

## N. DRAPER XN (MR SMITH)

1 COMSR STEVENS

2

3 HINDMARSH ISLAND BRIDGE ROYAL COMMISSION

4

5 THURSDAY, 26 OCTOBER 1995

6

7 RESUMING 9.36 A.M.

8 MR SMITH CALLS

9 NEALE DRAPER

SWORN

10 MR ABBOTT: Before Mr Draper commences his evidence,

11 I doubt whether I will be able to complete my  
12 cross-examination of him. Indeed, there is so much  
13 material that he refers to that is not produced, that it  
14 leaves one wondering where to start preparing for  
15 cross-examination. If you have read his statement, you  
16 will see that a proposition is put, and then he refers  
17 to work he has done in other part of Australia as  
18 support for that proposition. The source materials are  
19 not made available. One can hardly test his adherence  
20 to a proposition on the basis of work done in other  
21 areas when that work is not made available. I assume  
22 that Dr Draper has all that source material, but I ask  
23 that he start making it available at the outset so that  
24 we can commence reading it.

25 COMSR: Perhaps if you could enquire of his  
26 counsel.

27 MR ABBOTT: I'm just saying, just flagging at the  
28 outset, that I will not be in a position to commence any  
29 cross-examination of Dr Draper until I've had the  
30 opportunity of studying the material on which he bases  
31 his assumptions, and refer it to an expert for advice.  
32 In the case of my clients, everyone had weeks to prepare  
33 for cross-examination, and overnight, given the claims  
34 made by this witness and the scanty evidence produced to  
35 support such claims, it merely being in the form of  
36 anecdotal material based on his investigations in other  
37 areas, makes it impossible for me to commence  
38 cross-examination.

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- 1 COMSR: Dr Draper of course is here from  
2 Queensland, I understand.
- 3 A. That is correct.
- 4 MR ABBOTT: If all he can do is stay until Friday,  
5 he'll have to come back.
- 6 COMSR: In any case, I note what you're saying  
7 about that. It may be that there is some, at least, of  
8 that material available, Dr Draper.
- 9 A. As most, I suspect most of what is being referred to are  
10 the results of direct field work with people and  
11 situations which are specifically stated not to have  
12 been written down, the sources for that are myself and  
13 the Aboriginal traditional owners concerned, and in at  
14 least one case it's been noted that they are willing to  
15 appear, if necessary.
- 16 MR ABBOTT: Well, perhaps Mr Smith can go through it  
17 and find out what there is by way of written report.
- 18 COMSR: Perhaps as Dr Draper is taken through  
19 his evidence.
- 20 MR ABBOTT: Yes. I wasn't aware that none of this  
21 material was - most, if not all of this material is  
22 unrecorded, but there must have been a report produced.  
23 I mean he refers to his work. Could I give your Honour  
24 but an example? On p.6 of his statement line four, 'A  
25 good example of this process is what happened to', and  
26 the rest of that page, and then down the bottom of that  
27 page, 'A couple of years later', and all the next page  
28 is another example, and then at the bottom of p.7, 'It  
29 can therefore be seen', and then on p.8, 'I have been  
30 involved in similar situations with', 'An example of how  
31 difficult this can get', and so on and so forth, all the  
32 way down the bottom of p.8. If none of that has been  
33 recorded in any way shape or form, and I doubt that  
34 because there had to have been a report, I would want to  
35 see the source material before I cross-examined on that  
36 sort of claim, otherwise it should not be received as  
37 evidence.
- 38 MR SMITH: I suggest this course - and it is

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- 1 correct that I have produced to counsel all I have  
2 obtained thus far from Mr Draper and his legal  
3 representative, Mr Steele - I suggest we go as far as we  
4 can, and I'd invite people to cross-examine Dr Draper to  
5 the extent that they can. For instance, if there is  
6 some document that supports a proposition, if it can be  
7 identified, I'll deal with that through Mr Steele and  
8 his client. If it's unavailable or for some reason  
9 can't be produced, I'll deal with counsel about it.
- 10 MR ABBOTT: I'm obliged.
- 11 MR SMITH: It's the best I've been able to do in  
12 the time allowed.
- 13 COMSR: Yes. You're talking about -
- 14 MR SMITH: I accept that counsel have virtually  
15 just had overnight to consider the focus statement of  
16 the documents. To some extent Dr Draper's role in this  
17 matter is canvassed in the DOSAA documents which  
18 everyone has, but I accept that they don't deal  
19 primarily with his statement.
- 20 MR ABBOTT: While we're on that topic, may I enquire  
21 the progress of Dr Fergie's statement? I assume, in  
22 view of the fact that this witness has to return to  
23 Queensland on Friday night, that Saturday will be the  
24 date for Dr Fergie. If that is so, I would like more  
25 than just Friday night to consider her statement.
- 26 COMSR: Yes. I understood that Dr Fergie's  
27 statement will be available today some time.
- 28 MS PYKE: I said today or tomorrow morning. It's  
29 more likely to be tomorrow morning than by 5 o'clock  
30 today, but we'll produce her statement tomorrow morning  
31 and she will be available.
- 32 MR ABBOTT: Could I ask also that there be an answer  
33 to the subpoena, and that is her field notes, her  
34 notebooks and her diaries.
- 35 MS PYKE: There will be an answer to the subpoena  
36 wherein Dr Fergie will produce in accordance with the  
37 subpoenaes.
- 38 MR ABBOTT: I've heard a disquieting rumour that

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1 they have been handed over to the ALRM.

2 MS PYKE: I don't know where he gets these rumours  
3 and bits and pieces from. Perhaps he is got a mole.

4 COMSR

5 Q. Perhaps if I could just make this enquiry of you before  
6 we begin; I've put a suppression order on your statement  
7 because I wasn't certain to the extent to which there  
8 may be information in it which should not be revealed.  
9 I haven't myself gleaned that there is any, but perhaps  
10 you could enlighten me.

11 A. My understanding of the matter - and I have on some  
12 specific points with respect to that matter, I have made  
13 enquiries of Aboriginal people who are responsible for  
14 that kind of information, both within the Lower Murray  
15 region and outside - I have taken the greatest care I  
16 can to see that there are no matters there where  
17 information crosses that line. It is true that there  
18 maybe some topics which are mentioned but not described  
19 in detail which could cause discomfort to some  
20 Aboriginal people, and I would suggest -

21 Q. If they were pursued, do you mean, in detail.

22 A. Perhaps the very mention of some topics may be upsetting  
23 to some people. If that's the case, then I would urge  
24 people not to listen but I have, to the best of my  
25 knowledge, and I have been assured to this stage that  
26 the contents of the statement do not cross that line.

27 However, of course, discussion of certain site records  
28 and reports confidential under the Aboriginal Heritage  
29 Act would, I expect, have publication restrictions.

30 Q. You would flag that to us if you consider that an answer  
31 might involve such a difficulty.

32 A. I would certainly do that.

33 MR SMITH: When I come to the question of the draft  
34 site card and a detailed discussion of the report of 29  
35 April, which is already an exhibit, we'll pause and  
36 consider the position then.

37 COMSR: Yes, because at some stage, Dr Draper, I  
38 will be asking whether or not any of this material need

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1 be the subject of suppression orders.

2 EXAMINATION BY MR SMITH

3 Q. I think you describe yourself as an anthropologist,  
4 archaeologist and educator, is that correct.

5 A. That seems to be an apt description, yes.

6 Q. I won't go through your qualifications because your  
7 statement does that adequately, but I think in you began  
8 working in connection with, if you like, the question of  
9 the Hindmarsh Island developments and the Hindmarsh  
10 Island Bridge, you touched on that when you were in the  
11 Aboriginal Heritage Branch of the Department of  
12 Environment and Planning, is that right.

13 A. That's correct.

14 Q. In fact, you were very much involved in acting in your  
15 capacity as the government archaeologist in connection  
16 with that matter right throughout, if you like, from  
17 about 1988 through to almost the present time, is that  
18 right.

19 A. That's correct, yes.

20 Q. I think you've provided to this commission a statement  
21 of your involvement and setting out of your views,  
22 together with some attached documents. Looking at  
23 Exhibit 233, I think that exhibit is, first of all, your  
24 statement, is that right.

25 A. That's correct.

26 Q. Attached to that statement is, first of all, Exhibit  
27 233A, a summary of a proofing of you by a Crown Law  
28 officer on 28 July 1994, 29 July 1949, and 4 and 5  
29 August 1994.

30 A. Yes.

31 Q. Then the third bundle, which is marked Exhibit 233B, is  
32 attached documentation which is alluded to in your  
33 statement, including your curriculum vitae.

34 A. That's correct.

35 Q. I just want you to identify the structure of your report  
36 to commence with. I think it's correct that from  
37 pp.1-12 you set out for us your qualifications, your  
38 experience, and what I suggest to you is a commentary on

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1 the significant aspects of Aboriginal culture, being in  
2 particular matters relating to the disclosure of  
3 cultural tradition or confidences and secret  
4 information. Would you agree with that.

5 A. Yes.

6 Q. Then the next section, p.12 on to p.20 is, as the  
7 heading sets out, an `Anthropological Summary of the  
8 Ngarrindjeri Cultural Perspective of the Issue'.

9 A. That's correct.

10 Q. By that, what do you mean exactly.

11 A. Well, it's obvious not directly a Ngarrindjeri cultural  
12 perspective as I'm not an Ngarrindjeri person, but I am  
13 an anthropologist who has, in this specific and quite  
14 distinctive context, worked with those people, and I  
15 have attempted here to give an anthropological summary,  
16 as I understand it as an anthropologist, of the  
17 Ngarrindjeri cultural perspective, their overall  
18 approach to this issue and to this kind of issue.

19 Q. Is then what takes place in those pages in fact an  
20 application of the principles, if you like, that you've  
21 discussed in the previous section on Ngarrindjeri  
22 culture.

23 A. That's correct.

24 Q. Pp.20-29 you have headed `Previous Literature', and  
25 indeed in that area, you talk about some of the  
26 ethnographers and, in particular, you refer in detail to  
27 the journals of Norman Tindale, don't you.

28 A. That's correct, yes.

29 Q. Then on pp.29-61 is a narrative of events in which you  
30 intersperse your views as an archaeologist and  
31 anthropologist of what is happening, is that right.

32 A. It's a history of events of which I had some part or  
33 some direct knowledge through this matter, yes.

34 Q. I want to ask you some questions in each of those areas.

35 First of all, in the area of your commentary on the  
36 significant aspects of Aboriginal culture, and in  
37 particular as to divulgence of cultural traditions,  
38 confidences and secrets, you've talked about your

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- 1 general experience of Aboriginal culture in other  
2 places, haven't you, that is in places other than the  
3 lower River Murray.
- 4 A. I've provided germane examples from my own  
5 anthropological field experience, which are often from  
6 other regions, yes.
- 7 Q. From, for instance, Roxby Downs, the Flinders Ranges,  
8 for instance, you talk about, where you've worked.
- 9 A. Yes.
- 10 Q. You, I think, worked with the Kokatha people. They are  
11 peoples that hail from near the Roxby Downs area, is  
12 that right.
- 13 A. The Woomera region generally, yes.
- 14 Q. Aranda people.
- 15 A. Yes.
- 16 Q. Where are they from.
- 17 A. The Aranda people are from north-east to north central  
18 South Australia into the Territory, in this case  
19 referring to Aranda people who have come down and are  
20 doing things together with Kokatha people in that part  
21 of the country that we have just mentioned, together.
- 22 CONTINUED

1 Q. I think you then, at the top of p.8, for instance, talk  
2 about the Arkaroo Rock and Chambers Gorge, as well as  
3 Willaroo Lagoon. Are they areas in the Flinders Ranges.

4 A. Willaroo Lagoon is the other side of Lake Torrens, so it  
5 is part of the Kokatha work, and Chambers Gorge are in  
6 the Flinders Ranges, yes.

7 Q. This was work you did whilst you were a government  
8 employee in the Aboriginal Heritage Branch, is that  
9 right.

10 A. Yes. This is work done as part of my duties in the  
11 administration of the Aboriginal Heritage Act as an  
12 inspector under the Act, in the Aboriginal Heritage  
13 Branch of the Department of Environment and Planning,  
14 and then within the - it has changed names a few times -  
15 Resource Conservation Branch, as it was once known,  
16 within the national branch in the same department, and  
17 then last of all for the Department of State Aboriginal  
18 Affairs.

19 Q. Can I take you then to p.12 of your statement, Exhibit  
20 233, where you move to a consideration of Ngarrindjeri  
21 culture, Aboriginal culture. Is it the case that you  
22 take the position that there is a common core of culture  
23 relating to say secrecy and divulgence of confidential  
24 information which runs through all the Aboriginal  
25 communities, or most of them in Australia. Perhaps I  
26 could make the question more definitive. The thrust of  
27 my question is: Do you say or do you accept - if it is  
28 so - that the Lower Murray Aboriginal communities, and  
29 in particular the Ngarrindjeri community, is distinctive  
30 in any way from other communities that you've  
31 encountered, other Aboriginal communities.

32 A. Every Aboriginal community that I have directly  
33 encountered, worked with, read about, is distinctive in  
34 some ways. There is a distinctive landscape, a  
35 distinctive cultural expression in each particular  
36 region of the country, but there are some aspects of the  
37 organisational framework of regional and local  
38 Aboriginal cultures which are common, yes.



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- 1 Q. You are aware of the assertions that have been made in  
2 this inquiry by say Mr Philip Jones, Dr Philip Clarke,  
3 and, indeed, in the Berndt book 'The World that Was', as  
4 to the quality of distinctiveness of the Ngarrindjeri  
5 people, the Yaraldi people, in comparison to the  
6 Aboriginal peoples of the balance of Australia. Do you  
7 accept that, or do you make some qualification to it.
- 8 A. I am certainly aware of the Berndts' thesis in that  
9 regard, and I am generally aware of the positions put by  
10 Mr Jones and Dr Clarke, though I haven't exhaustively  
11 been through their evidence. I could not agree with the  
12 detail of their position as it is stated. I do not  
13 believe that the facts support that conclusion, as we  
14 know it.
- 15 Q. What are you focusing there in particular. What is it  
16 you take issue with.
- 17 A. The feature of cultural distinctiveness that is claimed  
18 with which I cannot agree because the facts do not  
19 indicate it and the Aboriginal people concerned do not  
20 indicate it, is that Ngarrindjeri culture - which we  
21 would take to include Yaraldi, as in the Berndt book;  
22 and Tanganekald and Ramindjeri, which are the specific  
23 traditional clan areas for Hindmarsh Island and Goolwa -  
24 the part that I have a problem with is that these are  
25 distinctive in that they do not, contrary to the rest of  
26 the continent, have: (a) confidential cultural  
27 traditions; and (b), in the same context, a separation  
28 at some level by gender of cultural knowledge and  
29 cultural responsibilities.
- 30 Q. In general terms, I think it is asserted by Dr Clarke  
31 and Mr Jones, and they claim to have support for this in  
32 the Berndts' work, that the literature shows an  
33 inter-penetration of men's and women's business in the  
34 Lower River Murray in contra distinction to most of the  
35 other Aboriginal communities in Australia. Do you take  
36 issue with that.
- 37 A. It is a very Freudian term. That statement does not  
38 state a distinction. For there to be a coherent culture

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1 involving males and females and their offspring, there  
2 must be some points of contact, some points of overlap,  
3 some common points of reference, even where there are  
4 gender separate responsibilities. That's obvious in any  
5 human culture.

6 COMSR

7 Q. Does it follow that if there are gender separate  
8 responsibilities, that they're necessarily secret.

9 A. Not as a consequence of that statement. Certainly there  
10 are, in every human society, separate gender roles,  
11 information, responsibilities, that may or may not be  
12 confidential.

13 XN

14 Q. The other point of distinctiveness that is made about  
15 the Lower River Murray is that the secrecy and  
16 sacredness, if you like, of some aspects of their  
17 cultural beliefs is minimal in comparison to other  
18 areas. Do you take issue with that.

19 A. Yes, I do. It is consistent, in my experience, with  
20 other regional Aboriginal cultures within southern and  
21 eastern Australia, in particular, which is the  
22 geographic and cultural province of the continent of  
23 which it forms a part.

24 Q. But distinctive from say desert cultures.

25 A. Yes, in a way, given that regional Aboriginal cultures  
26 reflect an interaction in each case of people with a  
27 specific environmental context, and given that the  
28 desert is environmentally quite different from the  
29 coast, forest, river estuaries, and that the character  
30 of environment is very much reflected in the expression  
31 of Aboriginal culture, then they are distinctive to that  
32 regard, and many of the distinctions, in my opinion,  
33 refer to those differences.

34 Q. One more matter on that topic. It has been said in this  
35 inquiry by Mr Jones and Dr Clarke, and I don't think  
36 vigorously contested by any other witness, that there is  
37 one dominant mythological ancestor who is a male,  
38 Ngurunderi, and this is again a point of difference

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1 between their culture - that is, the culture of the  
2 Lower Murray Aboriginals - in comparison to cultures say  
3 north of the Mt Lofty Ranges. Do you see that as a  
4 point of distinction.

5 A. No, I don't.

6 Q. Do you accept that there is one dominant male ancestor,  
7 one dominant Dreaming.

8 A. Please allow me to answer that in a slightly oblique  
9 fashion. There is certainly in the public domain a  
10 dominant or a - yes, that word will do - male ancestor,  
11 Ngurunderi. At the same time, I would say to you that  
12 at the core of any regional Aboriginal cultural  
13 tradition is the cultural account - always, in my  
14 experience, fairly confidential - of the creation not  
15 only of the landscape, of plants, of animals and people,  
16 but also of gender itself. So gender is something the  
17 ancestors create while they were about creating the  
18 world and people and all of the other things. I am  
19 reluctant to take that matter further in detail.

20 Q. Do you say there are other significant Dreamings in that  
21 area, in the lower -

22 A. There certainly are other significant Dreamings, because  
23 there has to be a network of cultural creation for there  
24 to be the cultural landscape perceived in and lived in  
25 by Aboriginal people. I think what you are getting at  
26 is - I am saying to you that there are non-public or  
27 confidential attributes to the publicly known Dreamings.

28 MR ABBOTT: I wonder if counsel assisting could  
29 elicit where we could obtain information about these  
30 other significant Dreamings. Otherwise, if I ask the  
31 question tomorrow, or whenever, I am then told it will  
32 take another day to get the documentation. So I ask  
33 that we get chapter and verse as we go along so we can  
34 set in motion getting the documentation.

35 XN

36 Q. We know about Ngurunderi and there are articles  
37 published about Ngurunderi as well as in other places  
38 beyond the Berndt book, aren't there.

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1 A. Yes, there are.

2 Q. What about the other Dreamings, the other significant  
3 Dreamings, are they the subject of any publications.

4 A. The public versions or published versions, of course,  
5 have been referred to. They appear in publications by  
6 the Berndts, by Norman Tindale, within the Tindale  
7 Journals, et cetera, the public versions.

8 Q. Are we coming to those in a moment when you refer to the  
9 literature.

10 A. In general.

11 Q. The other Dreamings you mentioned in the Berndts, can  
12 you identify that in the Berndts' work.

13 A. Obviously confidential secret, if you like, information  
14 about Dreamings which have a public version are, by  
15 definition, secret. They have not, to my knowledge,  
16 ever been written down. This is a matter of living  
17 texts, if you like. So the way one approaches those is  
18 to ask the custodians of that information. Whether they  
19 will tell you or not is an entirely different matter.  
20 So I would suggest that the textss referred to by Mr  
21 Abbott, to which - well, in this case, to whom one  
22 refers those questions, are those Ngarrindjeri elders  
23 who are responsible for them, some of whom I believe you  
24 will be calling before the end of - I can, at the  
25 appropriate occasion, refer you to those people.

26 MR ABBOTT: Dr Draper has misunderstood. I accept  
27 that there may be Dreamings which are - I accept, as a  
28 proposition, people may claim to have Dreamings, but I  
29 need, so that we can go to our experts, to ascertain  
30 whether his claim of other significant Dreamings has any  
31 validity at all, a reference to what Dreamings he is  
32 talking about, even in their public version, and which  
33 ones in Tindale's notes and Berndt and Berndt he is  
34 referring to. Albeit there may be an expanded and  
35 secret version claimed by him to be passed on orally by  
36 the elders, it is not good enough for him to say 'Find  
37 it in Berndt and Berndt'. That is like, as may have  
38 happened to your Honour, when you ask counsel for a

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1 case, you are told it is in Archibold.

2 COMSR

3 Q. Perhaps we might go around it this way. To the extent  
4 that you rely on any of the published material in  
5 support of the proposition, are you able to identify the  
6 passages that you rely on in say Berndt, Tindale or the  
7 Tindale Journals.

8 A. To the extent that I rely on written information in any  
9 detail here, it is specified in my statement.

10 MR ABBOTT: It is not. There is no reference to the  
11 other significant Dreamings.

12 COMSR

13 Q. Perhaps you are able to just pinpoint it for us then. I  
14 think Mr Abbott's concern is that unless he knows what  
15 you are referring to now, he won't have time to -

16 A. Mr Abbott has spoken to other significant Dreamings. I  
17 think he has misunderstood. I have said that there are  
18 other aspects which lie beyond or beneath what is  
19 publicly known about Ngurunderi, in particular, which  
20 is, I believe, what Mr Smith was asking me about at the  
21 time, of which I am aware, but I cannot talk about that  
22 to you. That would have to be asked of the senior  
23 Ngarrindjeri elders. I would suggest, with Ngurunderi,  
24 that you start with the senior men, and that your  
25 anthropologists would have to do - to evaluate it - what  
26 I have done, and that is get it - if you will excuse the  
27 phrase - from the horse's mouth. Except, of course, I  
28 wasn't going asking. I was in an assessment situation  
29 where that information was offered. So I cannot predict  
30 what the response will be.

31 MR ABBOTT: The witness used the expression 'other  
32 significant Dreamings' when asked by counsel assisting,  
33 whether he accepted that Ngurunderi was the prime  
34 dreaming that was known. He said there were other  
35 significant Dreamings. He then said they had a public  
36 form and a secret form, that is, the oral tradition  
37 form. He said they were publicly published in part.  
38 All I want is the reference to the publicly published in

- 1 part aspects of what he says are the other significant  
2 Dreamings. His words, not mine.  
3 COMSR  
4 Q. To the extent that you rely on any passages in Berndt or  
5 Tindale or some other journal, in support of what you  
6 put up as the publicly available aspects of it, could  
7 you identify those.  
8 A. The publicly available aspects of Ngarrindjeri  
9 Dreamings, with respect, are those that have been  
10 published in the Berndts book, in Tindale's field maps  
11 and journals, in particular. I do not obviously - I may  
12 be misunderstanding this, but I do not rely on published  
13 information about unpublished cultural traditions -  
14 aspects of cultural traditions. I am not sure whether  
15 you are saying to me: are there clues there or not. I  
16 have talked - some of that is contained in my statement.  
17 You have lost me.  
18 CONTINUED

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1 Q. I may be having difficulty following you here. Because  
2 you have mentioned those publications, I take it there  
3 is something in those publications which you rely on, to  
4 some extent. Are you able to pinpoint, I think is what  
5 Mr Abbott is saying, where the passages appear in those  
6 publications.

7 A. I do not know what passages Mr Abbott is referring to.  
8 Obviously there are more passages in published documents  
9 about unpublished information pertaining to those  
10 topics. The topics are there. One can look at Berndts  
11 1940 in Oceania for an account of Ngurunderi. One can  
12 look in Tindale's southeast of South Australia field  
13 journals for a lot of other information with regard to  
14 Ngurunderi, including I guess one passage which is  
15 referenced in my statement, which does take Ngurunderi  
16 into this realm, yes. It is one that has already been  
17 quoted by Dr Clarke, in fact, in his statement. I will  
18 find that one now, if you like.

19 Q. Yes, to the extent that you rely on them. You see,  
20 another person might go to that publication and think  
21 that they have got the passage you relied on, whereas,  
22 in fact, you might be relying on something entirely  
23 different. That's why I think, if you are able to  
24 identify -

25 A. This is all so vague. I don't really know what he  
26 wants, unless it is a great bibliography of what is  
27 there. Obviously for information that has not been  
28 recorded in writing by anthropologists or ethnographers,  
29 I am not relying on written records, but direct  
30 anthropological field work with Aboriginal traditional  
31 owners.

32 Q. I appreciate that.

33 A. With corroboration of some aspects. And I have given  
34 some clear examples in my statement from, for instance,  
35 Norman Tindale's field notes or statements contained in  
36 publications by the Berndts. It is not exhaustive, but  
37 it is illustrative I think.

38 Q. Whereabouts will we be able to find that.

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1 A. The section of my statement that, in fact, deals with  
2 it.

3 MR SMITH: P.20 onwards.

4 A. The section called 'Previous Literature', in fact, would  
5 be a good starting place, I think. I would be very  
6 happy to deal with specific questions as I understand  
7 them as well as possible on literature.

8 XN

9 Q. Can I ask you then, I was questioning you about  
10 Ngurunderi.

11 A. Yes.

12 Q. And suggesting Ngurunderi was the dominant mythology  
13 dreaming ancestor for the Ngarrindjeri people. Did you  
14 agree with that as a basic proposition. Not necessarily  
15 excluding other dreamings, but do you agree that that is  
16 the dominant ancestor, Ngurunderi.

17 A. Yes, I do.

18 Q. Do you say then that there are other dreamings and if  
19 you want to define that do so, that have application in  
20 the culture of the Ngarrindjeri people.

21 A. Certainly there are. We have, for instance, Condoley  
22 the whale who, in his adventures, I suppose, with the  
23 sharks who stole his fire was responsible for creating  
24 the Hindmarsh River/Inman River area of the Encounter  
25 Bay coast and hinterland.

26 Q. Is he mentioned in the literature, is that mentioned in  
27 the literature.

28 A. I am sure you will find it mentioned in Berndt and there  
29 is a reasonably detailed account from Clarence Long and  
30 Reuben Walker in Tindale's southeast journals, as well.  
31 So, yes, these are a matter of public record. There are  
32 many Ngarrindjeri dreamings I have heard referred to in  
33 this Commission from the literature which involve  
34 creation of cultural lore, custom, tradition and parts  
35 of the Lower Murray/Encounter Bay landscape.

