

1 COMMISSIONER STEVENS  
2  
3 HINDMARSH ISLAND BRIDGE ROYAL COMMISSION  
4  
5 MONDAY, 27 NOVEMBER 1995  
6  
7 RESUMING 9.05 A.M.  
8  
9 MR SMITH: On the last day of the hearing, you will  
10 recall that Exhibit 298 was a very rough genealogy that  
11 was tendered on the basis that that could be replaced by  
12 a neater typewritten chart. I do that now. I ask that  
13 you receive this genealogy chart to replace Exhibit 298,  
14 which is a very rough one. I should warn counsel that  
15 it's exactly the same - well, it's not exactly the same.  
16 There are some dates of death and there are some family  
17 connections that are not exactly as in the rough  
18 version, but counsel have been sent a small copy of this  
19 final exhibit.  
20 COMSR: There is no problem with that as far as  
21 counsel are concerned?  
22 MR SMITH: No. I tender that genealogy chart.  
23 COMSR: That will be in place of Exhibit 298.  
24 MR SMITH: There is no strict programme for today.  
25 You are receiving addresses today. Because a sprinkling  
26 of counsel have various commitments throughout the day,  
27 we didn't inflict a strict programme on everybody. This  
28 morning you will hear from David Meyer, Francis Nelson  
29 and probably Michael Steele. Then, towards lunch time,  
30 Michael Abbott. In the afternoon Sid Tilmouth and  
31 Maureen Pyke. Darcy Stratford and David Lovell - Darcy  
32 Stratford may or may not address, you depending on what  
33 is said by others.  
34 COMSR: You are speaking for him that he may or  
35 may not?  
36 MR SMITH: That is his position when he spoke to me  
37 last week, he may or may not. At the moment, he is  
38 probably content with his address, other than what was

1 said over the weekend about the Mouth House meeting. Mr  
2 Lovell tells me he will be a very short time. That's  
3 the rough programme for today.

4 COMSR: Who is going to commence?

5 MR MEYER: I apparently have been elected to.

6 MS ESZENYI: Before Mr Meyer commences, I am asked by  
7 my client to make a preliminary objection. If you have  
8 had the opportunity of seeing Mr Meyer's written  
9 submission, you will see that he seeks to put before you  
10 an article written by my client in the August and  
11 September 1995 edition of the Current Affairs Bulletin.  
12 My submission is that to put this argument before you in  
13 this way at the end of the evidence and without giving  
14 Dr Fergie the opportunity of commenting upon it, is  
15 unfair. That article was in the hands of Mr Meyer and  
16 available for cross-examination of Dr Fergie throughout  
17 her lengthy evidence. I suspect that Mr Meyer had  
18 forgotten to put this article to Dr Fergie. My  
19 submission is that he should not be permitted to make up  
20 for this forgetfulness in this way and it's an improper  
21 way of putting this document before you.

22 MR MEYER: My recollection is that we reached it  
23 and it was a matter that came up for discussion on a  
24 number of occasions and we were going along with the  
25 position we reached at the very end in relation to  
26 published material like that - and it was published and  
27 in the public arena and there to be commented on.

28 COMSR: What weight can be made of it might well  
29 be another thing.

30 MR MEYER: As for the suggestion that it takes Dr  
31 Fergie by surprise, she's the author. You can never be  
32 taken by surprise about things that you have written  
33 yourself, unless you have forgotten all about it.

34 MS ESZENYI: I didn't say she would be taken by  
35 surprise but she will be deprived deliberately of  
36 commenting on any inferences which Mr Meyer may seek to  
37 draw from the publication of that.

38 MR MEYER: It's not deliberate. If it had occurred

1 to me, I would have done it at the time.  
2 COMSR: I have read counsel's submissions as it  
3 happens. Perhaps I should point out that I've read all  
4 the written submissions and I don't need to have counsel  
5 read them to me and that counsel will be invited to  
6 speak for a maximum of one hour. Naturally, there will  
7 be no interruptions during the course of an address by  
8 other counsel. That will effectively eat into the time  
9 that is available to counsel. There will be no right of  
10 reply and I would ask that counsel need not reveal  
11 detail of any material that is subject to  
12 confidentiality restrictions. That material doesn't  
13 need to be specifically detailed to me in the course of  
14 an address. In particular, it would assist me if the  
15 oral submissions concentrated, to a large extent, on the  
16 evidence of the persons for whom counsel appear, or  
17 evidence which relates specifically to them. I note the  
18 time.

## ADDRESS (MR MEYER)

1 MR MEYER: I thought I would look at the start of  
2 the round and I have no doubt that I will, in fact,  
3 finish before quarter past 10. Your Honour has the  
4 written submissions that have been prepared. Whilst it  
5 might be slightly unusual to do so, I acknowledge at the  
6 outset the assistance of Mr Palyga who has done the bulk  
7 of the drafting work in relation to these written  
8 submissions. The way that the submissions are  
9 constructed is that in chapter one, which goes from pp.2  
10 to 6, there is an executive summary and then for there  
11 are the numbered paragraphs which will be found. From  
12 the bottom of p.4 under the heading 'Key facts', you  
13 have got para.1 through to 10 on the bottom of p.5. You  
14 will then find that those headings, for example,  
15 numbered 1, 'The fact that women's business is  
16 anthropologically insupportable', is a heading on p.6.  
17 If you are looking for any matter in these submissions,  
18 if you go to chapter one and in particular to p.4 and go  
19 down the list at pp.4 and 5, you will find then in the  
20 subsequent pages the discussion on each of the items  
21 that are set out. That makes easy reference for any  
22 particular matter that you may wish to go to.

23 Some time during the 1970s the Chapmans owned land  
24 at Hindmarsh Island and they constructed a marina. As  
25 you have heard, they made a decision to further develop  
26 that land. Part of that development was the  
27 sub-division of land for residential purposes and  
28 offering the land for sale. The Government required, as  
29 a result of that decision to progress to develop to a  
30 development of that nature, if it was approved, a bridge  
31 would need to be constructed from Hindmarsh Island and  
32 Goolwa, between Hindmarsh Island and Goolwa.

33 The Chapmans didn't originally want to have a  
34 bridge, that wasn't part of their original concept.  
35 They would have been quite happy to proceed with the  
36 development with some modification of the ferry service.  
37 But a bridge was considered by the relevant Government  
38 authorities to be a requirement.

## ADDRESS (MR MEYER)

1 An application was made, as you have been told and  
2 which is in the evidence before you in Exhibit 167, the  
3 Hook papers, and Exhibit 192 was an application which  
4 was made to the relevant authorities and a number of  
5 archaeological studies were carried out and an  
6 anthropological study was done by Mr Lucas. Nobody of  
7 those dates elicited any information at all which may  
8 have suggested that the bridge shouldn't have been  
9 built.

10 An environmental impact statement was prepared and  
11 was put on public display. During the period that the  
12 draft environmental impact statement was on public  
13 display there was a public meeting in Goolwa; not unlike  
14 the public meeting that took place in October 1993 at  
15 Centenary Hall when members of the public could come  
16 along and make comments, favourable or unfavourable, or  
17 raise any matter which was relevant to the construction  
18 of this bridge.

19 Tom Chapman, as you have heard, was referred to the  
20 Department of Aboriginal Affairs to consult with Henry  
21 and Jean Rankine. The department told him who to go and  
22 see. He followed that direction and, in fact, did  
23 consult with both Henry and Jean Rankine.

