 are talking about things that are more sensitive  
6 culturally, things that people don't want to reveal  
7 unless they have to, and we have a situation here where  
8 people don't want to reveal things until they have to.  
9 They had to at this point in time because the State Act  
10 was not providing protection. They had no alternative,  
11 and that's the significance of the timing. That is  
12 certainly the way I saw it.
- 13 Q. As you know, we are concerned in this Royal Commission  
14 with whether they revealed it or whether they fabricated  
15 it.
- 16 A. If I had been aware that there was fabrication, I would  
17 not have continued to act. It was quite clear to me  
18 that there was no fabrication.
- 19 Q. You had been requesting a Federal declaration since  
20 December 1993.
- 21 A. Yes, that's correct.
- 22 Q. On or after 12 April, you were told that there would  
23 have to be something of a cultural significance to add  
24 to the existing historical and archaeological evidence  
25 before a section 10 order could be made.
- 26 A. Yes, I knew that. I knew that in December, but the  
27 reason - sorry, I knew that in December.
- 28 Q. But specifically, it was reinforced after 12 April and  
29 just before 15 April, wasn't it, at the meetings you had  
30 with DOSAA and with your clients.
- 31 A. It was reinforced because the Commonwealth - my view of  
32 things was that the Commonwealth were waiting for the  
33 State process to be exhausted, and it was quite clear  
34 that they would not step in if the State was going to  
35 provide protection, and at about that time, between the  
36 12th and the 15th, it was quite clear that the State  
37 Government were not going to step in. It was on news  
38 broadcasts, the Premier himself said it in press release

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1 - in media reports, the Minister for Transport said it,  
2 and Dr Armitage more or less said it on the 15th when we  
3 met with him.

4 Q. By the end of the meeting with Armitage on the 15th, it  
5 was clear to you that, if there was any route down which  
6 ALRM would have to go to protect this as a site on  
7 behalf of the claims made by your clients, it would have  
8 to be the Federal route.

9 A. Yes, I think that - well, there was obviously the option  
10 of a judicial review.

11 Q. But putting that aside, the strategy was the Federal  
12 route, wasn't it.

13 A. That's right. We'd always - if you read the  
14 correspondence, we'd always kept that option open and,  
15 in fact, we were using that as a bit of a lever  
16 throughout.

17 Q. That's why it was only after the 15th that you first  
18 learned of the claim of women's business being  
19 referable to Hindmarsh Island.

20 OBJECTION Mr Stratford objects on the ground of  
21 relevance.

22 MR STRATFORD: He did say the 15th, not after. He said  
23 it several times. He doesn't need to say it again.

24 This has got nothing to do with Mr Abbott's clients, so  
25 I object.

26 MR ABBOTT: I accept that I have asked that before.

27 COMSR: We really haven't got time to traverse  
28 things over and over again.

29 MR ABBOTT: I will get onto something else.

30 COMSR: Only if it is something that we haven't  
31 touched on before.

32 MR ABBOTT: Yes, something we haven't touched on  
33 before.

34 XXN

35 Q. It concerns an interview between you and Doug Milera, do  
36 you remember that.

37 A. When are you talking about?

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1 Q. I am talking about 1995, and an interview that you had  
2 with Doug Milera, in which you took a statement from  
3 him.

4 A. Yes.

5 Q. When was that.

6 A. The date - I saw Doug twice. Can you be a bit more  
7 specific about this?

8 Q. Yes. It was the occasion of the interview at which you  
9 told Doug that ALRM would pay for private investigators  
10 to be sent down to interview the various people he had  
11 had contact with.

12 OBJECTION Mr Stratford objects on the ground of  
13 relevance.

14 MR STRATFORD: I have no brief for the ALRM, but really  
15 this has no relevance to the inquiry before you. It has  
16 no relevance to Mr Abbott's clients.

17 MR ABBOTT: It has considerable relevance in  
18 relation to Mr Milera. This witness has interviewed  
19 Doug Milera twice, once on 11 June, at Sexton Street,  
20 Goolwa, and once -

21 COMSR: Let's assume he has. For the sake of  
22 determining this matter, how is it relevant to your  
23 clients' interests?

24 MR ABBOTT: Only that our case is that Doug Milera  
25 knows the truth, has told it, and that nothing he has  
26 told Mr Wooley would deny the veracity of what he has  
27 publicly said, which is in support of my clients.

28 MR STRATFORD: On another point there too, I am not too  
29 sure what the relationship, if any, between Mr Wooley  
30 and Mr Milera was at that time. You will remember that  
31 Mr Milera -

32 MR ABBOTT: If there has been any solicitor/client  
33 privilege, it has been waived by Mr Milera long ago, I  
34 would have thought.

35 MR STRATFORD: Shall I continue?

36 COMSR: Yes.

37 MR STRATFORD: I just mention that perhaps we have to  
38 worry about the relationship between Mr Wooley and Mr

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1 Milera because it may be that at that time Mr Milera was  
2 a client of Mr Wooley's, in which case it would probably  
3 be a privileged communication. Again, I am not  
4 currently acting for Mr Milera, and I don't think I have  
5 taken specific instructions on this topic.

6 We would need to determine, in my view, first of  
7 all, whether or not there was any solicitor/client  
8 relationship between Mr Wooley and Mr Milera before Mr  
9 Abbott can ask any questions on this topic, even  
10 assuming they were relevant.

11 COMSR: Perhaps we can deal with that first  
12 issue of whether Mr Wooley considered Mr Milera his  
13 client at that time.

14 MR STRATFORD: Obviously he is not now. Obviously at  
15 one stage he was and at some stage he ceased to be. We  
16 have to determine that date.

17 WITNESS: Do you want me to answer that question?

18 COMSR

19 Q. Yes.

20 A. I wasn't sure whether Mr Abbott was going to ask it  
21 again. Clearly, Mr Milera was my client at that time.  
22 I had been acting in relation to the Federal Court  
23 proceedings. Mr Milera was a party to those  
24 proceedings. Those proceedings are still undecided, as  
25 it were. I am certainly acting for him. He was a named  
26 party in Federal proceedings. I was a solicitor on the  
27 record. I was taking instructions from my client.

28 Q. In respect of those matters.

29 A. I was taking instructions about my instructions.

30 MR ABBOTT: In view of that, I will not pursue that.  
31 In not pursuing it, I don't accept it, but I think there  
32 is an issue and we don't have time to explore it.

33 XXN

34 Q. Let me ask you about another occasion with Mr Milera  
35 which involved one of my clients, which clearly was not  
36 protected by professional privilege, that is, the  
37 meeting of 9 June 1995 at the Nunga's Club. We have had



- 1 evidence from one of my clients, Beryl, that you were  
2 present at that meeting with a Mr Charles.
- 3 A. I was certainly present at the Nunga's Club with Chris  
4 Charles. Whilst the meeting itself was being carried  
5 on, as it were, we were sitting in Isobel Norvill's  
6 office. We were there to give advice if called upon,  
7 and we basically weren't called upon.
- 8 Q. I don't want to go into it at length, but that's the  
9 meeting at which Doug Milera spoke to the meeting,  
10 confirmed that what he had said publicly and to the  
11 press, that is to Channel 10, was the truth. Do you  
12 remember that.
- 13 A. I wasn't in the room. Like I say, I was actually in  
14 Isobel Norvill's office. The meeting was actually  
15 taking part in another place of the building.
- 16 Q. You didn't hear it.
- 17 A. No, I didn't.
- 18 Q. You didn't hear anything that Doug said that night.
- 19 A. No, I didn't even speak to Doug. I saw him at a  
20 distance. That's all.
- 21 Q. I will not ask you any more questions about that. The  
22 last matter I want to ask you questions about is the  
23 daughter of Pinkie Mack. Do you know who I am speaking  
24 of.
- 25 A. I know who you're talking of, yes.
- 26 Q. Did you have any contact with her before her death.
- 27 A. No, I think I met her once some time ago, unconnected  
28 with this matter.
- 29 Q. Have you seen a document said to be an affidavit of  
30 hers.
- 31 A. I think I have. Yes, I think I have. I am not quite  
32 sure where.
- 33 Q. Perhaps at the ALRM.
- 34 A. Could have been there, yes.
- 35 CONTINUED

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(MR MEYER)

- 1 Q. In what circumstances did you see that document.  
2 A. I think that it was a copy - look, I'm - I am just - you  
3 know, I am not absolutely sure what the circumstances  
4 were, but I did see it, at one stage. I read it.  
5 Q. I take it that, for us to get a copy of it, we would  
6 have to subpoena the ALRM.  
7 A. I suppose. I can't speak for ALRM.  
8 Q. Mrs Betty Fisher's transcripts or notebook, have you  
9 seen either.  
10 A. No, I have never seen that.  
11 Q. You have never seen either.  
12 A. No, I haven't.  
13 MR ABBOTT: I have got no further questions.  
14 CROSS-EXAMINATION BY MR MEYER  
15 Q. I want you to cast your mind back to the meeting at the  
16 Mouth House that Mr Abbott has been talking about at  
17 which Doreen Kartinyeri was present. You have said that  
18 you were shown the letter, that is, MFI 206, without the  
19 additions to it.  
20 A. Yes.  
21 Q. You said words to the effect that there wasn't  
22 sufficient material in that letter to enable Mr Tickner  
23 to make a declaration.  
24 A. Yes.  
25 Q. We had got to that point.  
26 A. Yes.  
27 Q. This afternoon you have given some evidence in relation  
28 to a conversation that you then say took place with  
29 Doreen Kartinyeri.  
30 A. Yes, that conversation actually occurred before the  
31 letter was produced.  
32 Q. What I am seeking to ask you questions about is the  
33 period of time between when you said that the letter was  
34 insufficient and the occasion of the pointing at the  
35 map, because, as I understand the evidence you have  
36 given so far, we get to the point of your saying words  
37 to that effect that the letter isn't sufficient.  
38 A. That's correct.

1 Q. And then the next event that you have referred to is  
2 somebody pointing at the map.

3 A. Yes.

4 Q. What happened between those two times.

5 A. Yes -

6 OBJECTION Mr Stratford objects.

7 MR STRATFORD: Before my friend starts developing this  
8 particular passage that he is seeking to enquire into, I  
9 raise the question of relevance, yet again. I don't see  
10 how this particular meeting and what occurred at it has  
11 any relevance to Mr Meyer's clients. So, I object to  
12 him asking questions. The area has already been  
13 canvassed at length by Mr Abbott when it had no  
14 relevance to his clients. So, I object to his  
15 questions.

16 MR MEYER: The matter is of significant relevance,  
17 I would have thought, to the Chapmans.

18 COMSR: The outcome might be.

19 MR MEYER: The events that lead to the outcome are.  
20 And the matter hasn't been traversed by Mr Abbott. I  
21 thought it had been, because he asked those questions  
22 about the conversation with Dr Kartinyeri, but the  
23 witness has just said that that related to a different  
24 time. So, the events which occurred between the  
25 comments about the letter and the pointing at the map  
26 haven't been asked about.

27 COMSR: Yes, but your clients weren't implicated  
28 in anyway in the evidence that has been given.

29 MR MEYER: It doesn't matter whether they are  
30 implicated or not. It is a question of whether they  
31 have an interest in what occurred. And they have a very  
32 vital interest in what occurred.

33 COMSR: They have an interest in the outcome.

34 MR MEYER: They have an interest in a proper  
35 version, a complete version of the events that occurred  
36 at the Mouth House.

37 COMSR: I propose, to the extent that the matter  
38 has not been canvassed -

- 1 MR MEYER: I don't wish to go any further than  
2 that.
- 3 COMSR: It has been fairly fully canvassed, at  
4 this stage.
- 5 MR TILMOUTH: Can I point out, I have an interest in  
6 that matter and I would be proposing to go into, if that  
7 helps Mr Meyer.
- 8 MR MEYER: That doesn't help. Mr Tilmouth can deal  
9 with or tidy up any matter.  
10 I will try not to be very long.
- 11 XXN
- 12 Q. Can you fill in the gap for us. That's all I want you  
13 to do.
- 14 A. I have got no problems.
- 15 Q. You have got no problems. Fill in the gap for us.
- 16 A. I did actually say that, in relation to not being  
17 sufficient evidence, that I knew that they did have  
18 other material that could be divulged, but that it was a  
19 matter for them. And I was referring to the women.  
20 There was some silence. And then the pointing to the  
21 aerial photograph occurred.
- 22 Q. Dorothy Wilson was present at this meeting, wasn't she.
- 23 A. For part of it, yes.
- 24 Q. You know Dorothy.
- 25 A. I do know Dorothy.
- 26 Q. You had known her from visits that you had made to  
27 Murray Bridge in the course of your work.
- 28 A. Yes, I must admit, I was - yes, I knew Dorothy.
- 29 Q. What were you going to admit.
- 30 A. I was going to say I was surprised to see her there.
- 31 Q. In any event, she was there.
- 32 A. Yes.
- 33 Q. Have you taken the opportunity of reading her evidence  
34 of what she says occurred at this meeting.
- 35 A. I have read her evidence, yes, but not her - yes, I have  
36 read her evidence, but I wasn't here for it, as it were.
- 37 Q. No, but have you seen the transcript.
- 38 A. I have seen the transcript, yes.

- 1 Q. Do you disagree with her version.  
2 A. Some parts of it, yes. Not all of it.  
3 Q. Let's put it specifically.  
4 COMSR: I thought we had gone through that.  
5 MR MEYER: I haven't heard it put.  
6 OBJECTION Mr Stratford objects.  
7 MR STRATFORD: It has been canvassed plenty of times.  
8 And it is just going over the same old ground. And I  
9 object on the grounds of relevance.  
10 MR MEYER: I haven't heard it specifically put to  
11 Mr Wooley that it was Mr Milera who pointed at the map.  
12 I have not heard that specifically before.  
13 COMSR: I thought Mr Abbott had canvassed that.  
14 It would be just as quick to put it.  
15 MR MEYER: I wish to put it point blank to Mr  
16 Wooley what Mrs Wilson's evidence was and I haven't  
17 heard it put and I apologise if it has been put.  
18 XXN  
19 Q. Dorothy Wilson says Doug Milera pointed at the map, or  
20 aerial photograph. They are the same thing. Do you say  
21 that that did not happen.  
22 A. Yes, I say that it was - it was George Trevorrow that  
23 pointed to the map with the stick and I thought Dorothy  
24 actually said it was Victor that pointed.  
25 Q. Let's assume that Dorothy says it is somebody other than  
26 who you say it is. Is it a possibility that anybody  
27 else pointed at the map.  
28 A. Certainly while I was there, no.  
29 Q. Not a possibility, at all.  
30 A. No, not in the context of a comment and pointing that I  
31 was aware of. I mean, in the context of all this.  
32 Q. Doug Milera has also said that he pointed at the map.  
33 You say that didn't happen either.  
34 A. No, that didn't happen.  
35 Q. Doug Milera says that he said words to the effect of  
36 describing the map in relation to female reproductive  
37 organs. You say that didn't happen.  
38 A. No, that didn't happen.

1 Q. He made that up.

2 A. Well, it didn't happen.

3 Q. Did he make it up.

4 OBJECTION Mr Stratford objects.

5 MR STRATFORD: Make what up?

6 COMSR: I don't know that the witness can say  
7 that.

8 MR STRATFORD: Did he make up the statement that Mr  
9 Meyer is referring to? That is just a comment. I  
10 object to the question.

11 XXN

12 Q. What I was putting to you, then, was Doug's statement on  
13 the television.

14 A. I - which - I have only - yes, I don't know which  
15 statement you are talking about, sorry.

16 Q. The statement that he made to Mr Kenny, which has been  
17 played numerous times in this Royal Commission.

18 A. Sorry, yes, I am familiar with that one, yes. I say  
19 that it didn't happen that way at the Mouth House.

20 Q. You have not seen the statement, the version on the  
21 television.

22 A. I haven't - I have seen the one at the Appollon Motel,  
23 yes.

24 COMSR: Which is the one I think that is being  
25 talked to and all the witness can say is that it didn't  
26 happen that way and he can't say whether or not Mr  
27 Milera made it up.

28 MR MEYER: He was present. I am suggesting he can  
29 say that, because Doug Milera is saying that he was  
30 present when Mr Wooley was present. He is giving a  
31 version of the events. I am putting that version of  
32 events to another person who was present.

33 XXN

34 Q. And, if that is wrong, then you must say that he is  
35 wrong about it.

36 A. Well, he's wrong about it.

37 Q. You also weren't present at the meeting at the Nungas  
38 Club, when Doug Milera got up and discussed what he

1 said.

2 A. No, I wasn't present.

3 OBJECTION Mr Stratford objects.

4 MR STRATFORD: He said he was present at the Nungas

5 Club, but he was in somebody's office and he wasn't in

6 the room where Mr Milera was speaking.

7 MR MEYER: I thought I put the question

8 sufficiently clearly to say where Doug Milera was.

9 XXN

10 Q. The letter, that is, MFI 206, when you read the letter,

11 before it was in anyway amended, the signatures were

12 attached to that letter.

13 A. Yes, I think they were.

14 Q. In the form that they are now attached to the letter.

15 A. I am reasonably certain that they were in this form,

16 yes.

17 Q. The letter hasn't been resigned.

18 A. Not that I am aware of.

19 Q. And yet a section has been inserted into the letter

20 above the signatures.

21 A. It would appear that way.

22 Q. So, it is clear, in fact, that a part has been added,

23 which had not been there when the letter was signed.

24 A. That's - that does have that appearance, yes.

25 Q. You didn't disclose that in the proceedings in the

26 Federal Court, did you.

27 A. Sorry?

28 Q. You haven't said that before these proceedings, have

29 you.

30 A. No, I haven't. I haven't been asked about this ever

31 before.

32 Q. But, when you were at the Federal Court, as an

33 instructing solicitor, you were aware -

34 COMSR: Yes, I have to -

35 OBJECTION Mr Stratford objects.

36 MR STRATFORD: I object. I have no idea how this could

37 possibly be relevant to your Inquiry.

38 COMSR: Yes, not only that, but I have to take

1 into account the Terms of Reference.

2 MR MEYER: Okay, I won't press it.

3 QUESTION NOT PRESSED

4 XXN

5 Q. Were you involved in the preparation of the submission  
6 made by the ALRM to Professor Saunders.

7 A. Yes, I was.

8 Q. Is there any reference in that submission to the  
9 disclosure of women's business.

10 OBJECTION Mr Stratford objects.

11 MR STRATFORD: There are two aspects to that particular  
12 question that I would object to. One is as to  
13 instructions. And, secondly, it might well have some  
14 difficulties with the s.10 matter, because Professor  
15 Saunders was, of course, appointed by Mr Tickner who  
16 carried out the inquiry with respect to the s.10.

17 MR MEYER: I would have thought it was a perfectly  
18 public question. We haven't got as far as a s.35 issue.  
19 It is a question of whether Mr Wooley as a man was  
20 involved in the preparation of this material relating to  
21 women's business.

22 I would have thought that was a simple proposition.

23 COMSR: Yes I will allow that question, but no  
24 further. I don't want to get involved in details.

25 QUESTION ALLOWED

26 WITNESS: Which submission, which part of the  
27 submission are you talking about? Because I have -  
28 XXN

29 Q. Are you cognizant of the entirety of the submission.

30 A. Yes, there were - I think I have to explain that there  
31 were two parts. A part that was, I don't know if I can  
32 say it in this way, preDr Fergie's involvement and one  
33 that was after. What happened was that, in relation to  
34 the women's business in the detail that Dr Fergie  
35 obtained instructions on, I left that matter entirely up  
36 to Dr Fergie and I basically just sent her report or, in  
37 fact, she sent the report along to Professor Saunders on  
38 my behalf. So, I didn't actually deal with that issue,



1 because it was a woman's issue and I realised that I had  
2 a problem.

3 Q. When did you first speak to Dr Fergie in relation to the  
4 matter.

5 A. I think I spoke to Dr Fergie on 17 - well, I know. I  
6 know that I first spoke to Dr Fergie on 17 June.

7 Q. Did you not speak to her between 9 May, the Mouth House  
8 meeting when you decided you needed to instruct a female  
9 anthropologist, and 17 June.

10 A. No, I didn't.

11 Q. How did you come to select Dr Fergie.

12 A. I was - I had spoken to Dr Peter Sutton, who is a renown  
13 anthropologist, who has done a lot of work for  
14 Aboriginal people and, in particular, in relation to  
15 land claims in the Northern Territory and Queensland.  
16 He is very highly regarded as someone that is expert -  
17 an expert witness. I spoke to him, because I needed the  
18 names of people he could recommend who would be good  
19 witnesses, if this matter ever got to court. And he  
20 actually provided me with a list of prominent female  
21 anthropologists. And Dr Fergie's name was on the list.  
22 Unfortunately, Dr Fergie hadn't had court experience  
23 and, in some respects, that was one of the reasons why  
24 we got to her as late as we did.

25 Q. You haven't mentioned Dr Kartinyeri in any of that  
26 answer. Did she have no connection whatsoever in the  
27 selection of Dr Fergie.

28 A. No, she didn't have any - well, that's not quite true.  
29 Once I had tentatively engaged Dr Fergie, on the 17th, I  
30 rang - I think I rang Doreen to ask her whether or not  
31 she was happy with Dr Fergie and she said yes, she was.  
32 In fact, she was quite comfortable, because she had  
33 actually worked with her before. She was happy to work  
34 with her.

35 Q. I ask those questions, because there has been evidence  
36 in this Commission that sometime between 9 and 19 May,  
37 there was discussion of Dr Kartinyeri speaking to  
38 somebody at the museum and then cancelling an

1 appointment to speak to a person at the museum, because  
2 Dr Kartinyeri was able to speak to Dr Fergie. So, well  
3 prior to 17 June, in fact, by 19 May

4 OBJECTION Ms Pyke objects.

5 MR MEYER: Can I finish the question?

6 MS PYKE: That wasn't quite the evidence.

7 COMSR: Don't answer the question, Mr Wooley,  
8 until we know what the whole of it is.

9 XXN

10 Q. By 19 May, it was indicated that Dr Kartinyeri had  
11 already been in contact with Dr Fergie -

12 MS PYKE: That's what I object to.

13 XXN

14 Q. Did you have any knowledge of that.

15 OBJECTION Ms Pyke objects.

16 MS PYKE: I object to that, because the evidence  
17 wasn't that. If you might remember, indeed, I  
18 cross-examined on that topic and the witness wasn't  
19 clear when it was ever said that Dr Fergie had already  
20 been contacted or would be contacted. That was very  
21 much a grey area. There was some mention of Dr Fergie's  
22 name, but not that there had been contact by Dr  
23 Kartinyeri.

24 COMSR: Yes, Mr Meyer, you will have to point to  
25 the passage.

26 MR MEYER: It is in the evidence of Dr Clarke and I  
27 am not going to try and point to it in his evidence, it  
28 is too long.

29 COMSR: That is true. If there is some doubt  
30 about it, there is no point in pursuing it.

31 MR MEYER: It is in the Francesca Cubillo-Alberts  
32 evidence, the female anthropologist from the museum, who  
33 gave evidence about a week ago. And her evidence, you  
34 will recall, was that she was asked by Steve Hemming to  
35 speak with Doreen Kartinyeri. And then her next  
36 evidence was the appointment was cancelled, because  
37 Doreen Kartinyeri had been able to speak with, or make  
38 arrangements to speak with Dr Fergie. And that was all,

1 I think, by 19 May.

2 COMSR: Does that help you?

3 MR KENNY: I have found a copy of it. I think that  
4 the meeting, according to the statement, if I may point  
5 out, was 'The arrangement was to meet Doreen on 19 May.'  
6 It was sometime after that that Steve Hemming spoke to  
7 her.

8 MR MEYER: I am impressed that my memory of dates  
9 was so close.

10 MR STRATFORD: Could I just have the question again for  
11 Mr Wooley? I understood, I think, a lot of what Mr  
12 Meyer had to say, but, as I understood it, it had  
13 something to do with Dr Fergie and Dr Kartinyeri. I  
14 just don't know how this involves Mr Wooley.

15 Can I just have the question to see if Mr Wooley can  
16 actually help in it?

17 MR MEYER: I will start again, because there have  
18 been so many objections in the course of it that it has  
19 been lost.

20 XXN

21 Q. In the statement of Francesca Cubillo-Alberts, who is a  
22 curator at the South Australian Museum it says in part  
23 'Both Steve and Doreen told me that they wanted the  
24 information recorded by a woman and they wanted to know  
25 if I would be willing to record the information on a  
26 cassette.' It goes on to say 'I arranged for Doreen to  
27 meet me 19 May 1994 between 12 p.m. and 2 p.m. I know  
28 this by referring to my 1994 diary.' Leaving out an  
29 irrelevant paragraph 'Doreen did not make this  
30 appointment and I approached Steve Hemming to know  
31 whether Doreen still needed me to record this  
32 information. He told me that Doreen was now recording  
33 this information with Dr Fergie and, therefore, it was  
34 not necessary for me to be involved.'

35 CONTINUED

1 A. Sorry, what was the date of that?

2 Q. Well, there is no date on the approach, but the date of  
3 the meeting which was not kept was 19 May.

4 A. Yes.

5 Q. So assume, if you would, shortly after 19 May,  
6 Franchesca Cubillo-Alberts approaches Steve Hemming to  
7 say 'Why hasn't Doreen turned up'. I just find it  
8 coincidental that it's yet another month before you  
9 approach Dr Fergie, when there obviously appears to have  
10 been some contact. Can you help.

11 MS PYKE: I don't want to repeat my arguments, but  
12 I've got the index to the transcript. It's between  
13 pp.3539 and 3541 of the transcript. I particularly  
14 remember asking the question of Ms Amon about that. She  
15 was quite clear in her evidence that she couldn't recall  
16 whether Dr Fergie had already been contacted, or whether  
17 it was a proposal to do so in the future. It is  
18 misleading the way in which Mr Meyer is putting the  
19 question.

20 MR SMITH: The witness will deal with this. He is  
21 just poised to clear it up.

22 COMSR: If you give the witness a chance to  
23 clarify, it may save considerable time.

24 A. Yes, I think I know the question. I certainly wasn't  
25 aware of any communication that Doreen had had with  
26 Deane Fergie. I'm not saying that she didn't, but  
27 certainly Doreen hadn't made contact with me to say 'I  
28 want Deane Fergie'. It could well be that it was  
29 totally coincidental.

30 XXN

31 Q. Sheer coincidence.

32 A. Because I was certainly not in contact with Doreen at  
33 that time in relation to - in fact, if I'd known earlier  
34 that she - it would have saved me a lot of time,  
35 thinking about it, if she had already selected someone  
36 in May, it would have saved me going through the process  
37 of ringing all around Australia.

38 Q. You said in answer to a question by my learned friend,

- 1 Mr Abbott, that ALRM had a copy of the secret envelopes.  
2 A. Yes.  
3 Q. As well as the minister.  
4 A. That's correct.  
5 Q. Does ALRM still have its copy of the secret envelopes.  
6 A. I really don't know.  
7 Q. To the best of your knowledge.  
8 A. Well, I thought they whether locked up in some vault, in  
9 a bank vault somewhere. That was the last I knew of  
10 them.  
11 Q. When were you told that.  
12 A. Well, that happened during the process of the Federal  
13 Court proceedings. I believe that you, Mr Meyer, took  
14 an application in relation to it.  
15 Q. That application was in relation to the envelopes that  
16 have been given by Mr Tickner to some person, i.e. Mr  
17 Tickner's copy.  
18 A. Yes.  
19 Q. I'm asking about the ALRM's copy.  
20 A. I think that at the same time, from memory, Mr Tickner's  
21 copy came back, and subsequently all the copies that  
22 exist, or existed - I think they still exist - were put  
23 together, and I think there may have been, well,  
24 certainly there were two that I was aware of, were put  
25 together in a bank vault.  
26 Q. Are you aware of any more than two. Did Dr Fergie have  
27 a copy.  
28 A. There may have been a Dr Fergie copy, but that may be in  
29 the bank vault as well, I'm not sure. Certainly I  
30 wasn't party to that, but I knew about it.  
31 MR MEYER: I only ask because they are relevant to  
32 this enquiry. Nothing more.  
33 MR TILMOUTH: It might be of some comfort that I only  
34 wish to ask about the Mouth House, and I don't propose  
35 to be very long.  
36 COMSR: You don't propose to traverse the ground  
37 that the witness has already covered?  
38 MR TILMOUTH: I don't want accusations of not putting

T.J. WOOLEY XXN (MR MEYER)  
(MR TILMOUTH)

1 the case. I hope I can do it without too much  
2 interruption.

3 CROSS-EXAMINATION BY MR TILMOUTH

4 Q. I'm going back to 19 May 1994, the Mouth House occasion,  
5 and you understand my interest in it is because of the  
6 presence of Victor Wilson and George Trevorrow who, at  
7 that time, were members of the Lower Murray Aboriginal  
8 Heritage Committee.

9 A. Yes.

10 Q. Of course they were two of your many clients at that  
11 time.

12 A. Yes.

13 Q. I just want to understand the time sequence, if I may.

14 You arrived, on your estimates, at the Mouth House  
15 between two and three in the afternoon.

16 A. Yes, that's correct.

17 Q. There were substantial discussions between you and the  
18 others there for quite a period of time, I gather.

19 A. Yes, that's correct.

20 Q. Did I understand you to say that Sarah Milera was  
21 present at the Mouth House when you arrived.

22 A. I think she was, but I cannot be categorically sure  
23 about that. I think that she - certainly she was there  
24 when the letter was opened.

25 Q. The letter was opened, am I right in thinking, within a  
26 few minutes of Dorothy Wilson arriving.

27 A. Well possibly, yes, 10 minutes or so.

28 Q. Can you give the commissioner any idea what time of the  
29 afternoon it was when Dorothy Wilson arrived.

30 A. I think Dorothy arrived around about 4 o'clock, I would  
31 imagine.

32 Q. To put it another way, how long were the discussions  
33 that you had with the people there before Dorothy  
34 arrived. You're in the bedroom, you're on the telephone  
35 and so on, approximately how long did all of that take.

36 A. I would say it was in excess of an hour, possibly one  
37 and a half hours.

38 Q. As I understand your evidence, you first saw Dorothy

- 1 Wilson after you came out of the bedroom and into the  
2 lounge.
- 3 A. That's right.
- 4 Q. She was near a doorway, I think you said.
- 5 A. That's right.
- 6 Q. At the time you were in the bedroom, I think you'd been  
7 on the phone.
- 8 A. Yes.
- 9 Q. In relation to either the instructions or the legal  
10 matters you had been advising about.
- 11 A. That's correct.
- 12 Q. When you came out of the bedroom, did I understand you  
13 to say that you then talked about what had happened on  
14 the phone. I don't want you to go into detail, but just  
15 whether you talked about that subject matter to the  
16 group.
- 17 A. In essence, that's correct, and I also was given some  
18 further instructions.
- 19 Q. So in that approximately 10 minutes or so, the group was  
20 both giving you instructions, and you were giving some  
21 advice on legal matters, were you.
- 22 A. Yes.
- 23 Q. Dorothy Wilson was present when that was occurring, was  
24 she.
- 25 A. Yes, she was present at that time.
- 26 Q. Is it your evidence that the letter was not produced by  
27 Sarah Milera virtually immediately, or within a minute  
28 or so of Dorothy Wilson first appearing.
- 29 A. It was, like I say, it was within about 10 minutes. It  
30 was, in the scheme of things, relatively shortly  
31 afterwards, I mean after she arrived.
- 32 Q. But whatever the time period was, as I understand your  
33 evidence, there was clearly some exchange between you  
34 and the others there in relation to the advice and  
35 instructions you had gone down to obtain.
- 36 A. Yes, it was following up on the phone call.
- 37 Q. Then the letter was produced by Sarah Milera.
- 38 A. Yes.

- 1 Q. You took it to read it at the table.  
2 A. That's correct.  
3 Q. You gave the advice that you've told the commissioner  
4 about, is that correct.  
5 A. Yes, that's correct.  
6 Q. At some stage shortly afterwards - perhaps I should  
7 clarify the amount of time it was - but at some stage  
8 there was an occasion on which George Trevorrow used his  
9 walking stick to indicate one of the aerial photographs.  
10 A. Yes.  
11 Q. How long was that after the exchange relating to your  
12 advice on the letter in minutes.  
13 A. It was possibly a minute. There was a pause in the  
14 conversation.  
15 Q. Is it your evidence that all George Trevorrow did was  
16 point with his walking stick and indicated in general  
17 terms to the map.  
18 A. Yes.  
19 Q. Or the aerial photograph area.  
20 A. Yes.  
21 Q. And said nothing much more about it.  
22 A. Well, he said the words that - he said, from memory,  
23 exactly the words that I've given in evidence.  
24 Q. He indicated in short terms that the area was important,  
25 did he not.  
26 A. Well, I don't know what was in other people's minds, of  
27 course.  
28 Q. No, just what he said.  
29 A. That was the impression that I got, it was significant,  
30 yes.  
31 Q. Then your evidence is that Victor Wilson said something  
32 very short, is that right.  
33 A. That's correct.  
34 Q. And that Douglas Milera also said something.  
35 A. Yes, that's right.  
36 Q. Can I put it this way to you; that whole exchange, did  
37 that take very long at all, through George Trevorrow,  
38 Victor Wilson and Douglas Milera.



- 1 A. No, it didn't, it was a fairly compact exchange.
- 2 Q. Can you give an estimate in terms of what it is, a  
3 minute, or half a minute, or five minutes.
- 4 A. I'd say 10 minutes at the absolute outside, I think.
- 5 Q. I understand your evidence to be that when George  
6 indicated with his stick, that there was a pause for a  
7 short period of time.
- 8 A. That's right.
- 9 Q. Was that very long at all, was that a matter of seconds,  
10 minutes.
- 11 A. I think I said a minute.
- 12 Q. It was after that that Victor Wilson indicated the words  
13 that you've told the commissioner, is that right.
- 14 A. Yes, well, after George had spoken, Vic made a short  
15 statement, and then Doug made a short statement.
- 16 Q. I put it to you that Doug did not say words like `Look  
17 at the map. What does it remind you of'.
- 18 A. No, Doug never said those words.
- 19 Q. Did Doug say anything at all about anything in relation  
20 to the aerial photograph or the map in reference to  
21 women's business, or anything like it.
- 22 A. No, Doug made a reference to the women, that it was up  
23 to the women now, that they had tried through the State  
24 process, the men, that is, to get protection, and that  
25 it was now up to the women.
- 26 Q. Is it the position, as you understood it on this  
27 occasion, that you knew, as I understand your evidence,  
28 from a combination of the Draper report which you had  
29 earlier and what Dr Kartinyeri had said to you, that  
30 there was certain knowledge that they had, and the  
31 question was whether they should, and how they could,  
32 disclose it to Mr Tickner, he being a man.
- 33 A. In essence, that was what part of the meeting was about.  
34 In essence, that's what it was about.
- 35 Q. Well, could I put it to you this way; the dynamics of  
36 the situation, that short occasion which began with  
37 George pointing at the map, was really one in which the  
38 men were saying `It's up to you, the women, what you're

1 going to do about this'.