36 Q. You define the dreaming as what then exactly.

37 A. A dreaming is an account of cultural creation by  
38 ancestors of a people. So, in the case of the



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1 Ngarrindjeri people, their dreamings are those accounts,  
2 those cultural traditions which are made up of customs,  
3 observances, beliefs, oral histories, references within  
4 their culture and the landscape for those things that  
5 describe how they came to be. How they came to have the  
6 lore and customs they have and how their world came to  
7 be the way that it was. Every human culture has an  
8 equivalent of some sort.

9 Q. Can I come to the part of your statement dealing with  
10 literature there. I ask you to go to p.20.

11 A. Yes.

12 Q. You immediately say 'I do not accept that there are no  
13 written references to confidential cultural traditions  
14 among the Ngarrindjeri in ethnographic text.' And you  
15 make the point that you contend there are clear  
16 references. And you later refer, in particular, to  
17 Tindale. Is that what you draw from Tindale. Those  
18 journal references, or perhaps I will refer you or take  
19 you to them one by one.

20 A. Okay.

21 Q. You have already identified that bundle I have just  
22 handed to you as journal references to which you refer  
23 in this section of your statement.

24 A. That is correct.

25 MR SMITH: Perhaps, at this stage, I will tender a  
26 copy for the Inquiry.

27 COMSR: Counsel don't have a copy?

28 MR SMITH: Yes, they do now.

29 EXHIBIT 233C Extracts from journals of Norman Tindale  
30 tendered by Mr Smith. Admitted.

31 COMSR: What is the status of those journals,  
32 public?

33 MR SMITH: I think we take the view that you should  
34 restrict them on the same basis as you do ordinary  
35 exhibits.

36 XN

37 Q. Perhaps I will ask you, some of the material to which  
38 you are now going to speak about in connection with

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- 1 these journals, is that confidential material which  
2 ought to be excluded from the public domain.
- 3 A. These journals are held in the South Australian Museum.  
4 They are, I understand, still being reviewed. So, their  
5 status by the museum is probably undetermined. I have  
6 checked with a couple of Ngarrindjeri Elders about this  
7 particular topic. It is my understanding that, as my  
8 statement says, these are references to the existence of  
9 secret cultural traditions, if you like. They are not  
10 descriptions of those traditions. So, if the mention of  
11 the existence of those traditions caused discomfort to  
12 particular persons, then it would probably be best for  
13 them not to listen, but I do not believe that this is,  
14 in itself, culturally confidential information that  
15 would come under s.35 of the Aboriginal Heritage Act, to  
16 the best of my knowledge.
- 17 COMSR: Exhibit 233C is at present subject to  
18 some restrictions as to confidentiality, which I propose  
19 to review at the end of this witness's evidence, in any  
20 case.
- 21 XN
- 22 Q. Just dealing with them all as a whole now, the journals,  
23 which are volume 1, p.245. Volume 2, p.151, that's  
24 right, isn't it. Volume 2, p.207 to p.209. And volume  
25 2, p.214.
- 26 A. These are, yes.
- 27 Q. Then one more I think.
- 28 A. There is one more, yes.
- 29 Q. And volume 2, p.223.
- 30 A. Those are the references I have indicated, yes.
- 31 Q. You draw from those what conclusion in the context of  
32 your evidence.
- 33 A. These extracts from the Tindale journals as examples in  
34 this section of my statement indicate the existence in  
35 the memories of senior Lower Murray informants in the  
36 1930s to Norman Tindale. Those references indicate  
37 here, as they do in other places, the existence of  
38 cultural knowledge that is not generally available

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1 through the community and cultural knowledge and  
2 responsibilities that are restricted according to  
3 gender. In other words, these are references that  
4 indicate in passing the existence of a confidential and,  
5 to some degree, gender specific realm of cultural  
6 tradition among the peoples of the Lower Murray.

7 Q. If that is the case, shouldn't we be closing the hearing  
8 for fear of a breach of s.35.

9 A. As I said, these are indications of the existence of  
10 such traditions. These are not descriptions of these  
11 traditions, because they were a secret. So people, in a  
12 sense, mentioned some things in passing, which are  
13 symptomatic, which are indicative of the existence of  
14 those things. Such as, for instance, the ancestral  
15 landscape of the Lower Murray is not described by the  
16 Berndts, to use a different example, but some place  
17 names, which refer to that large scale conjunction, if  
18 you like, of cultural ancestral body are. So, these are  
19 references in passing. They do not, to the best of my  
20 knowledge and the checking I have done, with  
21 Ngarrindjeri Elders, actually go into the description of  
22 matters which would cause that kind of problem. But I  
23 obviously have to leave it to the discretion of the  
24 Commission, finally.

25 COMSR

26 Q. Once it is publicly known that there is a secret  
27 business relating to some aspect of Aboriginal culture,  
28 is the fact that such a secret exists, once it becomes  
29 public, no longer secret information.

30 A. No, what happens then is the best way to keep a secret  
31 is for people not to be aware that there is a secret.

32 Q. Once everyone knows there is a secret -

33 A. Once people know that there is a secret, then they tend  
34 to pursue you relentlessly to tell it to them, which is  
35 a very important fact to keep in mind in this matter.  
36 Because it is my opinion, based on my professional  
37 opinion, based on my field work, that it is exactly what  
38 we are dealing with. That it has been fine up to a

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1 point, because people, anthropologists, appear to have  
2 been spared knowing there are secrets that they didn't  
3 know. And, while they didn't know, they didn't ask very  
4 hard. And, now that it has been stated, they seem to  
5 either want to refute it or drag it out and learn all  
6 about it, which is, of course, not the wish of  
7 Aboriginal people, because, in order to maintain the  
8 integrity of those traditions, that secrecy is part of  
9 that integrity.

10 Q. Yes, but, once that secrecy has gone, once the cloak of  
11 secrecy has been lifted and people know there is a  
12 secret - now, going no further than that - the fact that  
13 there is a secret having been disclosed, it is no longer  
14 secret information that there is a secret.

15 A. That's correct. And obviously in this case I would  
16 assume that, as a considerable number of senior  
17 Ngarrindjeri Elders have stated publicly that there are  
18 secrets, that there are confidential cultural  
19 traditions, then, yes, the cat is out of the bag on that  
20 one. So that is part of the reason that I would  
21 consider that we are okay here, because it has already  
22 been said, or we wouldn't be in this room right now I  
23 presume.

24 Q. And, to the extent that anything that has been publicly  
25 stated by Aboriginal Elders gives some inkling as to  
26 what the secret may be, is that itself information to  
27 that extent which is no longer secret.

28 A. As an anthropologist I would have to say to you that, on  
29 a case-by-case basis, one should ask the Aboriginal  
30 custodians of that information that question. I am  
31 saying that there are too many possibilities there,  
32 depending on which bit of information is said by whom,  
33 in what context. That is very difficult to know. I  
34 expect that it must in reality be the case to some  
35 degree that, once a part of that is spoken, then to that  
36 degree it has been revealed. It is available.

37 Q. But no further you are saying.

38 A. But, yes, always it is just to the degree that the

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1 people responsible have, if you like, admitted the  
2 existence or the nature of the cultural information  
3 concerned.

4 XN

5 Q. Just so we understand, can I start by just using one  
6 example. Can I go to the journal reference volume 2,  
7 p.223. Do you have that.

8 A. I have that reference, yes.

9 Q. That is the interview, as you say in your statement,  
10 with Milerum in 1937 about Ngurunderi.

11 A. That's correct.

12 Q. Going to p.233 then, the actual source document, you  
13 quote out of that in your statement the notes under the  
14 heading 'Ngurunderi'. Would you read that into the  
15 record for us.

16 COMSR: What are we reading?

17 MR SMITH: No, there is nothing here that is  
18 troublesome. It is p.223, which is the last page in the  
19 bundle.

20 XN

21 Q. It is reproduced in your statement, is it not.

22 A. It is.

23 MR SMITH: At p.24.

24 COMSR

25 Q. And there is no problem with that.

26 A. I would be happy to read that paragraph. Before reading  
27 it I would simply say to any Aboriginal people who might  
28 be concerned that it mentions the - it simply mentions  
29 the existence and origin of the making of doctors and  
30 the existence of doctors in Ngarrindjeri culture. And I  
31 might just pause for a minute before I read it in case  
32 anyone doesn't just want to hear that mentioned.

33 XN

34 Q. You don't have to read it. I won't make you do that.  
35 It is there for everybody to see. You have gone to that  
36 journal page to demonstrate what exactly. What do you  
37 say we should draw from there.

38 A. There are a number of things that one should clearly be

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1 able to draw from it. One is that we have here, from an  
2 impeccable Aboriginal source, some details about the  
3 ancestor Ngurunderi which are not contained in the, if  
4 you like, geographic creation narrative associated with  
5 the Ngurunderi dreaming track that has been published.  
6 So that's its first thing. In other words, here is  
7 something that was, yes, written down in 1934 and has  
8 only just basically come back home recently after Norman  
9 Tindale died. It is certainly an aspect of Ngurunderi  
10 and his role in the creation of Ngarrindjeri culture  
11 which to my knowledge certainly is not prominent in that  
12 public record.  
13 CONTINUED

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1 It refers to things that we would be familiar with, from  
2 the published version, Ngurunderi looking back at Victor  
3 Harbor on the places he created, the fish and places for  
4 fishing he had created, how he taught people how to  
5 catch fish. In other words, the sorts of elements that  
6 one expects from a dominant or major creation ancestor  
7 in Aboriginal Australia. It goes on then with a very  
8 significant sentence which says that Ngurunderi was the  
9 one that brought us doctor corroborees and sacred  
10 corroborees on the nature of and creation of Aboriginal  
11 doctors, particularly in southern and eastern Australia.  
12 And the fact that, this is about 85%, at a rough guess,  
13 tied up with confidential cultural traditions. I refer  
14 you to the book by A.P. Elkin 'Aboriginal Men of High  
15 Degree.' I would also point out that, there are many  
16 references from this region and throughout southern and  
17 eastern Australia to the coexistence, if you like, of  
18 male and female Aboriginal doctors. But Elkin deals  
19 almost exclusively with male doctors because, the  
20 informants to which he had access, who would speak to  
21 him on the matter, were male, so he restricts his book  
22 mainly to males. But, there are many statements,  
23 including one here from Tindale, in Tindale about that.  
24 So, you can take it further there. But, he is basically  
25 saying, this is where this came from, from Ngurunderi  
26 at the ceremonies. I refer that to the previous  
27 sentence, the doctor corroborees, at the ceremonies  
28 which were Narambi or secret. And I make the point in  
29 my statement that it is clear, from the use of that  
30 word by Clarence Long, who is referred to here as  
31 Milerum throughout the Tindale journals, that it has  
32 or that word means, either/or, or both, secret and/or  
33 sacred. It is noted that at the ceremonies which were  
34 secret/sacred, Narambi - which I don't pronounce very  
35 well - only a few old women were allowed to be present,  
36 the others being excluded. So this is, as far as that  
37 goes, a very straight forward reference to secret sacred  
38 ceremonies. In this case, involving, because it is

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- 1 coming from a male informant, it is to do with the  
2 corroborees for the initiation, conferral, there are a  
3 number of words one might use for male doctors, because  
4 it is a male informant, with a few senior women present.  
5 And, I think that, there is, as I have said, this is  
6 most likely that the senior women present are those  
7 same few old women to whom Rueben Walker refers as being  
8 the female doctors, and people who, in some cultural  
9 respects, had power over the senior men. And, I would  
10 suggest to you that, it is very probable, in fact, it is  
11 almost certain, that that would be who those few old  
12 women were, if they were at a ceremony to do with  
13 Aboriginal doctors, they were probably doctors  
14 themselves. We don't actually hear, in this, anything  
15 about ceremonies for the female corollary of this  
16 because the informant is a man.
- 17 Q. But, certainly, the fact of this occurrence is the  
18 subject of publication, isn't it. For instance, it is  
19 canvassed in the Berndts'.
- 20 A. The Berndts mention doctors without anybody wondering  
21 how they got to be doctors, what that involved, a whole  
22 range of things and, the degree to which the status and  
23 character of Aboriginal doctors is congruent throughout  
24 Aboriginal Australia, can be ascertained, I think, to a  
25 considerable degree by reference to Elkin. The Berndts  
26 do not go into detail on that matter. But, certainly,  
27 yes, they raise the existence of such people.
- 28 Q. But, in the context of this enquiry, where we are  
29 looking at the existence of secret sacred women's  
30 business, what does that help us with, what you have  
31 done, that exercise that you have just elaborated upon.
- 32 A. I believe from the perusal I have done, or of the  
33 evidence before you, you have had evidence placed before  
34 you which you have raised with me earlier, suggesting  
35 that there was little or no secret sacred cultural  
36 knowledge, information, business, among the Ngarrindjeri  
37 at all. So, that is the first point. This is a  
38 definite, very definite case to the contrary. That



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1 there is nothing written down about it, well certainly,  
2 this wasn't available for many years, but it was written  
3 down in 1934. It refers to their, very simply, and  
4 explicitly, to the existence of secret sacred  
5 ceremonies, concerned with Aboriginal doctors, among the  
6 Ngarrindjeri, as there, which puts them in line with the  
7 rest of Aboriginal Australia, rather than placing them  
8 on this separate pedestal that seems to have been  
9 suggested to you. It also has a perfectly clear  
10 reference to the involvement of senior Ngarrindjeri  
11 women, in secret sacred business. It doesn't tell us  
12 any more, which is why we are still in open court, but  
13 it is there.

14 Q. You refer to that, do you Dr Draper, in a sense that,  
15 you say, that that is some support for the proposition,  
16 that there is secret sacred women's business, the  
17 existence of which we - the fact of the existence of  
18 which we know nothing, at least, until 1994.

19 A. I am saying it is a clear indication of that, yes.

20 Q. You accept, however, that that topic is canvassed  
21 repeatedly in the Berndts' volume, don't you, the  
22 question of doctors and Narambi in particular.

23 A. I don't think that I would say it was canvassed. These  
24 things are mentioned quite frequently but, for instance,  
25 the information here in the Tindale journal is not  
26 contained in the Berndt book, in that form, to my  
27 knowledge. So, it certainly is throughout it but -

28 Q. I just want to ask you to comment on this; I am showing  
29 you Exhibit 4, which is 'The World That Was' by the  
30 Berndts, p.295, under the heading 'The last initiation  
31 rituals.' Would you cast your eye over that quickly  
32 and comment on it in the context of what you have just  
33 told us.

34 A. The first thing we see is the assumption in the first  
35 sentence, that traditional life has disappeared. This  
36 is a product of the times, Daisy Bates, who was working  
37 when the Berndts were starting to work, was talking  
38 about soothing the dying pillow of the passing of the

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1 traditional Aborigines etc. This was a mainstream  
2 European idea, a belief that white Australia had, at the  
3 time the Berndts were working and anthropologists too,  
4 as a subject, said of that society, that that  
5 traditional culture, traditional knowledge was, in its  
6 entirety, passing away before their eyes. So, we have  
7 that first, which is, in other words, an assumption, is  
8 made at the beginning. Then we go on to -

9 Q. I am really wanting you to focus on the Narambi and  
10 the secrecy aspect.

11 A. We see Taplin took a stand against secret sacred  
12 rituals in his drive to establish a mission and convert  
13 people from their own cultural beliefs to Christianity.  
14 This also suggests that there was something that he was  
15 opposed to. He was opposed to initiation rites, any  
16 rituals that were Narambi, about which he was aware and  
17 that, the Elders, in his time, resisted this, which is  
18 mentioned in other of the Berndts' publications too, I  
19 believe. They are talking about the actual holding of  
20 ceremonies. The comment on the last initiation rituals,  
21 rites, becoming more infrequent etc. And, what they  
22 were saying is, the last publicly known to be held. I  
23 am not saying public, because it is Narambi, but, the  
24 last publicly known, publicly acknowledged perhaps, in  
25 fact, the last joint, Ngarrindjeri male I am presuming,  
26 initiation ceremonies, were said to be held in 1882. I  
27 think that is referred to certainly by the Berndts'  
28 informants, I think by Tindale's informants, whose life  
29 span cover that period as well. In fact, it mentions  
30 Albert Karloan took part in it. It mentions -

31 Q. Do you see any significance in the fact that the Berndts  
32 mentioned young people and young women were present.

33 A. No, they make it clear that, this ceremony, held in 1882  
34 was as it says, a foolscale affair, with a large number  
35 of participants; men, women, youths and young girls.  
36 Now, most Aboriginal initiation ceremonies, for  
37 particularly males, start out as public rituals. One  
38 has to know that boys are becoming men, otherwise, when

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1 one sees them again, how will you know anything has  
2 happened? And, as the Berndts, when they go through  
3 initiations, in other parts of their book, explain, it  
4 starts out public, the departure, if you like, of boys,  
5 from their families etc., and their reappearance in  
6 another state, some time later. Those parts are public.  
7 And the Berndts quite explicitly state and I believe it  
8 has been raised here before, that a lot of what went on  
9 in between was not public.

10 Q. I suppose really, Dr Draper, I am asking you to tell the  
11 Commissioner, on what basis that journal reference, that  
12 we have just been dealing with, at p.233 of volume 2 of  
13 Tindale, supports the notion, that not only is there  
14 secret sacred business, but there is secret sacred  
15 business which, until recently, has been unrevealed in  
16 the literature. That's the point you are driving at,  
17 is it not.

18 A. I think that is fairly simple Mr Smith. My  
19 understanding of the Berndt book, is that, the  
20 ceremonies referred to there as initiation rituals, the  
21 last of which occurred in 1882, that this is the most  
22 secret sacred aspect, perhaps, arguably, of Ngarrindjeri  
23 culture that they record, here or in publication  
24 elsewhere. The Tindale journal refers to the doctor  
25 corroborees and sacred corroborees, in particular there,  
26 the doctor corroborees, because that is unequivocal,  
27 which were given to the people by Ngurunderi, those  
28 ceremonies, and what is involved with them are not even  
29 mentioned by the Berndts, to the best of my knowledge.  
30 So, we have here a class of ceremony, to do with a class  
31 of cultural authority, of cultural specialist,  
32 particularly in terms of healing, of traditional law,  
33 which are not canvassed, as seems to be the common word  
34 here, by the Berndts.

35 Q. You would not though, equate 'not recorded' with 'secret  
36 sacred and unrevealed' would you.

37 A. In this case I would, because that is stated by Milerum  
38 with regard to the information about Ngurunderi. He

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1 makes it quite clear, that he has just talked about  
2 Ngurunderi bringing the doctor corroborees and sacred  
3 corroborees and says, immediately afterwards, at the  
4 ceremonies which were Narambi or secret, only a few old  
5 women were allowed. So, he is saying that, this is a  
6 context of restricted access, which is the other side of  
7 the coin of saying, secret sacred, yes, directly, in  
8 this case.

9 Q. Although, betraying the fact of it, is it not.

10 A. Well, that is correct. And, I note that he doesn't go  
11 into it in more detail. Rueben Walker mentions the  
12 doctors in some way, but doesn't go into this either.  
13 The Berndts mention it and they mention them, but they  
14 don't go into the details either. Elkin goes into far  
15 more detail, giving an example from this region, an  
16 example from that and example for another one, but - and  
17 that's field work as I remember, I think from roughly  
18 the same period.

19 Q. Can I take you back quickly, if I could, to your other  
20 references to Tindale. P.22 of your statement, you  
21 refer first of all to volume 1, p.245.

22 A. That's correct.

23 Q. Again, can you tell us, briefly as possible, what you  
24 draw from that reference.

25 A. I think it is well summarized in the statement that, it  
26 is an interview with Rueben Walker, a senior traditional  
27 owner from Goolwa - so we're in the right neck of the  
28 woods as it were - who, because one of Norman Tindale's  
29 main interests was songs in Aboriginal languages and  
30 recording them. One of the songs he gave him was a  
31 Tungari - I have a horrible Ngarrindjeri pronunciation  
32 - a Tungari or law song, sung by the old women. So it  
33 was, this song was a women's song, it was a senior  
34 women's song. So, it was performed publicly, because  
35 its purpose was through, as I have said, public  
36 admonition and shame, to coerce, if necessary and I  
37 presume it wouldn't be sung unless coercion was seen as  
38 necessary, widows in particular in this case, not to

1 make wrong remarriages, not to cut short, in a  
2 culturally inappropriate way, mourning periods etc.  
3 Q. Can I ask you there, how does that throw some light on  
4 the exercise we're embarked upon here.  
5 A. Well, that's what I will be quite happy to tell you. I  
6 am trying to be brief with you, believe me. Here it  
7 says the senior women are acknowledged as having  
8 authority, cultural authority over these matters, but,  
9 the source of that authority here and elsewhere, is not  
10 specified. And, it is the case that, if the old women  
11 have, in these matters, authority over the men, then  
12 there is necessarily, in Aboriginal culture, an  
13 authority from which that comes. In other words, what  
14 gives you the right to have say over this? And that  
15 specific origin of cultural law and responsibility, has  
16 not been recorded to my knowledge. In other words, it  
17 is saying, okay, there is authority here that comes from  
18 somewhere, otherwise no-one is going to listen. It is  
19 just like when I came - we're not dealing with secrets  
20 here - when I came on the stand, I took an oath. There  
21 is an authority from which this entire exercise  
22 proceeds, in terms of a speaking truthfully, and I guess  
23 ultimately the authority of this commission, through  
24 instruments of appointment etc., to do its business.  
25 What I am saying to you in doing that business there has  
26 to be authority.  
27 CONTINUED

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1 Q. Can I interrupt you to say, though, that you would  
2 accept that none of that is secret, or the fact of it  
3 not known, is it.

4 A. Well, in the case of what we're doing here, we all know  
5 and concede publicly what that source of authority is.

6 What I'm saying to you is that the authority is very  
7 plainly stated here, and the source of it is not on  
8 record, and it cannot be, by definition, sourceless.

9 Q. No, but can I ask you do you leap from that - perhaps  
10 `leap' is the wrong word - but do you necessarily leap  
11 from that to a conclusion that therefore it's secret and  
12 sacred and unrevealed.

13 A. Well, you've got two different things there. I would  
14 suggest to you that it's unrevealed because it is not  
15 recorded, and that of course touches on this Commission  
16 because it seems to me to have been claimed that just  
17 about everything about Ngarrindjeri culture that is real  
18 has been recorded, which is a big claim to make about  
19 any human culture, so it's actually saying to us that  
20 there is something that lies beyond that that is not  
21 specified. Whether it's a secret or it's unrecorded, we  
22 have no information to distinguish among those two  
23 possibilities, but I think it takes us to those two  
24 possibilities quite correctly.

25 Q. So you say no more about that than `Where do these  
26 elderly women get their authority? That's not  
27 documented, perhaps that might be an area of secret  
28 sacred knowledge', is that what you're saying.

29 A. It is more than that. In every case, and I don't mean  
30 in this particular region, but in every case that is  
31 documented of women's authority over such matters - and  
32 there may not be many - in Aboriginal Australia, in  
33 every case I've encountered, there is a source of  
34 cultural authority lying behind such responsibilities  
35 that is tied back into the creation of culture and law.  
36 All Aboriginal law and tradition is created by the  
37 ancestors, it's quite specific. We simply don't have  
38 that connecting information in this case.

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1 Q. No. The real issue in this commission, you're aware, is  
2 that what's claimed for Hindmarsh Island by the  
3 Ngarrindjeri ladies, the proponent ladies, is secret and  
4 sacred and hitherto unrevealed publicly, women's  
5 business.

6 A. That's correct.

7 Q. You understand that, don't you.

8 A. I do understand that, and I'm suggesting to you that  
9 there is information of that sort contained within  
10 Ngarrindjeri culture of that kind.

11 Q. Am I correct, then, where you refer to Tindale at p.245  
12 of vol.1 of his journal, that the most that could be, on  
13 a scientific basis, said about that is that the source  
14 of the elderly women's culture is unrevealed. It's  
15 rather difficult to draw anything more from that, isn't  
16 it.

17 A. It says that they have a specific cultural authority  
18 which is overrides anyone else's and we do not - they  
19 are the ones that do it, they are the ones who sing this  
20 song, that hold this song, no-one else does it, the old  
21 women, as Reuben always puts it in the material in the  
22 Tindale journals, have that authority, they are the ones  
23 who do it, and we're not told from where that authority,  
24 stems, yes.

25 Q. Can you take me at p.245 to that precise quite.

26 A. I'll have to look at it. I have been looking at the  
27 summary in the statement.

28 Q. Am I correct, I can't seem to find any reference to the  
29 women having cultural authority. Is that an assumption  
30 you've made.

31 A. No, it's not an assumption. You've got to put these  
32 things together. I mean these are all field notes.

33 OBJECTION Mr Abbott objects.

34 MR ABBOTT: I ask that he answer the question first  
35 of all, that is show us where in this extract there is  
36 an assertion that the women have control over cultural  
37 authority.

38 A. If you don't interrupt me.

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- 1 COMSR: I think the witness is trying to find  
2 the passage.
- 3 MR ABBOTT: I thought he going to say that 'It's not  
4 here, but you have to make certain assumptions'.
- 5 A. If you come down to the second paragraph, the one that  
6 starts 'Song eight', the third line of that paragraph  
7 introduces this song as a Tungari, a law song. You will  
8 find from other references - so right here (INDICATES)  
9 at about .3.
- 10 XN
- 11 Q. About .3 of the page.
- 12 A. About .3 of the page.
- 13 Q. Yes.
- 14 A. That is the opening comment about this song, that it's a  
15 Ramindjeri song of the people of Goolwa, so it's  
16 geographically where we want it to be, it's sung in the  
17 Ramindjeri tongue, it's a Tungari or law song. Law  
18 songs have a specific context - which you may refer to  
19 in other parts of the Tindale journals and to the  
20 Berndts, I'm sure, although I can't offhand give you a  
21 specific reference - law songs are sung basically as a  
22 practical and ritual means of enforcing cultural laws.  
23 It's not when you're being read your rights as being  
24 read the riot act in many cases. That's the first part  
25 of that. We then go on to about .8, so we're in the  
26 actual summary that's provided of the song. At about .8  
27 in the middle of that paragraph, you will see the  
28 sentence - actually we'll go down to .9, 'The old  
29 women', if you see that, 'The old women are indignant,  
30 they sing this in derision', so there we have the link  
31 between a Tungari and the people who actually sing that  
32 song, and that is the old women. That's quite  
33 straightforward. They are the ones who sing the song,  
34 and it says why the song is made. This song is made to  
35 prevent undue haste in the resumption of marital  
36 relationships, which is a terribly important thing,  
37 because of course everybody in Ngarrindjeri and  
38 Ramindjeri culture is allocated their place in the



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1 universe, both social and physical, in terms of their  
2 cultural classification which stems from marriage unions  
3 and so forth, so things like wrong marriages create  
4 cultural complications, particularly for the offspring  
5 of such marriages, or of the offspring of no marriage at  
6 all. That's a considerable glitch in the ongoing  
7 operation of a culture and, in this case, this song,  
8 which is made to prevent that from happening, from human  
9 nature perhaps overcoming cultural necessity, there is a  
10 Tungari, a law song, to enforce it, and it's song by the  
11 old women, so that's what I base that on.