24 Mr Tilmouth, as you will have read in his written  
25 submissions, has levelled criticism in relation to that  
26 consultation and you will read that he did so in  
27 cross-examination of one of the witnesses suggesting  
28 that half an hour in a park at Murray Bridge was not a  
29 proper method of consultation. He put it at blythly as  
30 he was able in the course of his cross-examination.

31 My submission is that that criticism is totally  
32 without foundation because: First, Tom Chapman was  
33 advised whom he should consult with; and, secondly,  
34 Henry Rankine obviously held a very influential position  
35 in the community. I'm happy to adopt Mr Tilmouth's  
36 explanation at p.75 of his submissions where he says:  
37 'He is a senior, well represented Ngarrindjeri leader, a  
38 long-time chairperson of the Point McLeay Council.'

## ADDRESS (MR MEYER)

1 Who else would be suggested to be an appropriate person  
2 to speak to?

3 Mr Tilmouth goes on to say:

4 `Along with his description of George Trevorrow and Tom  
5 Trevorrow, that their dedication to maintenance of their  
6 culture and their people's beliefs should not be  
7 doubted.'

8 If that is so, one would have expected Henry to say to  
9 Tom Chapman, when he went to see him about this  
10 proposal, that it was no good for Tom to speak to him as  
11 he did, but, a much more formal approach would need to  
12 be undertaken.

13 If someone came along and said `I will build  
14 something in the Hills Face Zone, is that okay? The  
15 reaction is `I don't think so, you had better bring me  
16 some more formal application of what is required to be  
17 done'. Henry didn't do that. Henry has the knowledge.

18 Thirdly, Wendy Chapman and Nadia McLaren spoke to  
19 Henry and Jean Rankine. Again, there was no warning or  
20 suggestion of there being any anthropological-type  
21 problem with the construction of a bridge. It cannot be  
22 suggested that Jean Rankine was unable to raise that  
23 issue because it involved secret women's business.  
24 George Trevorrow was able to approach Dr Draper in April  
25 1994 and say that there was a matter that the women  
26 wished to discuss. Why couldn't Jean Rankine have done  
27 that? If, in fact, there was any such business, it's  
28 reasonable to suppose that a warning could have been  
29 made more easily and given to Wendy Chapman and Nadia  
30 McLaren, both being women, than it may have been to Tom  
31 Chapman when he was speaking to Henry in the presence of  
32 Jean. That, as I said, not a word was said.

33 As I mentioned earlier, the EIS was prepared and was  
34 lodged and forwarded to the appropriate bodies. A copy,  
35 in fact, was sent to the Point McLeay Community Council  
36 and to the Ngarrindjeri Lands and Progress Association.  
37 It should be noted that Dr Draper conceded that the  
38 consultation carried out by the Chapmans was proper -

## ADDRESS (MR MEYER)

1 and we discussed that at p.36 of the written submissions  
2 which I won't take you to.

3 As a result of the EIS, a letter was sent by the  
4 Department of Aboriginal Affairs to Henry Rankine in  
5 respect of the application for approval. Henry agreed  
6 in his evidence that he had received an invitation to  
7 bring the matter to the attention of anybody who might  
8 have an interest in the matter and to provide the names  
9 of any person, or persons, who should be consulted in  
10 the department.

11 You will recall that the Point McLeay Council, I  
12 think I mentioned it later, the Point McLeay Council and  
13 the Ngarrindjeri Lands and Progress Association both  
14 have women on them and always have had and this  
15 invitation was sent to Henry Rankine and he doesn't  
16 reply to the letter. Presumably that is because he did  
17 not consider there to be any problem with the  
18 construction of the bridge. He has talked to Tom  
19 Trevorrow and now gets a direct invitation to raise  
20 issues, and he doesn't reply. The consultation that  
21 took place was in accordance with the methods which Tom  
22 Trevorrow suggested should be adopted.

23 I wish to take your Honour briefly to some of the  
24 evidence at pp.6115 and 6116. It was in my  
25 cross-examination where I asked:

26 `If I want to know whether I should consult with  
27 somebody ... me the answer.'

28 Further, on p.116 I asked:

29 `You have named them as people ... with it. A. Yes.'

30 Consider what happened in this matter. The papers were  
31 sent to Henry Rankine and to the Ngarrindjeri Lands and  
32 Progress Association. Both of them had been members.

33 The Aboriginal and Torres Strait Islander Heritage  
34 Act provides for an advertisement to be placed in the  
35 appropriate newspaper to give notice of an application  
36 that may have been made by a group of Aboriginal persons  
37 pursuant to that Act. Such an application may well  
38 affect other Aboriginal persons as well as

## ADDRESS (MR MEYER)

1 non-Aboriginal persons in the community. A notice in  
2 the appropriate newspaper is deemed by the Federal  
3 Government to be appropriate notice in consultation.  
4 Any person who wants to send in a submission is then  
5 able to do so and that is the process that was adopted  
6 in this matter back before Mr Tickner made his  
7 submissions. That was the process that O'Loughlin J  
8 found in fact was wrongly carried out. But all that is  
9 required under that Act is a notice in the newspaper.

10 What is the difference then between that situation  
11 and this? It's not suggested that any different  
12 procedure should be adopted under the Aboriginal and  
13 Torres Strait Islander Heritage Act for notice to be  
14 given to Aboriginal persons. It's not suggested that  
15 any special steps should be taken to give notice to any  
16 particularly interested parties. In this matter, all of  
17 the relevant information was sent to the bodies that  
18 Henry and Tom Trevorrow considered to be relevant. They  
19 didn't bother to reply to it. George's excuse, you will  
20 recall, was there was no meeting of the Tendi suggested  
21 by Mr Lucas because of lack of funds. You will recall  
22 that he said that they had the buses, but they didn't  
23 have the money to put petrol in the buses to get people  
24 to the meetings. That excuse is proffered in the face  
25 of the Department of Aboriginal Affairs paying \$658.58  
26 as mileage for driving Doreen Kartinyeri from Port  
27 Germein to Goolwa and back. You will find that document  
28 in the DOSAA documents, Exhibit 197.

29 You will recall Mr Smith cross-examining George  
30 Trevorrow about it down at Meningie. George  
31 acknowledged that the onus was, in fact, on them to  
32 organise a meeting of the Tendi, not the other way  
33 around. When he was pressed about his failure to do  
34 that, his excuse was simply 'Didn't have money to put  
35 petrol in the bus'. You will dismiss that excuse as  
36 being something thought of on the spot to try and  
37 explain why no action was taken.

38 If a non-Aboriginal person came along and said they



## ADDRESS (MR MEYER)

1 did not bother to read the information that was send to  
2 them about an application but now wanted to contest the  
3 approval that had been granted, and to contest it some  
4 years later, they would be bundled out of court very  
5 quickly. Your Honour's previous experience in the  
6 District Court and more particularly in the Planning  
7 Appeal Tribunal, you would not have accepted very  
8 readily someone who came along after a development had  
9 be validly approved and after money had be expended and  
10 said 'No, I don't want the planning approval to be  
11 granted for the application. The facts that I'm two  
12 years out of time is not relevant'. You would have  
13 bundled them out very swiftly. In that circumstance,  
14 your Honour may find special reasons in that instance to  
15 grant costs.