2 A. I think, yes, I would say that that's probably so. It  
3 followed on from my comment, really, or my comment was  
4 really addressed to the women, that 'I know you've got  
5 further information that you can divulge, but it's up to  
6 you what you can divulge', and I thought that George may  
7 well have been encouraging people to, the women that is,  
8 and in fact, thinking about it, Victor and Doug as well  
9 were really encouraging the women to come forward with  
10 further information.

11 Q. That was what the whole dynamic of this pointing at the  
12 map or the photograph was about, as you understood it.

13 A. Well, in essence, that was correct.

14 Q. Where was Dr Doreen Kartinyeri in this shortly exchange  
15 in relation to to the aerial photograph. Nearby,  
16 outside.

17 A. She was standing, well, quite close to me. When I was  
18 reading the letter, I was reading it at the short end of  
19 the table. My back was to the sea, everyone crowded  
20 around the table, so Doreen, when I turned around to  
21 look at the map, the aerial photograph, Doreen would  
22 have been on my right, quite close.

23 Q. So she was within touching distance, was she.

24 A. Well, reasonably close.

25 Q. Did she remain there during this exchange in relation to  
26 the aerial photograph or close by.

27 A. Yes.

28 Q. By the way, on that letter, just while I think of it,  
29 Exhibit 206, have you got a copy of that.

30 A. Yes.

31 Q. Is it correct to say that you never received a copy of  
32 that letter or any part of it then, or at any later  
33 stage, until the Federal Court proceedings.

34 A. That's correct.

35 Q. If I could return to Dr Kartinyeri. After Doug Milera  
36 spoke -

37 A. Yes.

38 Q. - did she say anything or do anything.

- 1 A. My recollection was that, at that time, after Doug had  
2 finished speaking, the women sort of moved towards the  
3 table where the letter was. I actually got up. The men  
4 I think at that stage went outside, I went over to my  
5 bag, I noticed at that stage there was some other women  
6 that had come in, and the women started talking out of  
7 my earshot. I was called outside, so I certainly didn't  
8 hear Doreen say anything.
- 9 Q. Was there any occasion -
- 10 A. She might have.
- 11 Q. - in which Doreen was apparently looking at the aerial  
12 photograph almost mesmerised or puzzled as to what the  
13 reference to it meant.
- 14 A. Well, I certainly didn't see her looking at the aerial  
15 photograph puzzled.
- 16 Q. I put it to you that on this occasion she said nothing  
17 at all, and in particular did not say 'Oh, yes, I can  
18 see it. I can see it now', or words like that.
- 19 A. She definitely didn't say those words.
- 20 Q. Why are you so definite about that.
- 21 A. If she had said those words, I think that immediately I  
22 would have thought it was a strange comment to make,  
23 given that it's something being shown by a man, but I  
24 think more importantly it would have been inconsistent  
25 with my earlier instructions, that she had authority,  
26 that she had knowledge, because earlier she had actually  
27 said that she had got this information when she was  
28 young, she said who she got it from and that she was  
29 forbidden to talk about it. She was obviously speaking  
30 as someone who had authority and knowledge. If she said  
31 those words, I would have thought 'What were you talking  
32 about before'. It would have been an inconsistent  
33 comment to make.
- 34 Q. This reference you're talking about, your earlier  
35 instructions, are related to that interview, if I  
36 understand you correctly, with Doreen Kartinyeri that Mr  
37 Abbott cross-examined you about.
- 38 A. Yes, it was at the same time.

1 Q. Earlier that day.

2 A. Yes, that's right.

3 Q. Is there anything at all that you can remember that in  
4 any way indicated that Dr Kartinyeri, at this time,  
5 suddenly received some kind of revelation from looking  
6 at the aerial photograph, either by what she said or how  
7 she reacted, or any combination of that.

8 A. Certainly it wasn't an observation that I made. If I  
9 had made that observation, I would have been disturbed  
10 by it.

11 Q. Is it the position that you never heard any  
12 conversation, whilst you remained in that room before  
13 going outside, which involved Dr Kartinyeri saying to  
14 somebody 'Here, dictate this' or 'Take this down'.

15 A. I didn't hear that, but I'm not saying that that wasn't  
16 said. I moved away.

17 Q. Do I understand your evidence correctly to be that there  
18 was no occasion at the Mouth House at which you were  
19 present where a copy of the report of Dr Draper was  
20 actually produced.

21 A. Certainly it was never produced in my presence.

22 CONTINUED

- 1 Q. The evidence of Dorothy Wilson was that, when Doug  
2 Milera adverted to the plan on the wall, Doreen  
3 Kartinyeri was leaning across the table and looking at  
4 the map. Do you recall Dr Kartinyeri doing that.
- 5 A. She couldn't have been leaning across the table because  
6 she had been - she had come up from the south-east  
7 corner of the room, and so she was actually away from  
8 the table on my right, because I was sitting at the long  
9 end and the rest of the table was away from me, going  
10 away from Doreen. So Doreen was not near the table - I  
11 mean, she certainly wasn't in a position to actually  
12 lean across it.
- 13 Q. To look at the aerial photograph in question.
- 14 A. That's right.
- 15 Q. Dorothy Wilson's evidence then continued, that after  
16 this statement by Doug Milera, it was apparently of  
17 great surprise to her, Doreen Kartinyeri. Did you see  
18 anything that indicated any surprise at all in Dr  
19 Kartinyeri.
- 20 A. I didn't see anything on anyone's face that indicated  
21 surprise, to be frank.
- 22 Q. In fact, Dorothy Wilson's evidence goes so far as to say  
23 that it was apparently, to her way of thinking, a brand  
24 new revelation to Dr Kartinyeri, and that she, Dr  
25 Kartinyeri, was apparently as surprised as the rest of  
26 them were when this question of the photograph was  
27 referred to. Did you see anything from either the  
28 reaction of Dr Kartinyeri or anybody else in the room  
29 that indicated any great surprise or some brand new  
30 revelation.
- 31 A. As I said before, no-one showed any great surprise.
- 32 Q. And certainly Dr Kartinyeri didn't say anything like 'Oh  
33 yes, I can see it now, yes.'
- 34 A. As I said before, no.
- 35 Q. In fact, as I understand your evidence, Dr Kartinyeri,  
36 after this episode, attended back to the table and  
37 apparently the letter.
- 38 A. Yes, that's right.

RF 50Q

T.J. WOOLEY XXN (MR TILMOUTH)  
(MS PYKE)

1 Q. How long did you remain in the room before going outside  
2 to speak with the police. Can you give the commissioner  
3 an idea about that.

4 A. This was after Doug spoke?

5 Q. After Doug spoke, after that occasion had concluded  
6 altogether. I think you went over to your bag or  
7 something initially, and then went outside to meet the  
8 police.

9 A. That's right. It was a matter of minutes really.

10 Really time to get from one side of the room to the  
11 other, to look at my bag, I think that I spoke to Isobel  
12 Norvill, who had just come in, and then someone said  
13 'Come outside'. So it was literally that quick.

14 Q. So it is one or two minutes, approximately.

15 A. Yes. Less than five minutes.

16 COMSR: I think the witness has covered this.

17 XXN

18 Q. Finally, is it the position that George Trevorrow and  
19 Victor Wilson came outside, either with you, to meet the  
20 police, or very shortly afterwards.

21 A. I got the impression that they went before me, that  
22 they'd already gone out.

23 Q. So your recollection is that they in fact went before.

24 A. That's right. When I got out there, they were speaking  
25 to Peter Morrison, Sergeant Peter Morrison.

26 Q. So the position is they left the room within a very  
27 short period of time relating to the episode where this  
28 pointing to the aerial photograph took place.

29 A. That's right. My recollection is that when the women  
30 started moving back to the table, the men left straight  
31 away, I went back to my bag, and then I was called  
32 outside.

33 CROSS-EXAMINATION BY MS PYKE

34 Q. P.13 of your statement, para.4.18, you say this 'I was  
35 then notified Professor Saunders would be coming to  
36 South Australia during the week of 20 June 1994'. Then  
37 a little bit further down 'I was then involved in  
38 discussions to sort out accommodation and to arrange a

1 meeting of the women on 19 June 1994, before the meeting  
2 with Professor Saunders on 20 June 1994'. You see that.

3 A. Yes, that is at about point 6. Who actually arranged  
4 what women were to attend those meetings on 19 and 20  
5 June. By that, I mean was there discussion as to who  
6 should be invited.

7 A. I spoke to Doreen about that. I think that - my  
8 understanding was that she, together with Shirley  
9 Peasley, was arranging that, and -

10 Q. Was there any discussion about what groups should be  
11 comprised in that meeting, or what areas they should  
12 come from.

13 A. I left it up to the women, because it was a women's  
14 issue. I certainly didn't want to get too heavily  
15 involved. I mean, they seemed to be taking care of it.  
16 I organised some funding for it to happen, and I made  
17 some of the arrangements to make payment.

18 Q. So you weren't involved in sorting out who actually  
19 would be invited.

20 A. No.

21 Q. No part in that.

22 A. No.

23 MR STRATFORD: I don't have any questions, but I am a  
24 little troubled by the first point Mr Abbott was  
25 pursuing in relation to the questions that I put to Mrs  
26 Wilson. You might remember he was concerned about  
27 whether I had put everything in accordance with my  
28 instructions. You might remember that the questions  
29 that I was putting forward at that stage were based on a  
30 transcript of a radio interview.

31 It may be that I got a bit confused in some of the  
32 questions that I put to Mrs Wilson. Mr Abbott, with his  
33 eagle eye, has seized on that. I really need to have a  
34 look at that evidence. I don't want to ask this witness  
35 any questions about his instructions to me, because that  
36 will raise privilege on privilege. That is something I  
37 would want to clear up. If I might address that later  
38 on, but otherwise I have no questions.

1 RE-EXAMINATION BY MR SMITH

2 Q. During the luncheon adjournment, you perused another  
3 small bundle of documents which we located from the  
4 commission's records, documents that you were familiar  
5 with in terms of correspondence between you and the  
6 State Minister and the like.

7 A. Yes, that's correct.

8 Q. If you could just identify that bundle for us.

9 A. Yes, that's the bundle that I looked at before.

10 MR SMITH: Everyone has copies of these and I seek  
11 to add that to Exhibit 223.

12 COMSR: It will just be added in and form part  
13 of Exhibit 223.

14 MR SMITH: We will make adjustments to the index.

15 REXN

16 Q. At one stage there was a visit to Canberra by some  
17 members of the Lower Murray Aboriginal Heritage  
18 Committee, and I think a Mr Richard Owen from the  
19 friends of Goolwa and Kumarangk. Is that correct.

20 A. Yes, I understand that that's the case. I actually  
21 found out about it after the event, as it were.

22 Q. So the ALRM were not involved in that.

23 A. No.

24 Q. In terms of funding it, for instance.

25 A. No.

26 Q. Who funded that trip.

27 A. I really don't know, to tell you the truth. It happened  
28 without my knowledge, as I say. I found out about it  
29 after the event.

30 Q. Who of your clients went on that trip. Doug Milera was  
31 one, wasn't he.

32 A. Yes. I'm not absolutely sure, but I think it was Doug,  
33 George and Victor.

34 Q. And Richard Owen.

35 A. Yes, and Richard Owen.

36 Q. You came to know Richard Owen during the months from  
37 October 1993 through to the stoppage of the bridge in  
38 July 1994.



- 1 A. Yes, I knew Richard.
- 2 Q. From time to time, did the Friends of Goolwa and  
3 Kumarangk give financial help to the Aboriginal protest.
- 4 A. Not that I was aware.
- 5 Q. For instance, they supplied a luncheon at Graham's  
6 Castle once, did they not.
- 7 A. They may well have. I don't know for sure.
- 8 Q. It is the case, isn't it, that the ALRM, for instance  
9 financed, as it were, or funded the reconciliation  
10 meeting in April 1995.
- 11 A. They may have. I was certainly not involved in that.
- 12 Q. We will come back then perhaps to the Professor Saunders  
13 weekend, the ALRM certainly funded that.
- 14 A. Yes, we got a specific grant from ATSIC in relation to  
15 organising that, so that the women would be there for  
16 Professor Saunders. It was, in fact, in conjunction  
17 with Professor Saunders' inquiry, I suppose.
- 18 Q. Is it though not also the case that the ALRM funded the  
19 reconciliation weekend on 21 to 23 April 1995.
- 20 A. As I say, they may have, but I certainly was not  
21 involved with any of that.
- 22 Q. So you were involved only to the extent of funding the  
23 Professor Saunders' weekend.
- 24 A. Yes, the reason for that was that it also - funding also  
25 covered Dr Fergie, and it was essential for - it was  
26 part of the section 10 process, I suppose. That's the  
27 reason I was involved with that. And ALRM didn't  
28 exactly fund it. It was ATSIC that funded it. ATSIC  
29 sent us some money. It was a specific grant that I  
30 arranged for that specific purpose. Although, it might  
31 have gone through the ALRM bank accounts, essentially it  
32 was a loan - it wasn't a loan, it was a grant, a funding  
33 grant made direct from ATSIC.
- 34 Q. Was that used to pay for Dr Fergie's efforts.
- 35 A. Yes, it was used, very strictly speaking, for Dr Fergie  
36 and the accommodation and meals at Graham's Castle at  
37 Goolwa whilst Professor Saunders was actually inquiring

1 into women's business and speaking to the women in  
2 particular at Goolwa.

3 Q. There have been gatherings of the proponent women  
4 throughout this commission, have there not, that you are  
5 aware of.

6 A. Gatherings? Well, yes - when you say the proponent  
7 women, I am just trying to work out your definitions.  
8 Can you be more specific about it? I am not trying to  
9 be facetious.

10 Q. The Ngarrindjeri women who are in support of the  
11 existence of secret sacred women's business, including  
12 Doreen Kartinyeri. There have been gatherings of Doreen  
13 Kartinyeri and such people throughout the progress of  
14 this commission.

15 A. Well, that has been my observation.

16 Q. Has the ALRM funded any of those meetings, buses, for  
17 instance, and things like that, that you know of.

18 A. They may have, but I don't know about that. I've not  
19 been involved in any of that.

20 NO FURTHER QUESTIONS

21 WITNESS RELEASED

- 1 MR SMITH: Mr Wardle was rather concerned about the  
2 evidence at some stage during this week. I tender an  
3 affidavit of Mr Wardle addressing that question about  
4 the conversation between Mr Wardle and Alison Caldwell  
5 on the 7.30 Report raw footage tape.
- 6 EXHIBIT 224 Affidavit of Douglas Wardle concerning  
7 conversation with Alison Caldwell on  
8 raw footage video tape tendered by Mr  
9 Smith. Admitted.
- 10 MR SMITH: At p.3,780 of the transcript, there was  
11 the bundle of notes of Alison Caldwell, together with a  
12 shot list. It was marked Exhibit 212. It ought to be a  
13 complete exhibit. In case you haven't got it received  
14 as a complete exhibit, could you do that.
- 15 COMSR: I have got it marked MFI 212 and  
16 admitted exhibit 212, shot list.
- 17 MS NELSON: Before I embark upon my  
18 cross-examination, is it possible to ask for an  
19 indication that I would be able to continue it on Monday  
20 morning.
- 21 MR SMITH: Yes, the witness is available Monday.

## P.G. JONES XXN (MS NELSON)

1 WITNESS P.G. JONES, CROSS-EXAMINATION BY MS NELSON

2 Q. Do you have a copy of your statement that has been  
3 tendered as an exhibit.

4 A. Yes.

5 Q. The first degree which you completed I think was a law  
6 degree. Is that right.

7 A. That's correct, yes.

8 Q. You then seemed to have made an eminently sensible  
9 decision and completed an arts degree.

10 A. That is also correct.

11 Q. Majoring in history.

12 A. I'd actually made that decision before I'd completed my  
13 law degree.

14 Q. Even more sensible. Did you major in history in your  
15 arts degree.

16 A. Yes, I did.

17 Q. Do you describe yourself as an historian.

18 A. Yes, I do.

19 Q. If I could just then take you to your statement, p.5.

20 You say there, at the foot of the first paragraph  
21 `Meta-explanations involving fertility beliefs and  
22 Notions of the "earth as mother" have gained great  
23 credibility in recent times, throughout Aboriginal  
24 Australia'. What do you mean by that.

25 A. The term `meta-explanation' could be used, I suppose, in  
26 connection with a broad, wide ranging explanation that  
27 perhaps picks up a range of apparently conflicting  
28 subjects and lumps them together as one. As far as the  
29 rest of the sentence goes, I think the point I'm getting  
30 at there is that there seems to be considerable  
31 literature connected with explanations for perhaps what  
32 has gone wrong politically or environmentally in various  
33 parts of the world, various parts of Aboriginal  
34 Australia, which have, at their root, a notion that  
35 somehow some violence has been done to the earth in its  
36 feminine construction.

37 Q. You go on to say `These broader currents may have  
38 provided some of the context necessary for the

- 1 substantial realignment of beliefs and attitudes to  
2 Ngarrindjeri country which has apparently occurred since  
3 the Hindmarsh Island affair began'. I will not read the  
4 rest of that paragraph, because it is relatively  
5 lengthy, but can you encapsulate - and if you can't,  
6 please say so - in a brief way, the point that you are  
7 making in that paragraph.
- 8 A. I think I am suggesting here that time hasn't stood  
9 still for the Ngarrindjeri people.
- 10 Q. Nor indeed for the rest of us, I suppose.
- 11 CONTINUED

1 A. No -

2 Q. It just seems like that.

3 A. Although, in a sense, it does seem like that.

4 Q. Especially in this room.

5 A. Yes, but what I am actually getting at there is that,  
6 around the Ngarrindjeri people and, indeed, within the  
7 community itself, historical changes and realignments  
8 have occurred and that it would be a mistake for an  
9 anthropologist who is investigating that society not to  
10 pay attention to those broad occurrences.

11 Q. Dr Clarke in his evidence spoke of an invention of  
12 tradition, not in the sense of fabrication.

13 A. Yes.

14 Q. Are you in this paragraph discussing a similar concept.

15 A. I guess there is a pretty substantial overlap between  
16 our points of view on that. I am perhaps not as formal  
17 in adopting that approach, yes.

18 Q. Perhaps you are approaching it more from the point of  
19 view of an historian rather than in an anthropological  
20 setting.

21 A. That generalisation could apply. It may not. I  
22 wouldn't back that one.

23 Q. At the foot of that page you say that 'In some senses,  
24 the Hindmarsh Island affair was almost an inevitability.  
25 Firstly, given the fact that heritage legislation and  
26 its administration in South Australia lacked transparent  
27 and accountable procedures.' Can you explain the  
28 meaning of that particular part of that sentence.

29 A. It has perhaps two meanings attached to it. Firstly, in  
30 terms of the concept of an inevitability, what I am  
31 getting at there is the suggestion that there - and I  
32 make - I develop this a little further, I think, or a  
33 little earlier in the statement, to suggest that, in a  
34 sense, Aboriginal people in southeastern South Australia  
35 - who have a radically different history, for example,  
36 to people in the more remote areas of the State, without  
37 going into details - are subject to the same legislation  
38 in many senses. And that I suppose what I am suggesting

- 1 is that that legislation is geared towards the notion  
2 that a living body of tradition is constantly evolving.  
3 Now, I suppose I am putting the proposition that many of  
4 the so-called dissident women have put forward. That,  
5 to all intents and purposes, certain structural elements  
6 of the culture in terms of religion and ceremony and the  
7 transmission of site specific information within that  
8 context probably faltered and stopped, in many senses,  
9 decades ago. And yet the Aboriginal people are, by  
10 virtue of the way that the legislation is administered,  
11 locked into the notion that is often foisted upon them  
12 that they must somehow exhibit characteristics of  
13 traditional society, traditional Aboriginal society with  
14 a living body of tradition. So, I am sorry for not  
15 answering the question as quickly as I would.
- 16 Q. No, I think I understand what you are putting.
- 17 A. What I am getting at is that, in a sense, a vacuum is  
18 generated. A vacuum of knowledge and information, which  
19 people are more or less invited to fill. The invitation  
20 is quite understandably taken up by people who are  
21 thoughtful and creative about their own culture.
- 22 Q. Is it fair to say that, at least in relation to the  
23 Lower Murray situation, detailed knowledge of  
24 traditional Aboriginal culture was almost lost and the  
25 culture no longer survived as a living force, in the  
26 main, but only fragments of it.
- 27 A. We have to be very careful about the definitions of  
28 culture that we are using here and I need a little bit  
29 more information on your definition before I reply to  
30 that question.
- 31 Q. It is not my definition. I am putting to you something  
32 which I think is inherent in Catherine Berndt's article  
33 on 'Women Rights and Sites'. That is an article with  
34 which you are familiar, where, at p.13, she says 'Just  
35 to look at the Lower Murray situation, the population  
36 that was often referred to by the general name of Point  
37 McLeay people is an especially interesting case. It is  
38 true that detailed knowledge of traditional Aboriginal

- 1 culture was almost lost and that their culture no longer  
2 survived as a living force. The local languages were no  
3 longer the main media of communication. Marriage rules  
4 no longer applied. Almost everything of the Aboriginal  
5 past seemed to have gone. The face of the landscape had  
6 changed and the signs of European occupation were  
7 visible almost everywhere, but the Point McLeay mission  
8 had one positive advantage. It was located  
9 strategically in a richly fertile and a natural  
10 environment. It was not overshadowed or crowded in by  
11 congestion of the settlements. After all, it provided a  
12 central focus for a population that had continuity of  
13 occupation over a long period.' And she then makes the  
14 point that children growing up in or around Point McLeay  
15 were able to get acquainted with basic information about  
16 the topography, resources and events. Do you accept her  
17 thesis that there was a point in the lives of the Lower  
18 Murray people where detailed knowledge of traditional  
19 Aboriginal culture was almost lost.
- 20 A. I do, yes.
- 21 Q. Is the thesis which you begin to develop, in the last  
22 paragraph of p.5, similar to the thesis she develops,  
23 which is that there are fragments remaining of knowledge  
24 of past traditions, which are then developed in a modern  
25 context.
- 26 A. I am sorry, which paragraph are you referring to there?
- 27 Q. P.13.
- 28 A. Sorry, my statement, p.5, which paragraph?
- 29 Q. Your statement on p.5, para.2.
- 30 A. Okay, what - yes, I - it could be interpreted in that  
31 way. I don't think I wrote it in quite that way, but  
32 what you may be suggesting is that a process of - to use  
33 sort of horticulture terminology - grafting may have  
34 occurred, whereby there is sufficient left of the old  
35 stock for new hybrid forms to develop from, is that the  
36 suggestion?
- 37 Q. Yes, that's what I was suggesting.
- 38 A. I am not really suggesting that there, no. But -



- 1 Q. Do you discount it as a possibility.  
2 A. I think it has relevance, yes.  
3 Q. In what way.  
4 A. It has relevance, I suppose, in a broad sense, in a  
5 broad cultural dimension. And perhaps in a more  
6 localised sense it has relevance as well, yes.  
7 Q. Can you indicate how it is relevant.  
8 A. Yes, okay. If, for example, people have an awareness  
9 of, for example, the influence of a major dreaming hero,  
10 we will call it that, because we are talking about  
11 Ngurunderi, it is then, I would suggest, quite possible  
12 for people who have been exposed to a welter of  
13 interpretations about what dreamings are, via the school  
14 curriculum or the television, models which are based on  
15 on perhaps Central Australia dreamings, to perhaps look  
16 back at what Ngurunderi might have been and suggest  
17 that, in essence, the characters of that epic operated  
18 in much the same way as in Central Australia. That  
19 perhaps is an example, yes.  
20 Q. You go on to say, in the last paragraph, on p.5, having  
21 said the Hindmarsh Island affair was almost an  
22 inevitability `given the marked deficit in the state of  
23 qualified anthropological researchers with a background  
24 in objective, incisive research.' What are you  
25 intending to convey in that latter part of that  
26 sentence.  
27 A. I am intending to convey that we - that South Australia,  
28 I guess, has lost a critical mass in its anthropological  
29 sort of talent, I suppose. It has been a process which  
30 has gradually occurred over the last twenty years.  
31 Q. Over on p.6, in the third line, you say `For structural  
32 functionalist anthropologists, the precise content of  
33 traditions or their pedigree is sometimes less important  
34 than establishing the fact that a given society is  
35 capable of generating these traditions.' First of all,  
36 are you there talking about the notion of evolution of  
37 tradition.  
38 A. No, I am talking about the propensity of social

1 anthropologists trained in what you might call the  
2 functionalist or the structuralist tradition to  
3 concentrate upon the present, I suppose, without much  
4 reference to perhaps placing it in the terminology of  
5 the two principle acts which impinge on this piece of  
6 legislation, which impinge on this matter, placing it in  
7 - with reference to a base of tradition from which  
8 tradition might evolve.

9 Q. In other words, that they don't sufficiently research  
10 back to see if there was an original or an old base for  
11 what appears to be a present traditional belief.

12 A. Yes.

13 COMSR: Who else is proposing to cross-examine  
14 the witness?

15 MS PYKE: Hands up.

16 MR MEYER: Cursorily, half up.

17 COMSR: Because we do have witnesses lined up  
18 next week, of course, but I propose to adjourn.

19 MR MEYER: I have made the assumption that Mr Jones  
20 has read the cross-examination of Mr Clarke and,  
21 therefore, that will assist in speeding all this up.  
22 Not only Mr Abbott's cross-examination, but the  
23 cross-examinations generally.

24 WITNESS: I hope so.

25 MR MEYER: That will speed things up, yes.

26 COMSR: We will be adjourning until 9.30.

27 ADJOURNED 4.30 P.M. TO MONDAY, 23 OCTOBER 1995 AT 9.30 A.M.

1 COMSR STEVENS

2

3 HINDMARSH ISLAND BRIDGE ROYAL COMMISSION

4

5 MONDAY, 23 OCTOBER 1995

6

7 RESUMING 9.37 A.M.

8 WITNESS P.G. JONES CROSS-EXAMINATION BY MISS NELSON

9 CONTINUING

10 Q. In your evidence you said in one of your answers there  
11 was a suggestion that there is a gender bias in the  
12 literature. Surely it's more than a suggestion. There  
13 was, for a period of time, a distinct gender bias, was  
14 there not.

15 A. It depends what you're really talking about. Are you  
16 talking about in the numbers of people divided by sex,  
17 or are you talking about the actual bias inherent in  
18 everybody's report, regardless of which sex they are?  
19 Can you be specific?

20 Q. Let me put it this way; do you not agree that at least  
21 the early material which is reported is biased in the  
22 sense that the recorders were mostly men and, I suppose,  
23 reported from their own point of view and with the  
24 limitation on the knowledge they may receive.

25 A. Yes, but I wouldn't apply that conclusion right across  
26 the period. I think it's an uneven bias and not spread  
27 out right across the period, so it's important to be  
28 specific, I suppose.

29 Q. Well, admittedly, there have been female anthropologists  
30 practising in the Lower Murray area of recent years, can  
31 we agree on that.

32 A. Well, 60 years ago is hardly recent.

33 Q. Who were you referring to there.

34 A. Alison Harvey, Dorothy Tindale.

35 Q. Was Dorothy Tindale an anthropologist.

36 A. Well, a lot of people are described as anthropologists  
37 who aren't - I myself am often described as an  
38 anthropologist - but I think the critical point is that

## P.G. JONES XXN (MISS NELSON)

- 1 Dorothy Tindale was applying herself to a particular  
2 issue, that is the elicitation of data and perspectives  
3 relating to women's issues in the Lower Murray 60 years  
4 ago, so whether you call her an anthropologist or a  
5 social data collector, it doesn't matter really.
- 6 Q. Catherine Berndt did her work in the early 1960s, did  
7 she not.
- 8 A. She may have had her first exposure to Aboriginal people  
9 in 1939, I think, but predominantly the early 1940s in  
10 this area.
- 11 Q. That was a joint effort with her husband Ronald Berndt,  
12 is that right, in the Lower Murray area I'm talking  
13 about.
- 14 A. That's correct, yes.
- 15 Q. It would seem from her writings that she did not realise  
16 until later, when she had ceased working in the Lower  
17 Murray, the importance of working on her own with  
18 Aboriginal women, and I have in mind in that connection  
19 what she said of what she learned later at Ooldea.
- 20 A. I think when she was making that comment - and we might  
21 have to get it out on the table and have a look at it -  
22 but I think when she was making that comment, she was  
23 referring particularly to the data that she found  
24 herself collecting increasingly from Central Australia  
25 and the western desert, so that what I'm suggesting is  
26 that in making that comment she wasn't, in fact,  
27 referring to the importance of working solely with women  
28 in Ngarrindjeri culture and society, but talking about  
29 areas where a domain of separate gender specific women's  
30 business, as such, was a factor, so that it would be  
31 misleading to suggest that she is applying that comment  
32 in retrospect back to Ngarrindjeri society.
- 33 Q. Well, in her article that appears in the book `Women,  
34 Rights and Sites' entitled `Retrospect and Prospect;  
35 Looking Back Over 50 Years', isn't she really saying  
36 this; `Until I went to work at Ooldea and I worked  
37 exclusively with the women, I did not appreciate how  
38 much time it took and how sensitive the subject is in

- 1 order to receive information about matters which are  
2 secret, and perhaps secret sacred, to women'.  
3 A. That's my very point, you see, because what she is  
4 referring to is a society, or that part of Aboriginal  
5 Australia, where there is a secret sacred domain as in  
6 the words that you've just quoted, so she is not  
7 specifically not referring that description back to a  
8 society and a description of a society where there is  
9 not a domain of secret sacred business. Can you see the  
10 slippage?  
11 Q. Yes, I understand what you're saying, but what I'm  
12 putting to you is that when she worked with the  
13 Ngarrindjeri people, she didn't have that background of  
14 experience and, therefore, it may well be that the  
15 information she received was limited as a result, is  
16 that not possible.  
17 A. No, it's not, because if it was possible, when she comes  
18 to co-author 'A World That Was' with her husband, she  
19 has a perfect opportunity to pursue that very point, but  
20 she doesn't, and in fact she collaborates with her  
21 husband in making statements that exclude the  
22 possibility of secret sacred women's business in the  
23 Lower Murray.  
24 Q. Well, let's perhaps just explore that. There seems to  
25 be no doubt, from reading 'A World That Was' that there  
26 were not only initiation ceremonies for men, there were  
27 initiation ceremonies for women. That's right, isn't  
28 it.  
29 A. Yes.  
30 Q. Men did not attend the women's initiation ceremonies.  
31 A. That seems to be the case, yes.  
32 Q. The significant thing, I suggest to you, about her and  
33 her husband's writing in 'A World That Was' is that they  
34 have very limited knowledge about those initiation  
35 ceremonies.  
36 A. Limited - well, I'd agree with that. I think they also  
37 have fairly limited knowledge about the men's initiation  
38 ceremonies, and I think what we have to remember here is

1 that the documentation on the actual terminal date of  
2 these ceremonies puts it, in the case of men's  
3 ceremonies, at an estimate of 1882. In the case of  
4 women's ceremonies, it's a little less clear, but one of  
5 the reasons for it being a little less clear is that it  
6 appears that women's ceremonies, in this part of the  
7 country, and actually throughout south-eastern  
8 Australia, were much much less formal, had fewer people,  
9 and didn't involve groups of people travelling from  
10 large distances, long distances, and therefore, perhaps,  
11 attracted far less attention from ethnographers and  
12 perhaps, one might say, less attention from within the  
13 culture itself. That is it was a right of passage that  
14 was just enacted, it didn't attract with it a great  
15 agglomeration of ceremonial activity.

16 Q. Do we know that. It may simply be that the paucity of  
17 information about women's initiation ceremonies is that  
18 aspects of it were secret and were not communicated to  
19 the Berndts. Is that not possible.

20 A. Well, it's - I mean if you take men's ceremonies, it's  
21 quite clear that large numbers of people were travelling  
22 across the country to undertake cycles of initiation  
23 ceremonies in the Lower Murray area, and perhaps further  
24 north towards Mannum, right up until 1882, and that if  
25 you bear in mind that you've got 50 years of European  
26 impact in that area, and obviously these people are  
27 traversing farms and pastoral properties, it attracts  
28 attention. Where we're talking about the women's  
29 ceremonies, all the existing documentation seems to  
30 suggest that it's literally a matter of slipping away  
31 into the bush to a secluded place for a couple of days  
32 in local areas, rather than an entire group of people  
33 coalescing at a particular site, as is the case with  
34 men's ceremonies.

35 Q. What information is imparted in the women's initiation  
36 ceremonies, and what happens. Those are the things we  
37 don't know. (NOT ANSWERED)

1 COMSR

2 Q. I don't know whether they are unknown, but is that an  
3 area that we can go into.

4 A. At a level of generality, I think we can. In fact, we  
5 do know quite a bit about that.

6 Q. When you say 'we know', it is publically known.

7 A. Yes, it's documented in the Berndt book. What appears  
8 to be the case is that people are passing on - there are  
9 songs that are sung as women are initiated, and  
10 cicatrises with scarring.

11 Q. You say this is in the published books.

12 A. Absolutely, but what you're not getting, perhaps, is,  
13 well, certainly as it appears, is this reference to a  
14 whole network of sites, a grid of sites that people are  
15 locating themselves against as you get in the western  
16 desert. It's just, there's a qualitative difference  
17 there.

18 XXN

19 Q. The Berndts worked a lot with Pinkie Mack, did they not.

20 A. Yes, they did.

21 Q. As I understand it, she had gone through some  
22 initiation, and she had scars from that, or tattoos from  
23 that.