12 Q. So is the answer to my question really that cultural  
13 authority you've assumed from the context of this  
14 occasion, and you've drawn on other material, have you.

15 A. That's my interpretation of that passage. It's not an  
16 assumption, it's my analysis of what that's about.

17 MR ABBOTT: For the benefit of the reporters, could  
18 we find out whether he is talking about L-A-W or  
19 L-O-R-E.

20 A. I believe that the - it's obviously a mainstream  
21 Australian distinction rather than an Aboriginal one. I  
22 have spelled that word as I've used it in this statement  
23 as L-A-W in terms of traditional Aboriginal law. It's  
24 that simple.

25 XN

26 Q. I'm going to take you now to the history of events, if  
27 you like. Is it correct, from your perspective, that  
28 Aboriginal community objection to the construction of  
29 the bridge really arose in strength in about October of  
30 1993.

31 A. Certainly my awareness of it, and my department's  
32 awareness of it and, I presume, beyond that, the State  
33 government's awareness of it, came about at about the  
34 end of October 1993, yes.

35 Q. I take it you had been, for some years, the senior  
36 archaeologist in the Aboriginal Heritage Branch at that  
37 stage, had you not.

38 A. Yes, I had.

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1 Q. I think we go to about p.33 of your statement. I think  
2 the Lower Murray Aboriginal Heritage Committee, you  
3 accept, was newly formed in about 1992, is that right.

4 A. That's my general recollection, yes.

5 Q. I think in October of 1993 you were involved, and I  
6 don't mean this in any sinister way, in the cessation of  
7 work on the bridge due to the fact that an access road,  
8 pending construction, went through a registered site,  
9 namely Amelia Park.

10 A. I, in fact, ordered that work to cease as an inspector  
11 under the Aboriginal Heritage Act on the instructions of  
12 my Chief Executive Officer and the Minister or  
13 Aboriginal Affairs, yes.

14 Q. I think then you undertook, in effect, a speedy survey  
15 of the island, or the Goolwa foreshore and Hindmarsh  
16 Island, in order to really just ascertain the position  
17 in relation to Aboriginal heritage problems with the  
18 bridge. That's the case.

19 A. The immediate survey work was done, particularly areas  
20 that were associated with bridge construction, and later  
21 survey work, again I think the adjective 'speedy'  
22 probably applies, was done in a wider area, yes.

23 Q. You'd obtained \$20,000 to fund that survey. I think  
24 that's right, isn't it.

25 A. Well, the Department of State Aboriginal Affairs was  
26 given that funding, yes, by the Minister for Transport,  
27 as I remember.

28 Q. You then reported the outcome of that survey, and I  
29 think that's document - the inspection report, it is.

30 A. It is slightly out of sequence, I think. The  
31 inspector's report - which document number did you have  
32 on that again - the inspector's report predates the  
33 survey work done from the grant for \$20,000.

34 Q. I think we have got it here, document number 9, I think.

35 A. Yes. That inspector's report refers to the very initial  
36 survey work done in the first few days over areas  
37 immediately concerned with bridge construction. The  
38 \$20,000 in funding you referred to was again subsequent

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1 to that, to conduct a comprehensive heritage survey of  
2 Hindmarsh Island and Goolwa.

3 Q. You did that, and the outcome of that is in that  
4 inspector's report, which is document number 9 signed by  
5 yourself.

6 A. That's correct.

7 Q. As a consequence of that report, a clearance was given  
8 to the construction of the bridge, and that's set out in  
9 the next document, a letter to the contractors Connell,  
10 dated 9 November 1993, is that so.

11 A. That's correct.

12 Q. I think you take the position, don't you, that you had  
13 no alternative but to clear the construction of the  
14 bridge.

15 A. That was the understanding of my department, and I  
16 drafted that letter, with my signature, on that basis.

17 Q. You were, I think, in consultation at that time with the  
18 members of the Lower Murray Aboriginal Heritage  
19 Committee.

20 A. The department and the minister were indeed, as required  
21 by the Aboriginal Heritage Act.

22 Q. I take it that you conveyed to them that that was the  
23 position, you had to clear the construction of the  
24 bridge.

25 A. I believe that that is the case.

26 Q. I think, then, there was a change of government at about  
27 this time, wasn't there.

28 A. There was around then, yes.

29 Q. It's not as if the bridge construction sort of started  
30 off straight after 9 November 1993.

31 A. There was a slight hiatus in terms of our department at  
32 least carrying out policy initiatives, as we waited for  
33 the government after the election to give us those, yes.

34 Q. If I can take you, then, to p.36 of your statement. At  
35 the top of p.36, I think we have a typing error, don't  
36 we. The letter should be 9 November 1993.

37 A. Yes, that's correct.

38 Q. Rather than 1994. The second line up there. (NOT

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1 ANSWERED)

2 MR ABBOTT: What page?

3 MR SMITH: Page 36, the second line should read

4 9.11.93.

5 COMSR

6 Q. Perhaps the witness might just put in that correction on  
7 the actual exhibit and initial it.

8 A. I would be happy to do so.

9 Q. That's p.36, second line.

10 A. I have it. I have corrected it and initiated it.

11 XN

12 Q. If we go to document 11, again that's a project brief  
13 you've prepared.

14 A. Yes.

15 Q. I think that that's a project brief for really a full  
16 survey of Hindmarsh Island from a cultural and site  
17 point of view.

18 A. That's correct.

19 Q. I think that that document, which is document 11, sets  
20 out the brief, as it were. The purpose of the survey is  
21 to 'Identify and record all visible significant  
22 Aboriginal sites on the island, and to produce  
23 appropriate representations for the preservation and  
24 management of these sites'. In a nutshell, that's the  
25 brief.

26 A. That's correct, yes.

27 Q. So you set about undertaking that survey yourself with  
28 assistance, did you not.

29 A. That's correct.

30 Q. That was in the wake, as it were, of the green light  
31 having been given to the construction of the bridge, is  
32 that correct.

33 A. That's my memory of it, yes.

34 Q. You set out the budget there for the survey in the  
35 document attached to document 11.

36 A. That's correct.

37 Q. I think you embarked on that survey in November of 1993,  
38 that's right.

1 A. That's right.

2 Q. That survey extended through into December of that year,  
3 I think.

4 A. Yes. It ran for approximately four weeks.

5 Q. I'm at p.37, para.2 of your statement. You there record  
6 that towards the end of the survey - and I take it  
7 that's December of 1993.

8 A. That's correct.

9 Q. There is a first hint of Sarah Milera reacting, if you  
10 like, to her perception that parts of the island are  
11 culturally significant to her, is that right.

12 CONTINUED

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1 A. That is right, yes.

2 Q. Can you tell us, or is this a sensitive area, she  
3 reacted in the sense that she spoke to you and conveyed  
4 something to you, didn't she.

5 A. That's correct.

6 Q. Can you tell us what that was.

7 A. My difficulty here is that I have not discussed with  
8 Sarah Milera, or with any other Ngarrindjeri person,  
9 whether it's okay to talk about those details or not.  
10 In the absence of that advice, I don't know if it would  
11 create a problem, and my training as an anthropologist  
12 is: if you don't know in that sort of situation, shutup.  
13 So I would prefer not to go into that, unless I knew  
14 what the effect upon those people of doing that might be.

15 COMSR

16 Q. When you say 'go into the details', are you able to  
17 indicate in a general way what the nature of the matter  
18 that concerned her was.

19 A. I believe I could assist you there to some degree.

20 Q. Without going into detail.

21 MR MEYER: Would it help if we close the court?

22 MR SMITH: I don't think we need to. I think we  
23 could do this in a secondhand way.

24 WITNESS: I believe I could give you some relevant  
25 information about that.

26 COMSR: The witness has indicated that he can,  
27 in a general way, indicate the nature, the topic.

28 MR ABBOTT: I record at this stage my view and my  
29 submission that this should be removed from his  
30 statement since apparently we will not be allowed to  
31 cross-examine on it. If he is going to make assertions  
32 to assist his cause, and then decline to be  
33 cross-examined on it on the basis 'I haven't got  
34 permission to speak about it', it puts the  
35 cross-examiner in an invidious and indeed impossible  
36 position.

37 MR STEELE: In my submission that is an entirely  
38 inappropriate submission to make at this time. The

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1 witness has already indicated that he is prepared to  
2 assist you. Counsel assisting has indicated that a  
3 back-hand way can be found to do it. If Mr Abbott has  
4 something to say, let him say it at the appropriate  
5 time, not ferment trouble.

6 MR SMITH: I will attempt to do it this way.

7 COMSR: The witness has indicated he is prepared  
8 to answer the question in a general way. We will see  
9 how far we get.

10 A. One of the places concerned is a -

11 Q. It is to do with places and sites.

12 A. Yes, it is to do with specific places. We were doing a  
13 site survey, significant sites on the island under the  
14 Aboriginal Heritage Act. So these are two places, and I  
15 have mentioned that they are areas and on sections of  
16 land on Hindmarsh Island, but they are physical  
17 features.

18 Q. I think that is the general description, sites and  
19 physical features.

20 A. They are certainly physical features, okay. Certainly  
21 physical features.

22 Q. I don't think that is going to get us into too much  
23 trouble getting into that.

24 A. I am sure it won't.

25 XN

26 Q. Can I just produce to you on this topic, Exhibit 17,  
27 which is the report of Professor Cheryl Saunders, which  
28 I can tell you is accepted to be, without debate, a  
29 public document. I am referring you to p.26, the  
30 paragraph which commences 'Sarah Milera' which is about  
31 point 6 of the page down.

32 A. Yes.

33 Q. Perhaps you could take some reassurance from the fact  
34 that this has been distributed as a public document by  
35 the Federal Minister, and has been accepted by this  
36 inquiry as a public document. Bearing in mind what you  
37 read there, would you be prepared to help us further  
38 with the answer to this question.

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- 1 A. From what you are saying there and what is contained  
2 here, again, as I said, I haven't talked to Sarah Milera  
3 since I did that recording in December, and this section  
4 of the Saunders report I presume is based on discussions  
5 that she had with Professor Saunders in May, but I think  
6 that it is highly likely that the comment about  
7 unexpected finds of cockle shells refers to one of the  
8 sites to which I refer.
- 9 Q. If I am not trespassing, that's what she said to you on  
10 this occasion here, something to that effect.
- 11 A. Yes. I think, although the reference in the Saunders  
12 report is very brief, it is highly likely that that's a  
13 comment of her interpretation, perspective on, one of  
14 those two places I've mentioned. It does seem  
15 consistent.
- 16 Q. At this time, was your wife a field assistant.
- 17 A. Yes, she was.
- 18 Q. Apart from providing your spouse with work, was there  
19 any other motivation for having your wife working with  
20 you.
- 21 COMSR: I don't know that that's -  
22 XN
- 23 Q. I don't mean that in any -
- 24 A. It certainly had very little to do with providing my  
25 spouse with work, as she was fairly busy at the time in  
26 any case. I've detailed, of course, the specific reason  
27 in the statement why she was hired for part of this  
28 survey.
- 29 Q. That's at p.38, about point 2, isn't it.
- 30 A. That is correct.
- 31 Q. It was considered a culturally appropriate device and an  
32 anthropologically appropriate device for dealing with  
33 information that might be of sensitive - in terms of  
34 being sensitive to women or confidential to women, and  
35 it has to do, very simply, with the fact that there are  
36 things that women can talk to other women about, and  
37 there are things that wives can talk to husbands about  
38 that the original female informants could not talk to



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1 that man about. So it is an cultural and  
2 anthropological device that is considered appropriate by  
3 Aboriginal people for dealing with a male researcher  
4 who's in a situation with some female informants.

5 COMSR

6 Q. When you say that it is considered that's the cultural  
7 appropriate way to go about it, that a woman talk to  
8 another woman about certain topics, is that more a  
9 matter of sensitivity than anything else, that women  
10 will speak more freely among themselves about certain  
11 topics than they would with a male, or especially a male  
12 stranger.

13 A. There are many topics that would not be considered  
14 secret, but just that would have some sensitivity,  
15 perhaps embarrassment potential even, where a woman  
16 might speak to her husband about it, might speak to  
17 another woman about it, who might speak to her husband.  
18 But in just speaking generally women to men, those  
19 topics would not be discussed. We have analogies in our  
20 own society. But this does also pertain, in several  
21 regional instances that I have had dealings with, to  
22 situations that do involve gender specific information.  
23 I have been in that sort of situation and experienced it  
24 previously, where it had been explained to me by male  
25 and female Aboriginal elders, and it was considered that  
26 it was a good thing to do in this case.

27 XN

28 Q. Yet Sarah spoke to you. Your wife -

29 A. On the occasion you have just referred to with respect  
30 to the cockle shells, my wife was also present, and I do  
31 recall that they lingered at that place when the men  
32 moved on, and as I was sort of moving on across the  
33 paddock too, I noticed they had lingered and I went  
34 back. They had a discussion before I arrived, to which  
35 I was not privy, and then after that Sarah spoke to me  
36 directly about it. On the other occasion, the one that  
37 wasn't to do with the cockles, which was to do with the  
38 landscape feature, Sarah spoke directly to me. In fact,

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1 again the men had moved on to another paddock over a  
2 hill, and Sarah had waited on to catch up with me. I do  
3 not recall that my wife - currently my ex-wife - was  
4 present at that particular time. She was not there  
5 absolutely all the time. Whether she was on survey that  
6 day, but not in that particular paddock, or simply  
7 wasn't there that particular morning or afternoon, I  
8 can't recall, but she certainly wasn't in the vicinity  
9 at the time that Sarah spoke to me.

10 Q. I take it that you were not aware at this stage, what we  
11 will call the first survey, that there was a prospect,  
12 if you like, of secret women's business being associated  
13 with the island.

14 A. I won't say I was unaware of the prospect. I think it  
15 would be a very foolish anthropologist who goes into the  
16 field with an urgent cultural heritage assessment survey  
17 that's very much in the public eye - I mean, it has got  
18 politics, big money, it is an important thing, and it  
19 has to be carefully but quickly assessed, so all the  
20 problems in, you know, do a very good job and do it very  
21 quickly are there - it would be foolish not to take into  
22 account the basic range of possible reasons why people  
23 are jumping up and down and saying 'Look, there are  
24 unrecorded very significant Aboriginal sites and  
25 associated traditions to do with this place'. Given  
26 that information, one says there may be a range of  
27 archaeological or burial sites, there may be men's  
28 business, there may be women's business, all you know is  
29 you have got a problem of this nature and it hasn't been  
30 recorded. So you try and have what mechanisms you can  
31 assemble for recording what there may be, which is why  
32 we had an arrangement that, if there were - and this is  
33 standard, I have adopted this over about, I would say,  
34 the last three to four years where the situation  
35 appeared to be relevant - to have the opportunity there  
36 for either specifically men's business to be mentioned  
37 or specifically women's business to be mentioned, some  
38 mechanism. Otherwise, if you don't have any way of

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1 recording it, you won't know whether it was there or  
2 not, quite frankly. So there has to be a mechanism  
3 which you have negotiated with the community for  
4 different kinds of information or cultural phenomena to  
5 be raised or accessed.

6 COMSR

7 Q. You are saying that prudence dictates that you bear in  
8 mind that there is a whole range of possibilities that  
9 could raise their heads in one way or another when -

10 A. That is certainly very correct, yes.

11 Q. I mean, without you knowing specifically which one of  
12 them it might be, you are on the alert for something to  
13 happen. Is that the situation.

14 A. To the degree that one can actually have an idea of what  
15 the range of possibilities might be, you try and prepare  
16 for that possibility. So if, for instance, women's  
17 business comes up in the course of a particular piece of  
18 field work, one can say, had there been in that context,  
19 there was a negotiated and agreed mechanism for that  
20 actually to come to our awareness. So you have some  
21 idea of whether the job has been done well enough. It  
22 would not, I believe, under those circumstances, be good  
23 enough to say 'I am a male researcher, but I didn't  
24 record anything'. The thing is: Were you aware that  
25 that might happen and take some sort of measures so  
26 that, was it there, you would be able to deal with it,  
27 you would know it. Rather than just making a statement  
28 on the absence of relevant information later. It is  
29 very hard to make a definitive statement about a - just  
30 the absence of information. One hopes to go one step  
31 beyond that.

32 Q. I understand that. I am just trying to follow what you  
33 were saying previously.

34 A. It was a precaution.

35 Q. That when you go into an exercise of this sort, where  
36 you know that it is fraught with several possibilities,  
37 you like to bear the whole range of possibilities in  
38 your mind.

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1 A. That is correct, it is a precaution.

2 XN

3 Q. I take it then, that the Lucas anthropological report  
4 that you already had - didn't you, the 1990 report.

5 A. Yes, it was in the archives, the reports that are  
6 associated with the site register.

7 Q. So you didn't put out of your mind the possibility,  
8 because of that report, of some spiritual or cultural  
9 significance being attached to the island.

10 A. That's correct.

11 Q. Can I take you to the Jacobs inquiry. That commenced in  
12 December 1993, and we know that Mr Jacobs QC reported in  
13 February 1994. That is as you understand it.

14 A. That is as I understand it, yes.

15 Q. I tell you as a prelude to this question that Mr Jacobs  
16 was unsure of the position. Can you tell us, did you  
17 seek him out or did he seek you out.

18 A. I certainly didn't seek Mr Jacobs out. In fact, one of  
19 the documents attached here is my minute, and it's -

20 Q. Document 12, I think.

21 A. Document 12. At that particular time, my supervisor at  
22 that time was Mr Robert Were, and I have here produced a  
23 handwritten minute to him on 23 December 1993 re  
24 Hindmarsh Island Bridge Inquiry. It simply says 'I have  
25 received a phone call from Justice Jacobs, informing me  
26 that I will be called on' that is by him 'in the next  
27 couple of weeks to assist the inquiry in providing  
28 information on the Aboriginal heritage issue. He stated  
29 that the Minister's office will be contacting the chief  
30 executive officer to request this assistance'. And he  
31 had just given me a courteous call to give me fair  
32 warning.

33 Q. Can you tell us when you first attended before Mr Jacobs  
34 QC. I mean, was it in December or was it January, do  
35 you know.

36 A. Given that - I don't have a clear memory of the exact  
37 dates, no. It was a very busy period, but given that  
38 that occurred on 23 December, the day before Christmas,

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1 when the State Government goes into partial recess, I  
2 think we can be reasonably certain that it was in  
3 January or the very end of December, but certainly after  
4 Christmas.

5 Q. Did you indicate, or not, to Mr Jacobs, that the island  
6 had, in your estimate as an archaeologist and  
7 anthropologist, cultural significance to the Aboriginal  
8 communities, or did you -

9 A. Under our Aboriginal Heritage Act, cultural significance  
10 is a matter to be ascertained and presented by  
11 Aboriginal traditional owners. We do scientific and  
12 historical significance, they do cultural significance.  
13 My very general recollection is that I indicated to him  
14 that the Aboriginal people concerned, the Lower Murray  
15 Aboriginal Heritage Committee, specifically did make  
16 such a claim in general, yes. So I reported that to  
17 him. It wasn't sort of my place to express that as my  
18 interpretation. It was just relating direct facts as  
19 related to the Act.

20 CONTINUED

- 1 Q. I think you recommended to Mr Jacobs, and he took it up,  
2 that he see George Trevorrow and Douglas Milera.
- 3 A. Yes, the Lower Murray Aboriginal Heritage Committee had  
4 very pointedly and specifically requested that I seek  
5 for them an appointment to speak to Justice -  
6 Commissioner Jacobs. That was approved by senior  
7 management of my Department and I passed on that request  
8 and arranged that meeting.
- 9 COMSR
- 10 Q. I just wonder before we go on, the Lower Murray  
11 Aboriginal Heritage Committee, what is the, I suppose,  
12 status of the committee, from time to time. I mean, its  
13 make up. Obviously the membership of the committee  
14 alters, from time to time, does it.
- 15 A. Like, I presume, all Aboriginal organisations set up at  
16 the request of mainstream Australia that are subject to  
17 annual general meetings and the election of officers,  
18 these things change. That committee was not an  
19 Aboriginal corporation registered under -
- 20 Q. Under the Aboriginal Heritage Act.
- 21 A. No, it wasn't an Aboriginal corporation registered under  
22 the Federal legislation for Aboriginal corporations, but  
23 it was a duly constituted regional Aboriginal heritage  
24 representative committee set up certainly with the  
25 assistance of the State Government, the various bodies  
26 that, from time to time, administer the Aboriginal  
27 Heritage Act. And largely for the purpose of responding  
28 to the fairly constant demands of the South Australian  
29 Aboriginal Heritage Act for advice and consultation and  
30 involvement of Aboriginal people with regard to cultural  
31 heritage matters. So, it was the body recognised by the  
32 Aboriginal Heritage Branch, by this stage, the  
33 Department of State Aboriginal Affairs, as the  
34 appropriate consultative body for the Lower Murray  
35 region.
- 36 XN
- 37 Q. In December of 1993 - and I am at document 13 here - you  
38 reported on the outcome of the first survey to your

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1 chief executive officer, did you not.

2 A. That is correct.

3 Q. That is that minute dated in December 1993. And you  
4 there recommended, I think, that another survey take  
5 place and requested that your superior officer seek  
6 funding to the extent of \$34,000 to carry out another  
7 survey.

8 A. That's correct.

9 Q. In para.2, you set out the results of the survey you had  
10 conducted.

11 A. Yes, that's correct.

12 Q. That you had discovered seven significant archaeological  
13 sites, at least two of them containing traditional  
14 burials, is that right.

15 A. That's correct.

16 Q. I don't think you did. You didn't register those, or  
17 did you.

18 A. It says 'the discovery and recording'. That is the  
19 field site recording. The process of registration is  
20 something that the Minister does, after he has completed  
21 the - after he has reviewed the completed site records,  
22 which are still being produced.

23 Q. The site register doesn't contain, I think, or do you  
24 know, the site register does not contain a recording of  
25 those sites that you mention there in para.2 of your  
26 report.

27 A. No, it does not, at this stage.

28 Q. That is going to happen later, is it.

29 A. That will be happening very soon, yes.

30 Q. I think we are at p.40, now. You had some contact,  
31 following this report and request for further funding  
32 for a further survey, you had some contact with members  
33 of the Lower Murray Aboriginal Heritage Committee, as  
34 you have recorded there, at the bottom of p.40. That's  
35 right, isn't it. Before you went on leave.

36 A. Yes, I was despatched from the Department to attend that  
37 particular meeting with the Lower Murray Aboriginal  
38 Heritage Committee.

## N. DRAPER XN (MR SMITH)

1 Q. I think you supplied a copy of the National Coastal Zone  
2 Enquiry Study to Mr Jacobs QC, did you not.

3 A. I believe that is the case, yes. I was the person, as  
4 that earlier minute shows, who was assigned by  
5 Commissioner Jacobs, the Department and the Minister to  
6 provide aboriginal heritage documents, information from  
7 the Department of State Aboriginal Affairs to  
8 Commissioner Jacobs as required.

9 Q. I produce to you a bundle of documents, which includes  
10 the Coastal Zone Report. Is that the one we are  
11 referring to here.

12 A. There is at least a part of one of the reports of the  
13 Coastal Zone Enquiry there, yes.

14 Q. That is a card from you, I think, that went with these  
15 documents to Mr Jacobs QC.

16 A. That's correct. That's the cover note.

17 Q. I don't think there is anything ultra sensitive about  
18 the documents, is there, at all.

19 A. There certainly doesn't appear to be any culturally  
20 confidential information in this. No, not in that  
21 bundle.

22 EXHIBIT 234 `Aboriginal & Torres Strait Islander  
23 Interests in Australia's Coastal  
24 Zone', paper entitled `A Voice in all  
25 Places', tendered by Mr Smith.  
26 Admitted.

27 Q. In January of 1994, as you record at p.40.9 of your  
28 statement, you met with the Lower Murray Aboriginal  
29 Heritage Committee, had a discussion with George  
30 Trevorrow. He showed you an extract, you say, of the  
31 Coastal Zone Enquiry Study, a document which we find at  
32 document no.15 of your attachments.

33 A. That's correct.

34 Q. When you say `extract', is that all that Trevorrow gave  
35 you, that one page.

36 A. That one particular page that has quotes about the  
37 cultural significance of coastal areas and waterways.  
38 It is just the one page.



## N. DRAPER XN (MR SMITH)

1 Q. Could you tell us whether or not you then set about  
2 getting the full report to give to Mr Jacobs, or had you  
3 done that before. It may help you to answer that  
4 question to look at the card, your card, that  
5 accompanied the report to Mr Jacobs.

6 A. I can be certain that the provision of the extract to  
7 Commissioner Jacobs followed the showing and giving me  
8 that page by George Trevorrow, because, if that had not  
9 occurred, if George Trevorrow hadn't given me that,  
10 there would have been no reason to raise that particular  
11 report with Jacobs J. As that information, or that  
12 report had been highlighted to me as being directly  
13 relevant and central in some way to as yet unexplained  
14 cultural concerns by George Trevorrow, that was passed  
15 on to Jacobs J, when he asked me about unsolved issues.  
16 I could not really do more but to show him that page,  
17 relay that information and then give him the sections of  
18 that report that had to do with that particular area to  
19 look at. That was really all the relevant information I  
20 could provide to him, at the time.

21 Q. So we can take it then that, following George Trevorrow  
22 giving an extract to you, you obtained the National  
23 Coastal Zone Enquiry Study and sent it on to Mr Jacobs  
24 QC, is that right.