16 Mr Tilmouth says at p.75 of his submissions that his  
17 clients did not become aware that a bridge was to be  
18 constructed until mid-1993. That submission is just  
19 plainly wrong. It's wrong on the evidence of his own  
20 clients. Both George and Tom Trevorow concede that it  
21 was a matter for discussion for some time in the  
22 Aboriginal community. Veronica Brodie said quite  
23 plainly that it was discussed as far back as 1991; i.e.,  
24 a year before her sister died. The simple fact is that  
25 the consultation did take place in the Aboriginal  
26 communities and no objection was raised to the  
27 construction of the bridge.

28 Mr Smith, at p.9 of his submissions, poses the  
29 question as to why there was a belated appearance of the  
30 Aboriginal opposition in 1993. I think the answer to  
31 that is quite simple. The Conservation Council had  
32 originally not opposed the development on Hindmarsh  
33 Island as set out in the Environmental Impact Statement.  
34 It lodged a response to the EIS. That response, in  
35 fact, appraised the submission that had been prepared by  
36 the Chapmans and did not oppose the construction of the  
37 bridge. That is in the Hook documents, Exhibit 192,  
38 document 25 in Exhibit 192. I quote from that what

## ADDRESS (MR MEYER)

1 was said at the outset of their response to the EIS:  
2 `The proposal has been thoughtfully prepared with  
3 considerable attention to environmental impact ...  
4 particularly commended.'

5 Doesn't sound like the Conservation Council that you  
6 hear about in 1993, 1994. That, in fact, was their  
7 position when this proposal started.

8 Private persons in the Goolwa/Hindmarsh Island area  
9 opposed the construction of the bridge and had done so  
10 for some time. Again, if you look in Exhibit 192, you  
11 will see a submission from Richard Owen and Anne Lucas  
12 where they used words like there was an undisguised  
13 personal interest in being able to maintain the island  
14 for their enjoyment. They are not their exact words,  
15 but that is a fair paraphrase of how I can remember  
16 that. That is the very first paragraph of the  
17 submission they lodged in respect of the EIS.

18 An association known as the Friends of Goolwa and  
19 Kumarangk was formed. I think it was originally the  
20 Friends of Goolwa and Hindmarsh Island until a  
21 politically appropriate name change was made, and then  
22 there was an outfit called the Kumarangk Coalition. It  
23 became apparent that the bridge would not be stopped on  
24 the grounds they were putting forward. As a result of  
25 that, Aboriginals were drafted to participate by those  
26 people and deliberately cultivated. Doug Milera says  
27 they were manipulated by people who used their heritage.  
28 That is one of the real disasters of this matter, that  
29 there were some people who used Aboriginal heritage for  
30 their own private purposes and benefit without any  
31 general regard for Aboriginal heritage itself. Those  
32 people are those who make up the Friends of Goolwa and  
33 Hindmarsh Island, the CFMEU and the Conservation  
34 Council.

35 The Conservation Council is hypocritical in their  
36 actions for the switch they made when they first  
37 responded to the EIS and its shift in late 1993 and  
38 early 1994. It should be noted that the vice president

## ADDRESS (MR MEYER)

1 of the Conservation Council, Margaret Bolsters chaired  
2 the October meeting at Centennial Hall where there was  
3 opposition to the bridge. One only has to listen to the  
4 tape to know that they read out the submission in  
5 response to the EIS at the outset of that public  
6 meeting.

7 The next explanation had to be found as to why there  
8 hadn't been any opposition before. The answer that was  
9 found was to deny, contrary to the facts, that there had  
10 be any consultation and, therefore, was quite proper for  
11 them to be in opposition now based upon matters that  
12 were important to the Aboriginal community. The no  
13 consultation argument was put forward at that October  
14 meeting at the Centenary Hall, but had be disproved by  
15 the evidence of Mr Tilmouth's clients Messrs Rankine  
16 Trevorrow and Trevorrow.

17 Mr Smith, at p.9 of his submissions, then posed a  
18 second and following question: Why was there a failure  
19 to mention women's business? In my submission, the  
20 answer to that is also simple: At that time it didn't  
21 exist. By November, there had been investigations by Dr  
22 Draper and approval given to the digging of the borrow  
23 pit and proceed with the construction of the bridge.  
24 That permission was granted after inspections in the  
25 area by George Trevorrow and Doug Milera. Bear in mind  
26 that at the outset of the Commission, it wasn't clear  
27 that the knowledge about secret women's business was  
28 common, we know by the end that these men say that this  
29 was something they had known about for years. That  
30 means that at the time of this inspection, they knew  
31 about that and at least two people, one representing the  
32 Heritage Committee and one representing the Ngarrindjeri  
33 Lands and Progress Association, has been consulted.  
34 They didn't oppose the borrow pit and they didn't  
35 mention or draw to the attention of Dr Draper anything  
36 that could suggest that there was some other reason why  
37 the bridge could not proceed.

38 Why didn't the women say something at that time?

## ADDRESS (MR MEYER)

1 The argument that disclosure wouldn't be made because  
2 they didn't realise that the bridge would be built  
3 doesn't fit by that time, because clearly Dr Draper was  
4 saying it was okay for a bridge to be constructed.  
5 Surely Dr Draper wasn't telling one thing to the  
6 Government and another thing to the Aboriginal people.  
7 That has never been suggested. There was opposition  
8 based on archaeological sites, but there was nothing  
9 else.

10 In John Campbell's evidence, he said there was a  
11 meeting of the Lower Murray Aboriginal Heritage  
12 Committee on 1 November 1993. Right at the moment, as  
13 you will recall, the 6 November letter that Dr Draper at  
14 least drafts in the department and sends to Connell  
15 Wagners, the engineers, in relation to the borrow pit  
16 and proceedings, that is dated 6 November.

17 On 1 November, there is a meeting at which women  
18 elders were present at the Lower Murray Aboriginal  
19 Heritage Committee. John Campbell said the bridge was  
20 discussed, but there was no mention of women's business.  
21 At that stage, the commencement of the construction of  
22 the bridge was absolutely inevitable. If women's  
23 business existed then, why wasn't it raised at that  
24 time? The excuse 'We are not going to raise it until  
25 the last moment' now doesn't work because we were at the  
26 last moment working on its commencement. The answer is  
27 simple: Women's business didn't exist.

28 CONTINUED

## ADDRESS (MR MEYER)

1 Note that even after the bridge was given approval  
2 for a go ahead in November by the letter of 6 November,  
3 the Friends of Goolwa and Kumarangk continued, we say,  
4 to cultivate the Aboriginal community. They paid for  
5 George Trevorow, Doug Milera and Richard Owen to go to  
6 Canberra, I think, in February 1994 to see Minister  
7 Tickner. We say they continued to massage and  
8 manipulate the community.

9 Beyond that, at various meetings of groups opposed  
10 to the bridge, and you will recall the meetings at Rocky  
11 Marshall's, a white person or white persons - who George  
12 Trevorow, Tom Trevorow or the other witnesses we  
13 cross-examined about it were now no longer able to name  
14 or described, or, at least, if they could, they weren't  
15 prepared to do so - inflamed the situation by referring  
16 to truck loads of bones, boot loads of bones being  
17 raffled at the hotel, super highway being built through  
18 to the South-East. None of those matters had any  
19 foundation whatsoever.

20 In fact, you will see in the papers prepared by Dr  
21 Draper that the work done by the developers in the  
22 development of the marina had been sensitive and proper.  
23 Totally contrary to the inflammatory remarks that were  
24 being put forward by the Friends of Goolwa and  
25 Kumarangk.