24 A. I'm not - I'd have to check that, I'm not absolutely  
25 sure whether she did have scarring. She may have.

26 Q. I thought that was what they suggested in their book,  
27 that she had some scarring from initiation.

28 A. Let's accept that she did.

29 Q. I mean for the purpose of my question, I don't know that  
30 that is important. It seems to be accepted by that that  
31 she had gone through women's initiation ceremony, and  
32 you would accept that, wouldn't you.

33 A. I think she had gone through the ceremony, yes.

34 Q. One of the reasons that they were particularly keen to  
35 work with her was that she was a renowned song woman.

36 A. I don't think they put it quite in those terms. I mean  
37 this was one of the many strings to her bow, yes.

38 Q. Culture and tradition, at least in Pinkie Mack's

1 generation, would partly have been passed on by those  
2 songs.

3 A. I think again there is a big difference to the desert,  
4 and to Central Australia. There appear to have been  
5 far, far fewer, or far less culture intensity poured  
6 into the generation of the reproduction of songs, that  
7 is you didn't have a three or four week long cycle of  
8 ceremonies that you have in Central Australia in the  
9 Ngarrindjeri area. Would you like me to elaborate a bit  
10 more on that?

11 Q. I don't know that it's necessary for the purpose of this  
12 question. (NOT ANSWERED)

13 COMSR: I don't know that it would be of great  
14 assistance to me.

15 XXN

16 Q. The significance, I suggest, of Pinkie Mack's  
17 presentation to the Berndts was this; whereas she could  
18 remember other songs, she consistently said she couldn't  
19 remember any of her own initiation songs. Now is that  
20 not suggestive of her maintaining an area of secrecy and  
21 not wishing to discuss that particularly secret aspect  
22 of what must have been a highly significant part of her  
23 own life with the Berndts.

24 A. I've heard that suggested. I think it's drawing an  
25 extremely long bow. It's wishful thinking, I think it's  
26 hoping that something might have existed which no other  
27 evidence suggests the existence of. I think in Pinkie  
28 Mack's case she, perhaps, as a young girl, was conscious  
29 of the fact that she was already in a very, very  
30 dwindling minority of young Ngarrindjeri women who were  
31 being initiated. She was in that sense probably an  
32 anomaly. Now whether that heightened her awareness of  
33 her experience, or tended to encourage her to regard it  
34 as marginal to Ngarrindjeri cultural life, is a question  
35 that we won't be able to answer, but I don't think you  
36 can go from the fact that she has very rich knowledge of  
37 a large amount of secular songs, some of which she  
38 probably sort of sung around the house. I mean it falls



1 into that category, I know Aboriginal women who do just  
2 that, but they don't tend to concentrate on those sort  
3 of private aspects and perhaps, over the course of six  
4 decades, the private aspects such as are represented in  
5 her own initiation cycle and over what are we looking  
6 at, five, six decades since her initiation, it's not  
7 really surprising that those lifted from her memory.

8 COMSR

9 Q. Is it ever likely that we would know the answer to this.

10 A. I don't think so, except by analogy elsewhere in  
11 Aboriginal Australia, and I think many examples could be  
12 given which suggest that Pinkie Mack's experience was  
13 not atypical.

14 XXN

15 Q. In Catherine Berndts' articles in 'Women, Rights and  
16 Sites', she said this, talking about women 'In their  
17 traditional past they were concentrating on their own  
18 cultural perspectives, their own regional cultures,  
19 their comparative range of interest and enquiry extended  
20 only so far. And then there is the factor of what  
21 should not be said, or written, publicly, even though  
22 "everyone knows it"; or should be only hinted at, or  
23 mentioned obliquely and within a certain range of  
24 people. This area of unspoken or partly verbalised  
25 understanding is an integral part of the whole complex',  
26 and I wonder if first of all you subscribe to that and,  
27 if so, does that not lend weight to the suggestion that  
28 this woman was, Pinkie Mack was not prepared to reveal  
29 that particular secret area of her knowledge. Now I've  
30 put two questions to you, I mean first of all do you  
31 subscribe to what Catherine Berndt said there.

32 A. I think, having read that and not having it fresh in my  
33 memory and hearing it again, what she is referring to is  
34 that the totality of Aboriginal Australia, and  
35 particularly to field work areas where she concentrated  
36 and where she elicited and, I suppose, first put on the  
37 map the notion of Aboriginal Australia, or helped to put  
38 on the map women's secret life, I don't think she is

1 referring specifically, or that you could take that  
2 reference to centre upon the Ngarrindjeri experience.

3 Q. No, I'm not suggesting it's focusing on Ngarrindjeri,  
4 but it is a general observation and, as I read it,  
5 doesn't exclude, so therefore must include, the  
6 Ngarrindjeri people.

7 A. If you say that very quickly, it sounds fine, but I  
8 don't think I'd really subscribe to that.

9 Q. You see the Berndts in their book certainly record  
10 details of the physical aspects of menstruation and  
11 conception and childbirth, they don't record any culture  
12 in reference to mythical or spiritual explanations for  
13 any of those matters, do they.

14 A. If you look at the huge amount of literature on this  
15 subject across the country, and I think it's the case  
16 that, overwhelmingly, even in areas where women's secret  
17 life has been documented, that again there isn't a great  
18 store of ritual and site specific information associated  
19 with those aspects. That is we're looking at events  
20 which occur in every woman's life with regularity, to  
21 the extent that it isn't commented upon in the culture  
22 as an extraordinary events that need mythological  
23 explanation to that degree.

24 CONTINUED

- 1 Q. But aren't there spiritual and mythological explanations  
2 in other Aboriginal societies for those events. Why  
3 should the Ngarrindjeri be an exception.
- 4 COMSR: I had understood the witness to say if  
5 you look across the whole spectrum of Aboriginal life  
6 there is very little in the way of mythology.
- 7 MS NELSON: I am taking issue with that, but I don't  
8 understand that to be the case.
- 9 XXN
- 10 A. You didn't give me a chance. What I suggested, and the  
11 way I finished my sentence, was that it was site  
12 specific.
- 13 Q. Putting aside the question of `a site', I understand  
14 your focus there -
- 15 A. There are spiritual and mythological dimensions to the  
16 explanation of those aspects, yes.
- 17 Q. May it be that the fact that the Berndts have not  
18 recorded that in respect of the Lower Murray people is  
19 an indication that they didn't receive that explanation,  
20 that it was kept from them.
- 21 COMSR
- 22 Q. There are two questions there. Firstly, that they  
23 didn't receive it; secondly, it was kept from them.
- 24 A. To answer the question as to whether they didn't receive  
25 it, it appears that they didn't, and to account for  
26 that, I'd suggest that it didn't receive the kind of  
27 mythological - it wasn't surrounded with the kind of  
28 mythological spiritual context that you find elsewhere.  
29 If you look at other aspects of the culture in  
30 Ngarrindjeri society, you find that other realms are  
31 also not perhaps cloaked or surrounded in - surrounded  
32 by this degree of mythology or sacrality, certainly  
33 secrecy, and you can find examples of other Aboriginal  
34 cultures within Australia where there are analogous  
35 situations, that there are realms of activity that are  
36 not subject to this phenomenon. I mean, to ask the  
37 trick question - I'm not criticising you for asking a  
38 trick question - but to suggest that because the Berndts

1 didn't receive it, it was being withheld, in this case I  
2 think you have got to work a lot harder before you can -  
3 I mean, what has to be offered are some hints that there  
4 was something to be withheld, even some hints, even  
5 little fragments of information, and the sort of things  
6 that we haven't seen. They haven't come up. They don't  
7 exist as far as we can see. What exists instead is an  
8 exceptionally rich culture which is quite distinctive  
9 and qualitative, different from those where this realm  
10 of sacrality is documented.

11 XXN

12 Q. I understand you exclude it as a probability. Do you go  
13 further than that and exclude it even as a possibility.

14 A. I guess my perspective is that there is enough  
15 literature on the Ngarrindjeri - perhaps 500 published  
16 references - which probably outweighs or outnumbers any  
17 other cultural group in the country. The mass of data  
18 and the detail of data suggests a model of culture, and  
19 this is what anthropologists - this is their currency,  
20 this data, and out of it they construct these models,  
21 and the model that has been constructed for the  
22 Ngarrindjeri, by men and by women, does not suggest the  
23 existence of a category of secret sacred women's  
24 business. So that's my perspective. As I said last  
25 week, I've been almost anxious to be made a fool of in  
26 that respect, but it doesn't look like happening.

27 Q. Of course, Faye Gale certainly says that the women in  
28 the Lower Murray area have distinctly separately women's  
29 business, doesn't she.

30 A. No, she doesn't. She suggests a certain part of the  
31 Lower Murray appears to have had separate secret sacred  
32 women's business, but I don't think that she suggests  
33 that the area that we are looking at, that is the Lower  
34 Murray and the lakes area, has any such thing.

35 Q. It is from her article which is entitled 'Roles  
36 revisited, Women of southern South Australia and women's  
37 rites and sites'. She says at p.129 'It is evident that  
38 women in southern South Australia played a dominant role

- 1 in the acquisition of daily food. It is also evident  
2 that this was not at the expense of involvement in  
3 ceremonial life, either in joint rituals with men or in  
4 distinctly separate women's business'. Do you agree  
5 with her observation there relating to distinctly  
6 separate women's business.
- 7 A. Can we just clarify, did you suggest to me earlier that  
8 it was secret women's business?
- 9 Q. No, I didn't put to you that she suggested secret sacred  
10 women's business. My question was she says that the  
11 women of the Lower Murray had distinctly separate  
12 women's business.
- 13 A. No, she doesn't, you see, because if you just repeat  
14 what you read out, she says women of southern South  
15 Australia, I think. Isn't that what you said?
- 16 Q. Yes, but I think in that article, unless I have grossly  
17 misread it, she is talking about Lower Murray.
- 18 A. But what you read out was southern South Australia.
- 19 Q. Would that not include the Lower Murray.
- 20 A. It would be a geographical anomaly if it didn't.
- 21 Q. I suppose we can clarify it. We can ask Professor Gale.  
22 Is that not how you -
- 23 A. What would we ask Professor Gale?
- 24 Q. If she is referring to women of the Lower Murray in that  
25 paragraph.
- 26 A. I would think that the reference 'Women of southern  
27 South Australia' would cover the Lower Murray, and that,  
28 to an extent, as we've seen, women, at times of birth  
29 and menstruation, sequestered themselves from men, and  
30 that on those occasions sang songs, recounted stories,  
31 and engaged in practices at which men were not present.  
32 But I would not go further and suggest that those  
33 practices were secret sacred. That's my position.
- 34 Q. In your view what is it which makes a practice, first of  
35 all, sacred. What are the criteria from your point of  
36 view.
- 37 A. It connotes a point of contact - it is difficult not to  
38 give a circular definition, but it connotes a spiritual

- 1 aspect that lifts what could otherwise be secular  
2 conduct out of the realm of the every day and gives it a  
3 resonance that people recognise as being spiritually  
4 important, I suppose.
- 5 Q. Do we have any data about the spiritual importance and  
6 how it is manifested of this separate women's business.
- 7 A. Which separate women's business?
- 8 Q. What you have just spoken about, the sequestration at  
9 times of menstruation and child birth.
- 10 A. We have got data for that, I think, right across the  
11 country.
- 12 Q. What about the Lower Murray. It didn't seem to me the  
13 Berndts had that spiritual data, if I can use that  
14 phrase, relating to the physical aspects of women's  
15 life.
- 16 A. I think what the Berndts suggest is that, for various  
17 reasons, which would have been characterised as, in  
18 various terms in the 19th century, perhaps connected  
19 with taboos of cleanliness, for example, that this  
20 sequestration occurred, and later - probably much later,  
21 in the early 20th century and mid 20th century, the  
22 suggestion was made that, no, it wasn't just a taboo for  
23 reasons of cleanliness and social order, but it had a  
24 spiritual dimension. The Berndts, I think, from reading  
25 'The World that was' pick up on that, and they suggest  
26 that this wasn't an entirely secular occasion, and  
27 indeed it had significance. But it is not as though it  
28 occurred within a context of great solemnity, but it was  
29 an occasion that certainly men treated with respect and  
30 were aware of. It wasn't secret. It was woven into the  
31 fabric of Ngarrindjeri life.
- 32 Q. The first time any suggestion was made to you about Dr  
33 Kartinyeri's potential involvement in anything to do  
34 with Hindmarsh Island, was just prior to Professor  
35 Saunders' visit. Is that right.
- 36 A. I had sort of hints and whispers. You know, people  
37 saying 'Where's Doreen?' and 'She's doing this and  
38 that' and so on, but as far as she herself was concerned

1 in direct relationship with me, yes, it was perhaps a  
2 day before the Professor Saunders' visit.

3 Q. And that was when she telephoned you.

4 A. Yes.

5 Q. As I understand it, she said that she'd got some  
6 information from Steve Hemming about a burial platform.

7 A. Yes. She said, in fact, it was from Hindmarsh Island.

8 Q. You would, I suppose, have been aware that -

9 COMSR: Again, are we dealing with something  
10 that is in the public domain. We are not going to get  
11 into specific -

12 MS NELSON: I actually wasn't going to take it too  
13 much further.

14 COMSR: I just have to be careful.

15 MS NELSON: I will be guided by Mr Jones, if I get  
16 into an area which is going to trespass on section 35 or  
17 any other consideration.

18 COMSR: He will signal that to us. I don't want  
19 to find us both inadvertently being led into that  
20 situation.

21 XXN

22 Q. You would have been aware that Mr Hemming would have had  
23 something to do with burial platforms that had been  
24 found in various areas.

25 A. Not particularly, no. I'd never had a conversation with  
26 - well, I hadn't had a conversation with Steve about  
27 burial platforms probably since about 1987, I suppose.  
28 I wasn't aware of any particular research interest in  
29 the subject that he had.

30 Q. Given that it doesn't look as though we are going to  
31 hear from Dr Kartinyeri, you only have her word for what  
32 he allegedly said to her.

33 A. Sure.

34 Q. As I understand your statement which has been tendered  
35 as part of your evidence, you didn't at any time raise  
36 that with Steve Hemming, the suggestion that you  
37 initially got from Dr Kartinyeri.

- 1 A. No, I just noted it as a strange assertion on - well,  
2 not an assertion so much, a peculiar reference, I guess,  
3 and didn't really pay much more attention to it until a  
4 few other things started to coalesce in my mind.
- 5 Q. You then, in your statement, talk about a discussion  
6 that you had in your office with Steve Hemming and  
7 Philip Clarke a few weeks later.
- 8 A. Yes.
- 9 Q. Can you be more specific about whether that took place.
- 10 A. I think it was in the week just prior to - the week  
11 ending 1 September. The reason that I say that is  
12 because, although I didn't make a note of the  
13 conversation at the time, I did - I do have a diary note  
14 which indicates an agenda of discussion items which I  
15 had with the museum director on Saturday, 2 September.
- 16 Q. 2nd of.
- 17 A. September, consisting of about 8 or 10 items, and the  
18 entry I think is 'Hindmarsh Island - Hemming' on that  
19 list.
- 20 Q. Where is that list.
- 21 A. Back at the museum in my office.
- 22 Q. You say that that discussion was another issue, it had  
23 nothing to do with Hindmarsh Island.
- 24 A. Yes.
- 25 Q. Do you recall what the discussion was about.
- 26 A. I think it was a sort of preparatory discussion that we  
27 were having concerned with the proposition that had been  
28 put to us by the - or the request that had been put to  
29 us by the Attorney-General's Department to supply data  
30 relating to various parts of South Australia that could  
31 be possibly subject to native title claims.
- 32 Q. May it have been something else. I put that to you  
33 because I suggest that you didn't have a discussion with  
34 Steve Hemming about Aboriginal land relationships on the  
35 Murray River until after February 1995.
- 36 A. I think, as a specific topic, that that's correct, we  
37 didn't actually focus upon that, but what was proposed  
38 to us is that we look at various parts of South



1 Australia, and what I was discussing with Steve and  
2 Philip was the possibility of them assisting in this in  
3 their areas of expertise, so, to that extent, the River  
4 Murray was mentioned, and that's the context that I  
5 refer to in my statement.

6 Q. How did the conversation get around to the lakes region.

7 A. Given that we were talking about Aboriginal land  
8 relationships and certainly the Murray was mentioned, I  
9 can't tell you exactly how the conversation switched to  
10 that, but it is hardly a quantum leap.

11 Q. I want to ask you something about what Steve Hemming  
12 said the lakes region resembled. I need you to indicate  
13 whether that is a matter where the commission should be  
14 in private session.

15 COMSR

16 Q. Yes, if it is a matter that is not already in the public  
17 arena, and it is covered by Section 35, and it would be  
18 the divulgence of information. I don't know whether the  
19 answer, as distinct from the question, will lead us in  
20 that direction.

21 A. I don't think it will because nothing really specific  
22 was discussed.

23 XXN

24 Q. Is this the position, that at some stage Steve Hemming  
25 said that he heard Ronald Berndt - not Catherine, Ronald  
26 Berndt - theorise about the feminine or female nature of  
27 the Lower Murray and the landscape.

28 A. No, I think it was a little more specific than that. I  
29 don't have a clear record of Steve suggesting that it  
30 was Ronald Berndt.

31 Q. But he may have done.

32 A. He may have. I think it was at least the Berndts, and  
33 what he referred to is not the sort of feminine aspect,  
34 as you put it, but the fact that there was a connection  
35 with a woman's body at some point. That phrase was  
36 used.

37 Q. You knew, didn't you, that there had been communication

1 in 1983 between Steve Hemming and Ronald Berndt to do  
2 with the Stirling Gallery redevelopment.

3 A. Yes, and I'd also communicated with Ronald Berndt on  
4 that exact subject.

5 Q. But your communication started in 1984. That's what  
6 you've told us. What I am suggesting to you is that  
7 prior to that, in 1983, you were aware that Steve  
8 Hemming had communicated with Professor Berndt and that  
9 communication was by correspondence and verbal.

10 A. Yes.

11 Q. And, of course, when the Berndts visited the museum when  
12 they came through Adelaide, there would be discussions  
13 with, I suppose, any of you that happened to be there,  
14 on mutually interesting topics.

15 A. That's true.

16 Q. You are aware that Steve Hemming also helped the Berndts  
17 with his book and received an acknowledgement.

18 CONTINUED

- 1 A. That is an odd one, because, as far as I can tell,  
2 through discussions with people involved, that  
3 attribution was actually intended for Philip Clarke.
- 4 Q. I can't comment on the intention, but the fact is Mr  
5 Hemming got the attribution, isn't that right.
- 6 A. The information I have is that a certain person in  
7 Western Australia, who was involved in putting the data  
8 together for that set of acknowledgements, mixed his  
9 sources up and put Steve in there instead of Philip.
- 10 Q. That really wasn't what I was asking you. I was asking  
11 you if there is an acknowledgement to Steve Hemming in  
12 the book.
- 13 A. There is, yes. That is what we are talking about.
- 14 Q. You know John Stanton, don't you.
- 15 A. That is the person I am talking about in Western  
16 Australia, yes.
- 17 Q. He assisted in editing the book.
- 18 A. Yes, he was mortified apparently to realise that he had  
19 made that mistake.
- 20 Q. Are you aware that he has dedicated his - he has written  
21 some sort of dedication in the copy that Steve Hemming  
22 has.
- 23 A. No, I wasn't, no. I mean, I am not saying that Steve  
24 didn't contribute. I am sure he did. But I am just  
25 saying that, as far as that particular attribution goes,  
26 it was a slip on his part.
- 27 Q. When Steve Hemming raised this comment that he heard  
28 Ronald Berndt theorise about the female nature of the  
29 Lower Murray landscape, did you say anything.
- 30 A. Yes.
- 31 Q. What did you say.
- 32 A. I think I vigorously denied it, because - or queried it,  
33 because I had been there at those discussions. I had an  
34 integral part in, firstly, bringing to light the article  
35 on Ngurunderi, which we used as the basis for the  
36 gallery. In discussing it with Ronald Berndt, in  
37 particular, in corresponding with him on the subject and  
38 in witnessing his appreciation of the way in which that

1 data had been applied in an exhibition. And so I was  
2 very close, close enough to realise that, if he had any  
3 theories, which he hadn't expressed in print and  
4 committed himself to it in print in 1993, that some  
5 indication of that, which has ramifications which bring  
6 us all here today, would have come to my attention. And  
7 I thought it was an extraordinary assertion for Steve to  
8 make and asked him, as quickly as he could, to come up  
9 with some evidence for it.

10 Q. And he said, what.

11 A. He said that he had seen something somewhere. And I  
12 asked him perhaps to materialise that, or produce it.

13 Q. Since then, he has told you, hasn't he, that he was  
14 mistaken and what he must have seen was the general  
15 reference to the Lower Murray lakes and the Coorong as a  
16 body described by the Berndts as symbolic of Ngurunderi.

17 A. He has not said that to me.

18 Q. Are you sure of that.

19 A. I don't have a memory of him saying that to me. That  
20 would amount to a retraction. And it would have a fair  
21 amount of significance for his apparent position on the  
22 characterisation of the Lower Murray landscape as  
23 somehow feminine in nature.

24 Q. Are you quite sure he has never come back to you and  
25 said, in reference to this conversation 'I was mistaken  
26 about that reference', or anything like that.

27 A. I am absolutely certain, yes.

28 OBJECTION Mr Abbott objects.

29 MR ABBOTT: Could I just raise the point, my learned  
30 friend has spent sometime on this. We now learn that,  
31 on her instructions, apparently, Mr Hemming has at least  
32 said he is retracting it. If her instructions are that  
33 he does retract it, can we get on with something else?  
34 This is no longer an issue then and we don't have to  
35 waste Mr Jones's time.

36 COMSR: It is not that so much, but where  
37 material has already been covered, I don't need to  
38 retrace it, but this is a fresh material.

- 1 MISS NELSON: I am only putting to this witness that  
2 the written reference was incorrect. That that was a  
3 mistake. I am not putting -
- 4 WITNESS: Sorry, which written reference?  
5 XXN
- 6 Q. You will recall you said that Mr Hemming told you that  
7 he thought he had seen it written somewhere.
- 8 A. He didn't use those words. I think he said he had seen  
9 something somewhere.
- 10 Q. Somewhere.
- 11 A. And, I mean, I took that to mean not a vision written in  
12 the clouds -
- 13 Q. Just so we are clear, I am not suggesting to you that he  
14 has come along and said 'Look, I think I am mistaken  
15 about this business of Ronald Berndt theorising about  
16 the female nature of the landscape.'
- 17 A. I thought that's just what you said.
- 18 Q. No, that is not what I am putting to you. So that we  
19 are clear about that.
- 20 COMSR: I wonder if you can clarify that?  
21 XXN
- 22 Q. What I am putting to you is that he has said to you that  
23 he originally believed he had seen a reference in the  
24 book, 'A World That Was', but he had since checked and  
25 that is incorrect.
- 26 A. No, I don't accept that, because I think the book itself  
27 was canvassed in that discussion and I think I, if not  
28 Philip, made the comment that it is specifically a male  
29 body which is referred to in the Berndts' book. And I  
30 think Steve countered that by suggesting that he had  
31 seen something somewhere, which indicated to myself and  
32 I suppose to Philip too, that he was looking at  
33 something that wasn't in the Berndts' book.
- 34 Q. Has there ever been any discussion between you and Steve  
35 Hemming, since that day, about this concept. That is,  
36 the female nature of the Lower Murray landscape.
- 37 A. No.
- 38 Q. Have you raised it with him since then.

- 1 A. No, I haven't.
- 2 Q. Can I suggest to you that this conversation about the  
3 possible female nature of the Lower Murray landscape did  
4 not take place until after February this year.
- 5 A. You could suggest that, but I wouldn't accept it.
- 6 Q. You say it was in about September of last year.
- 7 A. Late August, I think.
- 8 Q. But certainly after you had done an interview for  
9 Channel 10.
- 10 A. No, that was in May this year, I think.
- 11 Q. Yes, you are correct, I was looking at the wrong date.
- 12 COMSR: Miss Nelson, I wonder if I could clarify  
13 something? What you were putting to Mr Jones previously  
14 as possibly having been said by Mr Hemming, were you  
15 putting to him that that, in fact, was what originally  
16 he had put to Mr Jones? I am not quite clear that I  
17 followed you. You suggested to Mr Jones that Mr Hemming  
18 had said something. Are you putting to him that that  
19 was the original comment that he made, or a subsequent  
20 comment?
- 21 MISS NELSON: No, the original comment.
- 22 COMSR
- 23 Q. So what was being put was that, on the occasion on which  
24 he spoke to you, that that particular comment -
- 25 COMSR: I didn't note it.
- 26 MISS NELSON: About the female nature of the Lower  
27 Murray landscape.
- 28 COMSR: Yes, that's right.
- 29 COMSR
- 30 Q. Yes, that it was put originally and that somehow you  
31 misunderstood what he was putting to you.
- 32 A. Sorry, you will have to run that past me again.
- 33 MISS NELSON: No, that wasn't what I was putting.
- 34 COMSR: I simply hadn't followed the import of  
35 this. Could you just read that out to me? I want to  
36 make sure I don't misunderstand what the situation is.
- 37 MISS NELSON: Perhaps if I take it a step at a time.
- 38 COMSR: Can I just have the quote that you put

1 to the witness?

2 MISS NELSON: That Mr Hemming had heard Ronald Berndt  
3 theorise about the female or feminine nature of the  
4 Lower Murray landscape.

5 COMSR: Just so that I am clear here, you are  
6 suggesting to the witness that that was what Mr Hemming  
7 said to him, on that occasion?

8 XXN

9 Q. Do you agree that that is what he said.

10 A. I think we have had this conversation, haven't we?

11 COMSR

12 Q. Yes, I know, but I just wanted to make sure that I  
13 understood. Was that -

14 A. No, I think I - my earlier reply was that I didn't  
15 necessarily think that it was specifically Ronald Berndt  
16 and that I didn't agree that it was a broad concept such  
17 as the feminisation of the landscape, but that it was  
18 restricted, or more specifically related to a woman's  
19 body.

20 COMSR: Yes, that clarifies the issue for me,  
21 Miss Nelson.

22 XXN

23 Q. Did he also say that he thought Philip Clarke had been  
24 present during a conversation with Ronald Berndt about  
25 that topic.

26 A. I don't know that he did. I mean, no, I couldn't, I  
27 couldn't be sure of that. I would be open to the  
28 suggestion that it was Philip Clarke himself who  
29 suggested that he was present.

30 Q. Perhaps you would expand on that. What did Philip  
31 Clarke say.

32 A. I don't have a very clear memory of what Philip Clarke  
33 said, except to - in a substantive sense and that is  
34 that he expressed the same level of surprise as I did  
35 that a woman's body was being referred to in connection  
36 with this landscape on the basis that all the  
37 documentation points towards the other gender. And,  
38 more specifically, towards Ngurunderi as an ancestor.

- 1 Q. Did Philip Clarke say anything about being present at a  
2 conversation with Ronald Berndt. I thought I understood  
3 you to be suggesting that.
- 4 A. You asked me whether Steve Hemming said that Philip  
5 Clarke was there. I said -
- 6 Q. Or he thought that Philip Clarke was there.
- 7 A. Yes, and I said perhaps I wouldn't be quite sure about  
8 that, but I would be more open to the suggestion that  
9 Philip himself said that he was there. And I can't  
10 really take it any further than that.
- 11 Q. There when a conversation took place about the female  
12 body in the landscape.
- 13 A. When the serious conversation took place, I think Philip  
14 was usually on the scene as Steve and I were and we  
15 attended those meetings with the Berndts, which were  
16 usually held within the museum itself and often ranged  
17 across the subject of Ngurunderi and various nuances of  
18 the epic that we were working on to prepare the  
19 exhibition.
- 20 COMSR: This was fairly fully covered in the  
21 examination, Miss Nelson.
- 22 MISS NELSON: I don't think it has been addressed, at  
23 all, so far. That was my last question on the topic, if  
24 that helps.
- 25 COMSR: All right, yes, I thought I could see a  
26 Reference to it, on p.4237.
- 27 XXN
- 28 Q. After that conversation in, you think, late August 1994,  
29 there were no discussions between you and Steve Hemming  
30 about anything to do with Hindmarsh Island, is that the  
31 position.
- 32 A. Not specifically with Steve. I do recall another  
33 conversation with Philip where I was present, which I  
34 think was in the museum tearoom. But that wasn't  
35 specifically a conversation between me and Steve, no.
- 36 Q. When did that conversation take place.
- 37 A. Probably earlier this year, I would say. I can't be  
38 very specific about that. March/April. That is about



1 as far as I can -

2 Q. Before your television interview.

3 A. Yes, I would say so.

4 Q. How did you come to do that television interview.

5 A. I was approached by Chris Kenny, by telephone, I think.

6 Probably a couple of times, as I had been by a couple of  
7 other journalists. And, until certain other media  
8 exposure had taken place in the week prior to the  
9 interview that I did, I didn't consider that I had a  
10 useful role to play in making such a - coming forward  
11 and doing an interview. But, in that week prior to the  
12 interview, it - this was the week in which Bertha Gollan  
13 and Dorothy Wilson were interviewed, I think on the 7.30  
14 Report. And what struck me is that these women were  
15 receiving no real support from professional scholars or  
16 researchers who knew a great deal about the culture and,  
17 as such, they were exposed to the gentle ridicule of  
18 journalists who, no criticism intended, had very little  
19 training or background in the area. And assumed, from  
20 what they had been told by a couple of individuals,  
21 notably Dr Fergie, that the basis for being sceptical  
22 about the existence of secret sacred women's business on  
23 Hindmarsh Island was very slight. And I found that this  
24 'gentle ridicule', as I put it, in terms of Bertha  
25 Gollan, for example, being characterised as turning 100  
26 years of anthropological orthodoxy on its head, as one  
27 particular television interviewer portrayed her, was  
28 offensive.

29 CONTINUED

## P.G. JONES XXN (MISS NELSON)

1 and that I considered that the museum had a role to play  
2 in letting enough information out into the community so  
3 that people could see where the facts supported it, that  
4 this kind of stand that was taken by those women was not  
5 aberrant, anomalous or the sort of thing that ought to  
6 be subject to that kind of treatment, so I guess in that  
7 sense I felt partly as though I was coming in to bat on  
8 the part of a point of view that had not previously had,  
9 perhaps, a proper airing.

10 Q. And that was the dissident women's point of view.

11 A. Yes.

12 Q. So that Channel 10 interview, were you introduced as the  
13 Head of the Anthropology Department of the Museum.

14 A. Yes.

15 Q. Dr Clarke has told us that it was museum policy not to  
16 become involved in any type of political or contentious  
17 situation.

18 A. That's a broad principle which applies particularly to  
19 more junior people in the museum. Progressively, as you  
20 move up the echelons, that situation changes to the  
21 extent where the director is entitled, or has autonomy  
22 to make comments on a whole range of issues, and that  
23 autonomy is delegated at least to the next rung, which  
24 is at the divisional head level. I made a particular  
25 point of speaking with the director before doing that  
26 interview, telling him that I didn't feel comfortable  
27 about doing it. Personally, as it happened, fairly  
28 uncomfortable, because I'd had this bad throat problem,  
29 I wasn't in tiptop shape for giving television  
30 interviews, but I felt that it was necessary at that  
31 stage because no other anthropologist in South Australia  
32 or elsewhere had come forward to put the point of view  
33 which, after all, is overwhelmingly the anthropological  
34 orthodox position, that is that documented extensively  
35 in the Berndt's volume.

36 Q. As I understand what you've said in your statement, that  
37 was productive of a fairly strong words on the part of  
38 Dr Kartinyeri.

1 A. Yes.

2 Q. You've said that she was angry.

3 A. Yes. I think she was astonished that anyone could have  
4 the temerity to cross swords with her on that topic. It  
5 wasn't - yes, I will leave it at that.

6 Q. In your statement, you say that she told you that `Steve  
7 Hemming told her that the Lakes and Murray Mouth were  
8 evocative, mythologically, of a women's internal organs,  
9 and that the authority for this analogy rests with  
10 Catherine Berndt'. In what context did she say that.

11 A. I said to her - because I mean it wasn't entirely an  
12 harangue, it wasn't entirely just a heated conversation,  
13 we actually had a bit of a discussion - and I said to  
14 her words to the effect of `What is this based on,  
15 Doreen? I mean this claim about secret sacred women's  
16 business, what is it based on, and where is it - I mean  
17 where are you getting', sort of, I suppose, `What are  
18 your sources', is the sum effect of what I was asking,  
19 and she - I didn't get the impression that she was  
20 giving me all her sources, but she mentioned Steve and  
21 mentioned the fact that he had supported her in this  
22 idea. That is, I suppose, she was quite understandably  
23 saying `This is an opinion which is shared by another  
24 staff member in the division'.

25 Q. You never took that up with Steve Hemming, did you,  
26 after that conversation.

27 A. No, I didn't. I took it up with the director, because I  
28 felt at that stage what we were looking at was a pretty  
29 significant split, I suppose, within the division, which  
30 would have ultimate ramifications for the way in which  
31 we carried out our business.

32 Q. Because you have to work together.

33 A. Yes, so I suggested to the director that, in a sense, we  
34 had passed into a different reality as far as the  
35 division was concerned, and that we needed to address  
36 that.

37 Q. Well, did the director take it up with Steve Hemming, or  
38 you, or anyone else.

1 A. The director certainly took it up with Doreen and, at  
2 that stage -

3 Q. I'm not interested in what he took up with Doreen, but  
4 can you tell me if, to your knowledge, he took it up  
5 with Steve Hemming.

6 A. He didn't suggest to me that he had.

7 Q. If he did, he didn't tell you about it.

8 A. Yes.

9 Q. You certainly didn't raise what Doreen Kartinyeri had  
10 said to you with Steve Hemming.

11 A. No, I don't think I did.

12 Q. Why not.

13 A. Well, it appeared to be an intractable opinion from  
14 sources, other sources that I was in contact with, or  
15 were in contact with me. This was the period, you have  
16 to remember, I suppose, in which allegations of sorcery  
17 were being made. There was the proposition that  
18 particular individuals associated with people being  
19 discussed had aligned themselves in such a way that the  
20 possibility of just having a quiet chat about something  
21 of this nature had probably passed.

22 Q. Who were your other sources. Who was making these  
23 allegations.

24 A. Various members of the anthropology division are in  
25 contact with various members of the Aboriginal community  
26 across the board and, I suppose, on a daily basis,  
27 discussions were had here and there around the place.