25 A. We had all of the Coastal Zone Reports on file in the  
26 Heritage Branch. We had made various contributions to  
27 them ourselves. So, yes. I cannot remember the details  
28 of the choosing of the particular extracts, but relevant  
29 extracts were provided to Jacobs J when he was  
30 requesting relevant information.

31 Q. When you sent that off to Jacobs J it was attached to  
32 your card, I think, with some helpful notes, is that  
33 right.

34 A. Yes, it was. I was about to go on leave and he would  
35 not be able to easily ask further questions of me about  
36 information provided. So I provided a note that listed  
37 and briefly described the attached documents and a card  
38 with a couple of telephone numbers if there were further

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1 enquiries that the Department couldn't answer that he  
2 needed to ask, where he could find me while I was on  
3 leave.

4 Q. And there are a couple of other documents that went with  
5 it that, for the sake of completeness, ought to stay  
6 together, I think, that you have looked at.

7 A. That's fine, yes.

8 MR SMITH: I tender that bundle and I make copies  
9 available to counsel.

10 EXHIBIT 234A Bundle of documents tendered by Mr  
11 Smith. Admitted.

12 XN

13 Q. In January 1994, you had conversations also with George  
14 Trevorrow on the topic of the significance of the island  
15 and, in particular, related to water, is that correct.

16 A. That's correct. That's the topic that was raised, along  
17 with bringing my attention to that particular page of  
18 the Coastal Zone Enquiry Report.

19 Q. Can you tell us what was said.

20 A. In a general sense, I can. I was shown that page which  
21 was from 'A Voice in all Places', I believe it is page  
22 Roman numeral 3, and I was asked specifically by George  
23 whether sites of cultural significance to Aboriginal  
24 people - well, in fact, I correct that. Whether  
25 Aboriginal sites generally that were of the water, in  
26 the water or under the water were recognised, were  
27 covered by the South Australian Aboriginal Heritage Act.  
28 I replied that there was a specific provision for such  
29 sites in our Act. And that if with respect to this  
30 issue there were sites of that major concern, that it  
31 would be a very good idea to relay that to State  
32 Government very quickly, because it would, of course, be  
33 very relevant to the task in hand.

34 Q. You have set out, at p.41, that you got the impression  
35 that George Trevorrow was reluctant to expand on this,  
36 but he said to you, did he not, as you set out there,  
37 that it was an aspect which had been hitherto  
38 overlooked.

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1 A. That's generally how he put it, yes, that it had been, up  
2 until now overlooked.

3 Q. But, however, he did go on and give you some more  
4 detail, didn't he.

5 A. He did. He certainly indicated that the area of concern  
6 with respect to the bridge was the Goolwa channel and  
7 the Murray Mouth. In other words, the waters around  
8 Goolwa and Hindmarsh Island through which, over which  
9 the bridge would pass. And that was consistent with  
10 again the page in the Coastal Zone Enquiry. He was  
11 quite definite about giving me this photocopied page  
12 from this report, drawing my attention to it, asking me  
13 about those kinds of sites. But then when it came to  
14 details which would be necessary to record such a site  
15 under the terms of our on State heritage legislation  
16 that's when I formed the impression that he was very  
17 reluctant, for whatever reason, to give details. He  
18 made some general references, as I say there, to  
19 Aboriginal sites, to burials and culturally significant  
20 features such as the limestone cups. He was hedging  
21 around what he wanted to talk about rather than getting  
22 to the point and he just simply would not get to the  
23 crux of the matter in that conversation or subsequent  
24 conversations.

25 Q. That is the first hint you obtained, at least from this  
26 community, as to a perceived significance of the waters  
27 surrounding Hindmarsh Island, is that right.

28 A. That's certainly the first specific reference to that  
29 that I am aware of, yes.

30 Q. You speculate in your statement, at p.41, that this was  
31 the first hint of the culturally significant aspect of  
32 the meeting of the waters.

33 OBJECTION Mr Abbott objects.

34 MR ABBOTT: No, he says he believes it was a hint,  
35 he doesn't say 'was'.

36 MR SMITH: No.

37 XN

38 Q. I think you say, just to set it out 'In hindsight, I

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1 believe that George Trevorrow was hinting at the  
2 culturally significant aspect of the meeting of the  
3 waters', that's the case.

4 A. I believe that's the case, yes.

5 Q. I take you on to p.43.

6 A. Yes.

7 Q. On 24 March of 1994, approval was given for \$35,000 to  
8 be expended for a further survey of the island. That's  
9 right, is it not. And that was from the Department of  
10 Road Transport.

11 A. That's basically correct, yes. It was to complete the  
12 original comprehensive survey brief. There is a shaded  
13 map attached to relevant documents from the end of the  
14 first session of survey. And in seeking this money it  
15 shows that basically we had dealt with part of the  
16 Goolwa foreshore and approximately half of Hindmarsh  
17 Island in terms of ground coverage and that we basically  
18 still had half an island plus a few smaller bits to go.

19 Q. I will come to the survey in a minute, but I take you to  
20 document 21, which was a handwritten memorandum of  
21 yourself, and to p.44.6 of your statement.

22 A. Yes, I have those.

23 CONTINUED

## N. DRAPER XN (MR SMITH)

1 Q. I think that handwritten memorandum, in particular, in  
2 part at least, records a conversation you had with Roger  
3 Dobbs, from ATSIC, is that right.

4 A. My understanding is that, he was the head of - whether  
5 he was manager or not - of the ATSIC Heritage Branch in  
6 Canberra, which was involved in the administration of  
7 the Commonwealth Aborigine and Torres Strait Islander  
8 Heritage Protection Act.

9 Q. Did he ring you or you ring him Dr Draper.

10 A. I phoned him, at the command of my chief executive  
11 officer, to ascertain some information relevant to a  
12 briefing paper we were at the time preparing urgently  
13 for our Minister, which was specifically to do with  
14 where the Federal application that had been, as I  
15 understand it, lodged at the same time as the State  
16 application, by the Lower Murray Heritage Committee, to  
17 have the sites protected and the bridge stopped. I  
18 think they were about the same time and we had to, more  
19 or less, comment for the Minister in suggesting where  
20 we were with the State position, where the Commonwealth  
21 was at the same time.

22 Q. You have noted there the conversation you had with  
23 Roger Dobbs. By looking at that note, can you tell us  
24 what was said.

25 A. I have paraphrased simply the main points of the  
26 conversation for my chief executive officer. It wasn't  
27 a particularly long conversation. We were very busy  
28 preparing these briefings. Would you like - do you want  
29 me to go through that briefly?

30 Q. I think I can just take you to the gist of it, perhaps,  
31 and lead you.

32 A. Yes.

33 Q. You knew, of course, as you have just said, that the  
34 ALRM had made an application for a declaration to stop  
35 the construction of the bridge at this stage.

36 A. Yes, certainly.

37 Q. Dobbs was speaking to you, in his capacity as the  
38 manager of ATSIC, of the Heritage Branch in Canberra,

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1 about a briefing, if you were to brief your Minister -  
2 can you tell us why you were talking about that topic to  
3 Canberra in other words.

4 A. Well, Canberra had an application from the Lower Murray  
5 Aboriginal Heritage Committee at the same time that the  
6 State did and this dual process, to my knowledge, began  
7 at the end of October the previous year. That, when we  
8 received, from our Minister's office, a letter about the  
9 Amelia Park site and the bridge attached to it, I am  
10 certain from memory, there is a copy of a similar  
11 letter that had gone to Tickner, so that the State was  
12 in no doubt that there was a concurrent Commonwealth  
13 application. So, in briefing our Minister on the  
14 occasion we are talking about here, as to the situation  
15 currently, with our handling of the heritage issues with  
16 the bridge matter, my chief executive officer asked me  
17 to get an indication of where the Commonwealth  
18 Government was with their concurrent application. So,  
19 it was a matter of calling the person responsible for  
20 that other Acts administration, as required by chief  
21 executive officer, and asking where they were up to,  
22 what they were doing. At the same time we were putting  
23 together what we were up to and what we were doing.

24 Q. Your note reads, 'Spoke to Roger Dobbs. Tickner has as  
25 yet insufficient information for a declaration.' I take  
26 it Dobbs said that to you, words to that effect.

27 A. Words to that effect, yes.

28 Q. Then, the note goes on 'Needs. A. Site boundary or  
29 boundary of area within site to be protected.' Do I  
30 take it from there that he wanted, that Dobbs wanted  
31 you, in your capacity, in the State Aboriginal Affairs  
32 Department to supply that information to him.

33 A. Not at all Mr Smith, not at all. He was saying to me  
34 that, in order that, the Commonwealth Minister, Robert  
35 Tickner, had as yet, from the Lower Murray Aboriginal  
36 Heritage Committee insufficient information to act on  
37 their application, to make a declaration,  
38 which is what they were requesting, that he needed from

1     them, in order to do what they were asking him to do,  
2     that kind of additional information that they had not  
3     supplied. It certainly was not our place - we had not  
4     been requested, as the State Department, to provide such  
5     information at that time, either the Lower Murray  
6     Aboriginal Heritage Committee or the Commonwealth  
7     Minister.

8     Q. Then, part B, of needs, if you like, was `an assessment/  
9     description of heritage values/significance of specific  
10    area concerned.' Then it goes on `This should be more  
11    than archaeological, i.e. cultural significance.' He is  
12    conveying that to you I take it.

13    A. That's correct. I mean, I am summarizing there, which  
14    is why where, in a couple of different sentences  
15    he has used `assessment' or `description.' I have just  
16    simply put them together to try and convey the sense of  
17    what he is saying, and yes, basically, he is saying  
18    that, their policy and the interpretation of their Act  
19    and instructions from their Minister is that, the  
20    declaration sought by the Lower Murray Aboriginal  
21    Heritage Committee would require, in order for that  
22    application to be successful, more than archaeological  
23    information, it would require appropriate information  
24    about the cultural significance of places to be provided  
25    to the Federal Minister. We were being made aware of  
26    how that operated, what their criteria were under their  
27    Act, which, of course, we wouldn't otherwise have an  
28    inside view of.

29    COMSR

30    Q. I take it there was a fair bit of informal consultation  
31    that went on between the two departments, was there; the  
32    State and Commonwealth.

33    A. I am certainly generally aware, that there were other, I  
34    presume, State/Federal contacts but, to the best of my  
35    knowledge, these were at senior management level. This  
36    is a record of the only contact I had on this matter,  
37    certainly with the Commonwealth, and I was asked to do  
38    it. And when I had done it I wrote it down and reported

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1 back. I believe that, I generally recollect seeing  
2 other faxes or being aware of other conversations, but  
3 these were carried out at senior management level. This  
4 was a delegated task by the chief executive officer.

5 XN

6 Q. What did you do with that information then Dr Draper.

7 I take it, did you convey those reservations, for  
8 instance, in the first part of that conversation, to the  
9 Lower Murray Aboriginee Heritage Committee.

10 A. No, I did not. That would not have been appropriate.

11 This was a briefing. This was a briefing note for my  
12 chief executive officer and it went no further. It  
13 would not have been appropriate for me to do that I  
14 don't think.

15 Q. No, I am not suggesting you did it or it was  
16 inappropriate that you did but, that information,  
17 contained in that telephone memorandum, or that  
18 internal memorandum, is just to bring your CEO up to  
19 date with the status of the Commonwealth with the  
20 application by the Aboriginal community with the  
21 Commonwealth, is it.

22 A. That's correct.

23 Q. Can I take you in your statement then now, to p.44.8,  
24 to the issue of the consultation with the Minister under  
25 s.23 of the Act. That consultation meeting took place  
26 on 15 April 1993.

27 A. That's correct.

28 Q. That was, I think you make clear, in the conference  
29 room at DOSAA, and about 25 people attended, is that  
30 right.

31 A. That's correct.

32 Q. The Minister was Michael Armitage. He chaired the  
33 meeting.

34 A. Yes.

35 Q. Your statement sets out what took place but, I take it  
36 there, from your what you have said at p.45, the  
37 Aboriginal people attending that meeting expressed  
38 strong concern that Aboriginal sites would be



1 desecrated if the bridge was constructed. Is that  
2 right.

3 A. That was expressed to the Minister in very strong terms,  
4 yes.

5 Q. You mention there a number of people who were at the  
6 meeting that you recognised. You mention Sarah Milera,  
7 Jean Rankine, Shirley Trevorrow and Val Power. Looking  
8 back on the event, can you identify any other people  
9 now, any other ladies, for instance, Aboriginal ladies.

10 A. I cannot specifically identify others I am afraid. I  
11 wasn't taking minutes or attendance records for that  
12 meeting, which might assist such memory, that was  
13 happening elsewhere, and those events there, that  
14 weren't directly part of the meeting I referred to, were  
15 unexpected. So I was fully occupied with paying  
16 attention and dealing with what was being said at the  
17 time.

18 Q. That meeting concluded with the Minister advising  
19 the gathering that he was going to take the issue to  
20 cabinet later in the week, is that right.

21 A. That's correct.

22 Q. No decision was made on the s.23 authority at that  
23 stage.

24 A. That's correct, yes.

25 Q. After the meeting, there was some conversation between  
26 you and some of the women I think, Dr Draper, wasn't  
27 there.

28 A. There was some conversation immediately before the  
29 meeting, which was interrupted when the Minister and  
30 entourage began to begin it, and there was this which  
31 then resumed following the meeting. And, as I have said  
32 at the middle of p.46, I cannot recall exactly where  
33 that interval or interruption to the conversation, which  
34 was the main meeting, actually did occur within that.

35 Q. The first event, putting aside what took place at  
36 the meeting itself, the first event of significance was  
37 either before or after with women approaching you, is  
38 that right.

1 A. That's correct, yes.

2 Q. Who were they.

3 A. As I said, I am certain that Jean Rankine and Sarah  
4 Milera were two of them. There were at least four of  
5 them. I believe that Shirley Trevorrow was probably  
6 there too and there may have been other women there.  
7 Val Power may or may not have been part of that, sort of  
8 behind that specific conversation.

9 Q. They indicated to you, that the men needed to talk to  
10 you urgent, is that right.

11 A. Yes.

12 Q. On behalf of them was it.

13 A. Yes. It was the women basically saying to me - I  
14 remember the meeting there, with the Lower Murray  
15 Aboriginal Heritage Committee, the people we are talking  
16 to are all the men and women, those who, those who were  
17 on the State committee, because there were a couple of  
18 members of the State committee present, but the women  
19 were saying to me, that there were matters of  
20 significance to them, to be brought to the Department  
21 and the Minister's attention, through me, that the men  
22 would be talking to me about. So, the women are saying,  
23 the men are going to talk to you on our behalf, it is  
24 very important, listen to them carefully. That was  
25 their way of getting around the women talking to men  
26 kind of thing. So, basically, if we get back to the  
27 previous principle we discussed your Honour, it is a  
28 case of the women saying, our husband's basically, our  
29 close relatives will talk to you, a man, about things of  
30 significance to us. So it is a corollary to that sort  
31 of situation.

32 Q. I think you went ahead and spoke to the men, this is  
33 after the meeting of course.

34 A. That is after the meeting, yes.

35 Q. Was this in the conference room still at DOSAA.

36 A. This was in the conference room at DOSAA, which at the  
37 back as I remember, had tea and coffee and people still  
38 milling around within the conference room.

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1 Q. Who were the men who there conferred with you.

2 A. The group of men who spoke to me, included Victor Wilson  
3 who was chairperson of the committee at the time, that is  
4 the Lower Murray Committee, George Trevorrow, Henry  
5 Rankine, Doug Milera, Robert Day Senior, as he is known  
6 here, and possibly others, but I am certain of those  
7 people.

8 Q. Can you tell us what they said to you.

9 A. The first thing that they did was to say that they were  
10 following up on what the women had mentioned to me  
11 before. That they would be speaking to me about it.  
12 They reminded me that, George Trevorrow, had been  
13 highlighting, I guess would be the way to put it, to me,  
14 and had highlighted to Commissioner Jacobs, their  
15 concern about the cultural significance and the cultural  
16 impact of the bridge proposal with respect to Hindmarsh  
17 Island and the waters and in particular, they reminded  
18 me of the page from the coastal site enquiry that George  
19 had given to me and hadn't spoke much more about. They  
20 made it very clear to me that, they were - they had been  
21 and I have said in the statement, directed by the women  
22 to raise this issue now with the department through me.  
23 On reflection I think directed is an appropriate word.  
24 They had made a difficult decision that, some  
25 information would be revealed about confidential  
26 cultural traditions related to sites that they believed  
27 would be severely impacted by this project and, they  
28 expected that that would be documented for the Minister  
29 in the two weeks, as it was said, but it later became  
30 one, that had been allowed to put together information  
31 relevant to the s.23 authorization the Minister was  
32 considering.

33 Q. Was anything conveyed to you, about what the concern  
34 was, what the issue was that concerned the women.

35 A. Well, not about the character of the cultural sites or  
36 traditions concerned, beyond the fact that, obviously  
37 they believed that it was something that will be  
38 seriously impacted by the bridge proposal, that it

1 involved Hindmarsh Island and the Goolwa channel and  
2 that it was of specific significance to Ngarrindjeri  
3 women and had not been raised previously because it was  
4 the business of the women, so, it wasn't for the men to  
5 speak about and in public, that the men had limited  
6 knowledge and I honestly have no way of knowing how much  
7 or how little of it, in any case, previously. And they  
8 pointed out the obvious that, in fact, up until that  
9 particular meeting on that day, that the Lower Murray  
10 Aboriginal Heritage Committee, particularly in field  
11 work assessment situations had been, if you like,  
12 dominated by male membership.  
13 CONTINUED

1 Q. Going to about .4 of p.49, you make the point there that  
2 `The men indicated that the areas of cultural traditions  
3 involved were important parts of the dreaming tracks  
4 connected with other Aboriginal people, tribes and  
5 communities'.

6 A. Yes, that point was made at the time, and it was already  
7 a matter of public knowledge, well certainly it was  
8 known to me that there were significant traditional  
9 trade and exchange networks and that passed through  
10 Goolwa, and in fact some of them pass across Hindmarsh  
11 Island, one does at least, and that it was an important  
12 ceremonial and meeting place in the past, it is, after  
13 all, even in Aboriginal times, the port at the mouth of  
14 the Murray River, they were saying basically that there  
15 were additional aspects to this, so it's appeared  
16 consistent with what was known.

17 Q. The other Aboriginal peoples, tribes and communities  
18 that they mentioned to you, did you take that to mean  
19 people, other Aboriginal communities outside the lower  
20 River Murray area.

21 A. Certainly, that was what I clearly understood them to be  
22 talking about.

23 Q. And dreaming tracks relating to, in part, at least these  
24 other Aboriginal peoples, tribes and communities.

25 A. Yes. They were saying that these were dreaming tracks -  
26 dreamings are cultural networks, if you like, in general  
27 terms - that extended beyond their region, so that they  
28 had a responsibility not just to their own people, but  
29 to other Aboriginal people for their maintenance, for  
30 their continuity of these things.

31 Q. Now you make the point in that context in the middle of  
32 the p.49, `I was told that the sites also had to be  
33 looked after to preserve the most important, highly  
34 confidential dreamings'. Did they say that to you.

35 A. They said that - yes, they did, in effect, not using  
36 those exact words, that is my summary, but I was told on  
37 that occasion that the sites, the traditions, the  
38 matters concerned here, were fundamental to their

## N. DRAPER XN

1 culture, that were centrally important to their cultural  
2 traditions, so it was made clear that it was very, very  
3 important for us to pay attention - by `us' I mean me,  
4 then the department, then the minister - to pay  
5 attention to their information at this time, it was  
6 very, very important, and the implication was that  
7 because it was so important, that was an additional  
8 reason why it had not been raised previously.

9 Q. Did they provide you with the details of these  
10 confidential dreamings, or some detail of it. (NOT  
11 ANSWERED)

12 COMSR

13 Q. You're not being asked what the detail was.

14 A. No, I understand that. At that particular time, in that  
15 meeting room, with a lot of people milling around, no.  
16 It was understood that we would be shortly embarking  
17 upon a short but intensive site record relevant to the  
18 minister's s.23 application, and that general  
19 description, I guess, of the arena and the level of  
20 significance and whom it concerns they raised in the  
21 meeting with the minister, was as far as they went in  
22 that time.

23 XN

24 Q. But in conversation with you afterwards I'm referring  
25 to.

26 A. Yes. I mean certainly in conversation afterwards,  
27 that's as far as they went.

28 Q. Would you have a look, then, at that second last  
29 paragraph, and tell me what we make of that if that's  
30 the case. You say there `When the men spoke to me about  
31 these issues, they provided me with some confidential  
32 details which I determined were relevant to the issue,  
33 but of which I'm not at liberty to speak'.

34 A. The men did not speak about the content of the women's  
35 confidential cultural traditions that were the specific  
36 subject of this. What they did speak about there and  
37 remind me of conversations on a couple of other separate  
38 assessment occasions, was associated information, if you

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- 1 like I think the term that's been used here is  
2 `interpenetrating information', which they could speak  
3 about. It was confidential cultural information, but it  
4 was specific to men, the corollary to the information  
5 held by women. They spoke about the matching  
6 information or the information that goes alongside that,  
7 and the fact that that kind of information did exist,  
8 and `It's been discussed with you in that particular  
9 assessment situation when we went to look at such and  
10 such a site, that's related to this'. It was that kind  
11 of conversation, so that's what I'm referring to there.
- 12 Q. If those men, or their legal representatives, gave you  
13 permission to speak about that, you would be able to do  
14 so.
- 15 A. Certainly. If the men concerned gave permission for  
16 that, then I would be able to, yes.
- 17 Q. You've given us the names of these men already, haven't  
18 you.
- 19 A. I have.
- 20 Q. They are -
- 21 A. Certainly that reference would be a good start.
- 22 Q. - is that right, Victor Wilson, George Trevorrow, Henry  
23 Rankine, Douglas Milera, Robert Day at least.
- 24 A. That would be, I think, a very good starting point, yes.
- 25 Q. Any others.
- 26 A. I think if you asked that group of men, that would be an  
27 appropriate core group of men to ask. Beyond those men,  
28 it would be up to them to nominate whether there are  
29 additional people. They are the ones that I'm  
30 specifically aware of in this context.
- 31 Q. These are the people of the Lower Murray Aboriginal  
32 Heritage Committee that you've been dealing with  
33 throughout, pretty much, is that right.
- 34 A. Throughout this issue certainly, yes.
- 35 Q. From as early as, well, 1992 when the committee was  
36 formed, and then 1993.
- 37 A. As I said, I can't be absolutely sure when that  
38 committee, in that form, was put together, because the

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1 Aboriginal Heritage Branch was conducting that liaison,  
2 and a lot of 1991 and all of 1992 I was with the  
3 National Parks and Wildlife Service, not the Aboriginal  
4 Heritage Branch, but my understanding is - because when  
5 I came back to the department, I could see the  
6 continuity in files etc., that that is pretty much -

7 Q. The same group.

8 A. Pretty much the same group through that period, yes.

9 Q. From the protest, in the Amelia Park days, for instance,  
10 in October 1993.

11 A. Certainly I think that was the same elected committee,  
12 in fact.

13 COMSR.

14 Q. Just so that we're clear; the material of which they  
15 spoke was not of itself about any women's business.

16 A. It was about men's business that is associated directly  
17 with women's business.

18 Q. I see.

19 A. So that it was the other half, if you like, of the  
20 story. It was their side of the story without going  
21 into - they were sort of saying `Well, look, this is  
22 just a little bit, and will remind you of conversations  
23 we've had previously, mention that's been made in  
24 passing', a bit like those Tindale references, in a  
25 sense. `We hold confidential cultural knowledge or  
26 beliefs and traditions that go with this. We can show  
27 you that this exists, although we can't talk about the  
28 actual women's side of it', although it was understood,  
29 of course, from this meeting, that they had made a  
30 decision that sufficient detail of the women's cultural  
31 concerns for this very specific area would be provided,  
32 so that the minister could consider that in the request  
33 that he had received for a s.23 authorisation.

34 XN

35 Q. In connection with this confidential information, you  
36 make the point at p.49, about .8, `The information they  
37 provided to me corroborated information I had received  
38 independently, and also information I subsequently



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1 discovered in my researched in the Tindale journals and  
2 other archival material'. Now could you tell us what  
3 independent information are we talking about here. Can  
4 you identify it.

5 A. Only in the most general way. I'm referring there to  
6 two things; one is information, as I've mentioned to  
7 you, obtained from the same men, but at different times  
8 and in entirely different situations previous to this,  
9 where the Hindmarsh Island bridge and that immediate  
10 area there was not an issue, where we were dealing with  
11 other assessment situations, certainly within the Lower  
12 Murray region -

13 Q. Can I interrupt you there.

14 A. Yes, certainly.

15 Q. Can you, to come away from the general and into the  
16 particular, if you could, give us more detail about  
17 that. They had conveyed some similar information to  
18 you, had they, on other occasions. Is that what you're  
19 saying.

20 A. Overlapping or intersecting information, is how I would  
21 put that.

22 Q. The word 'independently' suggests this is sort of  
23 independent of them, doesn't it.

24 A. There are two things I was trying to tell you, one is  
25 that the first meaning of independently is in time and  
26 topic with the same people, the other meaning of  
27 independent there is analogous information for areas  
28 further east along the coast, in particular in  
29 south-western Victoria at that time, which involved,  
30 again, coastal country, coastal streams, islands, etc.  
31 and Aboriginal traditional owners and their beliefs with  
32 regard to those things.

33 Q. Just so the commission can understand the use of that  
34 sentence, you use there the word 'corroborated', you use  
35 there the word 'independent'.

36 A. Yes.

37 Q. In one of the senses of your answer, you're conveying to  
38 us that apart from what these men had told you, and

1 apart from the men themselves, you had independent  
2 corroboration for what they told you, is that right that  
3 is information from elsewhere than them.

4 A. Yes, about the existence of this form of cultural  
5 tradition - how can I say it - same business, different  
6 region, but connected in cultural ways, and that goes  
7 back to that comment they specifically made, that 'We're  
8 connected with other people through our dreamings and  
9 through shared knowledge; we hold a part of it, they  
10 hold a part of it', so it's a indication of other people  
11 saying 'Well, yes, that is true, and we do hold a part  
12 of this kind of thing which is consistent with what you  
13 have been told there'.