26 Subsequently, it said that George Trevorow handed  
27 to Dr Draper some paper relating to the importance of  
28 the coastal areas. That was meant to be after the  
29 December consultation, or early in January 1994. But  
30 what has that got to do with the alleged secret sacred  
31 women's business? We say absolutely nothing.

32 Tom Trevorow says that places where rivers join the  
33 ocean are always important. It has been known for  
34 years. It has got nothing to do with women's business,  
35 he said, it is not secret. You will recall that he made  
36 comments like: cities are often built where rivers join  
37 the ocean and it has always been important places for  
38 all manner of peoples. To suggest that has anything to

## ADDRESS (MR MEYER)

1 do with the existence of secret sacred women's business  
2 is to just drag a red herring into the whole  
3 proceedings.

4 The matter was then proceeding along on the basis of  
5 archaeological investigations. Women's business arises  
6 in late March, early April. Why then and not earlier?  
7 What had changed in relation to the situation that  
8 existed. One change was that there had been an  
9 injunction granted in the Federal Court by O'Loughlin J  
10 on about 29 March or thereabouts. That was one of the  
11 very last documents tendered, you will recall, which  
12 eliminated, in essence, any further opposition by the  
13 Conservation Council, the CFMEU and the Friends of  
14 Goolwa and Kumarangk, because those associations and the  
15 office bearers of those associations were named in that  
16 injunction.

17 That only left then the Aboriginal community. It is  
18 incorrect to say that Doreen Kartinyeri found out in  
19 January and then went berserk about it. She didn't do  
20 anything until April when she was, we say, drafted by  
21 Victor Wilson to assist. Deane Fergie suggests in the  
22 'Adelaidian', Exhibit 67 at p.6, that she arrived and  
23 went berserk in January, but that just does not fit with  
24 the factual basis, as you know it.

25 Veronica Brodie says the construction of the bridge  
26 had been the subject of general discussion, as I said  
27 earlier, for at least since 1991. It is false to  
28 suggest that the women didn't know that a bridge was  
29 going to be constructed. We say it is just too much of  
30 a coincidence that the issue of women's business arose  
31 after Lindy Warrell's visit to Camp Coorong for that  
32 coincidence to be ignored.

33 As Mr Smith says at p.12 of his submissions, after  
34 her visit, women's business became the focal issue. It  
35 suddenly arrives on the scene. It is both self-serving  
36 and naive, we say, to suggest that women would not  
37 accept a suggestion of women's business from men. If  
38 the aim was to stop the bridge, and the fight is a

## ADDRESS (MR MEYER)

1 political fight, then it is obvious, in my submission,  
2 that any suggestion that might lead to success in that  
3 fight would be adopted.

4 Clearly it was a political fight. It is exemplified  
5 by Sandra Saunders ringing up Dorothy Wilson. You will  
6 recall Dorothy's evidence. She said that she was  
7 telephoned by Doreen Kartinyeri after she had been on  
8 the TV or in the newspaper or wherever, and had a  
9 discussion about her points of view.

10 An hour later, she is rung up by Sandra Saunders.  
11 She says either that she has never been rung by Sandra  
12 before or, if she had, it was a very infrequent event,  
13 but on this occasion, half an hour after Doreen has  
14 talked to her, Sandra rings up and the evidence is she  
15 uses words like 'You don't want to forget all that has  
16 happened to Aboriginal people over the last 200 years'.  
17 If that isn't a political statement I will go leap in  
18 terms of what this fight is about.

19 Dr Draper confirms that he was told by an adviser to  
20 Mr Tickner that evidence of a more cultural nature would  
21 be required if there was any likelihood or possibility  
22 of Mr Tickner making an order pursuant to the Heritage  
23 Act.

24 That leads then to an evaluation of what amounted to  
25 final steps in the process: The meetings that occurred  
26 in April and early May; the development of the notions  
27 of women's business; and the final step in the process,  
28 the drafting of the Fergie report.

29 The Fergie report is obviously of huge importance  
30 because it is on the basis of that report that the  
31 crucial findings were made. We say that various options  
32 or versions of women's business were developed during  
33 April. One could say that the options were tried out  
34 and found wanting. The only conclusion that is open to  
35 you on the evidence is that at the time that Deane  
36 Fergie met with the women at Graham's Castle on 19 June  
37 1994, only one person purported to know the secret  
38 sacred women's business, and that's Doreen Kartinyeri.

## ADDRESS (MR MEYER)

1 All of the evidence, in fact, pushes you in that  
2 direction: The statements by Doreen that there was  
3 no-one who could verify it, Sandra Saunders looking for  
4 verification, matters of that nature.

5 At that time, men were supposed not to know that  
6 such business even existed. You will recall the  
7 evidence of Dr Clarke where there was some discussions  
8 to the effect of there being secret secret sacred  
9 women's business, and the exploration of the proposition  
10 that there could be secret business, the very existence  
11 of which was kept secret. That proposition was explored  
12 for quite a while, as to whether you could have a secret  
13 that no-one else knew about.

14 The subsequent disclosure of knowledge by the  
15 Aboriginal community is, in fact, very disconcerting and  
16 we say impossible to reconcile with the stance it  
17 originally adopted, and will be one of the matters which  
18 influences you, we say, in coming to the conclusion this  
19 is a fabrication, because of the fact that there is a  
20 genuinely held belief there does not need to be any of  
21 these inconsistencies. In fact, in any truthful version  
22 of any set of facts there are no inconsistencies. There  
23 are always explanations. It is often said the truth  
24 will win out, however unlikely.

25 The position adopted by Veronica Brodie at the end  
26 of her evidence, in fact, effectively demolished the  
27 evidence of Betty Fisher. The statement of Betty Fisher  
28 that she could not even mention anything about women's  
29 business because it was so secret was just destroyed by  
30 Veronica Brodie, who quite happily said that all manner  
31 of things were public, 'otherwise' she said - in a very  
32 serious answer but given somewhat flippantly by her -  
33 'why would I have ever read it on Channel 2 if it hadn't  
34 already been something that was publicly known?' That  
35 just destroys all of this 'Can't tell, can't speak,  
36 can't disclose' that Betty Fisher would have you  
37 believe.



## ADDRESS (MR MEYER)

1 Consider also, we say, the requirement not to  
2 publicly display any pictures of the Murray Mouth  
3 because of the secrecy and offensiveness of such  
4 pictures. At one stage during the Royal Commission we  
5 had the exhibits of the gentleman, Mr Cooper, who came  
6 from the E&WS turned around and facing the wall.

7 Then we have evidence from, I think, Vena Gollan  
8 from the Catholic Education Centre out at Enfield, or  
9 wherever, and the two ladies - Shirley Peasley and  
10 someone else - come along and demand that the photograph  
11 of the Murray Mouth be taken off the wall. Then you  
12 discover there is one on the wall down at Camp Coorong.  
13 You ask Tom Trevorror about it, and he says it is not a  
14 problem, and we have a video that has aerial shots of  
15 the Murray Mouth. That sort of inconsistency, we say,  
16 is a demonstrating factor in the fabrication of this  
17 whole matter.

18 But to return to 19 June, Doreen Kartinyeri is the  
19 only one who knows of secret sacred women's business and  
20 nobody else is able to confirm it or verify it. Dr  
21 Fergie conceded in cross-examination that she didn't  
22 discuss the matter with anybody else, and that the  
23 information disclosed at Graham's Castle is only a  
24 fragment of the full picture, a drop in the bucket -  
25 better still, a drop in the Murray.