28 Q. Let me make it easier for you to answer that question,  
29 because I can see there is some difficulty. Did Steve  
30 Hemming make any of these allegations to you.

31 A. No.

32 Q. Was he the source of any of this other information.

33 A. Perhaps indirectly.

34 Q. In what way.

35 A. Well, through discussions with other members of the  
36 division who said 'Steve says this', or other members of  
37 the division who said 'Doreen says this', and so on. So  
38 it's that, I think, kind of environment that you're

1 looking at.

2 Q. So everyone was having plenty to say about everyone else  
3 in that division, is that the case.

4 A. No, this was a pretty patchy thing. I mean some people  
5 preferred to keep absolutely quiet and neutral and to  
6 just slip out of the room if the topic came up. Others  
7 would put the kettle on.

8 MR MEYER: By that does he mean heat it up or make  
9 a cup tea.

10 COMSR

11 Q. Were you saying that, from what you heard, putting in a  
12 neutral way, from people in the department, they were  
13 passing on information they had got from the Aboriginal  
14 community.

15 A. That's correct.

16 Q. About sorcery and such like.

17 A. Yes.

18 XXN

19 Q. At this particular time, this is around about the end of  
20 May, early June of 1995, there was a fair amount of  
21 gossip mongering and rumour mongering going on in the  
22 museum, was there.

23 A. I think a direct reflection of what was going on in the  
24 community and the media, probably, at the time. Nothing  
25 extraordinary.

26 Q. But you didn't think to take up what Doreen Kartinyeri  
27 had said with Steve Hemming directly.

28 A. I did think about it, and I didn't take it up because it  
29 was quite obvious that things had been set in motion,  
30 alignments had been deepened and marked to an extent  
31 that a conversation of a conciliatory nature wouldn't be  
32 possible.

33 Q. In your position, that might have been made a lot harder  
34 by your public alignment with the dissident women, might  
35 it not.

36 A. I think if you have a good look at that Channel 10  
37 interview, you will see that I'm not entirely aligning  
38 myself with the dissident women. What I'm suggesting

1 there in that interview is that there is not a shred of  
2 evidence to suggest that secret sacred women's business  
3 on Hindmarsh Island existed but that, on the other hand,  
4 we have a group of women who suggest that it exists at  
5 present, and that the legislation allows for the  
6 evolution of tradition, and that that conceivably could  
7 be an explanation for what has gone on. I stopped short  
8 of actually exploring that topic to the extent of saying  
9 that the evolution of tradition in this case cannot  
10 allow for what it is that's been proposed as secret  
11 sacred women's business on Hindmarsh Island. By  
12 stopping short of that, I think I prevented myself from  
13 aligning myself publicly and quite unmistakably with the  
14 dissident women. I was quite careful about that.

15 Q. From the information that came back to you, did you get  
16 the impression it was perceived by people that that is  
17 what you had done, that is aligned yourself with the  
18 dissident women, whatever your intention might have  
19 been.

20 A. Yes, but not invariably. I knew that that would  
21 probably be the outcome.

22 Q. The result of that interview was that you were moved  
23 from your position as head of anthropology to a position  
24 as project officer, isn't that right.

25 A. That isn't right. That's absolutely incorrect.

26 Q. When were you moved to the position as project manager.

27 A. I actually wasn't moved. What had been in the wind for  
28 a couple of years, and what was in the wind before I  
29 even took up the position as head of division, was a  
30 major project which has since come on-stream, and it was  
31 understood, when I took up the position, that when that  
32 project came on-stream, I would be the person most  
33 likely to undertake it. Events moved in such a way that  
34 that project actually started about a month after the  
35 Channel 10 interview.

36 Q. When did you officially become senior project officer,  
37 division of anthropology.

38 A. 13 June.

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(MS PYKE)

1 Q. 13 June.

2 A. Yes.

3 Q. The television interview was 30 May.

4 A. Yes.

5 Q. Dr Kartinyeri came to see you the following day, which  
6 will have been 31 May.

7 A. I think so, yes.

8 Q. There was a deputation, as I read your evidence, from  
9 the ALRM to Dr Anderson. When was that.

10 A. If it wasn't 31 May, it could have been 1 June.

11 Q. They demanded your resignation.

12 A. Well, according to the director, yes, but I haven't had  
13 any direct evidence of that.

14 Q. Within two weeks, you became special project officer or  
15 manager.

16 A. Yes.

17 Q. Are you aware of the director telling other people in  
18 the museum that you'd, in effect, been moved to preserve  
19 the peace.

20 A. Our director is a consummate politician. I wouldn't be  
21 surprised by that.

22 COMSR: Where is this taking me?

23 MISS NELSON: It might be helpful on credit.

24 MISS NELSON: I don't know that I have any other  
25 questions, but if you'd just bear with me for a couple  
26 of moments, I'd like to take some instructions. I have  
27 no further questions.

28 COMSR: I propose to call on Ms Pyke next. Do  
29 you intend asking any questions?

30 MS PYKE: Yes, I do.

31 COMSR: A great deal of matters have already  
32 been canvassed. You don't need to go over those again.

33 CROSS-EXAMINATION BY MS PYKE

34 Q. Just on the issue of your dealings with the press, were  
35 you talking to members of the press, particularly the  
36 print media, on or off the record, before the interview  
37 with Channel 10.

- 1 A. Before the interview with Channel 10? I assume what's  
2 behind that is reference to my longstanding acquaintance  
3 with Christopher Pearson, is that correct?
- 4 Q. Don't worry about what's behind the question. Perhaps  
5 an answer to the question might suffice.
- 6 A. Yes, I had had conversations with people.
- 7 Q. Because there have been a number of articles written by  
8 Mr Pearson, haven't there, in the 'Australian', for  
9 example.
- 10 A. Yes.
- 11 Q. Did you provide Mr Pearson with any information in  
12 relation to those articles.
- 13 A. Very little actually. Surprisingly little you might  
14 say. Christopher Pearson has his own sources, I  
15 believe, and actually employs Chris Kenny as an  
16 occasional journalist at the 'Adelaide Review'. Chris  
17 Kenny is an investigative journalist, so I am -
- 18 Q. I am not asking you about other sources. I am asking  
19 about you and your provision of information to Mr  
20 Pearson, a journalist.
- 21 A. It was occasional.
- 22 Q. There was an article written by Mr Pearson in the  
23 'Australian' on 22 May 1995. That's part of Exhibit 67.
- 24 COMSR: Where is this line of questioning going?
- 25 MS PYKE: I want to ascertain from this witness  
26 that he has, by a back door, been involved in the debate  
27 for some time.
- 28 COMSR: I don't think the witness needs to state  
29 by a back door. I think he has gone in through the  
30 front door.
- 31 MS PYKE: Prior to his interview with the Channel  
32 10 media is what I am getting at.
- 33 XXN
- 34 Q. I suggest you have been providing information to Mr  
35 Pearson for the purposes of his articles in the  
36 'Australian' - I will put this question to you  
37 generally, it might save us going through each and every  
38 one of them - and the 'Adelaide Review' over a



- 1 substantial period of time.
- 2 A. Could you just put that in the form of a question,  
3 please?
- 4 Q. I thought it was a question. You can answer it or not.  
5 I put it to you that you have provided to Mr Christopher  
6 Pearson, information for his articles in the print media  
7 and, in particular, the 'Australian' and the 'Adelaide  
8 Review', over a period of time.
- 9 A. On a range of topics, probably since about 1981.
- 10 Q. In particular, in relation to the Hindmarsh Island issue  
11 and the women's business in relation thereto.
- 12 A. I'm probably one of a number of sources -
- 13 Q. I am not asking about other people. Perhaps just answer  
14 for yourself, if you wouldn't mind.
- 15 COMSR
- 16 Q. Have you anything to add to your earlier answer that  
17 occasionally you discussed the matter with him.
- 18 A. No, it is an occasional relationship.
- 19 XXN
- 20 Q. And that information that you provided to Mr Pearson  
21 certainly preceded your interview with Channel 10.
- 22 A. Yes, yes. No problem with that.
- 23 Q. Do you suggest that you are an anthropologist.
- 24 A. No. I suggest that I'm often referred to as an  
25 anthropologist.
- 26 Q. I am asking you do you suggest that you are an  
27 anthropologist.
- 28 A. No - in some senses, yes, but -
- 29 Q. In what senses do you suggest that you are an  
30 anthropologist.
- 31 A. In the sense that I've undertaken field work over a  
32 number of years with Aboriginal communities; in the  
33 sense in which I have published in the field of  
34 Australian anthropology; in the sense in which I was  
35 appointed as Head of the South Australian Museum  
36 Division of Anthropology; in the sense in which I've  
37 worked for a number of years with anthropologists and

- 1 attended conferences and given papers at anthropological  
2 conferences. Is that enough senses?
- 3 Q. Perhaps just answer the questions rather than ask them,  
4 if you wouldn't mind. So that's the senses in which you  
5 say that are you are an anthropologist.
- 6 A. Some of the senses.
- 7 Q. If you have got any other senses that you would like to  
8 share with me, please do.
- 9 A. No, we will leave it at that.
- 10 Q. Are you a member of any professional society of  
11 anthropologists.
- 12 A. No.
- 13 Q. Do you have any tertiary qualifications in relation to  
14 anthropology.
- 15 A. I have two undergraduate units in anthropology, yes.
- 16 Q. Do you, generally speaking, consider yourself to be an  
17 historian. I know you have got a law degree and the  
18 like. In terms of your own description of yourself, how  
19 would you describe yourself.
- 20 A. As an historian, yes, that's correct.
- 21 Q. You have talked about doing field work. Can you tell us  
22 what field work you have done with Aboriginal people of  
23 the Ngarrindjeri community.
- 24 A. It's fairly limited. I worked - I undertook a number of  
25 trips to Point McLeay back in the early 80s at a time at  
26 which we were just beginning to undertake consultations  
27 and gather data for the Ngurunderi exhibition. Since  
28 then, field work in that region has given way to work in  
29 other areas.
- 30 Q. Just pausing there, before we move on to other areas,  
31 what field work did you do. You have told us you did  
32 field work. I am trying to ascertain from you how much  
33 time you spent in the field with Ngarrindjeri people.
- 34 A. Perhaps 8 to 10 visits to Point McLeay; a couple of day  
35 trips to the Coorong; a three week period of living on  
36 the Coorong, working with Ngarrindjeri people, among  
37 others; doing the excavation of an archaeological site  
38 in September 1981; a further period of two weeks living

1 in the Coorong further south; and also working with  
2 Ngarrindjeri people during February 1982. I suppose,  
3 taken together, probably five or six times the amount of  
4 time your client has spent with Ngarrindjeri people.

5 Q. Perhaps just answer the question for yourself and  
6 reserve the comments for yourself. We might proceed a  
7 lot further. Is that one of your criticisms of Dr  
8 Fergie.

9 A. No. I just wanted to put it into perspective, because  
10 it is a difficult question to answer.

11 Q. I suggest to you it is a very simple question for you to  
12 answer as to what field work you have done with the  
13 Ngarrindjeri people. It is a very straightforward  
14 question, capable of an exceedingly straightforward  
15 answer.

16 A. I have just given it.

17 Q. This is the situation, I suggest to you, you really are  
18 trying to turn every answer into an attack on Dr Fergie,  
19 aren't you.

20 A. Not at all.

21 COMSR: The witness has actually been asked at  
22 length about his experience and qualifications.

23 MS PYKE: I want to just ask a couple of questions  
24 on this topic.

25 XXN

26 Q. You don't purport yourself to have in any way undertaken  
27 ethnographic work in relation to the Ngarrindjeri  
28 people.

29 A. Yes, I do actually.

30 Q. In what way do you purport to have undertaken  
31 ethnographic work in relation to the Ngarrindjeri  
32 people.

33 A. I undertook a literature search relating to the people  
34 which involved, in the early 80s, probably 82 to 85, I  
35 guess - 84 perhaps - preparing a working bibliography  
36 which was cross-referenced and indexed. This involved  
37 physically locating, reading and making notes from  
38 approximately 200 ethnographic references. I have a

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- 1 data base on file cards which is indexed to cultural  
2 subjects such as women's life, marriage, rites of  
3 passage. That comprises that section of the  
4 ethnographic work. I suppose the bulk of it consisted  
5 of an application of those sources, a testing of the  
6 relative weight which could be given to them in  
7 producing and contributing towards the production of an  
8 exhibition which purports, I suppose, to give as  
9 complete a picture of traditional Ngarrindjeri life,  
10 culture and history as is possible. So, to that extent,  
11 I would say that, up until the installation of that  
12 exhibition in the museum, I'd probably done as much  
13 ethnographic work in a traditional sense, perhaps  
14 without the field work component, as probably the two or  
15 three other people at that time.
- 16 Q. Is what you are saying this, that in the context in  
17 which you maintain that you have done ethnographic work,  
18 what you are basically talking about is looking at the  
19 published materials.
- 20 A. No. It also involved a large - a full scale exploration  
21 of unpublished material, and that -
- 22 Q. By 'published' I mean perhaps written. Let me clarify  
23 that. You have gone to sources where someone else has  
24 written something about Ngarrindjeri tradition and  
25 culture.
- 26 A. Not exclusively. I also took the step of obtaining from  
27 the Institute of Aboriginal Studies, a collection of  
28 some 40 reel-to-reel sound tapes recorded during the  
29 1960s, the period of Rebecca Wilson's prominence, I  
30 might say, in this commission, sound tapes which,  
31 although recorded by linguists - who I also spoke to  
32 extensively, Dr Catherine Ellison and Dr Luise Hercus -  
33 also contained a great amount of ethnographic data, so  
34 that in fact what I was doing was listening to the  
35 voices, not the processed ethnographic literature that  
36 you are suggesting I concentrated on, but the actual  
37 voices of Aboriginal people who were knowledgeable about

1 their culture in the 1960s and provided a great amount  
2 of data relating to daily life and spiritual life.

3 Q. Do you agree with me that, insofar as ethnography is  
4 concerned, the primary methodology of that is  
5 participant observation.

6 A. No. I would agree that anthropology is distinguished by  
7 that characteristic today, by and large, but  
8 ethnography, taken in its usual sense, involves the  
9 practitioner in a very often just a desk-based or a  
10 library-based, archive-based exercise. That is its  
11 accepted definition.

12 Q. Accepted by whom and in what circumstances, by  
13 historians, anthropologists or -

14 A. We are looking at a semantic difference. I think the  
15 question that you really wanted to ask me was  
16 anthropology. If we characterise anthropology, yes, we  
17 would say that practitioners generally engage in  
18 participant observation.

19 Q. You, as I understand it, claim to be putting on your hat  
20 as an anthropologist in this commission. Am I wrong in  
21 making that assumption.

22 A. Yes.

23 COMSR: I think you asked the witness what  
24 ethnological -

25 MS PYKE: The primary methodology of ethnography  
26 is participant observation.

27 COMSR

28 Q. What is encompassed by the term 'ethnography' as  
29 distinct from 'anthropology'.

30 A. I suppose we have got to step outside that to another  
31 term which is ethnology, which is the broader study of  
32 peoples. But ethnography generally involves a focused  
33 study of a particular people, and it is certainly not  
34 essential that the person undertaking that study live  
35 with the people. It is very often a desk-based  
36 exercise. Once you get into anthropology, you are  
37 stepping into, I suppose, practising in the sense of  
38 which a researcher lives with them, observes people at

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1 firsthand, and, in many cases, as is the trend I think  
2 in social anthropology in Australia, unfortunately there  
3 is very often a propensity to ignore the literature. I  
4 think we have been tripped up on that in this  
5 commission.

6 XXN

7 Q. Who is 'we'. Who are you purporting to speak on behalf  
8 of.

9 A. The people in this room.

10 Q. Who.

11 COMSR

12 Q. Ethnography is the analysis of data, and anthropology is  
13 the collection.

14 A. No, not strictly speaking. Ethnography is very often  
15 the compilation of data. Because of its traditional  
16 associations with 19th century desk-based ethnography,  
17 it still often carries with it the connotation of  
18 archivally-based, literature-based work. Whereas  
19 anthropology, because it didn't really exist, except as  
20 physical anthropology in the early 19th century, social  
21 anthropology itself very often consists of these  
22 participant observation exercises.

23 CONTINUED

1 XXN

2 Q. I will just put this to you: for the purposes of  
3 anthropology, ethnography entails, firstly, in-the-field  
4 ethnographic research, usually a period of 12 to 24  
5 months, in which the researcher basically lives the  
6 day-to-day life of the community with which they are  
7 working. Secondly, a period of ethnographic analysis.

8 COMSR: Wait until he answers them one at a  
9 time.

10 MS PYKE: I was going to put all three.

11 XXN

12 Q. Have you any knowledge of that being -

13 A. The accepted model I suppose is that derived from  
14 university departments across Australia who tend to  
15 project their students into the field for periods up to  
16 12 to 18 months, as you suggest. And there then follows  
17 a period of writing-up, in which those experiences are  
18 set into their wider perspective, which itself often  
19 involves an ethnographic approach. That is in terms of  
20 a literature search and a compilation of available  
21 sources. So, if we are going to further pursue this  
22 excursion into definitions, I am happy to provide you  
23 with more information.

24 COMSR: I hope we are not going to pursue it too  
25 far.

26 XXN

27 Q. What I simply was going to put to you was that, for the  
28 purposes of anthropology, mainstream anthropology would,  
29 I suggest to you, see an ethnography as comprising three  
30 parts. The first and an important part, I suggest to  
31 you, is in the field research for a period of 12 to 24  
32 months living the day-to-day life of the community.  
33 Second, is a period of what is termed ethnographic  
34 analysis, which incorporates a reading of relevant  
35 materials. And the third of which is the actual  
36 production of the ethnography, which is an analysis of  
37 the field work and the literature in the particular  
38 context. Do you disagree with that as being a model of

- 1 anthropological ethnography.
- 2 A. That is a model. A model that is more relevant I
- 3 suppose to this issue is what sort of standards and
- 4 methodology one adopts, if one is about to explore a
- 5 particular question relating to a particular group of
- 6 people.
- 7 Q. I suggest to you that, from mainstream anthropologists
- 8 points of view what I have just suggested to you is the
- 9 way in which a community would be studied, by some
- 10 substantial field work in the field looking at the
- 11 literature and then -
- 12 COMSR: I am sorry, is this the anthropologist,
- 13 what an anthropologist would do?
- 14 MS PYKE: Yes.
- 15 COMSR: As distinction from an ethnographer?
- 16 WITNESS: As distinct from an ethnographer and
- 17 presumably as distinct from an historian. Is that the
- 18 suggestion?
- 19 XXN
- 20 Q. Look, is that your answer to my question.
- 21 A. Not completely.
- 22 Q. Would you complete your answer and then we can perhaps
- 23 move on.
- 24 A. Because I think what - I mean, if we are asking a
- 25 question of what is required of an anthropologist
- 26 working in Australia today, because just to suggest an
- 27 anthropologist is, in a sense, to paint a sort of
- 28 idealistic picture. But, if your question has a
- 29 practical edge to it, that is, the extent to which a
- 30 practitioner can produce data which is testable and
- 31 subject to analysis, I would give a slightly different
- 32 answer. So, I suppose my answer is, in the ideal sense,
- 33 yes. And you can take it from there.
- 34 Q. In the ideal sense, are you aware of any ethnography, in
- 35 the model of which I have just put to you, being done in
- 36 relation to the Ngarrindjeri people by anyone in the
- 37 museum.
- 38 COMSR: I find that hard to follow, Ms Pyke.



1 You have asked the witness about anthropological -

2 MS PYKE: Yes, and I have just said 'In the model

3 I have just put to you', which I say is the  
4 anthropological model.

5 COMSR: Yes, right.

6 XXN

7 Q. Are you aware of anyone within the museum who has done  
8 an anthropological ethnography in relation to the  
9 Ngarrindjeri people.

10 A. I will put that previous definition to one side, because  
11 it now becomes plain that what you are talking about is  
12 not the ideal world, but the world of reality. And, in  
13 that sense, in terms of a person who would be accepted  
14 as having the expertise and the experience and have  
15 gathered sufficient data to be regarded as an  
16 anthropologist working with and able to pronounce upon  
17 aspects of the Ngarrindjeri community, I would say, yes,  
18 certainly there is such a person. And that is Philip  
19 Clarke.

20 Q. I put a particular model to you - and I will go through  
21 it again - and I want you to answer the particular  
22 question that I am putting to you. Are you aware of  
23 anyone in the museum who has spent a period of 12 to 24  
24 months in the field with Ngarrindjeri people living  
25 their day-to-day life as part of that community.

26 A. Would you - can I just get a point of clarification?  
27 Would you classify living in a day-to-day life with a  
28 Ngarrindjeri person.

29 Q. No, I wouldn't classify that, I wouldn't classify 'a  
30 person'. Presumably you are talking about Dr Clarke's  
31 wife. Do you know of anyone in the museum who has spent  
32 12 to 24 months living amongst the Ngarrindjeri  
33 community as part of their day-to-day life. That is,  
34 the life of the community.

35 COMSR: Continuous?

36 XXN

37 Q. Continuously.

38 A. Continuously and actually making a record as they go?

- 1 So, we are not talking about the school teacher at Point  
2 McLeay, for example?
- 3 Q. An anthropologist purporting to be doing an ethnography.  
4 A. Within the museum?
- 5 Q. Yes.  
6 A. No.
- 7 Q. Is it your view, from your discussions with Dr Clarke,  
8 that he in some way has done some in-the-field  
9 ethnographic research in the Ngarrindjeri community.  
10 A. It is not just my view, it is -
- 11 Q. No, I am asking you about your view. Don't worry about  
12 anyone else. If I want you to comment about anyone  
13 else, I will ask you very specifically.  
14 A. It is my view, yes.
- 15 Q. You have referred, I think, to various writings that you  
16 have read and you have referred to various people that  
17 you believe have been involved in working with the  
18 Ngarrindjeri community. Perhaps historically. Firstly,  
19 the Tindales: you have read the work of Mr Tindale. I  
20 think it is Mr. I might be -
- 21 A. No, Dr. Dr Tindale.  
22 Q. Dr Tindale.  
23 A. I have read some of his work, yes.
- 24 Q. Have you read his work in relation to the Ngarrindjeri  
25 people.  
26 A. I have read most of his work in relation to the  
27 Ngarrindjeri people.
- 28 Q. Are you of the view that Dr Tindale did an ethnographic  
29 field work in relation to the Ngarrindjeri people.  
30 A. Yes.
- 31 Q. In what sense do you say that he did.  
32 A. In several senses. In the first sense I suppose of  
33 undertaking trips to Point McLeay over a period of  
34 years, probably from the early 1930s through to probably  
35 the 1960s. Perhaps one or two trips since then.
- 36 Q. Do you -  
37 A. I haven't finished yet. In the second sense, very close  
38 collaborative research with four or five individuals.

1 Notably Clarence Long, otherwise known as Milerum. In a  
2 further sense in terms of an extensive and for his  
3 period exhaustive literature search and analysis  
4 touching on a range of issues. In a further sense,  
5 having worked with Clarence Long at the museum where  
6 Clarence Long actually, I suppose, undertook to provide  
7 as much information as he could to Tindale on the museum  
8 premises. That is an adequate summary, I think.

9 Q. Do you make any distinction between what I may refer to  
10 as field trips, that is, trips out of short duration to  
11 the field and extensive field work.

12 A. There is no doubt at all that Tindale has been sniped at  
13 by social anthropologists from the eastern States for  
14 not having undertaken or fallen in with the model of  
15 research that you suggest is the standard, academic  
16 model of participant observation.

17 COMSR: I don't understand that. I thought it  
18 was ideal rather than standard that you put.

19 MS PYKE: I hadn't put ideal. This witness  
20 somehow or other says that is the ideal and that is his  
21 answer.

22 WITNESS: It is both, I suppose. It has become a  
23 standard. In the period in which Tindale worked, there  
24 wasn't a Department of Anthropology in South Australia.  
25 That wasn't founded until 1973. By that time, Tindale  
26 was 73. A bit unrealistic to expect him to enrol as a  
27 student, at that time, I suspect.

28 XXN

29 Q. Because you are aware that one of the criticisms of  
30 Tindale is really that he spread himself, if I can put  
31 it in the colloquial, very thinly. He travelled broadly  
32 and spoke to a lot of people, but didn't spend intensive  
33 time with any particular community.

34 A. That is a flippant criticism made by some people of  
35 Tindale's work and it is entirely inaccurate, as far as  
36 his involvement with Lower Murray people goes.

37 Q. I think, just generally speaking, you have, in answer to  
38 some questions from Miss Nelson, answers to questions in

1 relation to this area of what I refer to as, perhaps,  
2 the domination of the Ngarrindjeri historical record by  
3 male reporters, if I can put it that way. And, as I  
4 understand it, you don't necessarily agree with that, is  
5 that correct.

6 A. No, I don't necessarily agree with that.

7 Q. You have, I think, referred to several women, yourself,  
8 in the context of women who have been involved in  
9 recording Ngarrindjeri tradition and culture. One of  
10 whom was Alison Harvey.

11 A. Yes.

12 Q. Do you know what Alison Harvey's work-history with the  
13 Ngarrindjeri people was.

14 A. Roughly, but -

15 Q. You just tell us what you roughly know.

16 A. I believe she is appearing before this Commission, so  
17 you will have an opportunity to ask her.

18 Q. I am asking you. You have put her forward as someone  
19 you say, or you have put her forward to refute the  
20 notion that there is some - there is a domination of  
21 male recording of the Ngarrindjeri people. Now, you  
22 have put her forward, so I am asking you basically to  
23 justify the basis that you put her forward. So I am  
24 asking you about your - what you know of Alison Harvey's  
25 work with the Ngarrindjeri people.

26 A. Yes, I believe that, in 1939, Alison Harvey had  
27 undertaken a couple of field trips to other parts of  
28 South Australia. To the Ooldea region. And to one or  
29 other of the Flinders Ranges or Ernabella, she did -

30 Q. I am asking you as to Ngarrindjeri, you understand.

31 A. Yes, I am coming to that. And she, on the basis of  
32 those particular field experiences, during which she was  
33 - it was suggested that she undertake a particular  
34 investigation of women's issues, that, having armed  
35 herself with that experience, later in 1939 she  
36 undertook investigations down in the Lower Murray lakes  
37 area. And worked with at least two Ngarrindjeri women,  
38 including Pinkie Mack and Charlotte Rigney, but also

1     undertook investigations with Aboriginal men, at that  
2     time.

3     Q. Do you know how extensive her field work was. As I say,  
4     you have put her up as someone who refutes the notion of  
5     the male dominance.

6     A. It was extensive enough, enough to have filled several  
7     notebooks, the results, in terms of fairly closely  
8     gathered data relating to the sorts of issues that are  
9     before this Commission.

10    Q. Do you know whether she was there days, weeks, whether  
11    she lived amongst the Ngarrindjeri people. Do you know  
12    anything about that.

13    A. Her family had a property at - in the vicinity. And I  
14    believe that, over a period of years, she probably had  
15    exposure to Ngarrindjeri people.

16    Q. Do you know or not. Do you know in any way, shape or  
17    form what her field work -

18    A. Yes, I am answering that question. I mean, what I am  
19    suggesting is that, over a period of years, she had  
20    exposure to Ngarrindjeri people who were camped at  
21    various times of the year on the property or close to  
22    it. And, in terms of the actual applied work which  
23    produced the notebooks that I am mentioning, that work -  
24    that particular data I believe was gathered during the  
25    course of one day.

26    Q. Do you agree with me that, on the basis of your  
27    knowledge, that Alison Harvey did not have an extensive  
28    connection in terms of working with the Ngarrindjeri  
29    people.

30    A. I think, you know, it compares - at the risk of sounding  
31    provocative - it compares very, very well with your own  
32    client's.

33    Q. I ask you not to be provocative. I ask you to answer  
34    the questions that I ask you and not to twist them  
35    around to what, frankly, are becoming self-serving  
36    statements that you have a desire to give from the  
37    witness box.

38    OBJECTION           Ms Simpson objects.

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- 1 MS SIMPSON: I object to that form of questioning.  
2 Mr Jones has come here at the request of the Commission  
3 and I ask Ms Pyke to confine herself to questions and  
4 not statements.
- 5 COMSR: Yes, the witness is not on trial or  
6 anything.
- 7 MS PYKE: I can appreciate that.
- 8 COMSR: This is a fact-finding -
- 9 MS PYKE: I was actually waiting for some  
10 objection from counsel assisting. The witness is making  
11 self-serving statements that bear no relationship to the  
12 question asked.
- 13 OBJECTION Ms Simpson objects.
- 14 MS SIMPSON: This is not the appropriate forum. Mr  
15 Jones is here to answer questions in cross-examination.  
16 If later on Ms Pyke wishes to make some submissions to  
17 you about the evidence he has given, then there will  
18 come a time when that is appropriate. It is not  
19 appropriate now.
- 20 MS PYKE: I think, frankly, it is a fair thing for  
21 me to put this witness on warning that self-serving  
22 statements are -
- 23 WITNESS: Can I -
- 24 COMSR: The witness is not on trial or anything.  
25 The witness is here to assist with -
- 26 WITNESS: Can I suggest to you that I am not  
27 making self-serving statements.
- 28 COMSR
- 29 Q. Mr Jones, you don't have to suggest that.
- 30 A. But, in fact, when you are suggesting that Alison Harvey  
31 has inadequate credentials in terms of the data that she  
32 has prepared and placed on the record, I just want to  
33 inject a little sense of relativity here in relation to  
34 work that has been done subsequently.
- 35 XXN
- 36 Q. I am simply putting the question to you on the basis  
37 that you have said one of the reasons that it is your  
38 view that the recording of information in relation to

1 the Ngarrindjeri people is not dominated by male  
2 recorders is, firstly, that Alison Harvey - I am simply  
3 - was asking you for your knowledge of the extent to  
4 which Alison Harvey had connection and worked with the  
5 Ngarrindjeri people. Now, it is a very simple question  
6 and you have answered it.

7 OBJECTION Ms Simpson objects.

8 MS SIMPSON: Again, is that a question, or is that a  
9 statement? I again renew my objection to Ms Pyke making  
10 statements of that sort from the bar table. That is not  
11 appropriate, in my submission.

12 MS PYKE: With respect, if the witness -

13 COMSR: Ms Pyke, how is this going to help me,  
14 unless I can go into an examination of all of the  
15 anthropologists and the amount of field work they have  
16 done?

17 MS PYKE: I am simply putting to you that one of  
18 the criticisms of my client and her report is that there  
19 is nothing recorded in the anthropological literature  
20 about certain issues. One of the things that we are  
21 having trotted out to us is that there have been various  
22 women who have worked in the field with Ngarrindjeri  
23 people.

24 COMSR: Yes.

25 MS PYKE: I think it is a very fair thing for me  
26 to do, is to question and elicit from those witnesses  
27 what experience they say these women who have worked in  
28 the field have. Now, I would have thought that was  
29 pretty fundamental.

30 WITNESS: Yes, but what I am suggesting is that,  
31 to reduce my answer on the suggestion that this person  
32 just breezed in for an afternoon, jotted down a few  
33 things and then disappeared, is to substantially  
34 misrepresent Alison Harvey's contribution to the topic,  
35 because she had come into this field with the benefit of  
36 some incisive field experience based entirely on the  
37 issue which is before this Royal Commission. And, when  
38 she came - went down to Point McLeay to that area, she

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- 1 homed in on the exact topic that is being discussed at
- 2 this Royal Commission.
- 3 CONTINUED



1 in that sense, even if she only asked one question and  
2 got back in her vehicle or whatever and disappeared, it  
3 would be of significant relevance.

4 XXN

5 Q. Well, is your information about Alison Harvey contained,  
6 from what you've heard, in her statement to this  
7 Commission.

8 OBJECTION Ms Simpson objects

9 MS SIMPSON: How can that with relevant, where the  
10 information came from?

11 MS PYKE: He has given the information, I want to  
12 know what his sources are.

13 MS SIMPSON: Where Mr Jones gets the information from  
14 is not relevant. If she has other information, put it  
15 to him. It's not appropriate for her to engage in some  
16 debate or argument with the witness. It's wasting  
17 people's time.

18 COMSR: It's particularly not helpful when the  
19 witness's evidence or knowledge might be quite  
20 incomplete, and the person is going to give evidence  
21 themselves.

22 MS PYKE: Look, I appreciate that, but this is a  
23 person this witness has trotted out, if I can put it in  
24 the colloquial, as someone who -

25 COMSR: She isn't trotted out, she is, as I  
26 understand it, one of the persons who's said to have  
27 done some work in that area, and it won't be of any use  
28 to me if I've got to consider the work of every  
29 anthropologist in order to make an assessment of how it  
30 compares with others. I really don't think that is  
31 going to assist me.

32 MS PYKE: No. I think at one level I accept what  
33 you're saying. Bearing in mind the criticism that's  
34 been made that this is not, the information that this  
35 commission is asked to decide upon, one of the things  
36 that's been put to you, it's not previously in the  
37 literature, therefore it's a fabrication. We have to  
38 analyse why it's not in the literature, surely.