14 Q. You draw on your experience from other places in the  
15 country, in Australia.

16 A. Specifically there I'm referring to work with  
17 Gunditjmara elders from western Victoria around lake  
18 Condah both male and female elders.

19 MR ABBOTT: I ask that he produce these notes, his  
20 discussions with the elders, and give us specific  
21 reference to the Tindale material and other archival  
22 material so that we can test this surprising claim.

23 MR SMITH: We're coming to that.

24 XN

25 Q. Do you have records in relation to that work in  
26 Victoria. (NOT ANSWERED)

27 COMSR

28 Q. If we can go into that.

29 A. I can answer that question.

30 Q. Because I have an authority in relation to s.35 which  
31 relates specifically to the Hindmarsh Island area.

32 A. I understand that.

33 Q. This won't in any way trespass.

34 A. It certainly won't. If you've read the statement, you  
35 will be aware that the context in this which this sort  
36 of information usually is given, or one important aspect  
37 of that is that you don't write it down. If you write  
38 it down, they are not going to tell you, it's that

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1 simple. When this sort of information is given, it's  
2 only given in situations where it is considered very  
3 important to those people to do so for one reason or  
4 another, but certainly in order - let's face it, if that  
5 kind of information is told to an anthropologist, 'Write  
6 it down in your notebook, go off and do what you usually  
7 do, write it up and publish it etc.', that's the end of  
8 that confidential cultural tradition right then and  
9 there. It has, as a confidential cultural tradition,  
10 just committed suicide, hasn't it? So this is not at  
11 all exceptional, only what is approved to be written  
12 down, and in some of these situations notebooks,  
13 tape-recorders, cameras are barred from the actual  
14 recording situation altogether, and the written product,  
15 in other words the purpose of the exercise, is only that  
16 which is specifically authorised.

17 Q. In talking about it here, or mentioning it here, are you  
18 trespassing in any way, then, upon the understanding  
19 that it not be recorded. I'm a bit concerned that we  
20 don't find -

21 A. I do have specific information to mention with respect  
22 to the specific examples I raise. Obviously with  
23 respect to Aboriginal Australia in general I don't have  
24 permission, but I can go that far, but the very fact of  
25 this commission's existence does make at least that  
26 rather necessary.

27 Q. You see, you are going into another area, aren't you,  
28 outside the area, geographically going into another  
29 area.

30 A. Necessarily. There has to be an appropriate basis for  
31 comparison with this situation which involves analogous  
32 situations, but other places to some degree -

33 Q. I appreciate that, as long as I don't find that we're in  
34 an awkward position here in relation to what I may and  
35 may not hear under my s.35 authorisation, and also  
36 you've said that when you obtain this information,  
37 information of this sort, it's on the basis that it not  
38 be recorded, I take it, and not be revealed.

## N. DRAPER XN

1 A. That it not be recorded so that either I or someone who  
2 got hold of records -

3 Q. Would see it.

4 A. - that I produced would see it, as I said, except for  
5 specifically negotiated products in the case of the  
6 issues we're talking about here. `The Draper report of  
7 April 1994' was a specifically, negotiated written  
8 product, except in its final consultation, which it  
9 wasn't, but that's, in my understanding, a common  
10 situation in development assessment and land rights and,  
11 more recently, native title anthropology. We have  
12 similar situations reported, certainly in our site files  
13 and report files - I say `our', what were at that time  
14 ours in the Aboriginal Heritage Branch.

15 Q. I might be appearing ultra-cautious to you, but I want  
16 to make sure that you're not going to tell me something  
17 which -

18 A. I understand your concerns greatly.

19 Q. - first of all would be breaching the confidentiality  
20 under which you were placed at the time, and takes me  
21 beyond the sphere where I can receive it.

22 A. The reason I have talked about specific examples in my  
23 own experience is because I've been able to check with  
24 the people concerned that they will allow, under these  
25 circumstances, for me to mention the fact that there was  
26 hitherto, if you like, the existence of secret  
27 traditions. The fact of this commission means that that  
28 topic has to be got around to sooner or later. Although  
29 that doesn't seem to be the wish, really, of those  
30 Aboriginal people, they recognise it's necessary to say  
31 something.

32 Q. So you're able to tell me that, to the extent to which  
33 you've mentioned it but no further, you have permission.

34 A. Yes, and I can refer you, either at a corporate or  
35 individual level, depending on which piece it is, to the  
36 people, the Aboriginal people, who are the only people  
37 that can really take that any further.

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1 XN

2 Q. You mention also your researches into the Tindale  
3 Journals and other archival material. Could you  
4 identify for us the Tindale Journals that provide  
5 independent corroboration for what the men told you,  
6 which of the journals.

7 A. Certainly, for the most part, Journal No.2, because, as  
8 you have seen, all but one example I have drawn in my  
9 statement are from Journal no.2.

10 Q. Can you locate that for us. Have you got that with you.

11 A. I remember that they reminded me of some details of the  
12 adjacent Dreaming track that was to do with, as I  
13 mentioned before, Kondoli the whale, for example, and  
14 how that intersected with the Ngurunderi Dreaming track  
15 in mutual creation, and went on to deal with - it came  
16 from the Murray Mouth, coming along that way, along that  
17 front Encounter Bay coast - this is Ngurunderi -  
18 intersected with another Dreaming, which created the  
19 Inman and Hindmarsh Rivers and coastal mountains, et  
20 cetera, which connected them with Granite Island and  
21 following Ngurunderi onto Kangaroo Island. There was  
22 some information concerned with Kangaroo Island, and I  
23 cannot go into that any more. That is very definitely  
24 up to them.

25 Q. This is all in the Tindale Journal.

26 A. No, I am sorry, the Tindale Journal stuff is just from  
27 the men. What was there was the information about the  
28 whale and the sharks, both in the Tindale Journals and,  
29 when I say other archival material, you are probably  
30 aware that there are a set of Tindale field maps that  
31 are cumulatively annotated, if you like, that go with  
32 his journals which the museum has, I believe, the  
33 originals, and the Aboriginal Heritage Branch has  
34 copies. They form a part of the same material. They  
35 are basically county maps that have been annotated and,  
36 in particular, they reminded me of -

37 Q. We would be able to locate this material, wouldn't we.

38 A. Yes.

## N. DRAPER XN (MR SMITH)

1 Q. You would be able to locate it for us.

2 A. Yes, certainly. In the particular case I'm thinking of  
3 and describing to you at the moment, there are series of  
4 maps which cover the Encounter Bay coast, there are  
5 field notes, and I'm pretty sure it is in volume 2 of  
6 the journals that have to do with Kondoli, et cetera.

7 Q. Could you have a look at Exhibit 18E, which is the  
8 Tindale map.

9 A. And it was clear to me at the time that we had dealt  
10 with that matter, with matters of development assessment  
11 to do with both Granite Island and along the south  
12 coast, that there was significant information that was  
13 either - that I either found later was in the Tindale  
14 Journal, but which had not been accessible to  
15 Ngarrindjeri people at the time that I was dealing with  
16 these matters, that they were quite aware of - it hadn't  
17 been lost with their grandparents or whatever - and they  
18 also had further details which - quite considerable  
19 information, and some of it of an obviously detailed and  
20 confidential nature that was not contained in the public  
21 information - the published information I was aware of  
22 at the time or subsequently found in the Tindale  
23 Journal. So both kinds of information are there.

24 Q. That Tindale map which I produce to you, Exhibit 18E, is  
25 that one of the -

26 A. That is one of Tindale's series of maps that run from  
27 the South-East right up along the coast and Fleurieu  
28 Peninsula. The ones to do with the Kondoli story and  
29 other Encounter Bay coast stories, for instance, is  
30 about - I think it is two sheets further west - two map  
31 sheets further west.

32 Q. That doesn't help you then.

33 A. Not this particular one, no.

34 MR ABBOTT: If my learned friend is leaving that  
35 topic, I must insist that if I am to cross-examine  
36 tomorrow on this passage, which is an important one, if  
37 he has other information which he can show us in Tindale  
38 Journals and quote other archival material, it has not

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- 1     been identified to any particularity that I can go to.  
2     Unless I take his answer -
- 3   COMSR:         Dr Draper has said he would be able to  
4     identify that.
- 5   MR ABBOTT:       But when?
- 6   COMSR:         Given the opportunity.
- 7   WITNESS:        This is when we get into difficulty. If  
8     I start -
- 9   MR ABBOTT:       Can I just finish with my concerns so he  
10    will know what they are? So far we have been told  
11    Tindale Journal No.2, which I assume could be produced,  
12    and Tindale's maps, of which Exhibit 18E forms a part.  
13    I assume we could get hold of the rest of Tindale's maps  
14    this afternoon and Tindale Journal No.2, but if there is  
15    anything more than that, I want to know about it now so  
16    we can do something about it.
- 17   COMSR
- 18   Q. Mr Abbott's concern is that he has to cross-examine  
19    tomorrow, and he wants the material available to do so.
- 20   A. I can understand that. It appears, in the context, that  
21    he may want to go further into what constitutes  
22    confidential cultural information in the process that I  
23    am able to go, and that we may have to ask him to ask  
24    that of the appropriate Aboriginal people, having  
25    identified them.
- 26   Q. For the time being, are you able to identify the  
27    particular map to which you are referring.
- 28   A. For that particular example - I mean, it is not the only  
29    one, but for that particular example, yes, I can do  
30    that. But obviously the most confidential aspects of  
31    that information you won't find - that's the point, you  
32    won't find them in the journal. You will not find them  
33    on the map. You will find references that corroborate  
34    what was being told. We are coming at this at the wrong  
35    end, without - if we go into that too far then we will  
36    reveal the information we can't reveal. It is simple  
37    for the men to do it in the situation they are in then

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1 with me on the landscape with that - well, not with the  
2 Tindale Journals, but with the field map.

3 Q. I appreciate that, but insofar as you have referred to  
4 the Tindale notes, are you able to assist to this  
5 extent, that you can identify the passages so that Mr  
6 Abbott will be able to refer to them himself.

7 A. I think that we can certainly go as far as we safely can  
8 with that, yes. Given sufficient time to actually put  
9 that together, of course, and access to the appropriate  
10 material.

11 XN

12 Q. In August 1994, you went to the museum and looked at the  
13 Tindale collection, didn't you.

14 A. That's correct.

15 Q. And you copied a lot of it, didn't you.

16 A. No, I didn't copy a lot of the collection. It is  
17 massive.

18 Q. Copied some of it.

19 A. I copied the relevant information mainly from the  
20 South-East Journals, a little bit from what are called  
21 the Camp Site Journals, but mainly from -

22 Q. Did you copy this material that you are referring to  
23 here.

24 A. I did copy relevant material that was in the journals.  
25 I already had copies of the field maps. I do not have -  
26 I have my field work copy of this field map that you  
27 have in this exhibit with me. It is unlikely that I  
28 have, myself, a copy of the field maps further on  
29 Encounter Bay with me at this time.

30 Q. We can supply the other maps to you, but what about your  
31 copies that you made of the Tindale Journals in August  
32 1994, that are some of the ones you are referring to  
33 here, have you got those with you.

34 A. I do have those with me, yes.

35 Q. So you can refer us to them now.

36 COMSR

37 Q. Just the reference, not the detail I think is all that  
38 is being sought.



- 1 A. If you are quite patient.  
2 XN  
3 Q. We can do that over lunch, if you like.  
4 COMSR  
5 Q. I think what Mr Abbott is looking for is a page  
6 reference or a map reference or something of that sort.  
7 MR MEYER: All the actual documents. It will save  
8 time getting them.  
9 MR ABBOTT: I would like to have a look at his  
10 copies.  
11 XN  
12 Q. You have got them in your bag there, haven't you.  
13 Perhaps while we are on the topic, it wouldn't be too  
14 much trouble to locate the relevant Tindale Journals.  
15 A. Given that these are my copies, working copies, for the  
16 survey report from the Tindale Journals, it will take  
17 longer than a few seconds.  
18 Q. I will not ask you to do that now then. The other  
19 archival material, you categorize that, in part, as the  
20 Tindale field maps.  
21 A. Yes.  
22 Q. What else. Is there any other archival material.  
23 A. I'm referring essentially there to the Tindale maps.  
24 Certainly, if something else occurs to me when I'm  
25 looking at that material and highlighting it for you, I  
26 will note that as well.  
27 Q. The use of the word 'other' there though tends to  
28 suggest some other source than Tindale, doesn't it.  
29 Would you agree. Not necessarily.  
30 A. Not necessarily, no.  
31 Q. Can I take you to the middle of p.50 of your statement.  
32 You concluded from this conversation with the men that  
33 what was being discussed was confidential women's  
34 cultural knowledge. Is that right.  
35 A. I didn't really conclude that. That was stated to me.  
36 Q. You say in the middle of p.50 there, that that's been  
37 reinforced by discussions you've had with female  
38 Aboriginal elders further along the Dreaming tracks and

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1 trade routes, who have equivalent cultural  
2 responsibilities. You say 'These women are as far away  
3 as Western Victoria. These women raised the matter with  
4 me in about late June 1995'. Is that the position, that  
5 you've had some contact with Aboriginal elders from  
6 Western Victoria about this topic.

7 A. Yes, the Boandik elders from around Mt Gambier, as I  
8 passed through the South-East of South Australia and  
9 into Western Victoria at that time, earlier this year,  
10 working as a consultant doing preliminary native title  
11 work, and the Gundiṯjmara elders. I did not raise the  
12 matter. I wouldn't presume to raise the matter with  
13 female Aboriginal elders, but both within Mt Gambier and  
14 then, in fact, it was in Portland, it was raised with  
15 me, and basically what I have reported there is, in a  
16 nutshell, what happened. These women said that they  
17 possessed confidential cultural traditions that were the  
18 specific responsibility of women that were equivalent to  
19 within their own region and associated with, in the  
20 sense of cultural continuity, along the coastline. And  
21 I'm presuming there - it is a very small presumption -  
22 they are talking about those Dreaming tracks with the  
23 women of the Lower Murray. And they very emphatically  
24 stated at that time that the women's business of those  
25 women in the Lower Murray was authentic and genuine and,  
26 as their equivalent, as senior female custodians down  
27 the line, as I think they put it, they confirmed that,  
28 and in fact a couple of those senior women have  
29 expressed their willingness, if necessary, to come here  
30 and tell you that themselves.

31 Q. But you are not there just talking about support, are  
32 you, that is, you are talking about some cultural  
33 corroboration of some connection between the Lower River  
34 Murray area and this Mount Gambier area, are you, or  
35 Western Victorian area.

36 A. Well, yes, our State border is somewhat artificial in  
37 Aboriginal terms, in traditional cultural terms. It was  
38 an emphatic statement. A confirmation of authenticity,

## N. DRAPER XN (MR SMITH)

1 that what they're talking about is genuine.

2 Q. But genuine from a point of view that they have some  
3 cultural perspective on its link with the Lower River  
4 Murray.

5 A. Yes. They - I mean, I was aware through the preliminary  
6 native title research we were doing at the time, to  
7 identify key traditional owners and people who had key  
8 cultural information with respect to native title, who  
9 these women were, and they knew that we were doing that  
10 research and they took it upon themselves to point out  
11 that they were the equivalent senior female traditional  
12 owners in their traditional country to the Ngarrindjeri  
13 women, who, as they were putting up, were standing up to  
14 protect their traditions, what they were responsible  
15 for. And they were telling me that they were the right  
16 people in their country. They recognised the right  
17 people in that other country, and the truth of what they  
18 were saying because they were in a position, not to know  
19 every detail of that business at the bottom end of the  
20 Murray, but they knew what the responsibilities of women  
21 in each of those coastal regions were with respect to  
22 confidential cultural business, and that they had  
23 equivalent business that had some associations with the  
24 information carried by the Lower Murray women. I don't  
25 know more than that because they didn't tell me more  
26 than that. Perhaps they would tell you more than that.  
27 I don't know. But it happened. It is relevant so I'm  
28 telling you.

29 Q. Can you tell the commission how these women would know  
30 what the business was.

31 A. There are - I think there are two fairly - how they  
32 would know what the business was? They knew of this  
33 business through both media and the Aboriginal  
34 information network which is a mysterious, but a very  
35 fast and comprehensive thing too. They did say that  
36 they did not know all of the details about the Lower  
37 Murray women's business. They did not know all the  
38 details. That was the business of those women. What

## N. DRAPER XN (MR SMITH)

1 they did know was, in general terms, the subject matter  
2 and the nature of that business was equivalent to their  
3 confidential cultural knowledge and responsibilities in  
4 their own country, and, in other words, the sort of  
5 thing we're trying to do from mentions in texts, et  
6 cetera, these were direct authorities speaking on the  
7 matter at Mt Gambier and at Portland, but particularly  
8 the situation I'm speaking about here occurred at  
9 Portland.

10 Q. This was not any work you were doing. This was some  
11 sort of accidental meeting with these ladies, was it.

12 A. I was working with that community at the time on  
13 preliminary native title research for the area around  
14 Lake Condah in Western Victoria, so I was there as a  
15 consultant anthropologist at the request of that  
16 community, working with that community.

17 CONTINUED

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- 1 They were aware, through media reports and goodness  
2 knows what else, that I was involved in the assessment  
3 work and sort of caught up somehow in the subsequent  
4 controversy over this matter. And they, first of all,  
5 began by grilling me, if you like, on what my role had  
6 been with this. And I pointed out that I had done the  
7 site recording work for the State, as a State Government  
8 officer. And was, as a consultant, writing up a report.  
9 They ascertained then that they wanted to make the  
10 further statement I have related to you.
- 11 Q. I take you to about .8, at p.50. It is the case that  
12 you had a meeting with the Minister, on 19 or 20 April.
- 13 A. That's correct.
- 14 Q. You were told that funds had been secured to enable you  
15 to complete the survey, that's right.
- 16 A. That is correct.
- 17 Q. Those funds were, what, a further \$35,000.
- 18 A. Yes, I think we actually requested 34 and got 35, for  
19 some reason, but it was of that order, yes.
- 20 Q. But the Minister had told you, as you say there at the  
21 bottom of p.50, that he wanted a report by 29 April.
- 22 A. That is a report for the s.23. So, there is two  
23 elements here. One is, the funding is there to complete  
24 the overall Aboriginal heritage survey, which was to  
25 commence, continue, resume, if you like, as soon as  
26 possible. But that there was an immediate job that had  
27 to be done and not within two weeks, as had been  
28 canvassed at the meeting held by the Minister, but one  
29 week was what Cabinet was willing to wait. And that was  
30 a report relevant to the s.23 authorisation, which is a  
31 separate and much more, I guess, restricted and specific  
32 matter than the completing of the entire survey.
- 33 Q. Would you trouble yourself over the luncheon adjournment  
34 to locate those Tindale journals to which we have  
35 referred on p.49.
- 36 A. To the degree that that is possible and whilst still  
37 eating lunch, yes, I am hungry, but I will do my best.
- 38 ADJOURNED 1 P.M.

1 RESUMING 2.18 P.M.

2 Q. We had reached the Anzac Day long weekend survey.

3 A. Yes.

4 Q. And that's the case, isn't it. As a prelude to your  
5 report of 29 April 1994, you conducted a survey of the  
6 island on the long weekend of Anzac Day, 22 April 1994,  
7 is that so.

8 A. The survey work that was conducted in that period was to  
9 complete our recording of the Goolwa and Hindmarsh  
10 Island foreshores on both sides of the channel and to  
11 record the area of cultural significance specifically of  
12 significance to women that had been raised at that  
13 meeting on the 15th. So, it was those specific areas  
14 that would be directly impacted by the bridge proposal.  
15 The Minister needed a report on that immediately for the  
16 s.23 application.

17 Q. I think it is public knowledge that you really found a  
18 continuous archaeological site extending a considerable  
19 distance along the foreshore at Goolwa, didn't you.

20 A. That's correct, yes.

21 Q. From Amelia Park right through passed Brooking Street up  
22 to the wharf area, is that correct.

23 A. It starts well north of Amelia Park and it goes well  
24 south of it. It is the original site before its  
25 considerable disturbance from place to place by the  
26 building of the township of Goolwa and it was several  
27 kilometres long.

28 Q. I suppose no matter where the bridge landed on the  
29 Goolwa side it was going to interfere with a site, is  
30 that the case.

31 A. With some part of it, the Amelia Park area was a  
32 specific part of that site. It did have some specific  
33 importance to Ngarrindjeri people.

34 Q. The people who assisted you with this weekend field work  
35 were I think Robert Day, Doug and Sarah Milera and Cyril  
36 Trevorrow, is that right.

37 A. I believe that's correct, yes.

38 Q. In that survey, did you rely on information from your

1 field workers, that is, the Ngarrindjeri field workers,  
2 the Mileras, Robert Day and Cyril Trevorrow.

3 A. We jointly recorded the archaeological record of the  
4 sites on both sides of the channel with respect to the  
5 site of cultural significance which had been raised with  
6 the Minister in a meeting of 15 April, I was told, by  
7 the Lower Murray Aboriginal Heritage Committee. I think  
8 it was in the conversation following the meeting on the  
9 15th that my informants for what was to be given as  
10 information to be written down for that site record  
11 would be provided to me by the survey crew provided for  
12 me that weekend by the Lower Murray Aboriginal Heritage  
13 Committee. And, in particular, Sarah Milera and Robert  
14 Day, who I was given to understand were closely related  
15 to one another and both had relevant descent through the  
16 Walker clan, in particular, at Goolwa. And that was  
17 considered the appropriate way by the committee for that  
18 information to be given to me.

19 COMSR

20 Q. The information as to the whereabouts of the sites was  
21 to be given to you.

22 A. The information for the site record card. There are  
23 minimum standards specified in the Aboriginal Heritage  
24 Act with regard to the nature and location of the area  
25 concerned, yes.

26 XN

27 Q. In this survey that took place over that weekend, was  
28 the question of the cultural significance of the island  
29 and, in particular, that concerning women's business,  
30 raised with you or between you and your informants.

31 A. Yes, it was. It was part of my task on that weekend and  
32 in producing a report in the next week to report on any  
33 area of cultural significance that the Lower Murray  
34 Committee wished to have recorded and placed in front of  
35 the Minister. And it had been indicated by the  
36 Committee that such information for a site record would  
37 be provided. And so that was something that I was  
38 looking for and particularly as I have noted in

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1 discussion, interviews with them in the evening having  
2 done ground survey during the day, that was the main  
3 topic I was trying to elicit in that short period of  
4 time available.

5 Q. Moving to p.52, the second paragraph on that page, you  
6 obtained information, did you, as to the genealogy of  
7 Sarah Milera, is that right.

8 A. That's correct. I was given a genealogy sketch, if you  
9 like.

10 Q. By.

11 A. By Robert and Sarah of their direct line of descent back  
12 through the Walker clan to Reuben Walker, for instance,  
13 who was a very well-known senior cultural figure in the  
14 early part of the century. So, it was not a full family  
15 tree, it was, as I said, a genealogy sketch. Just a  
16 direct line back from the people I was talking to to  
17 people who were considered by them, Reuben Walker, King  
18 Peter, to be traditional cultural leaders in their  
19 family line.

20 Q. Did you obtain any information as to women's business on  
21 this weekend of survey work.

22 A. Yes, I did. I collected I will say with some difficulty  
23 and reluctance even though they were determined to  
24 provide the information, it was still divulged  
25 reluctantly. I gained the information that appears in  
26 my report of 29 April.

27 Q. You are able to talk a little bit about that, aren't  
28 you, that is, the less secret aspect of it, in order to  
29 identify it.

30 A. That is the site that I believe that the name that was  
31 given to it has been publicised in any case. I asked  
32 'What do I call this site on the site card I am  
33 preparing for you?', and I was asked to call it 'The  
34 meeting of the waters.'

35 Q. Whose terminology was that.

36 A. I don't know. It was - that was said to me by Sarah  
37 Milera. My understanding was that Sarah as speaker and  
38 her tribal brother Robert Day as monitor were conveying



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1 to me information that had been agreed by the Lower  
2 Murray Aboriginal Heritage Committee would be given.  
3 So, I don't know whose term it was, but it was stated to  
4 me by Sarah Milera.

5 Q. The words 'The meeting of the waters.'

6 A. That's correct.

7 Q. Can you tell us, as the name implies, was the site  
8 really the waters, can you tell us, this claimed site,  
9 can you tell us the extent of it. It is not in the  
10 nature, is it, of a particular site in a geographical  
11 location which would be registered on certain  
12 co-ordinates. It is broader than that, isn't it.

13 A. All sites recorded under the Aboriginal Heritage Act  
14 have to be described as a specific area of - I was going  
15 to say land, in this case land and water. But, yes, I  
16 did elicit from those informants an area that  
17 constituted this site and a geographic boundary for this  
18 site, because that is required under the terms of the  
19 Heritage Act. That was a matter of some discussion and  
20 reference to a map to find boundaries, but it was done.

21 Q. Would you be able to tell the Commissioner the extent of  
22 this site, this meeting of the waters site.

23 A. I do not know whether that is permitted in this context.

24 COMSR

25 Q. You mean, in the public hearing.

26 A. Yes, I'm not sure what grades of restrictions you may  
27 have. This certainly would mean identifying the extent  
28 of a site that has been recorded although not yet  
29 registered under the Heritage Act. I don't know if  
30 there is a problem with it at all, at this stage.

31 MR SMITH: I might be able to help with this.

32 XN

33 Q. I will produce to you again the Saunders report, but  
34 perhaps I will show you a copy of the Terms of Reference  
35 and the definition of women's business. Would you look  
36 there, which is really the last paragraph of the Terms  
37 of Reference of this Commission.

38 A. Certainly this site record accords with that

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1 description, with the exception of Lake Alexandrina. It  
2 is the area that is clearly marked as the area of this  
3 site in the map that accompanies the Draper report. So,  
4 you do already have that information before you, in a  
5 restricted context.

6 Q. Is Lake Alexandrina excluded, is it.

7 A. They, Robert and Sarah both indicated to me that the  
8 area of significance extended further. That there was a  
9 chain of connected cultural significance. Given that  
10 there was no way I could record the entire Lower Murray  
11 lakes area as a single site coherently for my Minister,  
12 I had to ask them - in the full recognition that this  
13 might be very much a white man's request rather than  
14 something that made a lot of cultural sense to them - if  
15 they could be much more specific. That the application  
16 that we were dealing with, the s.23 application, was to  
17 do with the impact of the bridge. And that I was there,  
18 at that time, to record any site that they felt would be  
19 directly impacted by the bridge. And, under those  
20 circumstances, where would they place the boundary of  
21 this aspect and that broader cultural significance, to  
22 put it in a finite graphic context we can deal with.