26 Who provides the full picture? Only one person,  
27 Doreen Kartinyeri. Does anyone else verify that? The  
28 answer to that is no. Can Doreen Kartinyeri articulate  
29 what she is talking about to Dr Fergie? Again, the  
30 answer is no. She needs Dr Fergie to help her express  
31 what Doreen says is the secret sacred women's business.  
32 So that a political saleable report can be prepared - I  
33 use the words of Dr Fergie.

34 Doreen Kartinyeri has been quite inconsistent since  
35 the Fergie report was written. I do not wish to repeat  
36 the matters that are referred to in Mr Abbott's written  
37 submission. He deals with those issues of  
38 inconsistency. Equally, I will not traverse any of the

## ADDRESS (MR MEYER)

1 matters that he refers to in respect of the evidence of  
2 the women that he represents. There is no point in  
3 duplications in relation to submissions. I adopt them  
4 and I support them.

5 Suffice it for me to say, in my submission, you will  
6 accept the summary that Mr Easdown adopted when I  
7 cross-examined him, that, as a group of women, they were  
8 calm, cultured and articulate. I would add that they  
9 are clearly credit worthy and patently honest. What  
10 have they got to gain by coming here and putting up with  
11 the abuse and attack and everything else they have had  
12 to withstand to assist this commission?

13 Doreen Kartinyeri has gone from the position of  
14 great secrecy that existed at the time when Dr Fergie  
15 wrote her report, to the disclosures that unfolded  
16 during the Royal Commission. As an aside, I would say  
17 that I would dearly have loved to have the evidence that  
18 has been put forward in this Royal Commission when we  
19 were doing the Federal Court proceedings. One could  
20 have had a very different outcome.

21 Consider the evidence of Dulcie Wilson. Her  
22 evidence demonstrates that Doreen Kartinyeri was willing  
23 to tell lies to Dulcie, a woman she has known for most  
24 of her life, the wife of a man who was very highly  
25 respected in the Ngarrindjeri community. What she told  
26 Dulcie was the details of the information contained in  
27 the secret envelopes is quite contrary to what Dr Fergie  
28 says is written in those secret envelopes. Either  
29 Doreen is not telling the truth or Dr Fergie has written  
30 down something other than what Doreen Kartinyeri thinks  
31 she has told her. Why not tell the truth?

32 Consider the report of Dr Fergie. Can I take you to  
33 the written submissions where I have set out the  
34 comments about Dr Fergie's report. At point 7 on p.20 I  
35 say 'This point needs to be emphasized'. I am  
36 referring to, as you will see, Doreen Kartinyeri stating  
37 she was the only woman who knew the secret sacred  
38 women's business. 'This point needs to be emphasized'.

## ADDRESS (MR MEYER)

1       Whilst the Saunders report insinuates that more than  
2       one woman knew, the Fergie report goes further. Its  
3       language is incapable of any interpretation other than  
4       that Dr Fergie talked to more than one woman about the  
5       secret sacred women's business. For example, she says  
6       `My informants believe that the construction of the  
7       bridge' - I leave out the rest of the quotation. `My  
8       informants believe'. She uses the plural.

9       She says in the next quotation `It became evident  
10       from my questioning of women about why the linking of  
11       the bridge would' - what questioning of women? She  
12       didn't question any women at all. She only talked to  
13       one person. Show says at the end of that quotation  
14       `Their responses are insightful'. What responses?  
15       Again, there aren't multiple responses from various  
16       women to Dr Fergie.

17       At the top of p.21, referring to p.19 of the report  
18       `All insist that there is a fundamental difference. All  
19       made reference to the fact'. That would lead any  
20       ordinary reader to believe that Deane Fergie has talked  
21       to a significant number of people, and that is just not  
22       true. As she eventually conceded, she only talked to  
23       one, and to write her report in that way is just plain  
24       dishonest.

25       She follows up on p.21 `Secondly, all of those with  
26       whom I explored this' - all of whom that I explored she  
27       question with? Again, Dr Fergie didn't explore the  
28       question with anybody else but one person, and to write  
29       a report which suggests that she has spoken with  
30       numerous people is, in my submission, blatantly false.

31       The only conclusion that can be drawn is that Dr  
32       Fergie was quite deliberately and yet quite wrongly  
33       attempting to give the impression to her readers that  
34       the belief of which she was speaking was widely held and  
35       verified by others. In my submission, you are led to  
36       the conclusion that Dr Fergie was willing to  
37       deliberately mislead in her report to achieve the end

## ADDRESS (MR MEYER)

1 that was required. The end, in her words `a politically  
2 saleable report'.

3 As we all know, Dulcie Wilson and Dorothy Wilson  
4 spoke out against the existence of secret sacred women's  
5 business. Following their doing so, we have seen  
6 attempts to frighten people into silence. That conduct  
7 has been continued quite obviously through the hearings  
8 of this Royal Commission. When you consider the  
9 submissions that have been made by Mr Tilmouth, you can  
10 understand the strategy of those threats.

11 It was those threats which caused Doug Milera in the  
12 first place to come forward and make the statements that  
13 he did. He said that it was just not fair the way  
14 Dorothy Wilson was being treated, and these suggestions  
15 of murdering people, et cetera, drove him into the open.  
16 They have been made to the dissident women. Doug Milera  
17 has said that he considers that the ALRM was involved,  
18 and he specifically implicates Victor Wilson.

19 And yet Victor Wilson is not prepared to come  
20 forward and give evidence, and no explanation is given  
21 for his absence. In these circumstances, in my  
22 submission, you are entitled and, in fact, should draw  
23 the strongest possible inference that you can against Mr  
24 Wilson.

25 Mr Tilmouth makes a submission that Mr Clarke was  
26 available to give evidence when he was produced on the  
27 last afternoon of the last day of the hearing, at a time  
28 when it had been made perfectly clear that there would  
29 be no further evidence called. In fact, I think it was  
30 at about 10 to 5, or thereabouts, on that last Friday,  
31 if your Honour recalls.

32 To say that Alan Clarke had been made available to  
33 give evidence is almost bordering on contempt of this  
34 commission. By refusing to co-operate and by attempting  
35 to manipulate the provision of evidence by holding back  
36 witnesses until at a time when it is absolutely obvious  
37 to all concerned that it is impossible for that evidence  
38 to be taken is just indulging in a procedure to avoid -

## ADDRESS (MR MEYER)

1 whilst putting it in the best light possible - that  
2 evidence being given.

3 On that basis, in fact, I am surprised that Mr  
4 Tilmouth didn't produce a string of other persons at the  
5 last 10 minutes and then say, on the same basis, that  
6 they had been made available to give evidence and then  
7 criticise the commission, as he does at the closing  
8 pages of his submission, for not calling them. He says  
9 at pp.81 and 82 of his submissions:

10 `It might be suggested that the failure of the women to  
11 give evidence attracts an adverse inference based upon  
12 the principles enunciated by the High Court in Jones v  
13 Dunkell ... as to their religious beliefs - '.

14 That is contrary to the findings of the Full Court,  
15 which says this is not an inquiry which involves an  
16 investigation of religious beliefs:

17 `- and they consider the appropriate forum is the  
18 Federal Inquiry by Matthews J'.