- 1 COMSR: Well, yes.
- 2 MS PYKE: When that's trotted out as the prime  
3 motivation for criticising Dr Fergie and the proponent  
4 women.
- 5 MR ABBOTT: Why hasn't she asked that? `Could it  
6 be, Mr Jones, the fact that it's not in the literature  
7 is due to the limited time that Alison', whatever her  
8 name was, `Spent down in the area'. That's a question.  
9 Going about it like this is the wrong way.
- 10 MS PYKE: I'm grateful to Mr Abbott. I'm sure  
11 that Mr Abbott conducts his case as he sees fits, and  
12 will conduct me the courtesy of letting me do mine.
- 13 COMSR: We do have time constraints, and we  
14 haven't got time to delve into how much time every  
15 anthropologist in the field has spent for a comparative  
16 basis.
- 17 MS PYKE: I appreciate that there are time  
18 constraints, but these witnesses are being called to be  
19 critical, and that is entirely their right.
- 20 COMSR: They are being called to supply the  
21 commission with information, not to be critical.
- 22 MS PYKE
- 23 Q. Mrs Tindale, what do you know about her work with the  
24 Ngarrindjeri people.
- 25 A. She accompanied what's become known as the  
26 Harvard/Adelaide Universities expeditious of 1938 to  
27 1939 across Australia, mainly through South Australia,  
28 Victoria, New South Wales, Queensland, over an 18 month  
29 period for researchers Norman Tindale, Dorothy Tindale,  
30 Joseph Birdsell, Physical Anthropologist from America,  
31 and his wife whose name I forgot. The modus operandi of  
32 the trip was to concentrate on certain aspects, and this  
33 left room for Dorothy Tindale and Mrs Birdsell to  
34 concentrate particularly upon children's issues and  
35 women's issues, so that by the time the trip returned to  
36 South Australia in 1939, Dorothy Tindale had interviewed  
37 several hundred Aboriginal women across the country in  
38 relation to women's issues as they're generally

- 1 understood and can be defined.
- 2 Q. Who do you say she questioned about women's issues as  
3 generally understood and defined. What are you actually  
4 talking about.
- 5 A. Aspects of parturition, birth and menstruation.
- 6 Q. So the physical elements of those matters.
- 7 A. Obviously, during the course of asking those questions,  
8 we would have been alert to the issues that are before  
9 this commission.
- 10 Q. What makes you say that. What earthly knowledge would  
11 you have.
- 12 A. Excuse me?
- 13 Q. What is the basis of your knowledge of that.
- 14 A. The fact that she is asking pointed questions about  
15 women's sexuality, or at least making it known that that  
16 is her particular area of interest, and having  
17 information volunteered to her relayed to her by one  
18 woman after another, suggests that if there was great  
19 reticence about these subjects, or attention to  
20 restricting aspects of some of that information, that  
21 Dorothy Tindale, after a trip around Australia where  
22 she'd had the benefit of a great amount of comparative  
23 data, would have become aware of these aspects.
- 24 Q. You're just guessing, aren't you.
- 25 A. I'm not just guessing.
- 26 Q. What other women do you say we should take into account  
27 as having recorded the historical record of the  
28 Ngarrindjeri people, I will just use that as the general  
29 phrase. We have dealt with Alison Harvey, Mrs Tindale,  
30 what other women.
- 31 A. Well, I think probably Catherine Berndt would have to be  
32 the next cab off the rank.
- 33 Q. Anyone else.
- 34 A. Well, we get into the more recent period, I suppose.  
35 After Alison, after Catherine Berndts period, we're  
36 probably looking at students in the 70s and 80s, I  
37 suppose, perhaps students working under Faye Gale, for  
38 example.

1 Q. In terms of anyone who has recorded information about  
2 the Ngarrindjeri people in writing or - yes.

3 A. No. There is a person - I might have to consult some  
4 notes, Judy is her first name, she was - she died at an  
5 early age, but she published an article, at least one  
6 article, probably two, in the 1960s on the Point McLeay  
7 community.

8 Q. So is it fair to say that certainly the major -

9 A. It's Judy Ingliss.

10 Q. The major recorders that you have in mind who were  
11 talking about women and the Ngarrindjeri people are  
12 Alison Harvey, Mrs Tindale, Catherine Berndt, Faye Gale  
13 - sorry, or is it her students.

14 A. I don't have clear knowledge of that, but Judy Ingliss I  
15 put in there because she undertook a fairly focused  
16 study of the community.

17 COMSR

18 Q. Are you able to assist me to this extent; among  
19 anthropologists, in what regard are their works held.

20 A. These people?

21 Q. Yes.

22 A. I think Alison Harvey's work, for example, would be  
23 regarded as that of an ethnographer primarily, and  
24 certainly on a - I mean she herself would be, I think,  
25 the first, one of the first, to say that her work wasn't  
26 in the same league as that of Catherine Berndt. Dorothy  
27 Tindale didn't push her material, and therefore that's  
28 in a different category again, but I think what you  
29 could say about all these people is that they undertook  
30 serious work based on data rather than glib assertions  
31 of what might have been the case.

32 XXN

33 Q. I will get to Catherine Berndt in due course. You, in  
34 your statement, refer to, on p.6, 'Summary of  
35 Significance of the Island'. You've referred, in your  
36 second paragraph there, in the second to last line, to  
37 'The island's Rumerindjera, Wakend and Kangalindjera'.  
38 Are they the clans that you say inhabited Hindmarsh

- 1 Island.
- 2 A. They are the clans which I believe Ronald and Catherine  
3 Berndt and Norman Tindale in particular associate with  
4 Hindmarsh Island. The question of whether they actually  
5 inhabited the island in a sort of permanent sense is  
6 another issue.
- 7 Q. Are you aware that Tindale, for example, says that the  
8 Ramindjeri, and I just assume that that is a slightly  
9 different pronunciation or spelling, were in the  
10 Fleurieu Peninsula and Encounter Bay.
- 11 A. Your assumption is wrong.
- 12 Q. So you say that Ramindjeri are a different transcribe to  
13 the Rumerindjera.
- 14 A. I'm sure you've had explained to you the difference  
15 between clan and tribe. What we're looking at here are  
16 clans. The Ramindjeri is, in an accepted sense, a tribe  
17 which consists of an agglomeration of clans. In fact,  
18 the Rumerindjera are one of those Ramindjeri clans.
- 19 Q. What about the other two that are named in your report  
20 there, are they part of the Ramindjeri tribe. You've  
21 named three clans -
- 22 A. No, they are not.
- 23 Q. So one of them is part of the Ramindjeri tribe, and the  
24 other two are part of another tribe, is that what you're  
25 saying.
- 26 A. The other two, I perhaps have to check on this but, as  
27 far as I can be sure, the Wakend clan are associated  
28 with the Yaraldi tribe, and the Kangalindjera are  
29 associated with the Tangani tribe, so in fact we're  
30 looking at an island which, in a social sense, isn't an  
31 homogenous island at all, it has associations with  
32 perhaps more than one larger social grouping.
- 33 Q. Are you aware of the assertion by Tindale that he refers  
34 to it being a slight clue that the Ramindjeri may have  
35 originally had links with the western desert.
- 36 A. Yes, I think he uses a couple of pieces of evidence to  
37 suggest that, and it's certainly the case that of all  
38 those, all the groups that we're looking at, the

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- 1 Ramindjeri were closest to the Adelaide region, and the  
2 Adelaide region is sociologically, I suppose, and  
3 ceremonially, distinct from the other side of the Mount  
4 Lofty ranges, and takes us into an area of influence  
5 which itself extends perhaps to the western desert, so,  
6 yes, that's correct.
- 7 Q. Have you read, I think it's the book 'Aboriginal Tribes  
8 of Australia' by Norman Tindale.
- 9 A. Not cover to cover. I am familiar with it.
- 10 Q. You have referred to your involvement in the Ngurunderi  
11 exhibition at the museum and, as I understand what you  
12 say, you had involvement with that, along with Steve  
13 Hemming and Dr Clarke.
- 14 A. Yes.
- 15 Q. Presumably there was consultation with the Ngarrindjeri  
16 people about that exhibition.
- 17 A. That's correct.
- 18 Q. The mounting of that exhibition would be presumably  
19 perceived by the museum as being culturally sensitive,  
20 and by that I mean they would continue to have consulted  
21 with the Ngarrindjeri people about the way in which it  
22 was to be mounted.
- 23 A. Yes, that's correct.
- 24 Q. Can you tell me the range of Ngarrindjeri people that  
25 were consulted by the museum in relation to that  
26 exhibition.
- 27 A. Geographically, I suppose, people who were based along  
28 the River Murray, communities at Gerard, Murray Bridge,  
29 Tailem Bend, Meningie, Point McLeay, those would have  
30 been the major communities, and then extending also down  
31 to Kingston, that area - well perhaps I should also add  
32 Ngarrindjeri people based in Adelaide and Point Pearce.
- 33 Q. They are the geographic areas. What was the process of  
34 consulting within those geographic areas. Did you go  
35 out and hold meetings, or did you speak to particular  
36 individuals, or what happened.
- 37 A. The particular, I suppose, hands-on consultation was  
38 undertaken mainly by Steve Hemming and Philip Clarke. I

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1 was involved particularly in the early stages when we  
2 were floating, I suppose, the proposition that such an  
3 exhibition be produced, and in encountering people's  
4 attitudes towards the notion that their history and  
5 culture would be reinterpreted or interpreted through  
6 such an exhibition but, in terms of actually following  
7 the consultation process through, I didn't undertake  
8 that role myself.

9 Q. Did you have any part in formulating a model of the  
10 process of consultation that was to be utilised.

11 A. I think I did, I'm sure I did informally.

12 Q. Can you tell us what the model of the process was.

13 A. I suppose we saw ourselves, to some extent, in  
14 juxtaposition to a couple of other museums around the  
15 country, where an approach had been taken to the issue,  
16 for example, to constitute a particular committee  
17 composed of Aboriginal people who would operate as an  
18 advisory committee in relation to that particular  
19 subject. We took the point of view that that model  
20 perhaps wasn't appropriate, and that what we should be  
21 doing instead is working with particularly knowledgeable  
22 individuals in the community, people who are regarded by  
23 their peers, I suppose, as spokespeople on those sorts  
24 of cultural issues,

25 CONTINUED

1 and to adopt a fairly flexible and informal approach to  
2 consultation, but also ultimately to work through the  
3 various committees that operated or were perhaps just  
4 beginning to be operable - operational in the region.

5 Q. Was that actually done, do you know.

6 A. As far as I know, in the latter stages, the Lower Murray  
7 Heritage Committee, or its equivalent, was just getting  
8 off the ground because of the legislation which was  
9 being drafted, and which would have come into operation  
10 in 1988.

11 Q. In any event, it was Steve Hemming and Dr Clarke that  
12 went about that consultation process, the implementation  
13 of it, not yourself.

14 A. Yes. As I say, it was pretty much an informal and  
15 flexible process rather than being crystallized in a  
16 particular relationship with a particular committee.

17 Q. Do you know how many women were consulted as part of  
18 that process.

19 A. I would think probably a pretty well equal number to the  
20 number of men, and I couldn't give you a figure on that.

21 Q. When you say 'I think'. What is the basis of that, what  
22 you have been told or what you guess.

23 A. The prominent role, I guess, taken in these sorts of  
24 matters by Ngarrindjeri women in the community led me to  
25 form the opinion that it was quite likely that the  
26 numbers would have at least been pretty equal, yes.

27 Q. But you have no knowledge yourself.

28 A. The knowledge I have myself I am just giving to you.

29 Q. In terms of the Ngurunderi myth, there were various  
30 versions of that myth, weren't there.

31 A. Yes. It's the case that, while the epic or the myth  
32 pervades each section of Ngarrindjeri country, it isn't  
33 possible to extract the conclusive version at any one  
34 point. It always reflects the perspective of the local  
35 vantage point, cultural and geographical of the people  
36 who have contributed that version to the record.

37 Q. How was it finally settled upon that the particular



1 version that was used would be used. Was that a  
2 decision made by the museum.

3 A. Yes, pretty much, I guess it was. The Berndt version is  
4 distinguished by others, I suppose, or it was at that  
5 time by the fact that it referred to possible variations  
6 and, I suppose, more than the others, seemed to suggest  
7 that it was an attempt at steering a course through the  
8 different versions that existed. So, to that extent, it  
9 appeared to be less partisan, less specialised than  
10 perhaps an earlier version recorded by Richard Penney or  
11 George Taplin, but I suppose the essential factor, or  
12 the primary factor, was that we had access in that  
13 version to a very complete account, or a very full  
14 account of the dreaming, coupled with the fact that the  
15 person who had actually collected that version, Ronald  
16 Berndt, was at that stage still very much alive.

17 COMSR

18 Q. In all of the different versions that were presented for  
19 the museum to consider in determining the final form of  
20 the myth, was there anything suggestive of any women's  
21 business or secret women's business in the Ngarrindjeri  
22 community that was perhaps not given weight.

23 A. There are points of intersection in the Ngurunderi  
24 story, with a couple of other important creation or  
25 mythological accounts, and at least one of those  
26 accounts goes into men's initiation practices during  
27 which - I will not go into details -

28 Q. To make it a little more specific, to do with the area  
29 of Goolwa and Hindmarsh Island, if you can confine it  
30 more closely.

31 A. No. It was certainly the case that, at a certain -  
32 well, during the large part of the Ngurunderi epic,  
33 Ngurunderi is perceived to have been on the track of his  
34 two wives, who he is pursuing, and it was taken as read  
35 that these women, while they're keeping separate  
36 company, would have been undertaking a cultural life  
37 which was distinguished by attention to cultural detail.  
38 But we didn't have any evidence whatsoever that that

- 1 excursion on the part of the women had anything  
2 connected with some deeper ramification which was secret  
3 or sacred in any sense, and certainly not as it applied  
4 to Hindmarsh Island or the Goolwa region.  
5 XXN  
6 Q. You have read the report of Dr Fergie.  
7 A. Yes. I don't have it in front of me.  
8 Q. When did you first read that report.  
9 A. I think I was given a copy on the opening day or two of  
10 the commission. That was the first occasion I had to  
11 read it.  
12 Q. And the Saunders' report.  
13 A. I don't think - I think I've seen a little of that  
14 report, but I haven't read the report cover-to-cover.  
15 Q. So is it fair to say that, prior to your interview on  
16 Channel 10, you hadn't read Dr Fergie's report.  
17 A. Yes, that is fair to say, yes.  
18 Q. So, when you gave your interview on Channel 10, was the  
19 source of your knowledge about the parameters of the  
20 disputes and what was being claimed and counterclaimed  
21 what you had read in the media.  
22 A. Yes. I can't think of any other significant source, no.  
23 Q. Prior to giving your interview on Channel 10, did you  
24 think it might be prudent to, at the very least, read  
25 what Dr Fergie had reported to endeavour to inform  
26 yourself about what was actually in her report.  
27 A. No, I didn't. The reason for that, I suppose, was  
28 firstly that Dr Fergie didn't have a record of producing  
29 any reports for us to read at the museum, so I didn't  
30 expect to see one. But, apart from that, I considered  
31 that the suggestions - I suppose the very clear  
32 assertions made in the media were - I mean, that was  
33 essentially the basis of my decision to give the  
34 interview. So it wasn't particularly on the basis of  
35 what I imagined might exist in the Fergie report.  
36 Q. So you clearly, yourself, have got no issue with the  
37 content of your statements on the Channel 10 interview  
38 as being appropriate, notwithstanding that you hadn't

1 read Dr Fergie's report, nor indeed spoken to her, I  
2 suggest to you.

3 OBJECTION Ms Simpson objects on the ground of  
4 ambiguity.

5 COMSR: Is there some particular aspect of what  
6 Mr Jones had to say in that interview -

7 MS PYKE: I will get to that in due course. At  
8 this stage, I am merely getting him to acknowledge that,  
9 as far as he is concerned, his comments were appropriate  
10 notwithstanding he hadn't read Dr Fergie's report or  
11 indeed spoken to her.

12 COMSR: He may have said something about Dr  
13 Fergie, but I understood him previously to have said  
14 that he thought he should say something about the  
15 assertion that 100 years of orthodoxy had been  
16 overturned by the dissident women's assertion, but is  
17 there some other -

18 XXN

19 Q. Your comments on the Channel 10 report go further than  
20 that, don't they.

21 A. Further than what?

22 Q. Than what the Commissioner has just put to you, the  
23 assertion of the overturning of 100 years of orthodoxy.  
24 I mean, you were critical of the issue of secret sacred  
25 women's business, and -

26 A. I brought it to the attention of a wider public, I  
27 suppose, through that interview, that there appeared to  
28 be no suggestion of any evidence which would support the  
29 existence of secret sacred women's business on Hindmarsh  
30 Island.

31 Q. I will get back to that interview in the effluxion of  
32 time.

33 COMSR: There is not too much time to efflux.

34 MS PYKE: I understand the constraints of time in  
35 this commission, but, frankly, you will have to  
36 understand that these issues are -

37 COMSR: I understand your situation, but I do  
38 not want to go over material that is already before me,

1 unless there is something further that you wish to put  
2 to the witness.

3 MS PYKE: There are a number of things I wish to  
4 put to the witness.

5 XXN

6 Q. You have said at p.3 of your report, at about point 4  
7 'The extensive literature does not suggest the existence  
8 of a site which operated as a central focus for half of  
9 the region's population that is given'. Do I take it  
10 from that, that you believe that is what's actually  
11 being asserted, that Hindmarsh Island - I presume that's  
12 the site that you are referring to - operated as a  
13 central focus for half of the region's population.

14 A. That is a fairly clear implication to be drawn from the  
15 suggestion that Hindmarsh Island occupies the level of  
16 significance that is attributed to it by claims of the  
17 sort retailed by the proponent women.

18 Q. So really that's your interpretation of what's in the  
19 Fergie report. Are you suggesting that Dr Fergie  
20 purports to maintain that position.

21 A. No. I'm suggesting that this is an implication, as I've  
22 just submitted - would you like me to repeat the last  
23 answer? I'm suggesting that there is an implication  
24 contained in the views expressed by the proponent women  
25 about the centrality of Hindmarsh Island in the culture  
26 and perceptions of the landscape. If Dr Fergie has  
27 suggested that that's the case, then she falls within  
28 that attribution.

29 Q. You have read Dr Fergie's report. I am just asking you  
30 whether you say that's the conclusion you've drawn from  
31 Dr Fergie's report. You have given the answer you  
32 already have. Is it that you -

33 A. No, you asked a different question before. If you are  
34 asking this question now, is that the question?

35 Q. Short of re-reading what I asked before, I will perhaps  
36 start again. Are you suggesting that one of the  
37 inferences that you have drawn from Dr Fergie's report  
38 is that Hindmarsh Island was a site which operated as a

- 1 central focus for half of the region's population, that  
2 is, women. I am talking about Dr Fergie's report.
- 3 A. I am not suggesting that is a specific inference to be  
4 drawn from the Fergie report, but I would draw that  
5 inference from the Fergie report, taken in conjunction  
6 with everything else.
- 7 Q. Everything else from her report, or everything else from  
8 elsewhere.
- 9 A. Everything else from elsewhere. The proponent claims  
10 expressed in the media.
- 11 Q. You are aware that there has been a term that seems to  
12 have been utilised in this commission called 'secret  
13 sacred women's business'.
- 14 A. I am, yes.
- 15 Q. What do you understand by that phrase.
- 16 A. I anticipated that question. I would suggest that it is  
17 a body of practices or observances, beliefs or  
18 articulated traditions which are considered to be sacred  
19 by Ngarrindjeri women, that is, which imbue their lives  
20 with the perceived spiritual dimension, and which are  
21 also considered to be secret, that is, rendered  
22 exclusive to women in distinction to men, and, further,  
23 that this body of practices, observances, beliefs or  
24 traditions, somehow focuses, by its nature and content,  
25 upon a particular site, that is, in this case, Hindmarsh  
26 Island.
- 27 COMSR
- 28 Q. Of course, you are aware there is a definition of  
29 'women's business' in the Terms of Reference, and it is  
30 that definition that I am concerned with.
- 31 A. But she is asking me about secret sacred women's  
32 business, so I have put my own construction on that.
- 33 XXN
- 34 Q. Is that construction a construction that you believe  
35 applies to what has been put forward by the proponent  
36 women as their beliefs.
- 37 A. That's a little unclear, but I think I know what you  
38 mean. You are suggesting that that definition, if you

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P.G. JONES XXN (MS PYKE)

1 call it that, applies to the assertions made by the  
2 proponent women. I would say, in general it does, yes,  
3 taking into account the claims of the proponent women  
4 have been at wild variance with each other quite often.  
5 ADJOURNED 12.20 P.M.

1 RESUMING 12.25 P.M.

2 Q. On p.3 of your report, you have referred in several  
3 places in your report to the western desert and I will  
4 quote from your report 'I believe that it is these  
5 women's issues, to do with a realm of knowledge that is  
6 not secret in itself, but is usually discussed among  
7 women only, which have, in this affair, become elevated  
8 to the status of secret women's business as it is  
9 usually understood in the western desert.' I don't want  
10 you to give me details. I am not asking that, about the  
11 western desert, but, if we talk about the western desert  
12 as a model, if I can use a word that seems to be used  
13 frequently here, what is the model, the secret women's  
14 business model of the western desert that you say is  
15 being perhaps adopted.

16 COMSR: The model as to secrecy without going  
17 into the detail.

18 XXN

19 Q. Yes, I don't want the detail, but the -

20 A. In broad detail, I suppose, what characterises some  
21 of the western desert societies is that progressively,  
22 as constraints on the expression of aspects of men's  
23 life, secret life is accentuated, a domain of women's  
24 separate practice, cultural practice, is discernible.  
25 And this subject wasn't explored by male  
26 anthropologists in any great detail last century. It  
27 has been explored, to some degree, since. And its  
28 existence was certainly documented over 100 years ago.  
29 So, that leads us to the conclusion, which seems  
30 well-supported in the data, that this separate realm  
31 of women's cultural practice was certainly and is  
32 certainly always known about by men. But that, to  
33 return to your - the nub of your question, what is the  
34 subject and the broad content of that domain of  
35 cultural practice -

36 COMSR: Just before you get on to that: was that  
37 the nub of your question? Is that what you are trying  
38 to avoid?

1 XXN

2 Q. No, I don't want the detail. What I am simply after was  
3 really the model that we are talking about with the  
4 western desert, not the content of it.

5 A. Okay, to come to that: it is essentially site based.  
6 That is, that, for particular sites in the landscape,  
7 often - well, usually known to men and women. Women  
8 have a particular set of associations, which are encoded  
9 in cultural practices such as ceremony, dance.  
10 Particular kinds of body painting, for example. And  
11 that men are not directly privy to that information, but  
12 are certainly aware of it. And, to some extent,  
13 actually participate in its reproduction in a social  
14 setting. So that, although it is characterised by  
15 anthropologists as being an exclusive domain of secret  
16 sacred data, it actually isn't a patch on what is being  
17 claimed for Hindmarsh Island by the proponent women.

18 Q. The western desert model, if I could put it that way,  
19 basically, in so far as it relates to secret sacred  
20 business, male or female, is really a - can I put this  
21 to you, that the model basically is one of a cultural  
22 organisation predicated on a fundamental division  
23 between the exclusively cultural and religious concerns  
24 of men and women.

25 A. No, I think what I have just been suggesting doesn't  
26 neatly lend itself to that very sharp and harsh  
27 dichotomy that is contained in that description.

28 Q. Perhaps can I ask you this, where do you think that what  
29 I have just put to you is too harsh. Where are the grey  
30 areas.

31 A. I am not talking about grey areas, I am talking about  
32 black and white areas.

33 Q. Where do you say that what I have just put to you is not  
34 an appropriate description of the desert model.

35 A. Because it - the implication behind that description is  
36 that the domains are so exclusive that people don't even  
37 have knowledge of them across the gender divide. And  
38 that quite clearly isn't the case.



- 1 Q. Would you agree with me that there is a division between  
2 the exclusive cultural and religious concerns of men and  
3 women, or are you saying that there is some division  
4 between the cultural and religious concerns of men and  
5 women in the -
- 6 A. I think what I would suggest is that you take  
7 'exclusive' out of that sentence and, having done that,  
8 have another look at it.
- 9 Q. Let me put this to you, that a fundamental division  
10 between the cultural and religious concerns of men and  
11 women.
- 12 A. And then take 'fundamental' out.
- 13 Q. Right, so -
- 14 A. And we are getting, you know, into the realm of reality  
15 as it is documented by many anthropologists across the  
16 country.
- 17 Q. But, as I understand it, what is being maintained is  
18 that in the western desert there are some areas where  
19 there is an exclusive division.
- 20 A. No, I am resisting that in the sense that an exclusive  
21 division connotes, in my view, even a lack of knowledge  
22 about the existence of the other. And that simply does  
23 not bear any resemblance to the data. The data suggests  
24 that women had at least a perceptual awareness of the  
25 content of what was going on at ceremonies that they  
26 were forbidden from attending. They certainly knew  
27 where they were going on and they certainly knew who was  
28 attending them and the deductions to be drawn from that  
29 set of data, bearing in mind that everybody's social  
30 persona mirrors a sacred persona, is that the women  
31 themselves knew pretty well what the content of the  
32 ceremony was. And the same applies for men in  
33 conjunction with women.
- 34 Q. Is what you are saying this, that there were - I just  
35 want to make sure I understand this. There were  
36 ceremonies where - that would be exclusive to men or  
37 women, but the other gender would know that there were  
38 ceremonies and, when you say they know the content, what

1 do you mean by that.

2 A. What I am suggesting is that, if a particular set of -  
3 or I mean, if it was an initiation ceremony, that would  
4 very clearly be known, because of the very obvious  
5 alteration in the status of the boys who go to the  
6 ceremony as boys and come back as men. If we are  
7 looking at other forms of ceremonies, for example,  
8 increase ceremonies for particular species of plants or  
9 animals, what I was suggesting in the previous answer is  
10 that the totemic spiritual and ceremonial affiliations  
11 of the people who were attending the ceremonies and  
12 taking responsibility for them makes it a fairly easy  
13 deduction for those who were absolutely familiar with  
14 those identities - that is, the women - to work out what  
15 the ceremony is about.

16 Q. You are not suggesting that detail of what takes place  
17 in those ceremonies is not secret in some -

18 A. It is - no, I am not suggesting that, but very often its  
19 secrecy is not something which you have to approach by  
20 entering six sets of locked doors. You know, it is  
21 going on over there, often in earshot or just out of  
22 earshot. And it is quite often the case that and  
23 documented several times in the literature that, if the  
24 wind changes at a particular point and people suddenly  
25 start hearing something that they are not really  
26 supposed to, women will shift camp. So, we are talking  
27 about that degree of proximity. We are not talking  
28 about everybody slipping off with coded signals and  
29 assembling on an island somewhere, no.

30 Q. What I am simply trying to ascertain from you is that  
31 there are, in the - the western desert model, as you  
32 have put forward, certainly has a concept, if I can put  
33 it that way, of ceremonies being held. That people may  
34 know they are ceremonies, but the detail of what takes  
35 place or is said in those ceremonies is secret in the  
36 general sense in which we use that word.

37 A. And added to that is the proposition that, in what we  
38 can loosely refer to as the western desert, those

1 ceremonies very often have a very particular and strong  
2 focus connected with particular ancestors, particular  
3 sites, particular dreamings. It is a model of relating  
4 to the land which is qualitatively different from that  
5 in the Lower Murray region.

6 COMSR: Yes, I think I have understood what the  
7 witness has to say along those lines, Ms Pyke.

8 XXN

9 Q. And it is - that is, as you have defined it - that model  
10 that you say does not apply to the Ngarrindjeri people  
11 and, in particular, to the beliefs associated with  
12 Hindmarsh Island.

13 A. This is where I am suggesting that, if you look at a  
14 whole raft of data recorded by a couple hundred  
15 ethnographic sources back into the early 1840s, it is  
16 possible to deduce a model which is different to that  
17 western desert model of site-related affiliations. It  
18 is a model that is dependent upon another set of  
19 relationships to land. And, in this case, in the case  
20 of the Lower Murray, inherent relationships to what have  
21 been termed 'clan estates', in a sort of patchwork  
22 relationship across the country. You don't have these  
23 great penetrating lines of dreamings that crisscross the  
24 landscape and punctuate themselves at particular sites.  
25 If you did, it wouldn't be as completely surprising to  
26 find the proposition that one particular site such as  
27 Hindmarsh Island is being elevated over the other  
28 several hundred sites, which have been documented in the  
29 course of the last century by Tindale and others.

30 Q. Do you say that, within the Ngarrindjeri community,  
31 there are concepts of secrecy.

32 A. I say that in every society around the world there are  
33 concepts of secrecy.

34 Q. Let's not worry about -

35 A. Things that we don't tell each other.

36 Q. I am asking you particularly about the Ngarrindjeri  
37 people. I don't want to talk about the rest of the  
38 world. All right, do you agree that there are concepts

- 1 of secrecy within the Ngarrindjeri community.
- 2 A. Yes.
- 3 Q. Can you tell us what concepts of secrecy there are.
- 4 COMSR
- 5 Q. Can you answer that without any problems, as far as -
- 6 A. Yes, I am relying on published data.
- 7 MR ABBOTT: And you are asking for male and female,
- 8 I take it, from the question?
- 9 MS PYKE: Yes, generally.
- 10 WITNESS: It is quite clear that Ngarrindjeri
- 11 society, like every other society, is and was and will
- 12 be distinguished by networks of social relations which
- 13 involve, every so often, the need to conceal information
- 14 about a certain activity that might have taken place, or
- 15 a certain event, or people's perceptions of other
- 16 people, or - all the ordinary interplays that occur in
- 17 any society and within any family, for example.
- 18 XXN
- 19 Q. Are there any concepts, apart from what I might call
- 20 those interpersonal type concepts, in any part of the
- 21 structure of the Ngarrindjeri community that has secrecy
- 22 as a component.
- 23 A. I think secrecy existed or existed up to a point,
- 24 particularly with the final stages of male initiation,
- 25 in the sense of most younger people, whether they be
- 26 uninitiated men, or most women didn't have access to
- 27 those particular stages of that particular ceremony.
- 28 But to suggest that the information which was
- 29 transmitted in that ceremony is or was secret is another
- 30 step, because I think the evidence seems to suggest that
- 31 at least the parameters of it, the outlines of it were
- 32 known fairly generally across the society.
- 33 Q. What do you mean by that. That the people knew that
- 34 there were parts of the initiation ceremony that was
- 35 secret.
- 36 COMSR: Or that they knew that there were
- 37 initiation ceremonies.
- 38 MS PYKE: Yes.

1 A. They knew that there were details about the way in which  
2 those ceremonies were undertaken. And I suppose that is  
3 what I am saying.

4 XXN

5 Q. Are you saying that people might know that there are  
6 initiation ceremonies. They wouldn't just be women.  
7 You are saying it is male initiation. You are saying  
8 the women would know it is a male initiation ceremony.  
9 They wouldn't know there were secret elements of it,  
10 or -

11 A. I am suggesting that certainly all women knew that there  
12 were men's initiation ceremonies and I think they would  
13 have had a very clear knowledge of where those  
14 ceremonies took place at particular times. Most women  
15 would have been aware of the detail of most of the  
16 earlier stages of the initiation ceremonies. We reach a  
17 point in the latter stages of those ceremonies where  
18 only certain women were qualified to be present. And it  
19 is a reasonable supposition that those women didn't  
20 retail everything that they saw back to younger people  
21 but that, in a sense, the privilege associated with that  
22 information was preserved and attached to the status of  
23 the women who attended those ceremonies.

24 CONTINUED

## P.G. JONES XXN (MS PYKE)

- 1 COMSR: I think I've followed the witness'  
2 evidence on this matter. He has touched upon it.
- 3 MS PYKE: I realise that. I want to go on.
- 4 XXN
- 5 Q. Are there any other aspects of Ngarrindjeri community  
6 life, if I can put it that way, that have an element of  
7 secret knowledge associated with them, as far as you are  
8 aware.
- 9 A. Meetings of the Lower Murray Aboriginal Heritage  
10 Committee. I mean are you talking about the present or  
11 the past?
- 12 Q. Well, at any stage.
- 13 A. Well, it's -
- 14 COMSR: Traditional are you talking about.
- 15 MS PYKE: There would be a very large argument, I  
16 suspect, with this witness about what is traditional,  
17 which we're not meant to embrace in hopefully too much  
18 detail.
- 19 A. The question is that there are aspects of Ngarrindjeri  
20 life which might be regarded as secret.
- 21 XXN
- 22 Q. Yes, or have secrecy as a component.
- 23 A. Certainly in the contemporary period that's the case,  
24 and committee meetings of organisations charged with the  
25 sort of responsibilities that, you know, involve  
26 development issues or whatever are obviously subject to  
27 that level of secrecy. I mean if we go back into the  
28 19th century, it appears that the analogous meetings  
29 that were held, for example, by the tendi weren't  
30 secret, and that the business that was transacted there  
31 was pretty widely known.
- 32 Q. Are there concepts of sacred beliefs or knowledge  
33 associated with Ngarrindjeri people.
- 34 A. Yes.
- 35 Q. What are the parameters of what are sacred, or beliefs  
36 or practices.
- 37 A. The parameters?
- 38 Q. Or what do you know of it, again without the detail, if

- 1 you're able to answer the question.
- 2 A. I think you'll have to be a bit more specific. You've
- 3 asked a very, very large question.
- 4 COMSR
- 5 Q. Can we put it this way; what is the nature of the sacred
- 6 beliefs.
- 7 A. I think the nature of the sacred beliefs involve an
- 8 attempt to construct a link between secular life and a
- 9 spiritual dimension, and that very often in Aboriginal
- 10 society that is achieved through the personification of
- 11 detail and information, in particular landscape
- 12 features, for example, such as to take an open and
- 13 easily accessible example, the bluff at Victor Harbor,
- 14 which represents a club carried by a Ngurunderi on his
- 15 travels, that kind of thing, so that there is an attempt
- 16 to place every phenomenon, whether it be landscape
- 17 feature or a particular species of animal or fish, into
- 18 an explanation which takes us from the secular world
- 19 into the spiritual world, and into what is popularly
- 20 regarded as the dreaming.
- 21 Q. Because something is sacred, is it necessarily secret as
- 22 well.
- 23 A. Absolutely not.
- 24 XXN
- 25 Q. In Ngarrindjeri traditional or culture, are there
- 26 elements of sacred beliefs that are peculiar to men and
- 27 not shared by women, or practices.
- 28 A. I think, just as there are for men, there are beliefs
- 29 and practices which have particular relevance to one
- 30 gender or the other. The whole corpus of sacred belief
- 31 and interpretation related to spears and hunting, for
- 32 example, has particular relevance to men, and other
- 33 aspects have particular relevance to women, but to
- 34 suggest that women weren't privy to that entire half of
- 35 the culture and men, on the other hand, weren't
- 36 privilege to the other half, is something that would be
- 37 vigorously resisted.
- 38 Q. I'm not suggesting that all elements of the culture - I

## P.G. JONES XXN (MS PYKE)

1 hope you haven't misconstrued what I've said, but I'm  
2 simply putting, well, I was asking you, and perhaps  
3 you've answered it, is that the concept of sacred  
4 knowledge, practices or tradition is one where men may  
5 have some particular concept of sacred knowledge and  
6 belief or practice, and the women may have some  
7 different knowledge, belief or practice.