23 Q. Accordingly, having done that survey on the weekend, the  
24 weekend of the Anzac Day weekend, you then, by 29 April,  
25 had prepared your report, hadn't you, for the Minister.

26 A. Yes, the report was completed and handed in on schedule.

27 Q. That is document no.24 of Exhibit 233B. And you also  
28 completed a draft site card recording this claimed  
29 significant site, did you not.

30 A. I did, yes. That is document 24 as attached to my  
31 statement and I did prepare a draft site record, yes.

32 Q. And the draft site record is the clump of documents  
33 marked 23.

34 A. That's correct. There is a pencilled initial draft and  
35 then a more detailed draft.

36 CONTINUED

## N. DRAPER XN (MR SMITH)

- 1 Q. Following on I think, following on your report, of 29  
2 April, which provides detail of the meeting of the  
3 waters site, including a map, the Minister considered  
4 your report and on 3 May, gave an authority, pursuant to  
5 s.23, for the disturbance of the site and for the bridge  
6 to go ahead in effect, is that right. Document number  
7 25.
- 8 A. Yes, that's correct.
- 9 Q. That was subject to certain specified conditions, which  
10 are attached to document 25.
- 11 A. That's correct, yes.
- 12 Q. I think it is common ground that, on 12 May, the Federal  
13 Minister, Mr Tickner, imposed a temporary ban on the  
14 construction of the bridge.
- 15 A. That's correct.
- 16 Q. You were down, I take it, you were down at Goolwa, at  
17 some stage, in the period leading up to the temporary  
18 ban, were you.
- 19 A. We had resumed survey work by that time, and I was, on  
20 that day, in the area behind Signal Point, where there  
21 were - where construction was due to begin under that  
22 s.23 authorization.
- 23 Q. Can I take you to your report of 29 April Dr Draper,  
24 which is a document, as we have recognised, document 24.
- 25 A. Yes.
- 26 Q. At the bottom of p.4 of your report, and I will only  
27 deal with matters that can be safely explored, you have  
28 recorded that the Ngarrindjeri traditional owners of  
29 these sites, and the Lower Murray Aboriginal Heritage  
30 Committee, are firmly opposed to the granting of an  
31 authorization under the terms of the Aboriginal Heritage  
32 Act. Am I to understand that you satisfied yourself as  
33 to who the traditional owners were.
- 34 A. I did, in the terms required by this report and the Act,  
35 yes.
- 36 Q. Who do you say are the traditional owners.
- 37 A. The traditional owners were represented by both the  
38 Lower Murray Aboriginal Heritage Committee and by the

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- 1 Ngarrindjeri women, who had spoken to me at that  
2 meeting. I am not saying that they were the most senior  
3 traditional owners, but, they were the traditional  
4 owners who were in public, up in Adelaide or down at  
5 Goolwa, speaking to the Government about these matters  
6 and were recognised by the State Government. In fact,  
7 the Lower Murray Aboriginal Heritage Committee was  
8 already recognised by the State Government, as the  
9 representative body of traditional owners for the Lower  
10 Murray region, under the terms of the Aboriginal  
11 Heritage Act.
- 12 Q. Is it the case that you can't categorically say who the  
13 traditional owners are.
- 14 A. Not in total, because that was not part of what I was  
15 doing there at that time.
- 16 Q. You set out, in your report, I think, that if an  
17 authorization was granted under s.23, you made a series  
18 of recommendations as to how best any disruption of  
19 sites could be avoided.
- 20 A. I was - yes - I was specifically required to do that by  
21 the Minister. The format of this report and its  
22 contents and sections, were generally defined by our  
23 procedures and the terms of the Aboriginal Heritage Act  
24 and in this case specifically, defined in detail by the  
25 Minister Michael Armitage.
- 26 Q. Can I ask you a couple of questions Dr Draper. It  
27 relates to what other people have said and I am just  
28 putting it to you because, for instance, did you have  
29 any contact with Dr Lindy Warrell, a female  
30 anthropologist at about this time.
- 31 A. I had one contact with her around the time we were  
32 beginning the second survey session, so it is - I think  
33 it was April, May. She phoned me on that occasion and  
34 engaged me in a detailed conversation about her wish to  
35 conduct anthropological work with the Ngarrindjeri  
36 Aboriginal women from the Lower Murray Aboriginal  
37 Heritage Committee, paid for by Tom and Wendy Chapman,  
38 under the auspices of the Department of State Aboriginal

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1 Affairs. That is the very basic reference.

2 Q. Did you tell her - well, can I put it this way, to use  
3 the vernacular - did you warn her away, to some extent,  
4 or any extent.

5 A. No, I did not. I believe she has misunderstood what was  
6 a very clearly signposted conversation.

7 Q. What were the clear signposts. What were you saying.

8 A. The clear signposts I am referring to were, that, I said  
9 to her, quite explicitly and more than once, that, as  
10 far as proposing to do that, my role was to conduct a  
11 survey as instructed. If she wanted to take up that  
12 plan, to work with the women of the Lower Murray  
13 Aboriginal Heritage Committee, well, that was one group  
14 that needed to be contracted directly, under the  
15 auspices of the Department of State Aboriginal Affairs  
16 and the chief executive officer of that department was  
17 the other person to contact in that regard. That I had  
18 no power in that matter, in any way. I made it clear to  
19 her, as an off-the-record, unofficial piece of advice,  
20 as I was the professional officer of the department  
21 responsible for supervising consultants at the time and  
22 that means, not just regulating them, but, looking after  
23 that side of business to some degree, for the  
24 department. That, from the description she had given to  
25 me, of her understanding of the situation thus far, that  
26 it was rather more complicated than she supposed, and  
27 that, I believed personally there were reasons why the  
28 Ngarrindjeri women and the department, might not only  
29 not agree with that proposal, but might not look upon  
30 the fact that such a proposal was being made in a very  
31 good light and that, if there was a choice it might be,  
32 for a number of reasons that I did discuss with her,  
33 specifically off-the-record, not as an official  
34 department position of any kind, that there may be some  
35 good reasons to consider whether she wanted to become  
36 involved in what was already a very complex business or  
37 not. That's very, very different to the bald statement  
38 of warning someone off.

1 Q. Did you have a similar discussion with Vanessa Edmonds  
2 in about May of 1994.

3 A. The situation was a little different. I wouldn't say it  
4 was totally similar, as Vanessa basically turned up on  
5 the island in the middle of the survey out of the blue,  
6 making all sorts of accusations, but, basically, I  
7 certainly didn't try and warn Vanessa off either. And,  
8 in fact, Vanessa was already there. Although, I believe  
9 that members of the Lower Murray Committee, who were  
10 there at the time, I think Robert Day in particular,  
11 Robert and Cyril Trevorrow were there. I believe, from  
12 memory, that Robert indicated, as a member of the  
13 committee, that - I am trying to think exactly - I don't  
14 know exactly how he put it, but, that they weren't very  
15 pleased about her continuing in the role that she had  
16 turned up in on that day and that is, to investigate the  
17 details of what we were doing on behalf of her clients.

18 Q. Did you have an understanding that Dr Lindy Warrell had  
19 made some contact with the Trevorrows at Camp Coorong,  
20 Ellen and Tom Trevorrow, in as early as March of 1994.

21 A. No, I didn't, from my recollection.

22 Q. Did the Trevorrows, for instance, give you to believe  
23 that they thought, or any one of the Trevorrows, that  
24 they thought that Lindy, Dr Lindy Warrell was going to  
25 prepare an anthropological report.

26 A. No, they didn't to me. The phone call I had from  
27 Lindy Warrell was the first I had heard of her  
28 involvement in this matter in any way.

29 Q. In the course of time, particularly - well I am  
30 particularly focussing on or about the time that the  
31 Federal Minister imposed the temporary ban on 12  
32 May, were you in any way in contact with the journalist  
33 Colin James, and what was the nature of that contact.

34 A. I can't recall anything specific about that particular  
35 time. I certainly remember being contacted by Colin  
36 James on numerous occasions, either in person or by  
37 telephone and a lot of other reporters, I might say,  
38 from the beginning of this, at the end of 1993, through

1 to the present.

2 Q. Contact with Tim Wooley from the ALRM, from time to  
3 time.

4 A. Certainly from time to time during this period, Tim  
5 Wooley had numerous contacts with our department, which  
6 sometimes would mean different people in the department,  
7 sometimes me initially. And certainly there were  
8 matters that were involved, between our department, our  
9 Minister, my survey, his clients, some of whom were also  
10 my survey workers. So, I can remember, on at least one  
11 occasion, as I was the one carrying around a mobile  
12 phone in my backpack, receiving a telephone call for  
13 Doug Milera, who was on survey too, from Aboriginal  
14 Legal Rights and Tim Wooley and giving Doug the phone  
15 and saying 'You can catch up with us in the next paddock  
16 when you are done here.' So, yes, various contacts of  
17 that sort.

18 Q. Finally, I think you met and spoke with Professor Cheryl  
19 Saunders, didn't you.

20 A. That's correct.

21 Q. I think, on the same day you actually paid a visit to  
22 Rocky Marshall at Goolwa, did you, on 19 June 1994.

23 A. No, that didn't occur on the same day. The Rocky  
24 Marshall letter was published on Saturday 18th of June.  
25 At the request of the Lower Murray Committee and the  
26 advice of my chief executive officer, David Rathman, I  
27 visited him the next morning, Sunday morning the 19th  
28 with the men to interview him. I think the women went  
29 around there later. And, on the 21st, when I was back  
30 in Adelaide, with other public servants, I met with  
31 Professor Saunders and her assistant in Adelaide. Then  
32 on the next day, on the 22nd, very very briefly, late in  
33 the afternoon, at Amelia Park at Goolwa.

34 Q. Was your visit to Rocky Marshall an official visit, was  
35 it, on behalf of the department.

36 A. It was an official visit, as an inspector appointed  
37 under the Aboriginal Heritage Act, for the purpose of  
38 gaining information about a possible offence against the

1 Aboriginal Heritage Act.

2 COMSR

3 Q. The letter appeared one day and you were down there the  
4 next, were you.

5 A. I was already down at Hindmarsh Island, Goolwa, on the  
6 last couple of days of the survey. So, I was actually  
7 on Hindmarsh Island and I bought a newspaper, saw it,  
8 phoned my chief executive officer, suggested he have a  
9 look at the newspaper. He instructed me that I had  
10 better look into it and within an hour of that I had  
11 been contacted by members of the Lower Murray Heritage  
12 Committee, who were on my survey crew in the local area  
13 too, and it was the next morning when we visited him.

14 XN

15 Q. Was there a time, in about 1989, when you were in some  
16 conflict with, for instance, some of the Aboriginal  
17 community from, say, Camp Coorong.

18 A. Vanessa Edmonds, I know, mentioned this in her evidence.  
19 I am not aware, from memory, that I was aware of any  
20 such conflict at that time. I became aware of some  
21 issues of conflict that were presumed by members, I  
22 guess, of the Camp Coorong group of people, to have with  
23 me at a later date, very clearly in 1992/93. It turned  
24 out, in fact, we did not have a conflict. It was an  
25 illusion produced by misinformation created by a third  
26 party.

27 Q. Was that over the question of Telecom towers on the  
28 summit at Mount Barker.

29 A. If there was a problem over that at this time I wasn't  
30 aware of it. I was aware of a difference of opinion  
31 within the Ngarrindjeri community, which I became later  
32 aware of, over a development proposal at Cape Jervis.  
33 It is conceivable that the Mount Barker issue, which has  
34 come up - it comes up every so often, every couple of  
35 years almost, in one form or another, it is possible. I  
36 was not aware of it at the time.

37 Q. Can I ask you a question, you, I think, have had  
38 correspondence forwarded to you by a Mr Graham Baton



1 from Goolwa.

2 A. Mr Graham Barton gave me a report that he had prepared,  
3 which I understand to be a copy of a submission he made  
4 to Professor Saunders. He told me that it was relevant  
5 information with respect to the authenticity of an  
6 Aboriginal site at Goolwa and he wished me to take into  
7 account, in making my assessments and site records,  
8 which I have done and will do again when I have produced  
9 the site records. We had, of course, advertised - not  
10 advertised - we had an article, right at the beginning  
11 of the survey, in November 1993 in the local press,  
12 asking people to provide relevant historical or other  
13 information that might assist us and so, I took it on  
14 board in that context.

15 CONTINUED

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1 Q. I will come back to that at the end of your evidence,  
2 and I might show you some photographs so that we can  
3 better do that. During the luncheon adjournment, I  
4 think you addressed that outstanding matter relating to  
5 the Tindale journals and the other archival material  
6 which you isolated to be the Tindale field maps. First  
7 of all, the Tindale journals that provided you with some  
8 independent corroboration for what the men were telling  
9 you, can you tell us if you've located those.

10 A. You already have most of them. What I guess to I need  
11 to make clear -

12 Q. Sorry, I don't have any of them, do I.

13 A. You already have five references which are directly  
14 relevant here. What was corroborated - perhaps to  
15 quickly state here as there's been a question about it -  
16 is that they were reminding me of information provided  
17 by them on other matters that were independent of this  
18 matter, assessment matters, which showed that they  
19 possessed cultural information other than that,  
20 additional to that that had been recorded and published  
21 by anthropologists and others, and that with respect to  
22 them having a very detailed cultural landscape, a  
23 landscape that was known in great deal with respect to  
24 its features, of having been created by the ancestors,  
25 they were pointing out to me the very definite gap in  
26 the recorded information in that respect to do with  
27 Hindmarsh Island, the Goolwa channel and Mundoo Island  
28 particularly. So that's the context in which they were  
29 providing the rationale for there to be yet further  
30 information of this order, information that filled in a  
31 gap in the anthropological recorded cultural landscape  
32 which they said was a good reason, and also that they  
33 were the holders of previously unrecorded but not  
34 forgotten cultural information, so I think in that  
35 context, I think the Tindale references you have, yes, I  
36 think are very relevant. There's another note, it's a  
37 very brief one again, and this comes from the later  
38 journal material, the 'Tindale South-East Journal' vol.2

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1 p.37, where informant Alf Watson told Norman Tindale  
2 about a place near Salt Creek which was to do with men's  
3 business, and there was a restriction on the access of  
4 women to that place.

5 MR ABBOTT: What page of the journal.

6 A. That's p.37. There was that reference.

7 XN

8 Q. That's one of these Tindale journal references that  
9 you've referred to at p.49 of your statement, is that  
10 right.

11 A. It's one that's not there, it's an additional one.

12 Q. I'm sorry. Perhaps, so that we're on the right topic  
13 here, can you go to p.49 of your statement.

14 A. Yes, I can.

15 Q. I'm really focusing on what we left outstanding at the  
16 luncheon adjournment, where you were to locate the  
17 Tindale journals which were supportive, in a  
18 corroborative and independent way, of what the men told  
19 you. That reference you just gave us, is that one of  
20 them.

21 A. Yes, that's what I'm doing.

22 Q. That's vol.2 p.37 of the south-east journal.

23 A. That's correct. I've just explained to you what the  
24 context of that statement on p.49 means, and it's of  
25 that nature.

26 Q. Is this the position; it's rather what the Tindale  
27 journals don't say that supports the men.

28 A. Well, the Tindale journal supports the men in referring  
29 to matters which are not contained in the published  
30 ethnography record and summaries of them, so that's the  
31 context that it corroborates there. It basically sets  
32 the scene for one to accept that it is reasonable that  
33 there is further unrecorded information on the basis  
34 that there is recorded, but previously unpublished,  
35 information and, as I said to you, they, at that time,  
36 referred me to the detail with which Tindale had  
37 recorded most of the coastline running up the Coorong,  
38 the Coorong past Goolwa, Encounter Bay to Kangaroo

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1 Island with reference to Ngurunderi and several other  
2 ansestors, that this was a very detailed landscape,  
3 cultural landscape, but there was, if you like, a  
4 glaring gap, which was the area of Hindmarsh Island and  
5 Mundoo Island, and that that was directly relevant. Now  
6 we had the field maps and what you will see on the  
7 Tindale field maps is a very, very detailed run of  
8 Aboriginal place names and references to the stories and  
9 the ansestors and the events that match what the men  
10 were saying to me at that time.

11 Q. Can I just interrupt you there. Can we deal with the  
12 journals first. You've given us one reference, vol.2,  
13 south-east journals of Tindale, p.37. Any other  
14 reference to journal references.

15 A. Those ones are contained in my statement -

16 Q. Already.

17 A. - already. The additional -

18 Q. We're now moving on the archival material which is the  
19 Tindale maps, are we.

20 A. Yes, but we're still not off the Tindale journals  
21 because, as I was saying to you, at that time we had the  
22 Tindale field maps, and we had used them on occasion  
23 together in the field or, where I hadn't had them, I'd  
24 been able to check up with them after I'd been in the  
25 field with these people, and what you have in the  
26 Tindale journals at various points - and I haven't been  
27 able to catalogue this page number by page number, there  
28 simply wasn't time over the lunch break - there are  
29 journal notes that go with those fields maps, so that  
30 when there are a series - and that's mainly vol.2, just  
31 about all of this, particularly the first big field trip  
32 that Tindale did with Milerum, and the subsequent trip  
33 with Reuben Walker, there are cross-references in that  
34 information often annotated on these maps which will say  
35 `This is from Milerum', or `This is from Reuben Walker',  
36 and the first 60 or 70 pages of vol.2 of the Tindale  
37 south-east journals is one long field trip with Milerum,  
38 where a lot of that information up the Coorong across

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1 the Murray mouth, straight past Hindmarsh Island and  
2 Goolwa, part of the Goolwa foreshore and continuing on,  
3 but leaving out Hindmarsh Island and Mundoo Island.

4 COMSR

5 Q. Can you isolate or pinpoint or show with, some degree of  
6 precision, the references that you're relying on. (NOT  
7 ANSWERED)

8 MR STEELE: I think the witness said that there had  
9 been insufficient time over the luncheon adjournment for  
10 him to be able to do that. That's why the answer has  
11 been, in a sense, as non-specific as it has been.

12 XN

13 Q. I just show you a map, because you're going to identify,  
14 aren't you, for us, the field maps that are the subject  
15 of the archival material here mentioned at p.49, are you  
16 not.

17 A. I'm not going to do it at this moment. I'm unable to do  
18 it right now because we're dealilng with hundreds of  
19 pages of journal, and it would be a very big bundle of  
20 maps.

21 COMSR: I think perhaps Mr Abbott's difficulty  
22 is in trying to determine what are the references.

23 XN

24 Q. Have you got p.49 of your statement there.

25 A. Yes, I do.

26 Q. You see before lunch you said the archival material you  
27 relied upon was the Tindale field maps, and we showed  
28 you one and you said one of them was the next one along,  
29 didn't you.

30 A. You were asking me about a particular story at the time,  
31 Kondoli the whale, and that one is obtained on the map  
32 showing the area between Port Elliot and Victor Harbor.

33 Q. No, I was asking you, with respect, about the archival  
34 material mentioned there at p.49, about .8. You said to  
35 me that that archival material was the Tindale field  
36 maps, didn't you.

37 A. What -

38 Q. Did you not.

## N. DRAPER XN (MR SMITH)

- 1 A. It includes that, I didn't say it was restricted to  
2 that.
- 3 Q. I see.
- 4 A. I'm sorry if there was a misunderstanding.
- 5 Q. Did you not remember also that I provided you with a map  
6 that was an exhibit in the enquiry.
- 7 A. That's correct.
- 8 Q. You said 'It's probably the next one along'.  
9 A. Or two along.
- 10 COMSR: Two along.
- 11 A. Yes. I have in my mind at that particular time the  
12 particular example that we had raised.
- 13 XN
- 14 Q. I produce to you three of the Tindale maps. Could you  
15 identify, out of those three, which of them are we  
16 talking about in the archival material. It might not be  
17 one, it might be more than one.
- 18 A. Well, it is. In fact, to some degree all the Tindale  
19 field maps are relevant as they run along this  
20 particular stretch of coastline. The Encounter Bay  
21 sheet starts practically at Victor Harbor and it  
22 contains -
- 23 Q. All I want you to do, because I think this will be  
24 explored by someone else with you, because I want to sit  
25 down, what is the Tindale field maps archival material  
26 mentioned on p.49. Which of those maps are we talking  
27 about.
- 28 A. All of these (INDICATES), and all of those (INDICATES),  
29 and I really think in that general context of both what  
30 you've asked and what p.49 says, you could include that  
31 coastal run from the Coorong through - well, this one  
32 goes as far as Waitpinga, I think for illustration  
33 purposes that would be sufficient, even these three and  
34 the one that you showed me, the Nangapeta map would  
35 illustrate the point quite clearly.
- 36 COMSR
- 37 Q. Just so that we can -
- 38 A. If we line these up, it would illustrate the point.

N. DRAPER XN (MR SMITH)  
XXN (MR MEYER)

1 That page simply says, that paragraph - that there was  
2 nothing that was consistent with what they have told me  
3 that said `This is a reasonable thing to investigate',  
4 not that there is proof in these maps of Aboriginal  
5 women's business on Hindmarsh Island, I'm certainly not  
6 suggesting that, if that has been misunderstood by  
7 anybody.

8 Q. You can't be any more specific than you've been, is that  
9 the case.

10 A. At this level of these maps, I have no problem with  
11 being more specific. With respect to information  
12 provided to me at that meeting by the men, some of that  
13 there is a problem with, yes.

14 CROSS-EXAMINATION BY MR MEYER

15 Q. Do you know, when you talk about women's business,  
16 whether there was disclosed to you or raised with you  
17 that you're taking about the same women's business  
18 that's been referred to in this commission as secret  
19 sacred women's business, or are we talking about two  
20 different lots of women's business, do you know.

21 A. The term `women's business' is more one of the press,  
22 the commission, the public view of it than the  
23 Aboriginal terms used, but what I was dealing with at  
24 the time was confidential cultural information held by  
25 and specific to Ngarrindjeri women. That's what I was  
26 led to understand. I presume that is the same thing  
27 that is being investigated here.

28 Q. Well, if it's something different, then what you have  
29 been talking about is all off on the wrong track in  
30 relation to this commission, then, isn't it.

31 A. I just don't understand what you're -

32 Q. You talked about learning of information from the wives  
33 of the members of the Lower Murray Aboriginal Heritage  
34 Committee, or representatives of it, when you were doing  
35 your survey before 29 April 1995.

36 A. No, I did not. I referred to a mechanism whereby  
37 information could be transmitted by Aboriginal women to  
38 my wife, and then relayed to me, not that it had

## N. DRAPER XXN (MR MEYER)

- 1 something to do with Ngarrindjeri people's wives, if  
2 that's what I understand you to have said.
- 3 Q. Now who was transmitting the information to your wife.  
4 A. To my wife?  
5 Q. Yes.  
6 A. The direct person who was on the survey who it was  
7 considered that facility was directly provided for at  
8 the time was specifically Sarah Milera, or any other  
9 woman that the Lower Murray committee wished to put  
10 forward in that role.
- 11 Q. Who did they put forward.  
12 A. The person who was on that survey and providing that  
13 information to me was Sarah Milera.
- 14 Q. Anybody else.  
15 A. In the field work situation, Sarah was the only  
16 Ngarrindjeri woman who provided information about  
17 Aboriginal sites of specific confidential cultural  
18 significance to women.
- 19 Q. Relating to women's business.  
20 A. Yes.  
21 Q. Ellen Trevorrow, do you know her.  
22 A. I have met Ellen Trevorrow.  
23 Q. Who is Ellen Trevorrow.  
24 A. From memory, she is George Trevorrow's wife.  
25 Q. Did Ellen Trevorrow provide any of this information.  
26 A. No, she didn't. She was part of the group at the  
27 meeting on 15 April that set the situation up for  
28 providing the information but, as I made clear in my  
29 statement, the information was directly provided to me  
30 on behalf of the committee by Sarah Milera.
- 31 Q. Shirley Trevorrow, who is she.  
32 A. Sorry, Shirley may in fact be George's wife rather than  
33 Ellen. She is another one of the Ngarrindjeri women. I  
34 don't know either of those Trevorrow women particularly  
35 well. I have met them, I don't know them well.
- 36 Q. The women's business that you're talking about is the  
37 women's business that's been told to you by Sarah  
38 Milera.



## N. DRAPER XXN (MR MEYER)

1 A. Yes.

2 Q. Told to you by Sarah Milera before 29 April.

3 A. Yes.

4 Q. Written about by you in your report, which is dated 29  
5 April.

6 A. Yes.

7 Q. As I understand the situation as reported by Professor  
8 Saunders, there are two possible activities in relation  
9 to the knowledge of this secret sacred women's  
10 knowledge, business, whatever you like to call it, let's  
11 not fuss about the semantics of it, whatever it is that  
12 is being debated; either Doreen Kartinyeri, according to  
13 Professor Saunders, is the only one who knows it or, if  
14 that's not right, well then only a possible total of  
15 four people know it, and I think those four are Doreen  
16 Kartinyeri, Connie Roberts, Maggie Jacobs and Edith  
17 Rigney, but quite specifically Sarah Milera is not one  
18 of them. Can I take it that the women's business that  
19 you are talking about therefore must be different from  
20 the women's business that Professor Saunders talks  
21 about.

22 CONTINUED

## N. DRAPER XXN (MR MEYER)

1 A. I don't think I could agree with that statement at all.

2 Q. The women's business that you've learnt about is the  
3 women's business that Sarah Milera told you about.

4 A. That's correct, as the appointed spokesperson of the  
5 Lower Murray Heritage Committee for that purpose, and  
6 she does specifically -

7 Q. Can I interrupt you there.

8 A. By all means.

9 Q. The women's business that Professor Saunders talks about  
10 is from Doreen Kartinyeri, and Professor Saunders says  
11 Sarah Milera doesn't know it. Aren't we then talking  
12 about two different things.

13 OBJECTION Mr Steele objects.

14 MR STEELE: If my friend is putting that as a  
15 proposition, he better take us to where, in Professor  
16 Saunder's report, she says Sarah Milera does not know  
17 this.