19 That is totally inconsistent. Why can you give  
20 evidence about your religious beliefs in one place and  
21 not another? Forum shopping has been frowned upon by  
22 the law at least since the Judicature Acts in the  
23 1800s, if not before. He then goes on to say:

24 `It would be an error of law to draw any adverse  
25 inference in any case'.

26 What I say in response to that is there has been no  
27 reasonable explanation, except a point blank refusal by  
28 the relevant women and organisations to co-operate. He  
29 goes on:

30 `The same comments apply to the absence of Professor  
31 Saunders and the secret envelopes ... where subpoenas  
32 have not even been issued to absent parties'.

33 A subpoena was in fact issued to the ALRM, they just  
34 ignored it. He goes on at p.81, second paragraph:

35 `Without the women, Sarah Milera and Doreen Kartinyeri  
36 ... impossible to make any satisfactory or enduring  
37 findings on the question of fabrication'.

## ADDRESS (MR MEYER)

1 In my submission, the strategy is obvious: Keep  
2 away some of the key players from the commission; ensure  
3 that relevant documents are kept away from the  
4 commission; ensure that any copies which are extant are  
5 gathered into the ALRM, where they will not be released;  
6 threaten any people who don't tow the line as dictated  
7 by Doreen Kartinyeri and Sandra Saunders; and then we  
8 can make the submission that Mr Tilmouth makes.

9 One could have written that submission at the outset  
10 of these hearings in accordance with the events which  
11 are obviously going to occur from the very first moment  
12 of the appearance of the ALRM. In my submission, all of  
13 that adds up to the ring of people who are afraid in  
14 fact to stand up and be counted, afraid to face up to an  
15 examination of the matter on its merits.

16 Far from Mr Tilmouth's contentions, we say the  
17 evidence consistently goes in one direction. It amounts  
18 to a huge hurdle for Doreen Kartinyeri and her  
19 supporters to overcome, which no doubt has been  
20 recognised by them. As a result, the tactical approach  
21 of attempting to torpedo this commission has been  
22 adopted rather than face the issue on its merits. To  
23 derail rather than to comply with the rule of law.

24 In my submission, you will not fall for the simple  
25 ruse that Mr Tilmouth's clients and their Allies would  
26 have you fall for. You will find, as we set out on p.2  
27 of the executive summary of our submissions, that secret  
28 sacred women's business is a fabrication, and we proceed  
29 to set out the reasons as to why.

30 You will find, in my submission, that it was  
31 fabricated during the period from late March 1994  
32 through to late June 1994. You will find that the  
33 purpose of that fabrication was, in fact, to achieve a  
34 political end of demonstrating the strength of  
35 Aboriginal rights in today's community and to stop the  
36 bridge from being constructed. I recommend to the  
37 written submissions that we have made, and the detailed

## ADDRESS (MR MEYER)

1 text references that have been provided in support of  
2 all the propositions that are contained.

3 COMSR: You propose to go next?

4 MR ABBOTT: If I may.

5 MS ESZENYI: Before Mr Abbott starts, I am instructed  
6 to draw your Honour's attention to the statement of Dr  
7 Brunton which has been sought to be put before you. You  
8 will recall that during the hearing of evidence, Mr  
9 Abbott tried to tender that statement of Dr Brunton and  
10 you would not accept it as evidence at that time. He  
11 made no further submissions during leading evidence to  
12 tender that report, but now seeks to put it before you.  
13 We are particularly disturbed by Mr Abbott's claim at  
14 p.154 of his submission -

15 MR ABBOTT: If they wanted to object, they should  
16 have put forward a written submission.

17 MS ESZENYI: `This is a document before the Royal  
18 Commission and we commend it to the commissioner'. We  
19 are disturbed that Mr Abbott asserts that this is a  
20 document before the Royal Commission, and we wonder  
21 where he obtained that information. We suggest that Mr  
22 Abbott now seeks to make it a document before the Royal  
23 Commission and, again, our suggestion is that, in the  
24 circumstances, that is improper.

25 We have not been given a copy of this report by the  
26 Royal Commission. We have not been told of Dr Brunton's  
27 qualifications. We have been made unable to  
28 cross-examine on that report, and we are severely  
29 disadvantaged by this procedure. We object to its  
30 production in the commission in this way.

31 And this is against a background of expert  
32 anthropological evidence being announced by counsel  
33 assisting that would be called from Professor Tonkinson,  
34 Gale and Austin-Broos, none of which has in fact been  
35 called. And yet Mr Abbott, it appears, is seeking to  
36 put before you, or indeed, more disturbingly, may  
37 already have put before you a report of Dr Brunton.

## ADDRESS (MR MEYER)

1 COMSR: I certainly have the written submission,  
2 if that is what you are asking.

3 MS ESZENYI: Yes, in such a manner that it cannot be  
4 cross-examined upon. If you are of the view that it is  
5 in fact before you and that there is not a great deal  
6 that you can do about it, it would be my submission  
7 that, to the extent that it is an historical document,  
8 you might take notice of its existence, but to the  
9 extent that it seeks to put forward uncross-examined and  
10 untested and untried opinions of a person whose  
11 expertise has not been established before this  
12 commission, then those opinions should be ignored.

13 MR ABBOTT: Perhaps I should respond to that before  
14 I start, because it is actually a lot of nonsense that  
15 you have just heard. We put this forward because Dr  
16 Brunton has addressed, by way of argument, some of the  
17 issues. We are not putting it forward as evidence from  
18 Dr Brunton, but merely, as I said, and as I kept saying  
19 throughout the closing days of the Royal Commission,  
20 that these are some arguments which can and should be  
21 addressed by you.

22 If you do not like the arguments, you will reject  
23 them. If you think there is some substance in the  
24 arguments that are mooted in this paper, just like the  
25 other two that we have attached, then you may act on  
26 them. But at all times, of course, you will have regard  
27 to the evidence. It is on that basis only.

28 We are not claiming that because Dr Brunton has said  
29 them they should be accepted as his opinions. We are  
30 putting them forward, I make this very clear, on the  
31 basis that these papers, the three papers which we annex  
32 to our submission, are arguments by three people, with  
33 three different points of view, all of which are in the  
34 public domain and which, in our submission, there is  
35 some force in some of the criticisms they make. It is  
36 nothing more and nothing less than that.