8 A. No, I'm not suggesting that, actually, I didn't suggest  
9 that.

10 Q. Well, perhaps I can put that to you, and you can tell me  
11 specifically what you disagree with about that.

12 A. I'm suggesting that there are not exclusive realms of  
13 gender based knowledge in Ngarrindjeri society, and I'm  
14 suggesting that, or I'm not sticking my neck out to say  
15 that, I'm saying that is the anthropological orthodoxy;  
16 it's reiterated over and over again in the literature.

17 Q. We're not talking about secret at the moment, we're  
18 talking about sacred.

19 A. Yes.

20 Q. Are you aware, in Ngarrindjeri culture, practices or  
21 tradition, of what I might refer to as areas of  
22 restricted knowledge.

23 A. I think we have had that question.

24 Q. No, we have talked about secret, we have talked about  
25 sacred, we haven't talked about restricted. (NOT  
26 ANSWERED)

27 COMSR: You may not have, but I think the  
28 witness is referring it an earlier occasion when he has  
29 dealt with the matter. Do you wish him to repeat it?

30 MS PYKE: I will pursue a little bit of this.

31 A. Can you repeat the question.

32 XXN

33 Q. Are you aware of elements, or 'aspects' is probably a  
34 better way of putting it, of Ngarrindjeri tradition,  
35 culture and practice that have, as part of their  
36 practice, elements of restriction.

37 A. I've mentioned, for example, the final stages of male  
38 initiation, which wouldn't have been accessible to



1 uninitiated men and to the great majority of women, yet  
2 were accessible to particular women of high status, and  
3 this is what I meant by covering the same ground.

4 COMSR: Yes, I know.

5 A. We're into this again.

6 XXN

7 Q. Let me perhaps be a bit more specific. Are you aware,  
8 in Ngarrindjeri tradition, practice and culture, of  
9 areas where there are what I might refer to as domains  
10 of knowledge, particular individuals or groups of people  
11 possessing particular sorts of information. (NOT  
12 ANSWERED)

13 COMSR: Are you going to give an example?

14 MS PYKE: No, I'm asking the question whether he  
15 is aware at all.

16 COMSR: I think the witness did discuss a few  
17 such areas, but still.

18 A. It seemed clear that there was, for example, some  
19 specialisation in terms of material culture, particular  
20 men may have been known as very proficient makers of  
21 nets, for example, others as very proficient makers of  
22 spears but, to anticipate your next question, to go  
23 beyond that and to suggest that there are particular  
24 realms of sacred knowledge that are closed off to  
25 categories of the population, is a lot more problematic.  
26 The main barrier to knowledge appears certainly not to  
27 have been gender, but seniority and an expressed  
28 ability, through demonstrated behaviour over time, to  
29 handle and treat with respect the knowledge that is  
30 being disseminated in various contexts, including  
31 ceremonies.

32 XXN

33 Q. Can I just put this as a general proposition to you, and  
34 I will go on perhaps and detail it but, as a general  
35 proposition, would you agree that within Ngarrindjeri  
36 tradition and practice, there were specialist domains of  
37 knowledge and practice that were not available or  
38 developed in a general way amongst the wider

- 1 Ngarrindjeri population.  
2 A. No.  
3 Q. You disagree with that completely.  
4 A. Yes.  
5 COMSR: Are you going to put something specific  
6 to the witness as an example?  
7 MS PYKE: Yes.  
8 XXN  
9 Q. I will put to you, as an example of that, the putari.  
10 Are you familiar with the word 'putari'.  
11 A. Putari?  
12 Q. Yes.  
13 A. Could you be more specific?  
14 Q. Male and female putari, referred through through the  
15 Berndt and Berndt work.  
16 A. Which aspect of it?  
17 Q. Firstly, do you know of the terminology or the word.  
18 A. Yes.  
19 Q. Would you agree that male and female putari had areas of  
20 knowledge and practice that were not generally known  
21 amongst the wider Ngarrindjeri community.  
22 A. I think it's a mistake to concentrate on what is  
23 essentially localised knowledge, and then to somehow  
24 suggest that because the wider Ngarrindjeri community,  
25 as you put it, didn't have access to that knowledge,  
26 that it's somehow restricted. I mean the fact is the  
27 pattern of access to knowledge associated with that  
28 practice, although any of these social practices  
29 reproduces itself with a fair degree of equality right  
30 across the spectrum.  
31 MR ABBOTT: I rise to enquire of Ms Pyke whether she  
32 knows what she is putting. Berndt and Berndt described  
33 it as a midwife, p.138.  
34 MS PYKE: If my friend just reads on in his little  
35 volume there, he might find, at p.192, the Berndts refer  
36 to 'The Aboriginal doctor, such a man' and they say  
37 'There is also female putari'.  
38 COMSR: Are you putting to this witness that the

- 1 specified knowledge which a midwife, for instance, may  
2 have, is in any way restricted knowledge, or by any  
3 process other than the fact that the person is  
4 practising in that area.
- 5 A. The fact that I don't have plumbing experience, so what.  
6 I know where to get a plumber and, if I go into another  
7 postcode area, I can probably find one there too.
- 8 COMSR
- 9 Q. I dare say if you were to enrol in a course in plumbing,  
10 that would become available.
- 11 A. Yes.
- 12 COMSR: I'm just not sure what it is you're  
13 putting to the witness in respect -
- 14 MS PYKE: I'm developing something and I've got  
15 various things to put to this witness, which indeed I  
16 suggest indicated that there are restricted areas.
- 17 COMSR: Restricted, has that been suggested that  
18 that is secret, that knowledge, because it's restricted?  
19 I just want to know what is being put to the witness.
- 20 ADJOURNED 1.00 P.M.

- 1 RESUMING 2.16 P.M.
- 2 COMSR: We don't need to cover matters that I  
3 have, of course, heard from the witness on one or two  
4 occasions already.
- 5 MS PYKE: I understand that, but one has to  
6 understand that we see things and issues a little  
7 differently than people who have put them previously.  
8 To make any sense of Dr Fergie's evidence in the  
9 effluxion of time - I realise this is an inquiry and the  
10 rules of Browne and Dunn don't apply, so from that point  
11 of view it is not necessary for me to put anything that  
12 might affect my client to the witness - it seems to me,  
13 at least in general terms, I should also put some  
14 questions to make sense of her evidence. I will put  
15 matters that will be referred to in her case. I  
16 appreciate we are not in an interpartes proceedings. If  
17 you would rather I not -
- 18 COMSR: It is that I do not need to have  
19 repeated material that I already have.
- 20 MS PYKE: I accept that.
- 21 COMSR: Before you start, I will tell counsel we  
22 will be sitting until 5 o'clock tonight.
- 23 XXN
- 24 Q. I put to you the concept of putari, male and female,  
25 before lunchtime. What I want to suggest to you is that  
26 there are elements of putari practice that are exclusive  
27 domains of knowledge to putari. I understood you to say  
28 that you don't, as a general proposition, agree with  
29 that.
- 30 A. No, I think I actually supported your proposition by  
31 suggesting that there are specialities in every culture  
32 which apply, so that I can't - if you are making the  
33 leap from suggesting that the specialisation of the  
34 knowledge, such as in traditional healing practices, can  
35 be applied to the proposition that there is an entire  
36 category of sacred knowledge which is ultimately  
37 resident in half the population and not the other, I  
38 would say you still have a bit of work to do.

1 Q. I put to you quite clearly the assertion that you have  
2 just made, I take it, is your understanding of what is  
3 being asserted by the proponent women and, indeed, by Dr  
4 Fergie.

5 A. Which assertion, sorry?

6 Q. The assertion you just uttered.

7 A. No, I don't think so.

8 Q. Because I want to make it quite clear to you that what  
9 you have just suggested is not what Dr Fergie in any way  
10 purports in her report.

11 A. I didn't say that it was.

12 Q. I just wonder why you put that to me as a proposition.

13 A. I mean, we will separate what Dr Fergie said in her  
14 report from a few of the suggestions that you have made  
15 this morning, which indicate this great disjunction  
16 between male and female, and I'm suggesting that you  
17 can't make that progression.

18 Q. I am simply putting to you that it is not Dr Fergie's  
19 proposition that there is this great disjunction between  
20 male and female, certainly in the mode of the Western  
21 Desert model that you have propounded.

22 A. I don't think you quite understood me. I am suggesting  
23 that the proposition that you are putting forward is  
24 slightly different from that which Dr Fergie puts  
25 forward.

26 MS PYKE: I want to put some particular matters  
27 that are in Berndt and Berndt. Dr Fergie, in her  
28 evidence in due course, will refer to various bits of  
29 Berndt and Berndt. I assume there is no expectation  
30 that I put each and every piece of Berndt and Berndt or,  
31 indeed, any other writing, because it is not an  
32 interpartes -

33 COMSR: I take it Berndt and Berndt is being  
34 held up as the definitive work, as it were, in this area  
35 from the frequent references.

36 MS PYKE: It has been tendered as an exhibit.

37 Presumably that is because people view it as the

1 definitive work. I don't want to put each and every  
2 thing to this witness.

3 XXN

4 Q. I simply put to you, as a general proposition, that even  
5 in the Berndts book itself, there are references to the  
6 particular functions and activities of the male and  
7 female putari which indicate special areas of knowledge,  
8 including esoteric knowledge.

9 A. Yes, yes.

10 Q. They also refer to particular songs and that songs are  
11 used as one of the mechanisms for the passing on of  
12 particular knowledge.

13 A. Yes, and if you look at those songs in Berndt and  
14 Berndt, you find that they don't actually have site  
15 specific associations.

16 Q. I suggest to you that the specialist domain, in  
17 particular of putari, persisted after European  
18 settlement.

19 A. Yes, yes.

20 Q. In Berndt and Berndt they clearly assert that there is a  
21 specialist domain of female healers who had particular  
22 expertise in midwifery, menstruation, contraception and  
23 the like.

24 A. What exactly do you mean by `specialist domain'?

25 Q. That there was an area of specialty, namely, the female  
26 putari, who had a particular field of knowledge and  
27 expertise.

28 A. I think you are perhaps trying to cram as much into that  
29 suitcase as possible, and I seem to detect the  
30 implication that somehow this specialised domain is, to  
31 an extent, exclusive. I make it quite clear that that  
32 isn't my interpretation.

33 Q. So you don't accept there is an area of knowledge that  
34 was known only to the female putari. I am not  
35 suggesting everything they knew was exclusive, but you  
36 don't accept at all there that was any exclusive element  
37 of the knowledge of the female putari. Is that what you  
38 are saying.

- 1 A. I take issue with the notion that the female traditional  
2 healers stand in a class apart from the male traditional  
3 healers, so that that exclusivity is immediately open to  
4 question, and probably others - I mean, it is quite  
5 clear, for example, that the individuals who were being  
6 subjected to the healing practices had an insight into  
7 the procedures, techniques, rationale, logic and  
8 spiritual aspects of the services that were being  
9 provided to them. That is another exclusivity that I  
10 would discard.
- 11 Q. Would you accept that in Berndt and Berndt there was a  
12 recognition that there was secret sacred knowledge in  
13 relation to men that was disclosed to them by Albert  
14 Karloan, and, in particular, what I refer to as the  
15 inside or restricted aspect of the esoteric meaning of  
16 male initiation.
- 17 A. No. No, I wouldn't.
- 18 Q. Are you aware of the fact that in Aboriginal communities  
19 generally there is a change in the status of  
20 information. By that, I mean over a period of time, or  
21 evolution, that information that was previously perhaps  
22 not accorded secret status, becomes so.
- 23 A. With a few exceptions geographically across Australia,  
24 such as the Ngarrindjeri people, yes.
- 25 Q. Could you just say that again.
- 26 A. I said, with the few exceptions across the geographic  
27 extent of Australia, such as the Ngarrindjeri people,  
28 yes.
- 29 Q. By that, are you agreeing that there is an evolution of  
30 knowledge at times from perhaps open knowledge that  
31 becomes secret.
- 32 A. What I am suggesting - my answer is that it is a  
33 generalisation which applies across Aboriginal Australia  
34 with a few exceptions, such as the Ngarrindjeri people.
- 35 Q. Do you accept at all that there may have been  
36 information in relation to women's issues or women's  
37 business that was not passed onto the Berndts at all,  
38 for whatever reason.

- 1 A. I don't accept that there could have been a category of  
2 information with the ramifications such as secret sacred  
3 women's business carries with it, ramifications which in  
4 fact enter the entire Ngarrindjeri cosmos without it  
5 being remarked by a significant number of contemporary  
6 Aboriginal people today, Ngarrindjeri people, or the  
7 legion of scholars, ethnographers and anthropologists  
8 who have applied themselves to documenting that culture.
- 9 Q. The Berndts indeed, in their book, indicate that their  
10 primary informant on birthing and those matters was  
11 Albert Karloan. Do you concede that that may be perhaps  
12 a basis for supporting the notion that they were not  
13 informed of all matters in relation to birth,  
14 menstruation, contraception and the like, or all beliefs  
15 and practices in relation to those topics.
- 16 A. I think it would be, prima facie, an indication that  
17 they perhaps wouldn't have received much information at  
18 all about those subjects. However, Albert Karloan  
19 himself had acted as a midwife, as I understand, and had  
20 attended births and knew a great deal about it. So, in  
21 fact, what we find is the ethnography 'The World that  
22 Was' is remarkably rich with documentation about these  
23 aspects, particularly when further information was added  
24 from other Ngarrindjeri people, including women.
- 25 Q. I suggest to you that in the Berndt and Berndt book, the  
26 primary information in relation to matters to do with  
27 women, certainly reproduction and the like, came from a  
28 man, one source, Albert Karloan.
- 29 A. I don't accept that he was the only source. I think if  
30 you go back to the book and have a look at it, you will  
31 see that he is noted as a primary source, and, of  
32 course, what the Berndts tend to do, which is accepted  
33 practice, is to base their ethnography on everything  
34 that had been written and was accessible to them. So  
35 they had a great deal of data at their fingertips which  
36 had been gathered from women, against which they could  
37 measure and evaluate the data that Albert Karloan was  
38 giving them. So, no, I don't accept your proposition.



- 1 Q. I am just assuming you are familiar with the book of  
2 Berndt and Berndt. Is that an incorrect assumption.
- 3 A. I am familiar with it, yes.
- 4 Q. Would you agree with me that, at times, Pinkie Mack  
5 appears not to have recalled certain matters when she's  
6 questioned on the meaning of certain songs to do with  
7 female initiation and practices in relation to birth,  
8 menstruation and the like.
- 9 A. You are setting out on the same course as Ms Nelson, I  
10 understand.
- 11 Q. Do you agree as a general proposition there was an  
12 inability on Pinkie Mack's part, for whatever reason, at  
13 times to remember certain words to certain songs in  
14 relation to initiation and women's associated matters,  
15 or not. If you don't remember, just say so.
- 16 A. As we discussed this morning, yes, yes.
- 17 Q. Do you accept at all as a proposition, that Aboriginal  
18 women at times have shown reluctance to discuss matters  
19 associated with women's business, practices or rites,  
20 because they don't want to disclose information.
- 21 A. I think, in relation to the sort of issues that are  
22 being discussed, the reluctance is a reluctance which  
23 can be detected in Ngarrindjeri society, just as in our  
24 own, essentially subjects which are not openly discussed  
25 on the tram to Glenelg or, you know, delicatessens.
- 26 Q. What about if we take it further, if we just talk about  
27 Aboriginal communities generally, not Ngarrindjeri, in  
28 relation to secret or sacred practices, are you aware  
29 that Aboriginal women are reluctant to disclose  
30 information at times and, indeed, to the extent of lying  
31 about the existence of practices and beliefs because  
32 they don't want to impart the knowledge.
- 33 MR ABBOTT: You mean to men, to women, or generally?  
34 The question is not clear.
- 35 XXN
- 36 Q. To Aboriginal men and to white people.
- 37 A. You are asking me about the extent of my knowledge about  
38 Aboriginal women's propensity to relate sensitive

1 material to Aboriginal men - is that the first part of  
2 your question?  
3 Q. We will deal with it in two parts, if you prefer me to  
4 do it that way. In your readings in relation to  
5 Aboriginal people generally, and your experience, are  
6 you aware of assertions that Aboriginal women have been  
7 recorded as being unwilling to disclose information  
8 about secret and sacred business because they don't want  
9 to impart that knowledge to Aboriginal men.  
10 CONTINUED

- 1 A. No, I think - I mean, we are talking about - you are  
2 sort of creating the implication that there is this  
3 category of secret sacred knowledge.
- 4 Q. I am not talking about Ngarrindjeri. I am talking about  
5 generally speaking within the Aboriginal community.  
6 And, if you have no knowledge on this topic at all, just  
7 say so and I will go on.
- 8 OBJECTION Mr Meyer objects.
- 9 MR MEYER: In any Aboriginal community, rather than  
10 `the' Aboriginal community?  
11 XXN
- 12 Q. Aboriginal community, generally, I think was the  
13 proposition I put.
- 14 A. The net that you are throwing out has so many holes in  
15 it, that I can't really work out what it is supposed to  
16 cover. Could you -
- 17 Q. Have you read any book, document or article where it has  
18 been asserted that an Aboriginal woman has refused to  
19 disclose information about secret sacred women's  
20 business, because she didn't want other people to know  
21 about it.
- 22 A. None springs to mind.
- 23 OBJECTION Mr Meyer objects.
- 24 MR MEYER: Could I just say that is a very  
25 different question than it started off. It started off  
26 as anything secret and it finished up with secret sacred  
27 women's business. So, the question changed in amongst  
28 the discussion.
- 29 MS PYKE: I am endeavouring to assist and get an  
30 answer to at least some element of my question.
- 31 WITNESS: But, each time I ask you to clarify the  
32 question, you change it.  
33 XXN
- 34 Q. I assume you are finding some difficulty with the  
35 question and I tried to put it in simpler terms.
- 36 A. I am happy to stand here and debate it.
- 37 COMSR: The witness hasn't disclosed that he  
38 needs it in the simplest terms.

- 1 MS PYKE: I think it might make it a bit easier.  
2 XXN
- 3 Q. In your readings, history, knowledge and background of  
4 Aboriginal people, would it surprise you if an  
5 Aboriginal woman was reluctant to disclose to white  
6 people information of a secret and sacred nature.
- 7 A. It wouldn't surprise me and it hasn't surprised me to  
8 find that Aboriginal people are reluctant to disclose a  
9 great range of information - sometimes relating simply  
10 to historical episodes - on the grounds that, either  
11 through the manner in which the questions are being  
12 asked, through the perceived standing of the person  
13 asking the question, a whole range of effects and  
14 influences, just as in any other culture will. So that,  
15 to ask this remarkably generalised question, with all  
16 its implications, I mean, I can't really help you.
- 17 Q. It might be that you have got some information that  
18 would be useful. You have been involved with land  
19 claims, as I understand it.
- 20 A. Yes.
- 21 Q. Again, can I ask you this: are you aware of  
22 circumstances in which Aboriginal men or women have  
23 revealed to white people information that previously had  
24 been secret and sacred, because of the imperative of the  
25 land claim, if I can put it that way.
- 26 A. Yes.
- 27 Q. In essence, it had not previously been disclosed and the  
28 imperative was created and, in that setting of  
29 circumstances, they decided to reveal the information.
- 30 A. No, I wouldn't put it that simply. What happens in  
31 those circumstances is that a particular context is  
32 created for the transmission of information, often in a  
33 formal setting, to anthropologists or to legal counsel.  
34 And a decision is taken as to who can perhaps transmit  
35 that information and under what circumstances. But, to  
36 imply, because of that, that the information is being  
37 revealed for the first time to white people, or to  
38 anyone, that is what I have some difficulty with. What

1 happens, under those circumstances, is that information  
2 which has, in a sense, always been circulating in the  
3 community across gender barriers and in different  
4 circles and in areas within the culture and the  
5 community are suddenly crystalised and reailed in a  
6 particular setting. Now, that doesn't carry the  
7 implication that it is being revealed for the first  
8 time.

9 Q. Is the short answer to my question that you are not  
10 aware of any case or situation where, indeed, for the  
11 first time Aboriginal people have conveyed to white  
12 people, in the context of revealing information in  
13 relation to a land claim, information that hadn't  
14 previously been disclosed to white people.

15 A. That is a slightly different question. And I am aware  
16 of circumstances in which, for the first time, on  
17 record, an element of sacred knowledge has been  
18 crystalised and passed across into the record on a  
19 particular matter.

20 Q. Do you say that that was the first time it was disclosed  
21 to white people, or the first time it was recorded by  
22 white people, in that example that you have given me.

23 A. In the context of a land claim, what usually happens is  
24 that there is a process of investigation, culminating in  
25 a proofing of witnesses. Are you listening? Did you  
26 catch that?

27 Q. Yes.

28 A. Through which the information is actually passed across.  
29 And then the actual land claim itself involves, very  
30 often, a formalised transmission of that knowledge  
31 across. So, what usually happens in a land claim is  
32 that the information, in fact, gets passed across maybe  
33 several times, up to three or four times, in the actual  
34 process. And, in some cases, in particular, land  
35 claims, that information has been transmitted or  
36 captured by various means, perhaps on tape, or in the  
37 anthropologist's notebook, over a period of years. And,  
38 beyond that, the actual paradigm through which that - in

1 which that knowledge sits has possibly been recorded  
2 countless times. Now, we juxtapose that with the  
3 proposition in this case where there is, not only a  
4 little piece of information, but a completely new  
5 paradigm being passed across on one formal occasion for  
6 the very first time. It doesn't ring true.

7 Q. Have you completed your answer.

8 A. Yes.

9 Q. In terms of the transmission of knowledge, if I can put  
10 it this way, are you suggesting in anyway that all  
11 knowledge in relation to tradition practice and belief  
12 of the Ngarrindjeri people in the past or currently have  
13 been committed to writing.

14 A. That would be impossible in any culture.

15 Q. Would you agree with me that there are likely to be  
16 large gaps in the written information or knowledge of  
17 the Ngarrindjeri people.

18 A. What I am suggesting is that, if there are some gaps in  
19 the detail of knowledge, the detail relating to practice  
20 and belief in the Ngarrindjeri society, that it is,  
21 nevertheless, I believe, impossible for there to be an  
22 entire corpus of data, an entire paradigm relating to  
23 something which is apparently unknown to half the  
24 population which has escaped recognition in any slight  
25 or hinted form.

26 Q. Are you familiar with a publication called 'Key Issues  
27 in Hunter-Gatherer Research', edited by Ernest S. Burch  
28 and Linda J. Ellanna.

29 A. I have seen a reference to that, but I haven't read it.

30 MR ABBOTT: Can I ask for the date of that?

31 MS PYKE: 1994.

32 WITNESS: Was that 1994?

33 MS PYKE: 1994, yes.

34 XXN

35 Q. Rather than put various slabs of this to you, and it is  
36 at p.268. Unfortunately I actually haven't got the book  
37 with me, but, if you would like to, I will hand this to  
38 you, if it will make it clearer. It just says this,

1 that -

2 A. Could you, before you read that, do you have the book  
3 there?

4 Q. No, I don't, unfortunately. But I have got the article  
5 from which I want to read, which is an article of Lesley  
6 Mearns.

7 COMSR: What did you say the title of this  
8 article is?

9 MS PYKE: The book is 'Key Issues in  
10 Hunter-Gatherer Research'. And the actual chapter by  
11 Lesley Mearns is 'To Continue the Dreaming: Aboriginal  
12 Women's Traditional Responsibilities in a Transformed  
13 World.'

14 COMSR: Is there some questions -

15 MS PYKE: I thought the witness wanted to have a  
16 look at the general article. He felt uncomfortable  
17 about me asking him questions about it.

18 COMSR: Do you wish to draw attention to some  
19 particular page of the article?

20 MS PYKE: If you like, yes, there are several  
21 pages.

22 XXN

23 Q. Can I just put perhaps a general question and we will  
24 see how we go. Would you agree with me if I put the  
25 general proposition, and I will put the conclusion to  
26 you and it might be that, if you agree with the  
27 conclusion, we needn't worry too much about various  
28 points in the article.

29 COMSR: Yes, I wouldn't find it very useful if  
30 the witness isn't familiar with the article, in any  
31 case.

32 WITNESS: It is worth noting, I suppose, that this  
33 deals with a completely different area of Australia.

34 XXN

35 Q. I will just put the conclusion to you: it says this and  
36 it is on p.286 'Although the concept of tradition  
37 incorporates an emphasis on continuity, when the  
38 traditions under discussion are those of an indigenous

1 ethnic minority, the encompassing social order to which  
2 those traditions relate is radically different from the  
3 source of those traditions. Such traditions must deal,  
4 therefore, with considerable change. Not only is the  
5 meaning they derive from the wider society transformed,  
6 but so is the nature of there inter-relationship with  
7 each other. In their new setting, contradictions may  
8 arise in the articulation of those traditions,  
9 ultimately requiring a reinterpretation of precisely  
10 what should be expressed as traditional practice.'

11 A. Yes.

12 Q. As a general proposition, would you agree with that.

13 A. As a general proposition I would agree that that is an  
14 applicable statement to make in relation to an  
15 Aboriginal community where the main cultural references  
16 are generated from within that society. The sad fact is  
17 that, for the Ngarrindjeri people, the main cultural  
18 references have been overtaken by European cultural  
19 references. Not right across the board, but in very  
20 many aspects of the culture. And I would not take this  
21 statement as applicable to a culture which has undergone  
22 such radical transformations as Ngarrindjeri society.

23 Q. If I can put this to you, that, and this is on p.268,  
24 the author says this 'While I doubt that a written  
25 tradition is essential to maintaining historical depth,  
26 the absence of a written tradition in Aboriginal society  
27 greatly facilitates the rapid merger of the present with  
28 the past. A past that fades into uniformity beyond  
29 living memory.'

30 A. A South Australian school inspector visiting Point  
31 McLeay in 1882 noted that the level of literacy was  
32 greater than that of many country towns throughout the  
33 State. And I think, when you look at this statement  
34 again, that it is undoubtedly, if you have read the  
35 introduction, being made in reference to a society  
36 which, after perhaps 80 years or 100 years of European  
37 contact, remains essentially nonliterate. So, I mean, I  
38 would ask you, if you have got a focused question that



- 1 relates to this documentation and relates also to  
2 Ngarrindjeri society, to put it and I will answer that,  
3 but I don't think this is getting us anywhere.
- 4 COMSR: I gather that the witness doesn't see  
5 much applicability in -
- 6 MS PYKE: The witness is entitled to his view, if  
7 he wishes to express it.
- 8 COMSR: Yes, that is what he is here as, an  
9 expert witness, expressing an opinion.
- 10 MS PYKE: I understood that - I don't wish to be  
11 rude about this - but, generally speaking, it was the  
12 role of witnesses to answer questions, not ask them.  
13 But I -
- 14 COMSR: Yes, but I am just pointing out the  
15 witness has indicated that he doesn't see that that  
16 article has any reference that is useful in respect of  
17 the Ngarrindjeri community.
- 18 MS PYKE: It might be that my client says  
19 differently, but I just want to give the witness the  
20 opportunity to make some comments and, in particular,  
21 the couple of passages I have put there.
- 22 COMSR: It has to be useful to me.
- 23 MS PYKE: Yes.
- 24 XXN
- 25 Q. You would agree with me that, before the arrival the  
26 white people, Ngarrindjeri history was, apart from  
27 presumably any drawings that were done, an oral one. It  
28 wasn't written down.
- 29 A. Yes.
- 30 Q. And there might be elements like dance and song, but,  
31 leaving aside dance, basically it was an oral tradition.
- 32 A. Yes.
- 33 CONTINUED

1 Q. Would you agree with me, and feel free not to, that in a  
2 society which is becoming fragmented, if I can put it  
3 that way, by the arrival of European people, that the  
4 manner in which oral tradition is passed down, will  
5 also, in probability, become fragmented.

6 A. I can't make sense of that I am afraid. Could you  
7 explain what you mean?

8 Q. As the community disperses, do you concede that it is a  
9 possibility, that the holders of certain traditions  
10 disperse along with the community.

11 A. I don't really accept a model of dispersing community.  
12 One of the central facts of Ngarrindjeri history is  
13 that, the great shocks and obstacles that European  
14 arrival placed in their way, in many senses, has  
15 actually constituted the Masai community. It has led,  
16 instead of dispersal, it has led to a concentration of  
17 a group of people with a shared history and a shared  
18 culture.

19 Q. Are you suggesting, that is now, that Ngarrindjeri  
20 people are, in some way, centralised.

21 A. Perhaps less so since this Royal Commission began, but  
22 it is certainly the case that, throughout many several  
23 decades of this century, Ngarrindjeri people have  
24 retained a very clear understanding of their  
25 distinctiveness, in relation to other Aboriginal  
26 cultures in the country.

27 Q. Geographically, they live in various points, you have  
28 given your own evidence, in South Australia, don't they.

29 A. They do and they find that some of the proponent women  
30 come from almost four points of the compass, as far as  
31 the geographic extent is concerned. But, that hasn't  
32 militated against their self identification as a  
33 Ngarrindjeri people.

34 Q. In a nutshell, what you are saying - can I put this to  
35 you - it is your belief, even if secret sacred  
36 women's business, as it has been called here, continued  
37 to be an oral tradition, if it existed - let's just make  
38 the assumption that secret sacred women's business

1 existed -

2 A. I would prefer not to make that assumption.

3 Q. You might not prefer to, but I am asking you to make  
4 that assumption. That, if it did exist, as an oral  
5 tradition, are you suggesting it would be an oral  
6 tradition that would be known to all Ngarrindjeri women,  
7 or could you see it might be known to only a few, if it  
8 did exist.

9 A. I guess my response would be that, we're not actually  
10 talking about - we might be talking about an oral  
11 tradition, but, if we were talking about secret sacred  
12 women's business operating in a culture, it is not  
13 essentially a tradition that is some little some story  
14 that is told at a particular time and passed on, it is  
15 actually a fundamental structure, elemental structure in  
16 the society. It doesn't reside in a story, it doesn't  
17 reside in one person's memory. It manifests itself at a  
18 cultural level right across the society.

19 EXHIBIT 225 `Key Issues in Hunter-Gatherer Research'  
20 tendered by Ms Pyke. Admitted.

21 Q. Just to canvass the topic of what has been labelled `the  
22 invention of tradition.' You don't, as I understand it,  
23 particularly canvass that in your statement. Are you  
24 familiar with the concept.

25 A. I think it was one of the first pieces of writing I did  
26 for the Adelaide Review actually, back in about 1982 or  
27 '83. I reviewed the book.

28 Q. You haven't addressed it in your evidence here in the  
29 Commission. Have you heard Dr Clarke's evidence about  
30 that.

31 A. Yes, yes.

32 Q. Do you have the same view as Dr Clarke about the  
33 invention of tradition.

34 A. I suppose I am a little less ready to use the term  
35 because it, on the surface at least, it carries some  
36 pejorative associations. But, essentially, yes, I  
37 accept his use of the term, yes.

38 Q. Do you accept that, tradition can, well, can evolve,

1 that tradition is not a static thing.

2 A. Yes, certainly, certainly.

3 Q. That tradition or traditions are complex and change over  
4 a period of time.

5 A. Yes, yes.

6 Q. Do you consider that the so-called proponent of women  
7 generally believe what they are espousing.

8 A. It would be difficult to generalise about all of them.

9 But, I think I made clear in my statement, that the  
10 process that I see as perhaps having happened, which is  
11 relevant to this answer, is that, a number of  
12 Ngarrindjeri people today operate in a field which  
13 intercepts with political considerations to a large  
14 extent. Brings them into contact with influences and  
15 traditions from other regions. And when coupled with  
16 issues, such as heritage site preservation and  
17 development issues, places enormous pressure on people  
18 to contribute to establishing a basis for decisions to  
19 be made on those matters, in heritage matters and site  
20 matters and that, ultimately, models have to be  
21 constructed, which take those things into consideration.  
22 So, that, if you then say, 'Well, does that model  
23 conform with what we know about tradition in that area?'  
24 in some cases it does and in other cases it doesn't, and  
25 I think the overwhelming evidence in the Hindmarsh  
26 Island bridge case is that, it doesn't. But, that isn't  
27 to suggest that, people who are perhaps formulating and  
28 developing their models of culture, aren't doing so with  
29 an eye to the future and with an eye the validity of  
30 their own cultural expressions. The fact that they  
31 haven't read Berndt and Berndt and Taplin and Morehouse  
32 and Meyer and 150 ethnographic references, is another  
33 sensitive issue that needs addressing.

34 Q. I am having a bit of trouble making sense of what you  
35 have just said, bear with me. Is what you are saying  
36 this, that, you don't consider that what has happened  
37 with the proponent women, if I can put it that way, is  
38 some evolution of tradition.

1 A. I think the tradition, that particular tradition, has  
2 evolved quite rapidly in the 12 or 18 months since it  
3 was projected, but I don't really see the points of  
4 continuity, I suppose, this is my point, back to the  
5 traditions that were in full swing in the 1840s,  
6 through to perhaps, the 1880s and thereafter, transform  
7 themselves enormously to the point where we can't detect  
8 those strands continuing into the present, in terms of  
9 religious and ceremonial life.

10 Q. You are not suggesting that we have to find a pinpoint  
11 in the 1840s to the 1880s, to make an assertion that the  
12 tradition has evolved.

13 A. No, but we can say, for example, that, in Eastern  
14 Australia, where traditions of a certain kind were  
15 documented in that period, from the 1840s and the 1880s,  
16 there is a lively knowledge among the people in the  
17 1980s and 1990s of particularly specific aspects of  
18 those traditions. I am talking about things that are  
19 well and truly on the public record, such as bora  
20 grounds, initiation grounds in Eastern Australia, which  
21 have been turned into great cultural foci, if you like,  
22 so that, what we're looking at there, is a model where  
23 people are able to look back into their past and  
24 actively build upon aspects and traditions and  
25 institutions which had passed from active cultural use,  
26 but were nevertheless reference, points of reference,  
27 for the contemporary period. This isn't evident in this  
28 matter.

29 Q. In your conclusions, this is the bottom of p.6, you are  
30 talking about the salt water/fresh water dichotomy. You  
31 said this that, 'Construction of the barrages completed  
32 during the 1940s, effectively terminated this  
33 dichotomy.' What is your basis for that assertion.