18 XXN

19 Q. I take you to her evidence in the Federal Court. I put  
20 to you that is the situation and I ask you to accept -

21 MR STEELE: I think that is very unfair. We have  
22 the Saunders report here. My friend says that Professor  
23 Saunders says Sarah Milera didn't know it. He  
24 interrupts the witness when the witness is saying Sarah  
25 Milera is speaking on behalf of the committee. He  
26 doesn't ascertain who the members of that committee, are  
27 and on whose behalf she may well be speaking. It is  
28 very unhelpful to you.

29 COMSR: Perhaps we should at least find out on  
30 whose behalf.

31 XXN

32 Q. On whose behalf did you understand Sarah Milera to be  
33 speaking.

34 A. I was told by the group of women identified in my report  
35 as being present at the meeting with the Minister on 15  
36 April, that Sarah Milera specifically, and anyone else  
37 they sent along - and, in fact, it ended up being Sarah  
38 Milera speaking with Robert Day present - would be the

## N. DRAPER XXN (MR MEYER)

1 people to transmit the information to me that would be  
2 recorded, and I have noted in my report - I am just  
3 looking for the reference - that Sarah Milera said to  
4 me, and Robert Day senior didn't disagree with her, that  
5 for her - here we go, it is on p.52, middle of the page,  
6 `Sarah mentioned during the course of that weekend and  
7 these interviews that Auntie Connie, Connie Roberts was  
8 the ultimate authority in her Aboriginal family, i.e.,  
9 the extended Walker clan, in relation to conveying that  
10 women's business down the line;. So that's the  
11 information that was provided to me, simply that.

12 Q. But what I am driving at is this, your source of  
13 information was Sarah Milera.

14 A. That's correct.

15 Q. Professor Saunders' source of information was Doreen  
16 Kartinyeri.

17 A. I have no direct knowledge, apart from what I have read  
18 in the Saunders report, of what Professor Saunders, in  
19 brief conversations, has asked me of the details of her  
20 investigation, which was subsequent to my own and quite  
21 separate.

22 COMSR

23 Q. Was what Sarah Milera told you related to sites. Is  
24 that what you are saying.

25 A. Related to sites?

26 Q. Yes.

27 A. It was certainly related to the recording of the  
28 specific area that was said to be very culturally  
29 significant, greatly endangered by the construction of a  
30 bridge, and over which they - I have no reason to  
31 believe that it is any different. As far as I know,  
32 they were talking about the same thing, and certainly  
33 there is a connection in Connie Roberts being named in  
34 both context, but -

35 XXN

36 Q. I am referring to p.963 of the transcript in the Federal  
37 Court. The question was `Did Sarah Milera impart to you  
38 any matters relating to women's business?' Professor

## N. DRAPER XXN (MR MEYER)

1 Saunders' reply `No. Sarah's stance was a somewhat more  
2 mystical stance which was directed to the general  
3 significance of the island was the position she put to  
4 me, felt by her through various signs, but I didn't  
5 regard Sarah as a particularly useful informant about  
6 womens business'.

7 MR STEELE: I am uncertain as to the status of the  
8 evidence to which my friend refers, and how it can  
9 properly be brought before you. I think that needs to  
10 be clarified before this witness can be asked to comment  
11 on any evidence which some witness, of whom he has no  
12 knowledge, gives to that court.

13 MR MEYER: It is evidence given in an open and  
14 public court, in public proceedings, being action no. -

15 COMSR: I think he is asking the witness to  
16 accept that that was the evidence given.

17 MR MEYER: The question was asked as to what the  
18 status of bringing that evidence here is. What I am  
19 putting is that it was open and public evidence given in  
20 action nos.57 and 78 of 1994 in the Federal Court of  
21 Australia. Any member of the public could have gone  
22 along and listened to it. Some members of the public,  
23 in fact, did come along and listen. So if it needs a  
24 ruling, I say that there is no embargo of any kind on  
25 the evidence in the Federal Court.

26 COMSR: Was that your concern?

27 MR STEELE: My concern is twofold. I accept what my  
28 friend says as to it being a public hearing. I have  
29 nothing further that I can put with respect to that.

30 But I take up your Honour's point as to the witness not  
31 being there. He can't speak of this evidence. He must  
32 only be required to assume that it was said.

33 COMSR: Assume for the purposes of answering the  
34 question, yes.

35 MR STEELE: Given all of my interruptions, can it be  
36 put to the witness again.

37 XXN

38 Q. Can I show to you, referring to p.916, what appears to

## N. DRAPER XXN (MR MEYER)

1 be the first page of evidence which was taken on  
2 Wednesday, 14 December 1994, in the Federal Court,  
3 sitting in Adelaide.

4 A. Yes.

5 Q. Adelaide sitting. The person who is in the witness box  
6 by the time at least that we get to p.963, is Professor  
7 Saunders.

8 A. Yes.

9 Q. I would ask you to assume that the transcript is an  
10 accurate record.

11 A. Yes.

12 Q. And the question which is put at line 16 on p.963 is the  
13 question I read out, and the answer is there as well.  
14 Would you like to read it to yourself again.

15 A. Yes.

16 Q. What I am putting to you is this; assuming that to be  
17 the correct evidence, that Sarah Milera was not an  
18 informant of women's business to Professor Saunders -

19 A. I didn't even say she was an informant to me. I said  
20 that she was assigned, in my understanding and the  
21 department's understanding, by the Lower Murray  
22 Aboriginal Heritage Committee to convey the information  
23 to me. I worked on the State investigation in reporting  
24 in April, under those circumstances, with the people  
25 provided at the time, and I presume that Professor  
26 Saunders' work in May, June, whenever, in that situation  
27 with the informant spokespeople, et cetera, provided at  
28 that time - they were different investigations at  
29 different times. I'm not sure - and I have some direct  
30 knowledge of one and not of the other. I'm not sure I  
31 can help you more than that.

32 Q. When you say that they were at different times, you were  
33 in fact still completing your survey at the time that  
34 Professor Saunders was here, weren't you.

35 A. Yes. I was completing the field survey. The specific  
36 work that was concerned over that April long weekend of  
37 recording a site of particular cultural significance to  
38 women had been completed - had been concluded with the

## N. DRAPER XXN (MR MEYER)

1 preparation of that report. So I was working with men  
2 at the time, while the Professor Saunders' investigation  
3 was going on, on the straight completion of the  
4 Hindmarsh Island heritage survey in the field.

5 Q. Let us get this into a time sequence. You were doing  
6 the report at some time between 15 April and 29 April.  
7 And you provided what has been called the briefing  
8 paper, haven't you, of 29 April.

9 A. It is usually referred to as the Draper report in the  
10 press, yes, and it was prepared between about the 23rd  
11 and the 29th. I think it was produced over that long  
12 weekend and the subsequent week at the end of April.

13 Q. Subsequent to then, you continued with your involvement  
14 at Hindmarsh Island because you hadn't finished the  
15 survey.

16 A. That's correct.

17 Q. And that involvement continued through May and June.

18 A. That's correct.

19 Q. And you were continuing to have contact with various  
20 Aboriginal persons associated with that survey.

21 A. I was on that survey from that time, working with an all  
22 male Ngarrindjeri field crew, as my understanding was  
23 that all of the women associated with the Lower Murray  
24 Aboriginal Heritage Committee were involved with the  
25 Commonwealth investigation, and my field crew in that  
26 last session provided by the Lower Murray Aboriginal  
27 Committee was all male.

28 Q. From what time did Sarah Milera drop out of it.

29 A. After that Anzac Day long weekend in late April.

30 Q. So, by that time, you've got all the knowledge that you  
31 get of whatever women's business is.

32 A. All of the information that is the basis of the report  
33 to the Minister and the basis of that site - draft site  
34 record, came in during that period, yes.

35 Q. In fact, by the time Sarah drops out of it, you've got  
36 all the information that you ever get prior to - let us  
37 put a date on it - 10 July, i.e., when the Tickner  
38 declaration is made. You have got it all, haven't you,

1 when you get to that time.

2 A. Yes, with respect to that particular site and that  
3 particular aspect of cultural tradition, that's correct.

4 Q. Being whatever it is that you talk about as being the  
5 women's business.

6 A. Yes.

7 Q. So Sarah's it, because it can't be the men.

8 OBJECTION Mr Steele objects.

9 MR STEELE: The witness has said about three times  
10 that Sarah is not it. Sarah was a spokesperson, and he  
11 has said that two or three times already.

12 XXN

13 Q. I don't mind whether Sarah is a spokesperson. Sarah is  
14 the person from whom you get it and only Sarah. I don't  
15 mind whether she is talking on her own behalf or on  
16 behalf of everybody. Sarah is the only person you are  
17 talking to.

18 A. She is the only person who is speaking to me. As I  
19 said, the entire process of taking down the information  
20 that forms my report of 29 April and the accompanying  
21 site information was spoken by Sarah Milera in the  
22 presence of Robert Day.

23 Q. And that's your knowledge on women's business, at least  
24 until when Tickner makes his declaration, which is 10  
25 July.

26 A. With respect to that particular site, in that particular  
27 area, yes.

28 Q. Let us not get ourselves lost in amongst the definition  
29 of a site. I'm talking about women's business as it  
30 relates to Hindmarsh Island.

31 A. Yes, that is correct.

32 Q. Saunders goes on in her evidence at p.964, I would ask  
33 you to assume is correct, and at line 16, this question  
34 was asked `Well then, why do you think it may be if she  
35 knew about matters relating to the bridge in 1993, but  
36 it is not until April that anything relating to women's  
37 business raises its head'. And Saunders' replied `Sarah  
38 herself was not one of those who knew about women's

## N. DRAPER XXN (MR MEYER)

1 business'. So the finding of Saunders, the person who  
2 makes the report about this women's business, in  
3 conjunction with Dr Fergie, says Sarah Milera is not one  
4 of the persons who knows about women's business.

5 A. I think she says, does she not -

6 Q. Hang on. She is the only person that you have found  
7 anything out about women's business. That's right,  
8 isn't it.

9 OBJECTION Mr Steele objects.

10 MR STEELE: My friend has got to ask single  
11 questions, allow the witness to answer, put another  
12 question and allow the witness to answer that question.  
13 He must allow the witness to start and finish the  
14 answer.

15 XXN

16 Q. I put it to you as simply as I can. Saunders says Sarah  
17 herself was not one of those who knew about women's  
18 business. I would ask you to accept that as a fact.

19 A. I understood the passage you read to say with particular  
20 respect to late 1993. I - does it actually say what the  
21 status of Sarah's information was in April 1994? I am  
22 not quite sure what it says.

23 Q. The line of this cross-examination is in the context of  
24 the knowledge of women's business and the previous  
25 question.

26 MR TILMOUTH: Can you identify the page?

27 MR MEYER: 964.

28 MR TILMOUTH: I thought you were looking at the  
29 Saunders report.

30 MR MEYER: No, Federal Court transcript.

31 MR STEELE: I don't have a copy of the transcript.  
32 I would like to be able to read the transcript at the  
33 same time it is being shown to the witness.

34 COMSR

35 Q. Have you read it.

36 A. I have, whether I will need it again depends on the  
37 question I think.

38 MR MEYER: We can cure the point because it is an



1 important point. Would your Honour like to adjourn for  
2 say three minutes and we will photocopy four or five  
3 pages of the transcript.

4 ADJOURNED 3.31 P.M.

5 RESUMING 3.45 P.M.

6 MR STEELE: Before my friend goes on to ask  
7 questions arising out of this. I rise again with a  
8 slightly different aspect to my earlier objection. It  
9 still relates to the status of this. Unless this  
10 evidence of the Federal Court becomes evidence in this  
11 matter, I cannot see it has proper status. I am sure  
12 that no-one particularly wants to have X thousands of  
13 page references of the Federal Court proceedings.

14 COMSR: I know somebody who doesn't.

15 MR STEELE: I can speak for two people in that  
16 regard. To take a piece of evidence in isolation out of  
17 that total evidence is, in my submission, unhelpful to  
18 the point that it should be excluded. Even if the  
19 witness is asked to assume something, it is so out of  
20 context that it is unhelpful to you.

21 MR MEYER: I am happy to either tender pages 962 to  
22 967, which I think is more than sufficient before and  
23 after; or, alternatively, to tender Professor Saunders'  
24 evidence in the Federal Court which will avoid tendering  
25 all of the evidence.

26 MR STEELE: I strongly oppose either of those  
27 options.

28 CONTINUED

## N. DRAPER XXN (MR MEYER)

1 I submit that, to tender some part of Professor  
2 Saunders's evidence in the Federal Court is to take it  
3 out of context and that is not fair. It does not help  
4 you. To tender all of Dr Saunders's evidence is, I say,  
5 to give it a status in this matter which it does not  
6 warrant.

7 COMSR: It may be all of the evidence on this  
8 particular matter, Mr Steele. It might encapsulate it  
9 just one way or the other.

10 MR STEELE: I am not in a position to know.

11 COMSR: I think that this evidence could  
12 probably only be taken on this basis: that the witness  
13 is asked to assume that is the case.

14 If, in fact, at some stage, it is proved to be the  
15 case, Mr Steele, I suppose that then it can be taken  
16 into account.

17 MR MEYER: Can I say this: I am happy to provide a  
18 copy of the evidence to Mr Steele. Lend him a copy.

19 COMSR: Perhaps if we could go ahead with the  
20 questions now as such and the witness is asked to assume  
21 it. It may well be you will come to some arrangement  
22 and that it can be proved in some other way.

23 MR MEYER: Just to throw some assurance into it, I  
24 wouldn't have put the proposition if I didn't believe it  
25 to be the context of the evidence as it was given, but I  
26 will fix it up as a matter of proper operation.

27 XXN

28 Q. At p.962, there is merely evidence talking about women's  
29 business and reference to the appendices and referring  
30 to Doreen Kartinyeri.

31 A. If you say so, yes.

32 Q. Just reading the context of the evidence referring to  
33 Hindmarsh Island, women's business -

34 A. I see the words 'Hindmarsh Island', 'women's business',  
35 'Doreen Kartinyeri', yes, scanning the page, yes.

36 Q. At the top of p.963, it is asked did she explain how she  
37 came into possession of the knowledge. And Professor  
38 Saunders answered that, described that those people were

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- 1 not alive any more. And then, at line 8, I asked  
2 whether any steps were taken to seek out any other  
3 senior Aboriginal women other than those who were at  
4 Graham's Castle. And it was answered no, that Professor  
5 Saunders didn't do that. And you can see that the trail  
6 is going through the various people who might be able to  
7 help.
- 8 A. Yes.
- 9 Q. The next person that we referred to was Sarah Milera.  
10 And that was the question I put to you at line 12,  
11 right. I read you that part at line 12, on p.963.
- 12 A. You actually - I am sorry, no.
- 13 Q. Sorry, line 16.
- 14 A. Line 16, yes.
- 15 Q. Yes.
- 16 A. Yes, I see that.
- 17 Q. Then it goes on to refer to Professor Saunders's report  
18 where I make the reference, in line 25, to `your  
19 report'. Asking again at line 31 about Sarah Milera's  
20 knowledge in relation to the Hindmarsh Island bridge.
- 21 A. Yes.
- 22 Q. Then on to p.964, reference to Sarah Milera being  
23 involved from what I described as being the beginning.  
24 And Professor Saunders saying `I don't think it would  
25 surprise me to know that she was involved at the end of  
26 1993.' Then line 16 again the point we reached before  
27 `Well then, why do you think it may be if she knew about  
28 matters relating to the bridge in 1993, but it is not  
29 until April that anything relating to women's business  
30 raises its head?' And before I go on to the answer in  
31 relation to that, April was an operative, a very  
32 important month, wasn't it.
- 33 A. Yes.
- 34 Q. And we can take it as being April 1994.
- 35 A. Yes, we can I think.
- 36 Q. In the chronology of things.
- 37 A. Yes.
- 38 Q. And Professor Saunders goes on to say `Sarah herself was

## N. DRAPER XXN (MR MEYER)

1 not one of those who knew about women's business.' All  
2 I am doing is clarifying and trying to show you the  
3 evidence. If that's right, that means that what you  
4 have been told as being women's business is something  
5 which is not the same as what Professor Saunders is  
6 being told, because Sarah Milera doesn't know about  
7 women's business as far as she is concerned.

8 A. But this doesn't say that. You have had the benefit of  
9 reading it in some detail. I have only scanned it, but  
10 the pieces you have referred to me, as I add them up,  
11 for instance, on line 25, p.964, 'Did Sarah Milera know  
12 of matters relating to the bridge before March 1994?'  
13 Though, how Cheryl Saunders would know that, I don't  
14 know. She didn't turn up until May. Again down the  
15 bottom of p.963, the reference is 'prior to March 1994'  
16 with respect to knowledge of women's business. Going on  
17 to the next page, we go from her involvement at about  
18 line 14, line 15 in perhaps the affair generally with  
19 respect to the bridge at the end of 1993. Then we come  
20 to your starting statement 'Well then, why do you think  
21 it may be if she knew about matters relating to the  
22 bridge in 1993', so there is 1993, 'but it is not until  
23 April that anything relating to women's business raises  
24 its head?' There is April 1994. And then the reply  
25 'Sarah herself was not one of those who knew about  
26 women's business.' Now, it is totally unclear to me  
27 from that context whether that means she didn't know  
28 about it in 1993, or she did not know about it until  
29 April 1994, or she did not know about it at all. I can  
30 see those as three quite equal possibilities, on what is  
31 in front of me here. It is not clear to me, I'm sorry.  
32 Please correct me if I have missed something.

33 MR MEYER: I will mark the evidence for  
34 identification and that will remind me to clear up the  
35 tendering of the evidence. So I ask that you mark for  
36 identification pp.962 to 967.

37 MR SMITH: I am a bit reluctant to. I don't know  
38 how you feel about this, but I am a bit reluctant to

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1 allow the Federal transcript to become an exhibit. If  
2 it was effectively used, does my learned friend suggest  
3 that he needs it to do that in the light of what has  
4 transpired between him and the witness?

5 COMSR: Yes.

6 MR SMITH: Is he going to be able to submit that?

7 COMSR: The witness hasn't made any concession.

8 MR SMITH: The witness hasn't really made any  
9 concession at all. Do we need this exhibit?

10 MR MEYER: Can I leave it in that state and I will  
11 discuss it with my friend and we will sort it out?

12 COMSR: All right.

13 MR MEYER: That's why I avoid tendering it for the  
14 time being.

15 XXN

16 Q. Looking at Exhibit 67, a report in the Australian dated  
17 15 June 1995, it has a headline 'Women's Business  
18 Custodians Named', this is a report which is attributed  
19 to Dr Fergie. It refers to Dr Fergie preparing a  
20 report. And then, at about .6 of the first column, it  
21 says "These are the women who were the custodians. The  
22 ones with the understanding and the ones I relied upon  
23 in the report," Dr Fergie said.' And she is referring,  
24 you will see in the previous paragraph, to Mrs Doreen  
25 Kartinyeri, as she then was, 'the prime public custodian  
26 of the secrets, along with Mrs Connie Roberts, Mrs Edie  
27 Rigney and Mrs Maggie Jacobs.' Dr Fergie goes on to say  
28 'She said that she did not want to reflect on the  
29 beliefs of either Mr Doug Milera or Mrs Sarah Milera,  
30 who have been embroiled in a row over fabrication  
31 claims, but Mrs Milera was not a key informant for the  
32 purposes of her report.' That is clarifying, in  
33 essence, the same evidence as Professor Saunders gave,  
34 isn't it.

35 OBJECTION Mr Steele objects.

36 MR STEELE: I must rise again. We have gone through  
37 this time and time again. The witness has said time and  
38 time again Mrs Milera was a spokesperson for a group.

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1 She was appointed by the group. The Act requires that  
2 to happen. It does not say that she was his informant.  
3 She was a spokesperson. This evidence is taking you  
4 nowhere. And I really submit you should overrule the  
5 line of questioning.

6 COMSR: I think what Mr Meyer is putting to the  
7 witness, in effect, is that his source of knowledge,  
8 whatever might have been Mrs Milera's role, his source  
9 of knowledge concerning women's business came from her.

10 MS PYKE: Can I say something? I am confused here  
11 and it is really for my own assistance, as hopefully it  
12 might be of assistance to you.

13 We are talking about, as I understand the evidence,  
14 two separate points in time. One is in relation to  
15 sites in November 1993. And the other is evidence about  
16 what happened at a meeting at the Lower Murray  
17 Aboriginal Heritage Committee in April of 1994.

18 Now, they are two occasions in which women's  
19 business, if I can use that in the general sense, is  
20 being talked about. As I read the witness's statement -  
21 it might be that I have missed something completely - it  
22 is only at one of those, that is, when there is  
23 discussion of a site in November of 1993, that Sarah  
24 Milera talks. At the meeting in April 1994 there is a  
25 deputation from men who are asked to speak on behalf of  
26 the women about the issues. I think my friend's  
27 question is so confusing that I simply can't follow what  
28 he is getting at.

29 MR MEYER: In answer to that, your Honour is right  
30 in relation to your response to Mr Steele.

31 In relation to Ms Pyke's query: I established with  
32 the witness that the period that we were talking about  
33 involving Sarah Milera was at some time between the  
34 15th, or thereabouts, of April and 29 April when he  
35 wrote his report. It has got nothing to do with either  
36 of the events that she is referring to. It is that  
37 period of time that he was carrying out the field work  
38 whilst he is writing the report.

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1 COMSR: Yes, I think it has been conceded by the  
2 witness.

3 COMSR

4 Q. Your sole source of knowledge concerning women's  
5 business was what you were told by Sarah Milera.

6 A. That's correct.

7 Q. As at the time you were told it.

8 A. As at the time I was told and she said that her source  
9 of knowledge was Connie Roberts.

10 COMSR: I think we have established that, Mr  
11 Meyer.

12 XXN

13 Q. As I understand this concept of women's business, it is  
14 something which cannot be disclosed to men. That's  
15 right, isn't it.

16 A. That I understand to be a basic premise, one of the  
17 basic premises of it, yes.

18 Q. In fact, we go one step further than that. The very  
19 existence, the very knowledge of there actually being  
20 sacred secret women's business is something that was not  
21 known to men.

22 A. In general, that certainly appears to be the case. As  
23 to whether it is the case that no man knows anything  
24 about it, or whether it is a case that some senior men  
25 may know about it through, for instance, their wives, if  
26 I can put it, the pillow talk rule we discussed earlier.  
27 I am aware of a statement that Vanessa Edmonds says was  
28 made to her by George Trevorrow in her evidence where he  
29 said he had known something of it, but that he  
30 positively could not speak about it, because only the  
31 women could. So, I think the general rule is that this  
32 information is specifically and solely held by women.  
33 In practical terms it may be or may not be that senior  
34 men at different times with this kind of knowledge  
35 generally - because I don't know with respect to this,  
36 whether there is any leakage, if you like, unofficially.  
37 Certainly there is none that is acknowledged, apart from  
38 that, whatever that statement might mean from Ms

1 Edmonds.

2 COMSR

3 Q. Could there be another explanation; that what Sarah  
4 Milera told you about and has spoken about in front of a  
5 man might have been of a different nature than what has  
6 come to be referred to as the women's business.

7 A. My understanding, at the time, with respect to the  
8 presence of Robert Day, is that they were both very  
9 close relatives in the same family line and so both had  
10 specific cultural responsibilities for that particular  
11 area, Hindmarsh Island and Goolwa, which were being  
12 acknowledged by the Committee in appointing them the  
13 people to talk to me. Although, as I said, Sarah used  
14 Robert for her to talk to, not to talk to me with  
15 information. And it was explained to me as a  
16 brother/sister situation that they considered  
17 appropriate. With respect to the information provided  
18 for the site record of 'The meeting of the waters', it  
19 was specifically stated that this was a geographically  
20 marginal aspect of the confidential women's traditions  
21 which would suffice to define a significant but lesser  
22 aspect of the character of that cultural tradition and  
23 would additionally serve to put a geographic or allow a  
24 geographic boundary to be put on it without full  
25 disclosure. And I have discussed the context of that  
26 type of situation in my experience as an anthropologist  
27 in the earlier part of my statement. So, it is my  
28 understanding, without ever having seen the results of  
29 the later anthropological research conducted by a female  
30 anthropologist with the women, it was stated that I was  
31 being given just enough to make a record to satisfy our  
32 Minister, who had to know sufficient of the nature and  
33 the location of the site to make a determination, which  
34 he did, rather than the full works on what it was all  
35 about, which they were not going to talk to a man about.  
36 So, perhaps that explains why. Of course, it is not -  
37 what is in my little site record for the State's  
38 purposes is very different to the sort of efforts and



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1 information I presume that was produced. Certainly  
2 there is a lot more of it, for the subsequent Federal  
3 inquiry. I think it is more the nature of the inquiry  
4 than the nature of the source material would be my best  
5 guess at that.

6 XXN

7 Q. What has been a thread through the evidence in these  
8 proceedings, and it has been the subject of evidence by  
9 Dr Clarke and Mr Jones, has been a discussion about the  
10 possibility of the existence of secret sacred women's  
11 business/knowledge, whatever, without it being known,  
12 without the existence of it being known to men, at all.  
13 So, they are in blissful ignorance that such business  
14 even possibly exists. Is that how you understood the  
15 situation.

16 A. It is a situation, as I understand it, where either the  
17 men did not know, which is what you are saying, or that  
18 they did not know much and did not have the right to  
19 speak about it and that right wasn't given. Now, on the  
20 information available to me, I have no way of choosing  
21 between those alternatives, quite realistically,  
22 because, with respect to my involvement and observations  
23 on this matter, it could be either of those things. It  
24 wouldn't seem to make any difference, as far as I know.

25 CONTINUED

1 Q. Can I suggest to you that, in fact, you must be able  
2 to make a distinction, because, firstly, you say in  
3 your evidence, that it was men who raised the subject  
4 with you. That's right, isn't it.

5 A. Yes.

6 Q. For men to even raise the subject with you, they must  
7 know that the subject exists.

8 A. Are you speaking about January 1994 or April 15 1994?

9 Q. I don't think it makes an Adam of difference whether I  
10 am speaking of 1980, 1990 or today, if the proposition  
11 is, that secret sacred women's business is something  
12 that men don't even know exists, how could men raise it  
13 with you, at the time when it was first raised with you.