37 COMSR: That may explain the matters.



## ADDRESS (MR MEYER)

1 MR SMITH: Could I just interrupt? We laid down a  
2 rule to begin this morning that there would be no  
3 interruptions. Everybody has an hour and there is no  
4 reply and no interruptions. If there is going to be  
5 points taken about everybody's written address before  
6 they begin their hour we are not going to finish today.  
7 So if Dr Fergie's representatives have got a store  
8 of objections to each one of the submissions, I suggest,  
9 in accordance with your ruling earlier, that that be  
10 saved until their hour arrives. There are things that  
11 could be said about every submission that has been put  
12 in, and the time to say them is in the allotted hour.  
13 Could I ask that counsel do that.  
14 CONTINUED

## ADDRESS (MR ABBOTT)

- 1 COMSR: Yes, I did say there is to be no  
2 interruption by counsel during the course of an address  
3 and that by getting in first doesn't exactly get round  
4 that direction.
- 5 MR ABBOTT: It doesn't accord with the spirit of it  
6 anyway.
- 7 COMSR: No.
- 8 MR ABBOTT: May I start?
- 9 COMSR: Yes.
- 10 MR ABBOTT: Long, long ago in the Dreamtime when the  
11 spirit ancestors walked the earth, when Ngurunderi  
12 embarked on his epic journey, there existed secret  
13 sacred women's ceremony and ritual carried out on  
14 Hindmarsh Island. Known only to women and, by 1994,  
15 known only to Doreen Kartinyeri - or so the proponents'  
16 argument must go. And, indeed, so said Doreen  
17 Kartinyeri, in effect, to Deane Fergie.
- 18 This has been women's business known for 40,000  
19 years, she has said. And, as Mr Meyer has properly  
20 pointed out, there was only one confidante that Deane  
21 Fergie had. It was Doreen Kartinyeri. Three others, so  
22 Doreen Kartinyeri said, knew of it, but the three  
23 others, as Dr Fergie made clear, didn't tell her, Dr  
24 Fergie, of it.
- 25 That, in our submission, is extremely significant.
- 26 And so the issue for you, or one of the main issues  
27 is, is it true? Does this sort of claim by Doreen  
28 Kartinyeri have any substance? Did she make it up in  
29 April 1994, as we suggest she did? And, against that  
30 background, you have the evidence of Dorrie Wilson,  
31 Bertha Gollan, Dulcie Wilson and my other clients, all  
32 of whom I submit have told you the truth about this  
33 matter.
- 34 Doreen Kartinyeri's informants, so we learned from  
35 the published utterances of Doreen Kartinyeri, were  
36 Grandma Sally, who grew up at Poonindie near Port  
37 Lincoln. Auntie Rose, who grew up at Point Pearce on  
38 Yorke Peninsula. And Nanna Laura, subsequently disowned

## ADDRESS (MR ABBOTT)

1 by Doreen Kartinyeri, because the list of her informants  
2 started at three, but went to two and the daughter of  
3 Pinkie Mack was disowned when it transpired that she had  
4 signed a letter denying the existence of women's  
5 business and Doreen Kartinyeri's informants shrank from  
6 three to two. And, the other three who allegedly knew,  
7 at some stage - I say 'at some stage', because there are  
8 varying accounts - Dr Fergie, at p.16 of her report,  
9 claims it was since they were public material - were  
10 Connie Roberts, whom we heard comes from the Riverland,  
11 and left Raukkan when young, Maggie Jacobs, allegedly  
12 from her grandmother, and Edith Rigney. Their  
13 informants are unknown, their claims untested, and their  
14 assertions, in my submission, unproved. And, indeed,  
15 not even recounted to Dr Fergie directly.

16 And so the issue, as we see it, is if you look at,  
17 on the one hand, the body of proponent women - and, in  
18 essence, that boils down to Doreen Kartinyeri, but there  
19 are issues to consider in relation to Connie Roberts,  
20 Maggie Jacobs and Edith Rigney, on the one hand, and you  
21 assess what you know of them and their published  
22 utterances and their failure to give evidence, and then  
23 look at my client, Dorrie Wilson. And our Elders,  
24 Bertha Gollan, Dulcie Wilson and my other clients, all  
25 of whom I submit were honest, honourable women  
26 endeavouring to assist you in ascertaining what the  
27 truth was in relation to your Terms of Reference.

28 In our submission, the answer is clear. That  
29 Dorothy Wilson was telling the plain, unvarnished truth  
30 on every occasion that she gave evidence. That Bertha  
31 Gollan and Dulcie Wilson and my many other clients at  
32 all times were telling you the truth and endeavouring to  
33 assist you as best they could.

34 We did not set out to prove a negative. It was not  
35 our job to prove that secret sacred women's business in  
36 relation to Hindmarsh Island never existed. Our clients  
37 never came along to say that. What they did come along  
38 to say was that they had no knowledge of it. They would

## ADDRESS (MR ABBOTT)

1 have expected to have had knowledge of it had it  
2 existed. And, in the case of Dorothy Wilson, to tell  
3 you that she was present at the two important meetings  
4 at the Mouth House, on the one hand, and Graham's  
5 Castle, on the other. And she was present at those two  
6 important meetings, it is obvious, in our submission,  
7 that women's business was fabricated and revealed by  
8 Doreen Kartinyeri.

9 It is important, I think, that I go back a little in  
10 point of time, because there are some other strands, as  
11 we have said in our written submissions, and I commend  
12 to you, Madam Commissioner, the chronology section which  
13 deals with the two strands which evolved. And we adopt  
14 that and I don't want to speak in great detail, except  
15 to make some basic comment about the evidence as a  
16 whole.

17 As we see it, this really starts in October 1993  
18 when Dr Draper was reassigned to the Hindmarsh Island  
19 area to conduct an archaeological assessment or survey.  
20 It is at about that time that Doug and Sarah Milera  
21 commenced occupation of the Mouth House and became  
22 assistants to Draper for the next three months,  
23 apparently on some sort of ad hoc basis where they  
24 assisted in the archaeological assessment.

25 In our submission, there is no evidence that Sarah  
26 Milera had any real ties with Hindmarsh Island and that  
27 her subsequent claims that she is the custodian of the  
28 law - whether that is L-A-W or L-O-R-E, we don't know -  
29 in relation to Hindmarsh Island is false. As is her  
30 claim that she is descended from King Peter Pulami, the  
31 last Rupulle of the Ngarrindjeri tribe. If she has any  
32 genealogy going back to that period, then it is a  
33 collateral branch through a sister at best for her.

34 Draper's subsequent reliance on Sarah Milera and her  
35 brother, Robert Day, in our submission, make any  
36 conclusions drawn as a result of such reliance suspect.  
37 But, in any event, whichever way you look at Draper's  
38 evidence, he does not in any way substantiate Doreen

## ADDRESS (MR ABBOTT)

1 Kartinyeri's claims of secret sacred women's business.

2 There is no doubt that Hindmarsh Island has a large  
3 number of camp sites. That is, the remains of shell  
4 middens and a large number of burial sites. Both camp  
5 sites and burials in the main predate European contact,  
6 but there is nothing to suggest that there is any  
7 archaeological feature of Hindmarsh Island which makes  
8 it more significant than the mainland, the Coorong, or  
9 any other island. In other words, it is significant,  
10 but its significance is not a pre-eminent significance.

11 Draper's work in 1993 and the continuing survey over  
12 the Anzac Day long weekend in April 1994 show what we  
13 would expect, a pattern of habitation and occupation on  
14 Hindmarsh Island no different from the other islands and  
15 no different from the mainland.

16 I say this, not to in any way denigrate the  
17 significance of the archaeological material present both  
18 discovered and presumably what will in future be  
19 discovered, but merely to show that, in archaeological  
20 terms, there is no evidence of any unique sacredness  
21 attaching to Hindmarsh Island. Moreover, there appears.  
22 To be no archaeological basis to support any claim that  
23 Ngarrindjeri women resorted to Hindmarsh Island for the  
24 purpose of aborting fetuses, or for any other purpose.

25 In short, we suggest that the pattern that emerged,  
26 from the evidence that you have heard, in the last  
27 quarter of 1993 is one of increasing concern by the  
28 bridge proponents that their campaign was faltering in  
29 the face of increasing resolution on the part of the  
30 South Australian Government of the day to go ahead with  
31 the bridge.