34 A. What I am referring to there is that,  
35 effectively what the barrages did is, separate, by  
36 artificial means, the fresh and the salt water, which  
37 had previously been mixed waters - it met and mixed, in  
38 the region of the lower lakes. That, occasionally, for

1 example, salt water fish penetrated the system up as far  
2 as Mannum and that this sort of flux which has  
3 occurred, which was representative of the sort of pre  
4 barrage period, manifested itself in cultural terms, in  
5 various mythological accounts and that when the barrages  
6 were put in, the possibility for that flux and  
7 that mingling, was effectively terminated.

8 Q. Let me just put this to you, isn't it quite possible,  
9 that the belief and practices of the Ngarrindjeri  
10 people, around that dichotomy, could easily survive the  
11 physical building of the barrages and, in essence, the  
12 European construction wouldn't necessarily, in any way,  
13 affect or impinge upon the beliefs of the Ngarrindjeri  
14 people.

15 A. No, I think they would be affected. You obviously have  
16 the survival of mythology relating to that aspect well  
17 into the 1940s, because the Berndts recorded it and  
18 certainly past the 1930s and Tindale. Allison Harvey  
19 refers to it in her publication on a fishing legend of  
20 the Yaraldi. But, to say that it is still a  
21 meaningful, sort of, social geographical phenomenon  
22 today, once it has been terminated by the barrages, is  
23 not - I don't think is tenable, no.

24 Q. I would just like to ask you concerning some comments  
25 that you made on the Channel 10 interview. I am sort of  
26 paraphrasing. I suspect you will get the drift of it.  
27 You said something along the lines that - it is to do  
28 with what the propopnent women were saying. It was put  
29 to you or you might have said, basically, it was your  
30 view that, neither the assertion that there has been  
31 a fabrication or the assertion that there had been a  
32 long held traditional belief was correct.

33 A. Yes. I suppose it is a little similar to what Dulcie  
34 Wilson suggested, that Steve Hemming had said to her on  
35 a couple of occasions. That is that, he believed Doreen  
36 and he also believed Dulcie. And I would also put it in  
37 the same category as an assessment which Matt Rigney  
38 made of the situation, when he suggested that, in a

1 sense, both sides were correct. I don't have the  
2 media reference in my head as to when he actually said  
3 that, but, it was on television. What I draw from that  
4 and the opinion that I hold, I suppose, is that, on the  
5 one hand, the data, the ethnographic data, historical,  
6 anthropological data tell us that, the category of  
7 secret sacred women's business, as it pertains to  
8 Hindmarsh Island, didn't exist. On the other hand, we  
9 have a group of women who hold firmly and publicly, to  
10 the assertion that, they do believe in such a category.  
11 Now, accepting that, at least, a few of those women  
12 really do genuinely hold that belief, I am suggesting  
13 that there is a way of accounting for the fact that,  
14 both sides are right. But, unfortunately, in terms of  
15 creating a link between the two, that is where the  
16 difficulty lies. In fact, I suggest that, there is a  
17 disjunction between the two, that you can't skip from  
18 one to the other. That you can't suggest to one party  
19 that they are right and to suggest to the other one that  
20 they are right straight away, because in the process  
21 you're ignoring the fact that the assertion level,  
22 historically, the ground has shifted.  
23 CONTINUED

## P.G. JONES XXN (MS PYKE)

- 1 The ground has shifted in the sense that I think the  
2 so-called dissident women are perhaps looking back into  
3 their culture and their history, and they are not seeing  
4 any secret sacred women's business because it didn't  
5 exist. The proponent women, in my view, are looking  
6 forward into a range of political and cultural  
7 possibilities, and perhaps looking out into either parts  
8 of Aboriginal Australia, and seeing that such a category  
9 has contemporary validity. Does that answer your  
10 question?
- 11 Q. Yes, thank you. Are you familiar with the Aboriginal  
12 and Torres Strait Islander Heritage Protection Act.
- 13 A. Yes, I suppose.
- 14 Q. The concept of Aboriginal tradition as defined in that  
15 act.
- 16 A. Yes.
- 17 Q. Would you agree with me, and from your knowledge  
18 generally, that that act doesn't require a tradition to  
19 be hundreds or thousands of years old.
- 20 A. It certainly doesn't specify a time limit on a  
21 tradition.
- 22 Q. It doesn't specify that the relevant tradition must be a  
23 secret or sacred tradition.
- 24 A. As far as I recall it doesn't.
- 25 Q. Indeed the act doesn't require that the tradition be a  
26 tradition applicable to only a particular group of  
27 Aboriginal people.
- 28 A. That's correct, yes.
- 29 Q. You've talked about your experience, I think, and it's  
30 in your CV, in relation to a land claim. Was that an  
31 involvement on your part that required some time. I  
32 mean how much time did you spend on that project, I  
33 suppose is what I'm asking.
- 34 A. I think I was asked to do it because I'd already spent  
35 some years working in the general vicinity, so if you  
36 put that to one side, in actual terms of working on the  
37 claim, I suppose it amounted to two or three months  
38 solid preparation.



- 1 Q. In the raw footage that we had, some off-camera footage,  
2 you made some comments about Dr Fergie, and you said  
3 something along these lines, that 'It's clear that she  
4 didn't investigate thoroughly', and you then went on to  
5 say something along the lines that you think 'She may  
6 have been central in the way of shaping it', and you  
7 were talking about the way in which women's business, or  
8 secret sacred women's business, arose. Can I deal with  
9 that second part first. In what way do you think that  
10 Dr Fergie was central in shaping the way in which secret  
11 sacred women's business arose.
- 12 A. I thought that then, I mean that was obviously what I  
13 thought then. I'm not so sure that I think that now,  
14 but would you like me to give you some background on  
15 that?
- 16 Q. No. You'd say that's not something that you're  
17 asserting now.
- 18 A. I'd say in the light of what I've since learned after  
19 coming to this commission, that I wouldn't think that  
20 that centrality is as evident as I had thought then.
- 21 Q. You then made a comment along the lines of 'She has an  
22 agenda', which you went on to say was 'Partly anarchic'.  
23 Firstly, what agenda did you think that Dr Fergie had.
- 24 A. I think that it consists, or it certainly includes an  
25 attempt to put male interpreters of culture in their  
26 place, and that involves, in, some cases I'd suggest,  
27 fairly adventurous forays into unexplored territory on  
28 her part.
- 29 Q. What do you mean by that.
- 30 A. That, for example, it would have appeared, I would  
31 suggest, a very attractive possibility for her that here  
32 was an entire realm that had been completely overlooked  
33 by incompetent and essentially sort of patriarchally  
34 inclined male anthropologists, and that if she could put  
35 her moniker on the discovery of a category of knowledge  
36 that had previously escaped attention, that would be a  
37 good thing to be doing, not for herself, I'm suggesting,  
38 but for her profession and her gender.

- 1 Q. That's your view of it, is it. I mean at that stage you  
2 hadn't even read Dr Fergie's report as you've told us.
- 3 A. I think what you have to bear in mind is that it was an  
4 off the record comment.
- 5 Q. Yes.
- 6 A. And I'm making a comment which is equally, certainly not  
7 off the record, but equally casual in its general tenor.
- 8 Q. Your assertion that her agenda was partly anarchic, what  
9 did you mean by that.
- 10 A. Anarchic in the sense that to unsettle the status quo  
11 and to rock a few foundations is quite - I mean I've  
12 perceived that in some of Dr Fergie's approaches to  
13 issues, and it's not meant particularly as a criticism,  
14 it's an approach that she adopts on occasion.
- 15 Q. So are you suggesting that in doing this report, she set  
16 out to rock the boats and embark upon a criticism of, as  
17 you put it, incompetent male anthropologists.
- 18 A. No, I wasn't suggesting that, no.
- 19 Q. So you're not suggesting for a moment that she's gone  
20 into this with some preconceived idea or motive.
- 21 A. I think she has certainly gone into it with some  
22 preconceived ideas and motives.
- 23 Q. What preconceived ideas and motives do you suggest that  
24 Dr Fergie had before she undertook her brief, if I can  
25 put it that way, from Mr Wooley.
- 26 A. I think she had an approach which could loosely be  
27 described as feminist, and that isn't a criticism at  
28 all, that she wanted to explore aspects of Ngarrindjeri  
29 spiritual belief that she considered had been excluded  
30 from the record, and nothing is wrong with that  
31 whatsoever.
- 32 Q. I just want to make sure I'm sure; you're saying she  
33 embarked upon this process with those views in her mind  
34 before she conducted her enquiries.
- 35 A. I deduced that, yes. That's my interpretation of her  
36 approach.
- 37 Q. On what basis do you make that assertion. Had you  
38 spoken with Dr Fergie before she took the brief, or at

1 the time she took the brief.

2 A. No, but I'd spoken with Dr Fergie about other areas of  
3 Aboriginal Australia, I guess some years ago, and it was  
4 well-known or is well-known that Dr Fergie is a feminist  
5 anthropologist, so all I'm suggesting is that the  
6 orthodox approach of feminist anthropologists would be  
7 to approach an issue, such as Aboriginal religion or  
8 spirituality, with a number of assumptions which then,  
9 in the ordinary course of events, would be tested  
10 against the evidence. There is nothing extraordinary  
11 about that.

12 Q. What is a feminist anthropologist.

13 A. It's an anthropologist who approaches the question of  
14 how human societies comport themselves from the point of  
15 view of attempting to elicit data which perhaps swings  
16 the perspective on to the female sphere, or perhaps  
17 swings the spotlight on to the male sphere which is  
18 directed from a female perspective rather than a male  
19 perspective.

20 Q. Do we call male anthropologists - is there a name for  
21 them, do they enter upon their investigations in a  
22 particular way.

23 A. I think it's a little bit like the way in which  
24 politicians are characterised. You have politicians,  
25 and then you have female politicians. It's a function,  
26 I suppose, of the fact that until relatively recently,  
27 women haven't been well represented in universities or  
28 academic departments, and it will probably be another  
29 few years until these terms are dispensed with but, at  
30 present, and during the 1980s and the 1990s, they are  
31 still with us.

32 Q. I simply put it to you that to assert that Dr Fergie has  
33 got some agenda because she is a female anthropologist  
34 isn't -

35 A. I didn't say that, I said she is a feminist  
36 anthropologist.

37 Q. What I simply put to you is this; for you to seek to  
38 distinguish Dr Fergie as a feminist anthropologist

- 1 primarily because she is, I suggest to you, a female  
2 anthropologist as opposed to a male anthropologist, is  
3 to attempt to create artificial distinctions.
- 4 A. No, it's a distinction which Dr Fergie has claimed for  
5 herself. She quite happily inhabits the ground which  
6 we're describing. I mean it's an element of her  
7 identity as a professional.
- 8 Q. I suggest for you to make any suggestion that Dr Fergie  
9 has gone into her investigation or her enquiry or her  
10 brief with some preconceived notions on the basis that  
11 she is a feminist anthropologist, is simply nonsense.
- 12 A. I don't think it's nonsense, no.
- 13 COMSR: I don't know who else is going to  
14 examine the witness, but I can indicate that I'm  
15 satisfied that there are a number of areas which have  
16 been well and truly covered and that I don't want  
17 covered again, so if counsel have got areas that haven't  
18 been touched at all, because I don't really need a great  
19 deal more information about the matters that I've heard  
20 evidence on. I mean I'm satisfied in those areas.
- 21 MR KENNY: I just indicate that I have no questions  
22 for this witness but, just record, it should not be  
23 presumed that I accept what this witness has said.
- 24 MR STEELE: That's also my position.
- 25 COMSR: Perhaps you could indicate what matters  
26 you propose to cover.
- 27 MR ABBOTT: In view of the failure of Mr Steele to  
28 put anything on behalf of Dr Draper, I want to ask this  
29 witness some questions about Dr Draper.
- 30 MR STEELE: What has that got to do with my failure  
31 to ask any questions?
- 32 COMSR: Yes.
- 33 MR ABBOTT: There are some questions that arise out  
34 of the history of this matter that Mr Jones -
- 35 COMSR: Well, how does that, in particular,  
36 affect your clients? Is there some particular aspect?
- 37 MR ABBOTT: Yes, it does effect my clients, it  
38 effects them in this way; one of the criticisms that

## P.G. JONES XXN (MS PYKE)

1 I've continually heard throughout the months of this  
2 Royal Commission, so far as my clients are concerned, is  
3 `All you can say is that you didn't know about this  
4 secret sacred women's business, you can't take it any  
5 further' and, in essence, my clients are criticised  
6 because they cannot prove, in essence, an absence of  
7 secret sacred women's business other than saying they  
8 didn't know about it. Now in relation to that aspect, I  
9 submit I'm entitled to cross-examine Mr Jones in respect  
10 of the claims made by those who do assert the existence  
11 of secret sacred women's business, and the first person.  
12 To do so is Dr Draper, and I want to ask some questions  
13 in relation to Dr Draper's methodology.

14 COMSR: Of this witness.

15 MR ABBOTT: Of this witness, yes, because this  
16 witness is an expert ethnographer and historian, and  
17 has demonstrated an awareness and knowledge of  
18 Ngarrindjeri culture, and I want to put to him some of  
19 the propositions that Dr Draper has come out with. I  
20 submit it's entirely appropriate that I do so. So  
21 that's one topic.

22 I want to ask him a couple of questions about Berndt  
23 and Berndt to clear up some of what I suggest are the  
24 misconceptions under which Ms Pyke was labouring, and  
25 there is a couple of other topics as well.

26 COMSR: Yes, Mr Abbott.

27 MR STEELE: I rise in response to Mr Abbott  
28 predicated his remarks on the basis of my failure to ask  
29 questions, his wanting to ask questions arising out of  
30 my failure to ask questions. There is a complete non  
31 sequitur in that remark having now listened to him. I  
32 raise the issue that I have deliberately avoided asking  
33 questions in the circumstances where the issues that I  
34 would choose to cover have been amply covered by others  
35 and in this case, as with the case of Dr Clarke, the  
36 issues on which I would cross-examine have been covered  
37 by Ms Nelson and Ms Pyke.

38 It cannot be said by Mr Abbott that anything can

1 follow from my failure to ask any questions arising out  
2 of any representation of Dr Draper.

3 MR ABBOTT: I'm not predicating my cross-examination  
4 on Mr Steele's failure at all. I'm just saying that  
5 there are some things that I want to put that I thought  
6 Mr Steele might well have put. He hasn't put them, and  
7 I want to put them. It's a topic that hasn't been  
8 covered with this witness at all, that's all I was  
9 alluding to. You said we should be cross-examining on  
10 topics not already covered. Dr Draper's work is one of  
11 them.

12 MR STEELE: With respect to Dr Draper, his work is  
13 as an archaeologist. There has been no suggestion by  
14 this man, or by anybody else, that this man has  
15 expertise in the field of archaeology. I don't deny  
16 that Dr Draper is also an anthropologist, but Dr Clarke  
17 is the expert anthropologist. He was not cross-examined  
18 with respect to Dr Draper's methodology. It seems to me  
19 entirely inappropriate that this commission is further  
20 delayed by asking this man, who does not express  
21 expertise, questions about the expertise of my client or  
22 the methodology of my client asserting his expertise.

23 MR ABBOTT: If Mr Steele has an answer to my  
24 questions on the basis that this witness is incompetent  
25 to do so, let him to do so at the time I ask the  
26 questions. As will be obvious when I put questions to  
27 Mr Jones, it's not a matter of Mr Draper's expertise as  
28 an archaeologist, it's a matter in respect to which I  
29 submit, and will be submitting, strays well outside any  
30 expertise of his own, and is now and has, in the course  
31 of this matter which led up to the banning of the  
32 bridge, in fact put forward what are essentially his own  
33 views as distinct from his views as an expert.

34 CONTINUED

1 MR STEELE: I take up the point that you raised  
2 earlier. What relevance is this to Mr Abbott's client.  
3 Is he actually seeking to ask questions on instructions  
4 from his clients? As far as I can tell, the only  
5 witness who comprises one of his clients who spoke at  
6 all of my client was Mrs Dorothy Wilson, and she said  
7 that she had never met Dr Draper, she had never  
8 participated in the conversation with Dr Draper, she had  
9 never overheard a conversation with Dr Draper. How then  
10 can Mr Abbott represent to you that he has instructions  
11 on which to cross-examine in the way that he is now  
12 outlining?

13 MR ABBOTT: Do you want me to answer that? Because  
14 it is just nonsense to suggest that I have to get  
15 instructions on every aspect I wish to cross-examine a  
16 witness on from my clients, who essentially, in this  
17 regard, are lay persons. It is like saying they have  
18 got to be able to give me detailed instructions on  
19 scientific methodology and, if they don't, I can't ask  
20 questions on what I ascertain to be a faulty scientific  
21 methodology. That is just arrant nonsense.

22 What my clients have endured now for months, in the  
23 media, is constant assertions made that what they are  
24 saying is not true. Part of their complaint is that  
25 they have come along here to assist the Royal  
26 Commission. They have told you all they know about it.  
27 They are still met with 'You weren't told about it. You  
28 don't know about it. You weren't one of the chosen  
29 people'. I want to test the validity of that sort of  
30 criticism with this witness. Dr Draper is one of the  
31 persons who has aligned himself with the proponent  
32 women. I want to explore Dr Draper's role in this with  
33 this witness.

34 COMSR: I am not quite sure what you mean by  
35 'role in it'. That is what is concerning me. Ask the  
36 questions and I will see what it is leading to. My role  
37 is to obtain information about what happened.

## P.G. JONES XXN (MR ABBOTT)

1 MR ABBOTT: Yes, and I suggest that this witness  
2 will be able to help you obtain information in relation  
3 to it.

## 4 CROSS-EXAMINATION BY MR ABBOTT

5 Q. Mr Jones, you said that in the 80s you did research into  
6 the ethnography in terms of the written sources, and, of  
7 course, some visual and oral sources of the Ngarrindjeri  
8 people. You have mentioned that project that you did in  
9 that period.

10 A. Yes.

11 Q. Have you continued to keep abreast of what has been  
12 written in relation to Ngarrindjeri people.

13 A. Yes.

14 Q. Are you aware of a number of reports that have been  
15 written in the 80s and 90s in relation to Hindmarsh  
16 Island and its interrelationship with the Ngarrindjeri  
17 people.

18 A. Yes, I'm aware of their existence, but not in all cases  
19 of their detail.

20 Q. I am not going to ask you about the content of them,  
21 except in isolated instances. Are you aware that Dr Rod  
22 Lucas wrote a report in 1990.

23 A. Yes, I've heard that mentioned.

24 Q. He is the husband of Dr Fergie.

25 A. That's correct.

26 Q. Have you read the Lucas report.

27 A. No, I haven't.

28 Q. In 1994, I think you are aware that Dr Draper furnished  
29 a report, which is our Exhibit 16, in relation to  
30 Aboriginal heritage sites which directly impacted upon  
31 the Kumarangk/Hindmarsh Island Bridge project.

32 A. Yes.

33 Q. Have you read Dr Draper's report.

34 A. Yes.

## 35 WITNESS HANDED EXHIBIT 16

36 COMSR: This is a suppressed report. Are you  
37 going into any detail?



## P.G. JONES XXN (MR ABBOTT)

1 MR ABBOTT: Dr Draper identifies three sites, two of  
2 which are specific. One of which is non-specific in  
3 that it is 'all the waters'.

4 COMSR: If we are going to go into any  
5 discussion on sites, we will not be able to do that in  
6 public hearing.

7 MR ABBOTT: I am happy to have it in a private  
8 hearing.

9 COMSR: If you are going to put sites to the  
10 witness and identify them - there are other general  
11 questions, I suppose, or you can just ask him to look at  
12 it.

13 MR ABBOTT: I could do it that way. I will try.  
14 XXN

15 Q. Dr Draper identifies a third site which he describes as  
16 'Having vital cultural heritage significance as part of  
17 the meeting of the waters.'

18 A. Yes.

19 Q. The location of that site is set out in the map attached  
20 to the back. I merely refer you to it without asking  
21 you to describe it. Could you look at the map.

22 A. Yes.

23 Q. Do you understand all the stippled area is that 'site'.

24 A. Yes. It is difficult to conceive of that as a site.

25 Q. I wanted to ask you about that. In describing that as a  
26 site, does that accord with what your knowledge is of  
27 Ngarrindjeri Aboriginal traditional sites.

28 A. No, it certainly doesn't. The sites that have been  
29 recorded over the course of this century, in particular,  
30 relate to places, landscape features in particular, not  
31 an entire marine landscape in that respect.

32 Q. This is in the public domain, this particular site,  
33 because it has been mentioned publicly, and I propose to  
34 ask the witness so that your Honour is aware that if you  
35 look at the large map on the wall here -

36 MR SMITH: I am trying to straighten out what we  
37 know is in the public arena and what isn't.

## P.G. JONES XXN (MR ABBOTT)

- 1 COMSR: If there is any doubt about it, I am not  
2 going to take the evidence in public.
- 3 MR SMITH: In the public arena or no, it must be a  
4 divulgence which amounts to a divulgence in  
5 contravention of Aboriginal tradition. I do not know  
6 whether anyone would contend that, in any event.
- 7 MR ABBOTT: Potentially Section 35.
- 8 MR SMITH: Yes. Parts of this report, of course,  
9 were leaked to the media, as we know, and it received  
10 some attention in the media. I will locate that so if  
11 we do embark on this we can do it with some impugny or  
12 not.
- 13 COMSR: I will not embark with impugny if  
14 there is any doubt in the area. I would sooner we went  
15 into public hearing and dealt with it in that way.
- 16 Q. Are you able to say, Mr Jones.
- 17 A. I think I can make a general comment.
- 18 Q. As to whether it is in the public arena or not.
- 19 A. Yes, I mean, it would have to be in the public arena, I  
20 think. If it isn't, we would have to take that map  
21 down.
- 22 Q. I am talking about the specific identification of sites.
- 23 MR ABBOTT: In the report of the `Sydney Morning  
24 Herald', Dr Draper is stated as saying this `Contrary to  
25 the dissident assertions that the women's business was  
26 an invention of the island meeting, Mr Draper said this  
27 week that he first became aware of the notion in  
28 February last year' that's 1994 `and hindsight adds a  
29 bit of clarity to an oblique reference in his report,  
30 the same section quoted in the women's letter, "This  
31 area represents a crucial part of Ngarrindjeri cultural  
32 beliefs about the creation and constant renewal of life  
33 along the lower Murray lakes, the Murray Mouth, and the  
34 Coorong. The most serious cultural heritage dilemma  
35 concerns the Goolwa Channel, and its vital cultural  
36 heritage significance as part of the meeting of the  
37 waters. The cultural traditions concerning this `site'  
38 and its relationship to the surrounding lakes and the

1 Coorong are highly confidential and only their very  
2 general nature is documented in this report".'

3 It details a map of the area as well. So I would  
4 assert that the third site, identified by Dr Draper in  
5 his report is in the public domain, particularly when  
6 the whole of the area is on the map on the wall.

7 COMSR: Why is there some necessity to go into  
8 the specifics of it in any event?

9 MR ABBOTT: I want to know if there is any basis on  
10 the research which this witness has undertaken which  
11 would give any hint. He has said all along in relation  
12 to other aspects of women's business that there is no  
13 hint. I want to know whether there is any hint of this  
14 particular site.

15 COMSR: You can put that to him. He only has to  
16 look at the map. He doesn't have to have it spelled out  
17 chapter and verse.

18 XXN

19 Q. You see what Dr Draper describes in his report the third  
20 site as being the meeting of the waters.

21 A. Yes.

22 Q. You, I think, have read his report, is there anything  
23 that you have read or heard of, prior to hearing this  
24 asserted by Dr Draper that, first of all, there was any  
25 concept in Ngarrindjeri cultural life other than the  
26 reference you make at the bottom of p.6, and the top of  
27 p.7 of your statement, to the meeting of the waters.

28 A. No. There are indications in the literature elsewhere  
29 that the fresh water/salt water dichotomy that I speak  
30 of at that point, is of significance, but no indications  
31 in the literature to extrapolate from that and then  
32 suggest that any part of the marine landscape in that  
33 vicinity is therefore a site.

34 Q. That's what I wanted to explore. It is obvious, is it  
35 not, from your knowledge of Ngarrindjeri culture, that  
36 the fact that salt water extended up into the lakes and  
37 as far up as Mannum, and it ebbed and flowed, was a  
38 matter of some significance and gave rise to some

1 elements of a mythology. Do you agree with that.

2 A. Can you just run that past me again. I was distracted.

3 Q. It is obvious, isn't it, that the fact that the salt  
4 water came in through the Murray Mouth and, in some  
5 cases, extended as far north as Mannum, where salt water  
6 mullet could be caught in the swamps, and that it ebbed  
7 and flowed, gave rise to elements of a mythology in  
8 Ngarrindjeri culture.

9 A. Yes, that's the case, and it can be documented elsewhere  
10 in Aboriginal Australia, that same phenomenon.

11 Q. Amongst what we will call estuarine aborigines.

12 A. Yes.

13 Q. It might be said by Dr Draper, or indeed by someone  
14 else, that because there is that fact, that somehow that  
15 provides a justification for asserting that Hindmarsh  
16 Island was a site, and a specific site, within that  
17 mythology. Is there any hint of that being so.

18 A. It's a gross - we're dealing with culture in a very  
19 gross way if we accept that, because there are literally  
20 hundreds of documented sites in the region, each with  
21 explicit connotations and associations.

22 Q. Is there any hint in any of the material that you have  
23 read, seen or heard, that something like a bridge which  
24 joins Hindmarsh Island to the mainland somehow destroys  
25 that mythology, that spirituality.

26 A. None at all, no.

27 Q. Indeed, can you see any reason why it should.

28 A. No. It has mystified me as a line of reasoning since it  
29 first appeared. I mean, the barrages achieved just that  
30 effect, as an extremely intrusive interference into that  
31 subtle shift of environmental mixture, if you like, and  
32 a bridge is always - I mean, I am neither proper nor  
33 anti the bridge. I suppose I regard it as essentially a  
34 blot on the landscape that would be nice to avoid, but I  
35 don't see an argument in that direction.

36 Q. I will read out what's in the report about the meeting  
37 of the waters, since it is in the newspaper as well of

1 27 May. On p.4 of his report, dealing with the Goolwa  
2 Channel, the meeting of the waters -

3 COMSR: You are reading out what's appeared in  
4 the newspaper?

5 MR ABBOTT: Yes, I am reading out the same bit that  
6 has appeared in the newspapers. I am sorry, to the same  
7 effect as in the newspaper. It doesn't appear to be  
8 exactly the same.

9 MR STEELE: You are looking for page 1. That is the  
10 same passage as in the newspaper. Page 1, point 9, word  
11 for word.

12 MR ABBOTT: In that case, I will not read out what's  
13 at p.4, para.3.3.

14 XXN

15 Q. Look at 'Site Description'. Would you read the  
16 paragraph under that heading dealing with the site  
17 description.

18 A. Yes.

19 Q. Let me know when you have read it to yourself.

20 A. Yes.

21 Q. Whilst obviously the interaction between fresh and salt  
22 water was of cultural and ecological significance to the  
23 Ngarrindjeri - you would accept that, would you not.

24 A. Yes.

25 Q. Is there any remnants of any tradition, that is  
26 referable to creation and renewal of all life,  
27 including the Ngarrindjeri people.

28 A. I certainly haven't detected that, no.

29 Q. Are you aware of whether or not references to the  
30 concept of salt water meeting fresh water is part of a  
31 much larger and deeply significant set of cultural  
32 traditions.

33 A. I'm not, no.

34 Q. I suppose you would need to know just what the author  
35 was referring to when he talks of much larger and deeply  
36 significant set of cultural traditions.

37 A. Yes. I suppose in a report of this nature, one would  
38 expect to see a little footnote appearing after that and

- 1 a reference to a published source, or an archival  
2 source.
- 3 Q. The author says that Dr Draper said that they were  
4 confidential and couldn't be described. However, would  
5 you expect to find some reference to them.
- 6 A. Particularly when we are dealing with a culture that  
7 doesn't have this category of secret sacred.
- 8 Q. The fact that there is a claim made of a sacred site  
9 being the meeting of the waters, being all this aquatic  
10 area, if it was a valid claim, you would indeed expect  
11 to see it forming part of a much larger and deeply  
12 significant set of cultural traditions, wouldn't you.
- 13 A. Yes, that's right.
- 14 Q. That's exactly what you have been on about for some  
15 hours to Ms Pyke.
- 16 A. Yes. Its significance is such that it would be - it  
17 could not be avoided in people's own awareness of what  
18 it is that they're transacting culturally on a  
19 day-to-day basis.
- 20 CONTINUED

- 1 Q. Is it also your view that, whilst that larger - much  
2 larger and deeply significant set of cultural traditions  
3 may indeed be, to some extent, gender oriented, you  
4 would not expect there to be a total unawareness by one  
5 gender of the significance and cultural traditions of  
6 the other gender. By definition, that couldn't occur,  
7 could it, in Ngarrindjeri life.
- 8 A. No, in fact, even in most - in the sort of paradigm  
9 societies, for this sort of gender division in  
10 Aboriginal Australia, the actual awareness of the  
11 existence of that category is prominent in the  
12 consciousness of the other group, yes.
- 13 Q. So that you would, I take it, applaud Dr Draper's claim,  
14 if it can be substantiated, and be prepared to modify  
15 your views, if he could show you a much larger and  
16 deeply significant set of cultural traditions which  
17 encompassed a claim for a site which he calls a meeting  
18 of the waters which, in fact, is all the waters and area  
19 around the area we are talking about.
- 20 A. Yes, I would.
- 21 Q. But, until he comes up with them, you would reserve  
22 judgment.
- 23 A. No, I would go a little further than that.
- 24 Q. Yes, what would you say.
- 25 A. I would discount the possibility on the basis of what we  
26 know. I mean, the suggestion is that we need to modify  
27 our understanding of the culture and its history to an  
28 enormous extent. And, I mean, I can't really imagine  
29 that possibility. I can't countenance it. And I don't  
30 think a number of other people, including Ngarrindjeri  
31 people, can either.
- 32 Q. I want you to assume that one of the claims in one of  
33 the secret claims in the envelope attached to the  
34 appendix to the Fergie report is that 'Hindmarsh Island  
35 and its environs including the river channel is or was  
36 of the utmost significance to Ngarrindjeri cultural and  
37 spiritual life, but, in particular, to the women of the  
38 Ngarrindjeri nation.'

1 A. Yes.

2 COMSR: What are you putting? What is the  
3 source of that?

4 MR ABBOTT: A distillation of the media utterances  
5 of the proponent women, Dr Fergie and others, who have  
6 asserted to know what they are talking about.

7 XXN

8 Q. I emphasise, these are my words.

9 A. Yes.

10 COMSR: I am sorry, can you put it again? I  
11 have undoubtedly broken the train of thought.

12 MR ABBOTT: Yes.

13 XXN

14 Q. I want you to assume that one of the claims that is  
15 being made by Dr Fergie, or one of the claims that has  
16 been recorded by Dr Fergie in the secret envelope which  
17 contains the two appendices, one of which is Dr  
18 Kartinyeri's information and the other is Dr Fergie's  
19 confirmation of Dr Kartinyeri's information: you  
20 understand that.

21 A. Yes.

22 Q. But one of the claims is to this effect 'That Hindmarsh  
23 Island and its environs including the river channel was  
24 or is of the utmost significance to Ngarrindjeri  
25 cultural and spiritual life.' Do you accept, or are you  
26 prepared to make that assumption, for the time being, of  
27 what I have told you.

28 A. Yes.

29 Q. What that cultural and spiritual significance is is  
30 unclear, but it is of such significance that, to destroy  
31 the physical attributes of the site, that is, by linking  
32 Hindmarsh Island with the mainland, will bring to an end  
33 Ngarrindjeri culture and will destroy the Ngarrindjeri  
34 cosmos.

35 A. Yes.

36 Q. In particular, it will adversely affect the ability of  
37 Ngarrindjeri women to reproduce and that it will bring  
38 to an end the world as Ngarrindjeri people know it.



1 A. Yes.

2 Q. In respect of a claim of that order, have you heard or  
3 seen, apart from what is put forward by the proponent  
4 women, Dr Draper and Dr Fergie, anything to substantiate  
5 it.

6 A. No, I haven't. And it is - I mean, it is the sort of  
7 claim that one would expect to be supported by extensive  
8 documentation and a careful record of evidence  
9 reflecting upon that matter. And it doesn't appear to  
10 have been done, no.

11 Q. It is, I suggest to you, too big a secret to have  
12 remained a secret.

13 A. Yes, I accept that. It is.

14 Q. We are talking about, to use Doreen Kartinyeri's words,  
15 she speaks of Hindmarsh Island as being the Uluru of  
16 South Australia.

17 A. Okay, yes.

18 Q. Or of the southern area.

19 A. Yes.

20 Q. That is a mighty big claim, isn't it.

21 A. I can accept that it had achieved that prominence in her  
22 own mind, yes.

23 Q. Allied with that claim in the appendix may or may not be  
24 a claim that the physical attributes of the site are  
25 such that, if you look at an aerial view, then the whole  
26 area looks like women's reproductive organs. You have  
27 heard of that claim, have you not.

28 OBJECTION Miss Nelson objects.

29 MISS NELSON: The form in which it is put suggests  
30 that that is what is in the appendix. And I don't  
31 understand that -

32 COMSR: I think he is asking the witness to  
33 assume that.

34 MR ABBOTT: Yes.

35 MISS NELSON: That is not what he said, though. If  
36 that's what my learned friend means, then he should say  
37 so.

38 MR ABBOTT: Yes, I do mean that. I thought I said

1 allied with that claim may or may not be.

2 XXN

3 Q. That is the claim that I make in respect of the  
4 envelopes.

5 COMSR

6 Q. Yes, you are being asked to assume that, for the  
7 purposes of this question.

8 XXN

9 Q. May or may not be another subsidiary claim.

10 A. Yes.

11 Q. An aerial view of the area would indicate, to a  
12 Ngarrindjeri observer, resemblance to women's  
13 reproductive organs.

14 A. Yes.

15 Q. Have you heard anything like that in your investigation  
16 of Ngarrindjeri culture.

17 A. Only in the media in recent times, yes.

18 Q. Is there any support for that sort of claim in the  
19 Ngarrindjeri ethnography that you have studied.

20 A. I believe that I have come across references to salt  
21 pans or clay pans, which may become salty, as  
22 resembling, metaphorically, the animal skins which are  
23 mythological animal skins which are pegged out. That  
24 analogy finds expression across Aboriginal Australia.  
25 The most spectacular is Lake Eyre, yes.