14 A. Again, could I ask what time, when you are referring to?

15 Q. When was it first raised with you.

16 A. When was it first raised with me?

17 Q. The notion of there being women's business.

18 A. Then, if the word `women' comes into it, rather than the  
19 word - other than `Goolwa channel and waters' then we're  
20 talking about April 15, 1994.

21 Q. April 15, 1994 the proposition is this, as I understand  
22 it, there is such a thing as sacred secret women's  
23 business, but men don't know it exists. Assume that  
24 that is the proposition put forward by Dr  
25 Kartinyeri. My question to you is, if that is right,  
26 how can men speak to you about it, on 15 April 1994, if  
27 they don't know it exists.

28 OBJECTION Ms Pyke objects.

29 MS PYKE: Perhaps my friend, putting that as the  
30 proposition, perhaps he can tell us where that  
31 proposition is reported, as to where Dr Kartinyeri is  
32 alleged to have said those words.

33 MR MEYER: I was asking him to make that  
34 assumption.

35 MS PYKE: What is the point of a question like  
36 that, unless it is based upon something you will have  
37 before you Commissioner? My friend is putting the  
38 proposition. I ask him to establish the basis for his

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1 proposition before the witness answers it.

2 MR MEYER: The basis of the proposition is this,  
3 until quite recently in these proceedings, and all the  
4 time in other proceedings, any suggestion that there  
5 could be any whisper of knowledge by men, in relation to  
6 this women's business, has been vigorously contested.  
7 And the suggestion is made, that it was only disclosed  
8 to men, in a last resort, to protect the cultural  
9 significance of Hindmarsh Island.

10 COMSR: It wasn't disclosed to men, its  
11 existence was.

12 MR MEYER: That is at a time when Saunders prepares  
13 her report. Up until that moment, the suggestion that  
14 any of this could be known to men, at least in the  
15 public arena, is totally unknown. Dr Draper says, 'I as  
16 a man, learnt it from a man.'

17 MS PYKE: Are we're talking about topics and  
18 content? What is my friend talking about, the topic?

19 COMSR: I think it is a legitimate question to  
20 put to the witness.

21 XXN

22 Q. I am talking about the topic, not the contents.

23 A. I have tried to keep track of all the bits of this.

24 One, it is not a reasonable proposition, not public, but  
25 Ngarrindjeri men obviously knew something as early as  
26 the Jacobs' Commission. There was obviously some  
27 knowledge, from the time of the Jacobs' Commission, of  
28 some sort. Because, from that time, you will remember  
29 in my evidence, that that's when a page from the Coastal  
30 Zone Enquiry Report was first referred to me by men,  
31 Ngarrindjeri men, with respect to there being an  
32 unrecorded and previously unconsidered cultural  
33 significance to the Goolwa channel and Hindmarsh Island,  
34 the channel in particular. Certainly what transpired on  
35 April 15, which again I will detail, is that, first of  
36 all, the women spoke to me, simply to say that the men  
37 were going to talk to me, because the women didn't want  
38 to specifically say it about their business so - I have

1 given this evidence - but it seems that it is being  
2 asked for a second time, unless I have misunderstood the  
3 question.

4 Q. You haven't answered it you see.

5 A. Please try me again.

6 Q. You have merely just said really, the men knew about it  
7 earlier. I am not concerned about whether you say the  
8 men knew about it, if they knew about it when they  
9 handed over the piece of paper to you. I come back to  
10 the same point. If the topic is not meant to  
11 be known by men, its very existence, how, I am asking  
12 you as an anthropologist, how can men tell you.

13 A. They knew something early '94, knew it - I am not sure,  
14 because I have tried to give you some context in my  
15 statement, from previous anthropological experience in  
16 assessment situations which Aboriginal communities  
17 consider to be cultural emergencies, that decisions have  
18 to be made. Does one lose sites essential to a core  
19 cultural tradition through development? Does one reveal  
20 information that one is not supposed to reveal? Those  
21 are two things that one is not supposed to do as a  
22 traditional owner. But, obviously one is placed in a  
23 situation of doing one or the other to some degree, and,  
24 I would suggest to you that, that kind of emergency  
25 situation pertained from the end of October 1993. Now,  
26 apart from the history of events that I have given you,  
27 that kind of information, where I have knowledge of it,  
28 I can't say to you what passed between the women and the  
29 men at what time, or when the men knew about it. But,  
30 the men were talking to me on the 15th of April, not  
31 describing the contents of confidential women's cultural  
32 traditions, just urging me that, and through me the  
33 department, so that I could report that straight away to  
34 senior management, that, these concerns existed and that  
35 they were saying, on behalf of the women, that  
36 these cultural traditions were real, they were  
37 confidential, that they wanted these sites protected or  
38 that site protected, on that basis and the information,

1 as I said, which was just a couple of key points, from  
2 the point of view of the men that was told to me - this  
3 is the s.49 bit - to assure me, so I could assure senior  
4 management that they weren't just making this up, was  
5 about their business, that goes with the women's  
6 business, to see, well, there is a logical consistency  
7 there, so listen to us, take us seriously. They weren't  
8 describing the detail of women's business to me.

9 COMSR

10 Q. I think you have gone into that also.

11 A. Yes, I thought I had too.

12 XXN

13 Q. We will come back to that. If we turn from the topic to  
14 the content, do you say men, then, as I understand it  
15 you say, are allowed to know the topic, but not the  
16 content.

17 A. I am really just telling you in this situation what  
18 actually happened, in terms of what I know of. I think  
19 that there are certainly situations, possibly here,  
20 certainly elsewhere in Aboriginal Australia, where that  
21 is the case.

22 Q. Let's just talk about Hindmarsh Island, let's not go  
23 elsewhere.

24 A. I really don't know that.

25 Q. You, I take it, have heard of suggestions that, the  
26 Hindmarsh Island Murray Mouth geographical area, is said  
27 to represent female reproductive organs.

28 A. I have seen a range of semi conflicting press reports  
29 over quite a period, referring to that, yes.

30 Q. Does any of that have anything to do with sacred secret  
31 women's business, as far as you know.

32 A. It is certainly relevant. I can quote one specific  
33 example, that is the case of the Rocky Marshall letter,  
34 well, article, that appeared as a letter in The  
35 Advertiser.

36 Q. Which is in similar terms.

37 A. Which is placed in those terms and -

38 Q. Can I stop you there.

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1 A. Yes sure. It is only half an answer.

2 Q. If that is meant to be secret sacred women's business,  
3 how come then Doug Milera is able to talk about it.

4 A. Well, if you had waited for the second half of the  
5 answer I was going to say, on that occasion it was said  
6 to me, I believe directly by Sarah Milera and I have the  
7 impression perhaps by the Lower Murray Committee more  
8 generally at a later occasion, that, Rocky Marshall had  
9 information, had published information that was along  
10 the lines of their confidential traditions, but that the  
11 information he had published was not accurate. That he  
12 was in the ballpark, but it wasn't accurate, or terms to  
13 that effect and that is the most specific I have ever  
14 heard about the question you ask of I would think.

15 Q. Then, in relation to this issue of accuracy then, if we  
16 go to the report in The Australian of 7 June 1995,  
17 again, this one is quoting Doreen Kartinyeri. The  
18 report says, Exhibit 67, 7.6.95, second column almost to  
19 the end, third to last para. 'Miss Kartinyeri said she  
20 was unaware of Mr Milera's comments, but disputed claims  
21 that he had pointed to a map and made reference to  
22 women's business during the May 8 meeting. If I had  
23 heard one man say that I would have smacked him in the  
24 mouth, because I am older than them and I respect my  
25 culture and traditions.' Miss Kartinyeri said 'I would  
26 never have allowed a man to talk to me about those  
27 things. I know the stories, they were passed on to me  
28 by my Auntie and my great grandmother.' That indicates  
29 to me that, in fact, Mr Milera is correct in what he is  
30 saying, because Doreen Kartinyeri doesn't deny it.

31 A. I have never worked on this matter with Miss Kartinyeri.  
32 I can see clearly in this context this is a  
33 newspaper report, so we can only assume that it is a  
34 correct reporting, but it appears to be in the context  
35 of something he is alleged to have done and said at a  
36 meeting on May 8, which, if I understand correctly, has  
37 to do with giving details of this in front of  
38 Ngarrindjeri men and women. That is a very different

1 kind of situation.

2 Q. Why, if men weren't permitted to know, and we have had  
3 proceedings whereby men are excluded, and you can only  
4 have a female reporter, and you have got secret  
5 envelopes that the Minister isn't allowed to see, in  
6 other words, totally men are excluded, how can you  
7 conceivably have a meeting where men are told.

8 A. Mr Meyer, I mean, I have heard evidence in this  
9 Commission that that didn't take place for a start, but  
10 I can assure you, that no Ngarrindjeri men has ever  
11 pointed to a map like this and made descriptions of that  
12 sort in my presence, or to me. So I have not been in  
13 an analogous situation to the one reported there, as far  
14 as I am aware.

15 Q. At the end of the day, you don't know whether that is  
16 the sacred secret women's business or not.

17 A. What is alleged there, no I have no direct - I was not  
18 at the Mouth House on May 8, so I really can't help you  
19 on that matter.

20 Q. Or the 9th.

21 A. Or the 9th, whichever is the relevant day. It is the  
22 8th here.

23 Q. You wrote a letter on 9 November, 1993, in relation to  
24 proceeding with the bridge works, didn't you.

25 A. Could we refer to either my numbered documents or the  
26 court document, so I know what letter you are talking  
27 about? I wrote a lot of letters for the department.

28 Q. It is document 10.

29 A. Yes, I have that. That's the letter signed by Neil  
30 Carter that you are referring to.

31 COMSR

32 Q. Am I correct in drawing the inference, from what you  
33 said earlier, that once something that was secret has  
34 been revealed, either to men when it shouldn't be, or  
35 women when it shouldn't be, it has lost that cloak of  
36 secrecy, as it were, I mean, public.

37 A. I think on the face of it that would be  
38 anthropologically - that is not a safe assumption on the

1 face of it. I don't know, in an offhand way, one can  
2 recover a secret. But, it is quite possible in a  
3 culture, for people to basically say, 'You didn't hear  
4 that.' I mean, I think your Honour does this on  
5 occasion in a courtroom. There are ways of culturally  
6 dealing with the withdrawal of privileged information,  
7 or of not making that go beyond that to refer to other  
8 things. But beyond that, I think this is something that  
9 has yet to be canvassed as a topic, to my knowledge,  
10 with senior Aboriginal traditional owners. Its  
11 obviously a question they would rather be concerned  
12 about too, but it is an unusual situation.

13 Q. I don't mean reveal one to the other in the sort of  
14 private session, but reveal to the world at large, as it  
15 were.

16 A. I see what you mean. One could hardly withdraw that. I  
17 think it is obvious that, in this case, for those  
18 Ngarrindjeri people who say 'We have had secrets, we  
19 still have secrets, but the fact that we had secrets is  
20 no longer a secret.' They obviously can't take that  
21 back from the world. And, I have certainly found it a  
22 major concern, as have, I think, other anthropologists  
23 in this sort of situation, in actually coming forth and  
24 saying, 'Well, yes, of course there are these matters.'  
25 I mean, people who have worked in situations I have,  
26 have known that there are secrets where the ethnographic  
27 records, where anthropology done out of books doesn't  
28 know there are secrets, but because of the nature of  
29 that work, be it native title, development assessment,  
30 we're not allowed to go and write up books and articles  
31 about it.

32 Q. I am not talking about that situation. I am talking  
33 about a situation where, the keeper of the secrets, as  
34 it were, has gone public and it has become a matter -

35 A. As culture is shared among the community, if that  
36 custodian - if that person is accepted by that  
37 community or the substantial part of it, where one has a  
38 split community, as having the right to do that, and if



- 1 it is accepted that has been done, then I guess it has  
2 been done.
- 3 XXN
- 4 Q. You got the letter of November 1993 in front of you.  
5 A. I do.
- 6 Q. That letter refers to field inspections carried out by  
7 you, you being the senior archaeologist.  
8 A. That's correct.
- 9 Q. And goes on to detail matters following your field  
10 inspections.  
11 A. It reports on those areas that we were required to go  
12 and report on, so, yes, it is a response to previous  
13 instructions and correspondence.
- 14 Q. At the top of the next page under para.D, there is a  
15 reference to the proposed borrow pit.  
16 A. That's correct.
- 17 Q. And that had been an area or pit which you had been and  
18 examined.  
19 A. Yes, it was at this stage a paddock on Hindmarsh  
20 Island, although at the location indicated that I had  
21 examined with members of the Lower Murray Aboriginal  
22 Heritage Committee.
- 23 Q. It was your view that there were no heritage objections  
24 to the use of that location.  
25 A. That is what it says, yes.  
26 CONTINUED

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- 1 Q. In essence, on 9 November 1993 you, as the senior  
2 archaeologist, were giving this, the construction of the  
3 bridge, the go-ahead.
- 4 A. That's not correct at all. I had absolutely no  
5 authority to do any such thing.
- 6 Q. Shall we go to the next -
- 7 A. I drafted a letter for my divisional director, at his  
8 instruction, along the lines which I was required to  
9 under the act for that purpose, and gave it to him, and  
10 he signed it and forwarded it.
- 11 Q. Are you saying you're the draftsman of this letter of 9  
12 November.
- 13 A. Yes, that is correct.
- 14 Q. The next paragraph says `With respect to the  
15 requirements of the South Australian Aboriginal Heritage  
16 Act, there are no objections to the bridge construction  
17 project proceeding'.
- 18 A. That's what it says.
- 19 Q. In November 1993, as I understand it, you held  
20 qualifications as an archaeologist.
- 21 A. Could you give me the time period again?
- 22 Q. November 1993, when you wrote this letter.
- 23 A. That's true.
- 24 Q. You held qualifications as an archaeologist.
- 25 A. Yes.
- 26 Q. What were your qualifications as an archaeologist.
- 27 A. In academic terms, exactly the same as my qualifications  
28 as an anthropologist, which are detailed in my  
29 curriculum vitae.
- 30 Q. I'm not asking you for an extensive description, but  
31 I've understood from some of the cross-examination that  
32 has taken place here that there is a difference here  
33 between an archaeologist and an anthropologist.
- 34 A. There is if one only studies one of those disciplines,  
35 or studies it in a context that is not academically  
36 related.
- 37 Q. That's why I'm asking you firstly what are your  
38 qualifications as an archaeologist, because the next

## N. DRAPER XXN (MR MEYER)

1 question then is 'What are your qualifications as an  
2 anthropologist'.

3 COMSR: Academic qualifications.

4 XXN

5 Q. Academic, yes.

6 A. I hold a BA (honours) degree from the University of  
7 Queensland 1978 in anthropology, from the Department of  
8 Anthropology and Sociology. My honours thesis was  
9 concerned with anthropology and archaeology and  
10 Aboriginal history, as well as some environmental  
11 matters. I hold a masters degree by course work, an MA  
12 in anthropology, 1983, from the University of New  
13 Mexico, Albuquerque, and I hold a PhD in anthropology  
14 from that institution which was awarded, I think we  
15 said, in 1992. Yes, it was 1992. So I did my  
16 postgraduate studies not in Australia where  
17 traditionally anthropology is often social anthropology  
18 solely, and archaeology is often classical European  
19 prehistoric archaeology or some other field that is  
20 specifically archaeology.

21 Q. Can I interrupt you there, because the point of my  
22 question - and you might be able to quickly agree with  
23 me - is as of November 1993, you considered yourself to  
24 be, appropriately, both an anthropologist and an  
25 archaeologist.

26 A. Well, I think that's sort of your own estimate it.  
27 Obviously the academic community and the government of  
28 South Australia considered me, so I accepted their word,  
29 that I was an archaeologist, anthropologist and  
30 archaeologist in the academic tradition in which I was  
31 trained -

32 Q. I wasn't wanting to underestimate it.

33 A. - through archaeology. The archaeology of  
34 hunter-gatherer societies in particular is a field  
35 within anthropology, within the anthropology of  
36 hunter-gatherers. It's one part of the area of  
37 evidence, just as ethnobotany - the study of the  
38 indigenous use of plants - is a part of the anthropology

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1 of hunter-gatherer. It is possible, if you are trained  
2 that way, to be an anthropologist or an archaeologist,  
3 or to be only one or the other, to be trained that way.

4 Q. If we go back a step in time, you were employed by the  
5 State government in whatever was the relevant department  
6 in 1988.

7 A. Early January 1987.

8 Q. Were you continuously in the employment of the South  
9 Australian Government - let's ignore department names  
10 and things - through to 1993.

11 A. In fact through to early this year, 1995.

12 Q. In 1988, did you consider yourself similarly qualified  
13 to what you've just described for November 1993.

14 A. That's a fact, yes, with the exception, of course, that  
15 my - I was qualified in the same fields, but  
16 academically to a lesser degree, to the degree that I  
17 had not yet completed and turned in my PhD dissertation,  
18 so obviously in 1988 my highest awarded qualification  
19 was an MA, a masters degree, not a PhD, as obviously  
20 that wasn't awarded until 1992.

21 Q. So you were lively to the necessary steps to be taken  
22 and useful to those matters for both archaeology and  
23 anthropology in 1988.

24 A. Yes, certainly.

25 Q. In 1988 you caused, I think, Vanessa Edmonds to be  
26 engaged to carry out an archaeological survey.

27 A. That's not correct, I don't cause, did not in that  
28 position cause particular consultants to be engaged.  
29 Vanessa Edmonds was engaged to do that whether it was by  
30 senior management, by my department or a proponent or  
31 the planning division, I have no idea. I prepared the  
32 brief and, in general, I had oversight of her field  
33 survey and assessed it for the Aboriginal Heritage  
34 Branch.

35 Q. So you were, in essence, the immediate officer-in-charge  
36 of that piece of work.

37 A. To some degree, yes.

38 Q. You were lively at that time to the need for an

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- 1 archaeologist carrying out a survey to watch out for  
2 matters of anthropological importance.
- 3 A. I don't really understand your English usage of the term  
4 'lively' in that way, but certainly I was aware of those  
5 considerations, yes.
- 6 Q. Well, you were always alert to the possibility that  
7 there could be important matters other than just  
8 archaeological matters when you are carrying out a field  
9 survey, aren't you.
- 10 A. Certainly, and by that time, although not proclaimed  
11 until March 1989, the Aboriginal Heritage Act had been  
12 completed, and it directed our attention to that  
13 dimension of significance as well, to cultural  
14 significance to Aboriginal people, and we were operating  
15 basically as if that act had been proclaimed, getting  
16 ready for it to be proclaimed, so yes, the Aboriginal  
17 Heritage Branch generally operated in that regard.
- 18 Q. And when you carry out some field work, whether it be  
19 archaeology or anthropology, you make sure that you keep  
20 alert for the suggestion of anything else that might be  
21 of importance.
- 22 A. Yes, I suppose so.
- 23 Q. If, in fact, you are well organised, you take steps to  
24 facilitate that information being given to you perhaps  
25 by taking somebody of the opposite sex with you; better  
26 still, your husband or wife.
- 27 A. I'm sorry, you've lost me completely now. I thought we  
28 were talking about Vanessa Edmond's archaeological  
29 survey on Hindmarsh Island in 1988?
- 30 Q. We're starting off in 1988 because, you see, I've  
31 listened to your evidence where you have said, 'You've  
32 got to stay alert to the whole range of possibilities',  
33 and you said that in relation to your survey in April,  
34 that it was useful to take your wife Del with you  
35 because that creates the opportunity for people to  
36 convey information to one's spouse, because that's  
37 considered to be an acceptable thing to do, and your  
38 justification for employing your wife was so you could

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1 get that information.

2 OBJECTION Mr Steele objects.

3 MR STEELE: This is a speech, it's not a question.

4 If you can distil questions out of that speech, there  
5 are about 10 of them. It's a subject which I suggest is  
6 unhelpful to you and, in any event, the witness did not  
7 say that he employed his wife because it was helpful for  
8 people to talk to his wife, he said that the department  
9 employed his wife because it was helpful for women to  
10 talk to another woman. I take objection to it.

11 While I'm on my feet, I draw attention to the fact  
12 that it is now nearly 20 to five. This witness has been  
13 in the witness box since 9.30 this morning. He arrived  
14 at the commission to assist at 8 o'clock this morning.

15 That is a hugely long day for any witness.

16 MR MEYER: I don't have any difficulties in  
17 stopping now. I raised with Mr Steele earlier today the  
18 fact that this was going to be a long session for the  
19 witness. I just assumed we would go to five. I have no  
20 objection to stopping.

21 COMSR: Perhaps if we found out from the  
22 witness.

23 MR STEELE: The witness is showing signs of  
24 weariness.

25 COMSR: The questions might be framed a little  
26 more simply.

27 COMSR

28 Q. Are you prepared to go on or not.

29 A. I'm quite happy to go on for another 20 minutes, but I  
30 admit that I thought I was being asked about 10  
31 questions at once, and couldn't be sure which was which  
32 before, yes.

33 Q. The gist of the question, as I understand it, was that  
34 it is always helpful to have someone of the opposite sex  
35 along when you go on a field trip, because that enables  
36 a greater range of information to be obtained in respect  
37 of the whole range of men's and women's matters.

38 A. It's a lovely thought, but rarely achievable. I would

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1 say that what I've described to you with respect to the  
2 1993/1994 Hindmarsh Island Aboriginal Heritage Survey  
3 are a set of procedures and awarenesses that have  
4 evolved; in other words, I wasn't born with all of these  
5 things, and neither have they evolved within the  
6 Australian profession. It's only within the last five  
7 years that it has become common in most States to  
8 involve Aboriginal field workers directly in development  
9 assessment projects involving cultural heritage, for  
10 instance, that it has become common not to assume that  
11 outside of the desert or places like that, that in the  
12 more settled areas of Australia, there are no cultural  
13 traditions and therefore one need not look for them.  
14 Changing those attitudes amongst anthropologists and  
15 archaeologists has been an evolutionary process too. I  
16 guess, if you like, public anthropology and archaeology  
17 have had to lead the way in this because that's where  
18 these things are happening, so whereas there was a  
19 specific situation, as Mr Steele has reinforced, in this  
20 case where there was a measure that I'd learned about, I  
21 guess in 1991, so I wasn't aware of the husband/wife  
22 facility in 1988 for a start. Ms Edmonds, from her own  
23 evidence, was employed by the department to do a survey  
24 - so much land, so much time, so much money. There was  
25 no question of hiring anybody else to do anything else  
26 because that was set in advance.

27 Q. No-one has suggested that.

28 A. I may not have answered the question, but I have dealt  
29 with it as far as I understand it.

30 XXN

31 Q. Let's progress on a little. It's not a new notion of  
32 the last few years for an anthropologist or an  
33 archaeologist to be alert to a whole range of  
34 possibilities that might come up outside of merely the  
35 site survey, or whatever they are traversing, is it.

36 A. It varies from place to place, survey to survey. Not  
37 entirely, no.

38 Q. Let's stick with the subject matter of Hindmarsh Island.

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1 That requirement hasn't changed over the last five or  
2 six years, has it.

3 A. Yes, it has. In fact you will note that Aboriginal  
4 field workers would today, and in recent times, would be  
5 basically hired as part of the cultural heritage survey  
6 and assessment process. That was not the case in 1988.

7 Q. I'm talking about being alert to the possibilities that  
8 might arise.

9 A. Sorry, could you be more specific please? We always do  
10 try and do our best, but I'm not sure what you want from  
11 me beyond that.

12 CONTINUED



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- 1 Q. At p.4,889 of the evidence, you were asked this question  
2 by the Commissioner just before lunch `You are saying  
3 that prudence dictates that you bear in mind that there  
4 is a whole range of possibilities that could raise their  
5 heads in one way or another when' - and you interrupted  
6 and said `That is certainly very correct, yes'. The  
7 next question was `I mean, without you knowing  
8 specifically which one of them it might be, you are on  
9 the alert for something to happen. Is that the  
10 situation'. And you went on with a 15 line answer `To  
11 the degree that one can actually have an idea of what  
12 the range of possibilities might be, you try and prepare  
13 for that possibility. So if, for instance, women's  
14 business comes up in the course of a particular piece of  
15 field work' and it goes on.
- 16 MR STEELE: It does go on. I rise again. This is  
17 really putting motherhood statements to this witness.  
18 He has been asked questions about this. Is my friend  
19 seriously suggesting that he is going to cross-examine  
20 him on that line? Is he going to say, you are wrong,  
21 you do not have to be alert? If he is not going to ask  
22 that, what is the reason for asking this again?
- 23 MR MEYER: When we get to December 1989 we employed  
24 Edmonds to do an archaeological study and Lucas to do an  
25 anthropological study, with instructions for Edmonds not  
26 to bother to talk to Aboriginal persons, and that's  
27 where we are getting to.
- 28 WITNESS: There are four errors of fact there that  
29 I am aware of in what you have said already.
- 30 MR MEYER: We will traverse those areas, if it is  
31 convenient, tomorrow morning, because that's where I am  
32 going.
- 33 COMSR: I understood the witness is prepared to  
34 go on.
- 35 WITNESS: I am also happy to stop.
- 36 COMSR: You are equally as happy to stop?
- 37 WITNESS: That's right.
- 38 COMSR: If you are unable to go on, then we will

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1 adjourn, but I understood that you are under some  
2 pressure to return to -

3 MR MEYER: We will not finish by tomorrow night. I  
4 will, but I doubt whether everybody else will. I have  
5 got 40 references to put out of Exhibit 197.

6 COMSR: Can they be put directly to him?

7 MR MEYER: I will do my best. I think the  
8 questions are shorter than the answers.

9 COMSR: I don't know if it is possible to put  
10 questions that just invite a simple yes or no answer in  
11 the field of anthropology. In view of the fact that you  
12 have had an extremely long day, Dr Draper, we will  
13 adjourn now.

14 MR SMITH: There is a small matter that if we do it  
15 now we will not forget. At p.2,704 of the transcript  
16 there was tendered 3 volumes of newspaper clippings and  
17 they were marked Exhibit 170A, B and C. They were  
18 originals and they were tendered on the basis that the  
19 commission would copy them and replace the exhibits.  
20 Can I recover the originals of those three volumes and  
21 replace them with the copies.

22 COMSR: Yes, certainly.

23 ADJOURNED 4.42 P.M. TO FRIDAY, 27 OCTOBER 1995 AT 9.30 A.M.