26 Q. And it is obvious, is it not, that Aboriginal people in  
27 the past could stand on a hill, could look down on  
28 something and then could give a mythological allusion to  
29 a lake or a place, from above. At least, from a degree  
30 of perspective.

31 A. Yes, and I think it is also clear, as the western desert  
32 painting movement shows, that Aboriginal people have the  
33 facility to conceive of the landscape in a schematic  
34 sense and to transfer that schema to canvas as it  
35 happens. But, in this case, we are talking about an  
36 internal view, such as is of the body, which is achieved  
37 through anatomical dissection. And I don't find any  
38 evidence that that perception of the body manifested

1 itself in that way in any Aboriginal society.

2 Q. Looking at Exhibit 210, now before you, which is the  
3 Kurna Higher Education Journal, would you look at p.67,  
4 I think it is, the article entitled 'The Cultural  
5 Significance of the Onkaparinga River', have you read  
6 this article.

7 A. I have skimmed it, yes.

8 Q. You will see that there is a claim made that the  
9 Onkaparinga River estuary 'shows a connection between  
10 the landscape of the river and the reproductive organs  
11 of a woman'.

12 A. Yes.

13 Q. And that, not only does it show the organs in a side  
14 view, but also frontal.

15 A. Yes.

16 Q. The support for this view, apart from the claim made  
17 just by the authors, is the Kurna dictionary, which the  
18 authors say show the Kurna people talked about body  
19 parts.

20 A. Yes.

21 Q. I take it you accept that there was some knowledge of  
22 body parts.

23 A. Yes, certainly, particularly in relation to body parts  
24 of kangaroo, for example, species which were cooked.

25 Q. Then there is a section headed 'Aerial Visualisation',  
26 in which the authors took on board a legend of the  
27 Arabana people.

28 A. Yes.

29 Q. And the story of Lake Eyre made from a kangaroo skin.

30 A. Yes.

31 Q. Which the authors say supports the view that 'Showing  
32 that Aboriginal people can visualise a map-like view of  
33 an area of land'.

34 A. Yes.

35 Q. Do either of those lines of argument support the view  
36 that the Onkaparinga River and its estuary shows a  
37 connection in its shape between the river and  
38 reproductive organs, in your view.

- 1 OBJECTION Mr Steele objects.
- 2 MR STEELE: Where is this line of questioning going  
3 and how is it helpful to you in determining the issues?
- 4 COMSR: Yes, Mr Abbott.
- 5 MR ABBOTT: Because it will be our suggestion that  
6 this is one of the possible genesis for this story that  
7 was created in March 1994 in relation to Hindmarsh  
8 Island.
- 9 MR STEELE: By whom? Will we get an ever-increasing  
10 list of names that are supposed to be the genesis for  
11 this so-called fabrication?
- 12 MR KENNY: I thought Mr Abbott's assertion was my  
13 clients fabricated it. I seek clarification.
- 14 MR ABBOTT: I am not saying the authors of this  
15 paper created the story in 1994. I am saying that those  
16 in 1994 used what is in this paper. I want to ask  
17 whether there is any basis and the witness can answer it  
18 - it is only one question - whether there is any basis  
19 he sees in the article. It may be that it will be  
20 asserted that it was entirely appropriate to base a  
21 claim in relation to Hindmarsh Island on something like  
22 this. That it had been done before.
- 23 COMSR: Perhaps we will get a yes or no answer  
24 first.
- 25 COMSR
- 26 Q. Can you see any basis in the article for that claim.
- 27 A. I would prefer to give a slightly longer answer, if I  
28 could?
- 29 Q. Yes.
- 30 A. That there seem to be several aspects to your question.  
31 Firstly, whether it would be appropriate to extrapolate  
32 from the mythology recorded for the Arabana and related  
33 peoples in relation to Lake Eyre and to suggest that,  
34 because Aboriginal people had this capacity for making  
35 those analogies between landscape and depictions of  
36 landscape, that the same could be said for a river  
37 system and the internal organs of a human being. And I  
38 don't accept that. I think a kangaroo skin was

1 encountered probably every once or twice a week. The  
2 internal or reproductive organs of women were probably  
3 never encountered as anatomy books since the 18th  
4 century have depicted them, in any case. So that is one  
5 strand. The other - perhaps to answer the other strand  
6 of the question: it is apparent to me that this  
7 propensity to discuss or to interpret the landscape  
8 essentially in European terms and in relation to what  
9 might be loosely discussed as fertility symbolism has  
10 increased in frequency since the 1980s. I have  
11 certainly encountered it myself.

12 XXN

13 Q. Numerous examples of the claim.

14 A. Examples of people interpreting rock art, for example,  
15 which has quite, I think, quite clearly slipped from  
16 people's traditions, even perhaps several hundred years  
17 ago, as being related to this same sort of symbolism.

18 Q. It is a common factor in this new age mythology you  
19 spoke of, is it not.

20 A. It is, yes.

21 Q. The identification of estuarine areas with reproductive  
22 organs.

23 A. Yes, it is a fact, I suppose, that every orifice of the  
24 landscape could resemble orifices in the human body, if  
25 you wanted to.

26 Q. I don't know whether you have read a novel by Gerald  
27 Brown, published in 1982, in which he equates New York  
28 Harbour, the upper bay as the vaginal cavity. The  
29 pelvic structure of Staten Island. And Brooklyn and  
30 Staten Island forming what is appropriately known as  
31 'The Narrows'. Manhattan being the uterus and the East  
32 River and Hudson Bay being the fellopian tubes.

33 OBJECTION Mr Steele objects.

34 OBJECTION Miss Nelson objects.

35 MISS NELSON: Mr Abbott has gone too far now.

36 WITNESS: It rings a bell. If that is what you  
37 are suggesting.

38 COMSR: What is the purpose of this?

1 XXN

2 Q. The point I want to make is that, is the claim by people  
3 in the 80s and 90s, not Aboriginal people, that  
4 estuaries and waterways resemble or may be seen as  
5 aspects of reproductive organs, something that is common  
6 across the world. Not necessarily in every country, but  
7 certainly not specific to Hindmarsh Island, to your  
8 knowledge.

9 OBJECTION Mr Steele objects.

10 MR STEELE: I object. I think that is a really  
11 absurd question. It is so far in the periphery of the  
12 matters you have to deal with it is an wholly  
13 inappropriate question and line of questioning to  
14 pursue.

15 COMSR: Yes, I don't know where that would lead  
16 me, Mr Abbott. Even if it does, even if it is not  
17 confined to Australia, how is that going to assist me?

18 MR ABBOTT: I am not suggesting necessarily that  
19 those that propounded it in March 1994 necessarily got  
20 it from the Onkaparinga River article. I am  
21 endeavouring to show that there could have been 100  
22 other sources to give them the spur for what they made  
23 up, the proponent women.

24 COMSR: I don't know that that is going to  
25 assist, at all, Mr Abbott.

26 MR ABBOTT: Very well.

27 XXN

28 Q. One of the other claims that I invite you to assume may  
29 be in the - or invite you to assume is in the secret  
30 appendix to Dr Fergie's report, is a claim that the  
31 island itself, that is, Hindmarsh Island, was a place  
32 where Aboriginal women went to abort the foetuses  
33 conceived as a result of contact with white or partly  
34 white people. You are aware of that claim being made in  
35 the media.

36 A. Yes.

37 Q. That is not a claim of a myth, is it, that is a claim of  
38 a fact.

4521

KC 51Q

P.G. JONES XXN (MR ABBOTT)

1 A. Yes, I think so.

2 Q. Is there any documentation of that fact in any of the  
3 material you have read.

4 A. No.

5 CONTINUED

1 Q. Is the closest that you have seen, the claim in Meyers'  
2 book, that not abortions were practiced in the  
3 Ngarrindjeri nation, but infanticide was sometimes  
4 practiced. Is Meyer in any way site related in respect  
5 to that claim.

6 A. Does he site relate that reference?

7 Q. Yes.

8 A. No, I don't believe so. He was the missionary at  
9 Encounter Bay and one assumes that it took place in that  
10 vicinity.

11 COMSR

12 Q. What was the manner of travel of Aboriginals from the  
13 mainland to Hindmarsh Island. How would they get across  
14 there.

15 A. There is some documentation on that which suggests  
16 that, people actually made rafts, of grass, trees and  
17 reeds and rushes and bundled them together  
18 and paddled out or poled themselves out across that  
19 stretch of water.

20 XXN

21 Q. In relation to that claim, that is that factual claim,  
22 is it your view that, factually, that's not true.

23 A. Yes, it is my view, yes.

24 Q. You were asked some questions by Ms Pyke, about the  
25 women's business, which is the secret sacred women's  
26 business, which is the subject of this Commission. I  
27 remind you that, the terms of reference are whether or  
28 not the women's business were or any aspect of the  
29 women's business was a fabrication. Women's business is  
30 defined in the terms of reference, as being: 'The  
31 spiritual and cultural significance of Hindmarsh and  
32 Mundoo Islands, the water of the Goolwa channel, Lake  
33 Alexandrina and the Murray Mouth within the Aboriginal  
34 tradition of Ngarrindjeri women which is crucial for the  
35 reproduction of the Ngarrindjeri people and of the  
36 cosmos which supports their existence.'  
37 I think you're aware that, the definition of women's  
38 business, in the terms of this Commission, seemed to



1 have had their genesis in Dr Fergie's report.

2 A. Yes, it has that ring to it.

3 Q. Have you told us all you know of the spiritual and  
4 cultural significance of Hindmarsh and Mundoo Island.

5 A. No, I don't think I have been asked that question  
6 actually.

7 Q. I think that, Dr Clarke has written about the spiritual  
8 and cultural significance of Hindmarsh and Mundoo  
9 Islands in his thesis. In relation to the spiritual and  
10 cultural significance of Hindmarsh and Mundoo islands,  
11 is there any support for the view that, Hindmarsh Island  
12 was female, or predominantly female, in the spiritual  
13 or cultural significance terms, and Mundoo Island male.

14 A. No, none whatsoever and I haven't read closely the  
15 archaeological reports. In fact, in the case of Vanessa  
16 Edmonds' report, I haven't read it at all, but I  
17 understand that it has generated the same set of  
18 conclusions that apply elsewhere, in the landscape, and  
19 that, what we conclude from that is that, that the  
20 archaeological sites contain evidence for the occupation  
21 by groups of men and women and children, at any one  
22 time.

23 Q. I think you have heard it suggested in the media  
24 reports, that there is a claim made by the proponent  
25 women and/or Dr Fergie, that Hindmarsh Island is in some  
26 spiritual and cultural terms, female, and Mundoo Island  
27 is correspondingly male.

28 A. Yes.

29 Q. And that, the channel mediates, that is, the channel  
30 between those two islands, mediates the separateness.

31 A. Yes.

32 Q. Is there any basis for that, that you can see.

33 A. No, no.

34 Q. In terms of fabrication and if one defines fabrication  
35 `to create or invent' from what you have learnt, and as  
36 a result of your studies, is it your opinion that the  
37 women's business, as defined in the terms of the Royal  
38 Commission, was fabricated in early 1994.

1 A. That would be my conclusion, yes.

2 Q. The Fergie report, which I only briefly take you to, and  
3 only the part in Professor Saunders' report - have you  
4 read Professor Saunders' report.

5 A. Not in full.

6 Q. The Saunders' report, at p.31, the paragraph is, in  
7 essence, the Ngarrindjeri women regard the Murray Mouth  
8 area, in general, and the Hindmarsh and Mundoo Islands  
9 and the surrounding and separating waters in particular,  
10 as crucial for the reproduction of the Ngarrindjeri  
11 people and their continued existence, accepting that  
12 some Ngarrindjeri women, from March 1994 onwards, have  
13 so regarded this to be so. Is there any support for the  
14 view that, prior to March 1994, a substantial body of  
15 Ngarrindjeri women did regard it to be so.

16 A. Didn't?

17 Q. Did regard it to be so.

18 A. No, no.

19 Q. Professor Saunders goes on to say, `This tradition  
20 is not mythological but spiritual and an actual  
21 reflection of traditional practice handed down from  
22 mother to daughter, drawn out of the landscape itself.  
23 In the words of Doreen Kartinyeri, "this is not just  
24 not a dreaming, this is a reality.'" Does that make any  
25 sense to you, that comment.

26 A. It does, in the sense that, I interpret it as an attempt  
27 to shift logic from that which applies elsewhere in  
28 Aboriginal Australia, to something which, if a group of  
29 people perceive it to be the case, it is the case.  
30 So that, what I think is attempted to be achieved here  
31 is to, take the debate away from the constraints which  
32 would normally be applied to those sorts of expressions,  
33 by testing and investigating those traditions against a  
34 background of pre-existing base of traditional knowledge  
35 and to place it, instead, in a more sort of slippery  
36 and hard to get at realm of what it is people happen to  
37 perceive on a certain day or in a certain period.

38 Q. The very claim that the logic, if there is any logic

1 behind such a claim, is so secret that you can't have  
2 access to it, presents its own difficulties, doesn't it,  
3 for the investigator.

4 A. Well, it defies what is documented across the country  
5 for other Aboriginal groups.

6 COMSR

7 Q. If it is so confined, that you can't get at it, can  
8 there be a sufficiently significant body of opinion so  
9 that one could say that, whatever might have been the  
10 case in the past, a sufficient number of people now  
11 believe in it, for it to be a reality.

12 A. Could you just run that by me?

13 Q. I am just trying to marry it up with what you said  
14 previously; that this appears to be a more slippery  
15 concept and that, as I understood what you were saying,  
16 it is that, if people believe something to be a reality,  
17 that that is sufficient for the purposes of the  
18 definition that you have been referring to.

19 A. It clearly has been sufficient for the purposes - for  
20 Dr Cheryl Saunders' purposes, but I would suggest -

21 Q. Assuming that to be the case, if the knowledge is so  
22 confined, that very few people can have access to it,  
23 could that definition that she gives - what significance  
24 would you give it.

25 A. I couldn't give it any standing, because, essentially,  
26 it means that, if you turn up next week and a different  
27 group of people claim a different reality, that has a  
28 similar currency. So, what I mean is, the various  
29 techniques for evaluating and testing Aboriginal land  
30 relationships across Australia, have grown out of this  
31 dilemma. And what people have settled upon, what  
32 Aboriginal people have settled upon is, a system of  
33 clarification of this kind of knowledge, which has its  
34 basis in the documentation of traditions and in the  
35 establishment of models of cultural practice, which take  
36 us back, often through the genealogical method, back in  
37 time. But this sits outside that. It floats  
38 essentially, and it has been sort of captured in a

1 butterfly net and served up in this report.

2 XXN

3 Q. Indeed, having listened to the cross-examination of you  
4 by Miss Nelson and Ms Pyke, did you apprehend that they  
5 were endeavouring to present to you possible links with  
6 traditional tradition, as it were, that this knew  
7 tradition might have.

8 A. Yes.

9 Q. You rejected, I think, essentially rejected, their  
10 attempts to show that this concept in Dr Fergie's  
11 reports and in Professor Saunders' report has any  
12 links, that you were aware, with tradition, defining  
13 that to mean what has happened in the past, prior to  
14 March 1994.

15 A. Yes, I think, if a fraction of those efforts to create  
16 or look for connections, had been applied to the  
17 original reports themselves, it would be a different  
18 matter.

19 Q. Can I ask you this question about Dr Fergie's report.  
20 It is obviously appropriate for a person like Dr Fergie  
21 to accept a brief a behalf of a particular body. That  
22 is done by anthropologists all the time, is it not.

23 A. It is, I suppose, up to a point, and the point is that,  
24 it is generally taken as given, that the particular  
25 anthropologist has expertise in that area or experience.

26 q I meant, put aside the area, I mean, CSIRO, SANTOS,  
27 mining companies, hire anthropologists and consultants  
28 in particular areas.

29 A. Yes, that's true.

30 Q. So do the Aboriginal Legal Rights Movement, the Central  
31 Australian Land Council and other Aboriginal bodies.

32 A. Yes.

33 Q. I take it that, the mere fact of employment by a party  
34 with an interest, in your view, should never colour the  
35 approach of the anthropologist.

36 A. No, it shouldn't for a variety of reasons.

37 Q. Could you tell us what those, some of those reasons are  
38 please.

- 1 A. Well, I suppose -  
2 OBJECTION Miss Nelson objects.  
3 MISS NELSON: I don't think it goes to the issue that  
4 is before you.  
5 MR ABBOTT: I will put the issue first of all.  
6 XXN  
7 Q. Is it apparent to you, from reading Dr Fergie's report,  
8 that she has proceeded on the basis that the secret  
9 women's knowledge, or whatever form of the words she  
10 uses, exists.  
11 A. It does appear that she has and that she hasn't provided  
12 a framework for that definition to operate within.  
13 Q. Do you regard it as professionally appropriate for an  
14 anthropologist, when asked to prepare a report, on a  
15 matter as important as what was being done, namely, a  
16 report to Professor Saunders, who, in turn, had been  
17 charged with making a report to administer in relation  
18 to the s.10, aspect, that an anthropologist should  
19 proceed on the basis that women's knowledge secrets,  
20 women's knowledge exists.  
21 CONTINUED

- 1 OBJECTION Miss Nelson objects.
- 2 MISS NELSON: It really doesn't matter what this  
3 witness thinks of that proposition. It doesn't, again,  
4 go to any of the issues before you.
- 5 MR ABBOTT: It does.
- 6 MISS NELSON: No, it doesn't. You're asking his  
7 opinion about how an anthropologist should approach a  
8 report. It has absolutely nothing to do with the  
9 matters before the commission.
- 10 MR ABBOTT: First of all, I say that Miss Nelson has  
11 no standing to take any objection and, if it should  
12 come, it should come -
- 13 MS PYKE: We were standing at the same time.
- 14 MR ABBOTT: But secondly I'm asking this question,  
15 lest it be suggested by Dr Fergie that it's entirely  
16 appropriate, because I'll be suggesting the contrary; if  
17 it's suggested by Dr Fergie that it's professionally  
18 appropriate to accept a brief from ALRM, and then  
19 proceed, without examining, or to assume the existence  
20 of the women's business and merely set about, as it  
21 were, encapsulating it and endeavouring to relate it to  
22 Ngarrindjeri tradition as distinct from challenging the  
23 first premise on which she had proceeded, that is that  
24 it exists -
- 25 MS PYKE: With respect, these are perhaps proper  
26 questions to put to Dr Fergie. I don't accept for the  
27 moment that what Mr Abbott is saying to the witness is  
28 in any way correct, but the appropriate way would be to  
29 cross-examine Dr Fergie. I mean it's just a premise  
30 that I say is not at all apparent on the face of the  
31 report.
- 32 COMSR: Particularly as I don't know how  
33 familiar the witness is with it.
- 34 MR ABBOTT: Very well, I've made my arguments. I  
35 don't think I need to get the witnesses answer.
- 36 XXN
- 37 Q. You were referred to 'A World That Was', and it was  
38 suggested to you that Albert Karloan, being male, was

## P.G. JONES XXN (MR ABBOTT)

- 1 unlikely to be a very good provider of information in  
2 relation to women's business, and I think the argument  
3 that was being put forward in cross-examination was that  
4 because he was their foremost informant, indeed I think  
5 it was suggested that he and Pinkie Mack were the only  
6 informants, that one could somehow put aside Berndt and  
7 Berndt and their omission to record anything in the way  
8 of secret sacred women's business. Did you understand  
9 that to be the thrust of some of the cross-examination.
- 10 A. Some of it, yes.
- 11 MS PYKE: I expect that wasn't - if that was the  
12 witness' view of it, he missed the point.
- 13 MR ABBOTT: I'm trying to do the best I can. I'm  
14 only a mere male.
- 15 XXN
- 16 Q. Could you look at p.6, in the introduction - I won't ask  
17 you to read it - but I think Albert Karloan is referred  
18 to halfway down p.6, his history, his ability, his  
19 intellect are all referred to on p.6.
- 20 A. Yes, that's true.
- 21 Q. Pinkie Mack is at the bottom of p.7 of the introduction.
- 22 A. Yes.
- 23 Q. Over on p.9, the authors make it clear in these terms,  
24 `Apart from Albert Karloan and Pinkie Mack, on whom we  
25 were most dependent and who supplied of the bulk of the  
26 data discussed in this book, we were also helped by',  
27 and follows a number of sources, many of whom are women.
- 28 A. Yes, and in fact another two or three women, I think,  
29 are mentioned on previous pages.
- 30 Q. Yes. If it be Ms Pyke's suggestion in her eventual  
31 submissions to the commissioner that one could somehow  
32 put aside the Berndts book `A World That Was' as not  
33 being relevant to this issue, and their omission to  
34 record in it any hint of the secret sacred women's  
35 business because of the paucity of the information they  
36 received or the limited number of their informants, do  
37 you say that that would be appropriate from what you  
38 know of their work, such a submission.

1 A. A submission which didn't include references to this  
2 book?

3 Q. Yes. (NOT ANSWERED)

4 COMSR

5 Q. I don't think that's the question. I understand the  
6 submission to be that because one could conclude that  
7 they had failed to refer in their work to the existence  
8 of secret women's business, because of the paucity of  
9 the knowledge of their informants. (NOT ANSWERED)

10 XXN

11 Q. Or of the paucity of the number of their informants,  
12 would there be any substance, in your view, of such a  
13 submission.

14 A. No.

15 Q. Indeed, you were described in the acknowledgements as  
16 playing an important part in this, gave editorial  
17 advice.

18 A. Yes.

19 Q. Did you read this material, or much of their material,  
20 in draft.

21 A. Yes, I read it several times. I collaborated with Dr  
22 Dianne Carlisle, who is mentioned in the introduction,  
23 who was copy editing the manuscript in Melbourne, and  
24 she and I corresponded, sent drafts to each other and  
25 had long telephone conversations about the substance of  
26 the book.

27 COMSR: Do we have to take that matter any  
28 further.

29 MR ABBOTT: No.

30 XXN

31 Q. I want to ask you some further questions about the  
32 Fergie report. (NOT ANSWERED)

33 COMSR: I think I've got a fairly clear idea of  
34 what the witness' attitude is to the Fergie report.

35 MR ABBOTT: I'm going to roll out the question  
36 because I think he's read Dr Clarke's evidence.

37 COMSR: Right.



1 XXN

2 Q. Have you, at my request of counsel assisting, been  
3 supplied with a copy of Dr Clarke's evidence.

4 A. Yes, I have.

5 Q. Have you read Dr Clarke's evidence through.

6 A. Yes.

7 Q. In particular, you have read my cross-examination of Dr  
8 Clarke in relation to Dr Fergie's report.

9 A. I have read that, yes.

10 Q. First of all, generally, do you agree with the  
11 criticisms that Dr Clarke made of Dr Fergie's report.

12 A. Yes, I do.

13 Q. Are there any criticisms that he made with which you do  
14 not agree.

15 A. I don't think so. I have put in a view slips of paper  
16 here, can I just refresh my memory on those?

17 Q. Yes. I wouldn't want to - if there are respects in  
18 which you have amendments or additions to what Dr Clarke  
19 said, would you let us know.

20 A. I think, in substantive terms, there are just a couple  
21 of comments which I've made which perhaps take Dr  
22 Clarke's criticisms a little further in a couple of  
23 directions, but essentially I don't have any quarrel  
24 with what he said.

25 Q. If there is anything that you think you can usefully  
26 add, and I say that not in the pejorative sense, I'm  
27 only conscious of the time.

28 COMSR

29 Q. Anything of significance.

30 A. Yes, well, I just put in a piece of paper right at the  
31 very beginning, p.3946, which is in reference to the  
32 first page and the commissioning of the report by ALRM  
33 to provide 'an anthropological evaluation of the  
34 significance of secret women's knowledge within  
35 Aboriginal tradition to that declaration' and I just  
36 note the fact that it appears to me that in the report  
37 that that actual undertaking wasn't pursued in the  
38 report. There is no assessment or evaluation of the

1 significance of secret women's knowledge within  
2 Aboriginal tradition, nor does there appear to be, or  
3 nor is there an application of those concepts to the  
4 Ngarrindjeri people, so that point perhaps wasn't made  
5 as clearly as it could have been.

6 Q. You understand that Dr Fergie's responses will be, I  
7 suggest, that this is so monumental, this knowledge, to  
8 Ngarrindjeri women, that it had to be kept so secret,  
9 that that's how it eluded every hunter and gatherer in  
10 the Ngarrindjeri ethnography field. (NOT ANSWERED)

11 MS PYKE: I just stand to point out that the fact  
12 that Mr Abbott asserts that in no way means we are  
13 agreeing that that is what Dr Fergie is going to say.

14 XXN

15 Q. 'This secret knowledge for them', that is the  
16 Ngarrindjeri people, 'Is as powerful and dangerous as  
17 nuclear fission is in our understanding of what keeps  
18 the cosmos running. Now to split the atom is as highly  
19 guarded a secret in our culture as this has been in  
20 theirs'. She acknowledges she made that quote in an  
21 interview. What do you say about that theory, that the  
22 information is so significant, that it's become so  
23 secret, that it's eluded every investigation.

24 A. I think it's essentially insulting, I suppose, to the  
25 Aboriginal traditions which are being examined here, to  
26 caricature them in a way which has no content, no  
27 contact with ethnography reality or documented  
28 tradition, and reduces the whole thing to some  
29 cataclysmic scenario.

30 COMSR: I think it's fair to point out that Mr  
31 Abbott appears to be pointing out from some newspaper  
32 source, is it?

33 MR ABBOTT: It's an interview she gave on about 1  
34 August 1994.

35 COMSR: Yes.

36 MR ABBOTT: It's reported in a newspaper article so  
37 she may -

38 MS PYKE: Is Mr Abbott going to tell us whether

1 this was something told to Dr Fergie by one of the  
2 proponents?

3 COMSR: I'm pointing out that one needn't  
4 necessarily conclude that they were the precise words  
5 used.

6 MR ABBOTT: These are claimed to be her words in  
7 this article.

8 A. I heard, I think it was on the 7.30 Report or some such  
9 - it may not have been the 7.30 Report, but a television  
10 interview in which she committed herself to that  
11 interpretation, and I suppose it made me consider the  
12 very careful compromises that Aboriginal women and men,  
13 I suppose, have made in terms of releasing aspects of  
14 their traditions into a public sphere or a legal sphere,  
15 which involved very great compromises, and yet  
16 ultimately, perhaps, have resulted in the protection of  
17 particular sites in various parts of Australia, and in  
18 looking at those decisions and examining the decisions  
19 that Aboriginal people have made in those spheres, the  
20 contrast can be drawn between those very careful and  
21 considered decisions, and this what I would regard as a  
22 gross misrepresentation of Aboriginal religious belief  
23 as the structure of the society continued.

24 MR SMITH: That's actually Exhibit 67, that  
25 newspaper article.

26 COMSR: Do you have much further to go?

27 CONTINUED

## P.G. JONES XXN (MR ABBOTT)

- 1 MR ABBOTT: I do have some further questions, yes.  
2 There are a number of matters that I want to put, mainly  
3 involving Dr Fergie and Dr Draper.
- 4 COMSR: I take it it is not going to be an  
5 analysis of the report?
- 6 MR ABBOTT: No, not at all. It is an ex cathedra  
7 pronouncement of Dr Draper and Fergie.
- 8 COMSR: Mr Meyer, have you any idea how long you  
9 are likely to take?
- 10 MR MEYER: About 5 to 10 minutes if Mr Abbott  
11 traverses the other ground I would cover.
- 12 COMSR: We have problems with witnesses, of  
13 course.
- 14 MR ABBOTT: I think I could finish in probably half  
15 an hour tomorrow.
- 16 XXN
- 17 Q. Did you know the daughter of Pinkie Mack.
- 18 A. No, I didn't.
- 19 Q. Dr Kartinyeri claims to have received this information,  
20 this secret sacred women's business, from her Grandma  
21 Sally Kartinyeri, her Auntie Rose Kropinyeri, and the  
22 daughter of Pinkie Mack. You are aware of her claim in  
23 that regard.
- 24 A. Yes.
- 25 Q. Have you had any contact or are you aware of the  
26 genealogies of any of those three ladies.
- 27 A. Not in detail, no.
- 28 COMSR: Haven't we had the genealogies?
- 29 MR ABBOTT: Not entirely.
- 30 XXN
- 31 Q. I want to give you the claims that are made. We have  
32 got Dr Kartinyeri, and she is saying she got it from  
33 those three ladies; we have got Connie Roberts, also  
34 perhaps one of the persons with this secret sacred  
35 women's knowledge; Maggie Jacobs, do you know her.
- 36 A. I've met her.
- 37 Q. And Edith Rigney. The claim is made by Dr Fergie in her  
38 report that these four women - that is, Kartinyeri,

1 Roberts, Jacobs and Rigney - have had their knowledge  
2 since their puberty.

3 A. Yes.

4 Q. I take it that there is, in the ethnographic sources,  
5 some reference to knowledge being passed on at puberty  
6 or at some stage in a woman's life.

7 A. Not in a package, as such. There is a gradual accretion  
8 of detail, I suppose, cultural detail.

9 Q. Is there any story that would in any way fit in with a  
10 tradition, if it existed, of the secret of the universe  
11 being handed on to women entering their puberty, in the  
12 Ngarrindjeri nation that is.

13 A. No. No, none at all.

14 Q. Indeed, does that model fit in with Aboriginal society  
15 anywhere in Australia.

16 A. No.

17 Q. If it existed - that is, they were given the secret of  
18 the cosmos, or the secret equivalent to nuclear fission  
19 in the European context - it would represent a model  
20 which has no parallel in the rest of Aboriginal  
21 Australia, is that so.

22 A. That's the case, yes.

23 Q. There is a qualification to that proposal. Dr  
24 Kartinyeri has, on several occasions, publicly stated  
25 that she got the stories at that age, but didn't know  
26 the place that they were referable to. So I ask you,  
27 assuming that there are stories that are handed on, have  
28 you any knowledge of a procedure in which that sort of  
29 thing happened in Ngarrindjeri culture which were not  
30 site specific, or is that question far too wide.

31 A. Yes, it is a very broad question. It is difficult to  
32 answer that.

33 Q. If one assumes, and I invite you to assume, they were  
34 stories about going to a place to be taught to be a  
35 woman, or going to a place to abort a foetus, or going  
36 to a place to have birth, but not the place being  
37 mentioned, is there any shred of Ngarrindjeri culture

1 which gives support for there being stories in relation  
2 to that site specific type of behaviour.

3 A. No. It really comes into the category of activities  
4 that are undertaken on a local basis right across the  
5 country, and, therefore, most likely in reference to  
6 particular known places in the various clan estates, as  
7 they're characterised, which characterise the whole  
8 country - the extent of Ngarrindjeri country.

9 Q. It is poles apart, isn't it, to suggest exclusion of men  
10 during birth, menstruation or abortion, and going off to  
11 an island to give birth to, to menstruate or to abort,  
12 isn't it.

13 A. It is even more particularly problematic when you see  
14 that within the evidence, the ethnographic literature,  
15 there are several references to the fact that  
16 essentially it is important for women to keep clear of  
17 water courses in those states - in those various states.

18 Q. Is it your opinion then that the Ngarrindjeri tradition  
19 militates against the existence of such a counter  
20 tradition.

21 A. Yes.

22 Q. Dr Kartinyeri made a claim that Mundoo Island is the  
23 burial ground and Hindmarsh Island the birthing site.

24 A. Yes.

25 Q. Again, we have not got the male and femaleness. We have  
26 got birth and death being related to site specific. Is  
27 there any support for that view.

28 A. No. There is no support for that view, no. In fact,  
29 there is early documentation in a Book of Reminiscences  
30 by a fellow called George Snell, published in the 1980s  
31 but actually written in the 1850s I think, which suggest  
32 that there was a large burial ground at Goolwa on the  
33 foreshore which was extensively used in this period.  
34 So, although there is also documentation of Hindmarsh  
35 Island perhaps and Mundoo Island being burial sites, so  
36 are a great many other localities throughout the  
37 Ngarrindjeri region, and, in fact, it appears to be the

1 case that burial grounds existed in almost every section  
2 of the Ngarrindjeri region.

3 Q. Indeed, taking Hindmarsh and Mundoo Islands, it would be  
4 fair to say, would it not, that burial sites and  
5 occupational middens occur almost with equal frequency  
6 on both.

7 A. Yes. I mean, the region is acknowledged to have been  
8 one of the most densely populated regions of Aboriginal  
9 Australia, and this was a fact commented upon by various  
10 explorers passing through the territory, from Sturt  
11 onwards, and in all cases the explorers encountered  
12 mixed groups of men and women.

13 Q. Again, the historical records do not in any way indicate  
14 that Mundoo Island was male and Hindmarsh Island female,  
15 or there were female sites on Hindmarsh Island and male  
16 sites on Mundoo Island.

17 A. That's correct.

18 Q. I think you are aware of the historical records that  
19 indicate that Aboriginal people walked from Hindmarsh  
20 Island to the mainland - walked in the sense of waded  
21 across the channels - in times of drought.

22 A. I couldn't -

23 Q. I am not asking you to locate them, but I think there is  
24 references to that, is there not.

25 A. I couldn't confirm that, no.

26 Q. In any event, is there anything in Ngarrindjeri culture  
27 that might be something in aid of a concept that it was  
28 somehow wrong or would drastically affect the spiritual  
29 or cultural identity or reproduction to join, in the  
30 20th century, an island to a mainland.

31 A. No. In fact - well, I mean, it is the case that  
32 Tindale's map of the Coorong, for example, shows several  
33 crossing places which were perhaps from one side of the  
34 peninsula to the other, where people could wade across  
35 at certain times, and it is quite clear that there were  
36 no cultural imperatives against doing that kind of  
37 thing.

1 Q. To range even further afield, is there anything in  
2 Ngarrindjeri culture that you are aware of, until March  
3 1994, that somehow the waters around Hindmarsh Island  
4 and the Murray Mouth were referable to Ngarrindjeri  
5 women's sterility or fertility.

6 A. None at all.

7 Q. And that parting those waters, or going across them with  
8 a bridge, or putting a connection between the waters,  
9 would somehow destroy the reproductive facilities and  
10 render them sterile. Is there any support for that.

11 A. No, no support.

12 ADJOURNED 4.57 P.M. TO TUESDAY, 24 OCTOBER 1995 AT 9.30 A.M.