32 I emphasise that my clients are not concerned with  
33 whether the bridge goes ahead or does not go ahead.  
34 Most of them, I think it came out in evidence, had no  
35 position in relation to the bridge, or their position  
36 was one of opposition to the bridge. We are not  
37 proponents of the bridge and they are not involved in  
38 whether the bridge should or should not go ahead. But I

## ADDRESS (MR ABBOTT)

1 say, Madam Commissioner, that towards the end of 1993  
2 there was obviously increasing resolution on the part of  
3 the Government o'clock to go ahead with the bridge,  
4 rightly or wrongly.

5 From Draper's perspective, it appeared, I suggest,  
6 that too little, too late was being done by way of  
7 consultation and examination of the island.

8 That may well be an appropriate response on his  
9 part, from the Friends of Hindmarsh Island's  
10 perspective, or Goolwa and Kumarangk, whatever they call  
11 themselves, and that there would be increasing pressure  
12 on the fragile wetlands' ecology, if the bridge went  
13 ahead. Again, that could equally be an appropriate  
14 response, but by late December 1993 it is possible to  
15 identify the concerns that were being advanced as  
16 arguments against the construction of the bridge.

17 There was the damage to the ecology of Hindmarsh  
18 Island, the wetland ecology and the migatory bird life.  
19 There was the pollution in every sense to Hindmarsh  
20 Island by the increase in the number of people whom it  
21 was thought would gain access to the island if the  
22 bridge were built. There was the interfering with the  
23 archaeological evidence with the Aboriginal population  
24 of the islands. Its middens, the camp sites, its burial  
25 sites and, in particular, there was a regard and a  
26 concern for the possible desecration of graves that may  
27 be caused, not just by the construction of the bridge,  
28 but also by the increased traffic that Hindmarsh Island  
29 would bear if a bridge were built. And, finally, there  
30 was the loss of amenity and visual pollution of the area  
31 by the fact of a bridge turning what was once an island  
32 connected only by barges and a ferry into an island  
33 clearly seen by every visitor as being connected by road  
34 to the mainland.

35 Now those factors - damage to the ecology, pollution  
36 generally, interference with archaeological evidence and  
37 remains and visual pollution - are all quite proper  
38 concerns and it was proper that they were addressed by

## ADDRESS (MR ABBOTT)

1 groups who had special interests in each one of them or  
2 all of them. But what is not proper and what is not  
3 appropriate is that Doreen Kartinyeri, to further those  
4 aims, should make up and fabricate a claim of secret  
5 sacred women's business. And, as to how that happened,  
6 I will endeavour to briefly outline in the course of  
7 these submissions.

8 As was made clear, by 12 April 1994, by ATSIC and  
9 Minister Tickner, the considerations that I have spoken  
10 of, which were, in my submission, entirely appropriate  
11 considerations, were thought apparently by Tickner on  
12 advice from his legal advisers to be insufficient to  
13 enable a s.10 declaration under the Commonwealth  
14 Aboriginal Heritage Act to be granted. In turn, this  
15 led to the 14th of April meeting with Minister Armitage,  
16 the State Minister. The request by Draper for Mr Jacobs  
17 QC to see the Ngarrindjeri men during the Jacobs inquiry  
18 demonstrates what we would see as the increasing  
19 attempts by the anti bridge lobby to halt the bridge by  
20 whatever mechanisms were available under State law.  
21 Trevorrow and the others apparently saw Jacobs as a  
22 last-ditch attempt to persuade Jacobs QC to bring down a  
23 report which would, on a State level, hopefully result  
24 in the stopping of the bridge.

25 It is significant that they never even hinted that  
26 they had even heard of any women's business in relation  
27 to Hindmarsh Island. And, as we know, the delivery of  
28 the Jacobs report closed after that avenue and the 15  
29 April 1994 meeting with Minister Armitage closed off  
30 whatever hope the anti bridge lobby had of a respite  
31 under State law.

32 The pattern that emerges - and I am not bringing  
33 every strand into this address - is that, by that time,  
34 by April 1994, the forces that were opposed to the  
35 bridge - and properly opposed to the bridge, for proper  
36 reasons - were unlikely to be successful in relation to  
37 convincing the State Government the bridge should be  
38 stopped under State law.

## ADDRESS (MR ABBOTT)

1 Those forces already knew, from their on-going  
2 communication with Tickner, that he was waiting to see  
3 what would happen under State law before he was, as it  
4 were, forced into doing anything and forced into an  
5 ultimate consideration.

6 We say that that period leading up to 15 April 1994  
7 marks the genesis of the claims for secret sacred  
8 women's business. And, to those who are minded to  
9 suggest, as we do, that the emergence of the claims of  
10 secret sacred women's business is nothing more than  
11 political opportunism, an attempt by the Lower Murray  
12 Aboriginal Heritage Committee to empower themselves, we  
13 refer to the fact - and I am using anthro-speak when I  
14 use the word 'empower' in that sense - we refer you to  
15 the fact that the proponents of the anti bridge lobby of  
16 the women's business, both male and female, tell us that  
17 it is only at this time that the women decided to  
18 mention for the first time ever publicly that there  
19 existed in relation to Hindmarsh Island women's  
20 business. And, for that matter, secret sacred women's  
21 business.

22 Why is it that at that crucial time there is the  
23 first mention publicly of the existence in relation to  
24 Hindmarsh Island of women's business in general and  
25 subsequently secret sacred women's business in  
26 particular?

27 Whilst one can expect that in certain cases where  
28 secret sacred women's business exists it is not  
29 deployed, if that is the right word, until absolutely  
30 necessary, no anthropological evidence has been given to  
31 you to point to any documented example where a totally  
32 unknown secret of the magnitude of the secret sacred  
33 women's business asserted here, which is also  
34 site-related, was revealed for the first time in any  
35 way, shape or form at the death knell in terms of  
36 protection of the alleged site.

37 We are not talking about something of little  
38 magnitude. We are talking of a claim of women's secret



## ADDRESS (MR ABBOTT)

1 sacred business, according to Fergie and Doreen  
2 Kartinyeri, equivalent to Uluru. The secret of the  
3 Ngarrindjeri cosmos. The secret that will result in the  
4 loss of the faculty to reproduce of Ngarrindjeri women  
5 if it is revealed.

6 This must have been the best-kept secret in the  
7 world, because only one person knew about it, or at  
8 least only one person was able to inform Dr Fergie of  
9 it. And, even if it were conceded that examples exist  
10 where one person has come forward right at the end where  
11 the bridge is just about to be or the foundations are to  
12 be poured and said 'Stop, women's business is here',  
13 what makes this claim of secret sacred women's business  
14 unusual are, I suggest, some of the factors that are set  
15 out in our written submissions and which I will briefly  
16 touch on in the course of my oral submissions.

17 We know that Ngarrindjeri society has been  
18 extensively documented. In the 30s and 40s, by Berndt  
19 and Berndt. By Norman Tindale and latterly by Dr Philip  
20 Clarke. It would be surprising if such a site-related  
21 secret was never documented in any way, shape or form,  
22 even if it was merely to the extent that there was known  
23 to be some secret business, not even gender-related,  
24 connected with or to Hindmarsh Island. There is no  
25 documented evidence that any secret business, forget  
26 gender, was connected with or to Hindmarsh Island.

27 Alas for the Mileras, Trevorrow, Vic Wilson, Doreen  
28 Kartinyeri, Deane Fergie and the others, there is not  
29 one word about Hindmarsh Island anywhere suggesting  
30 there ever existed a body of secret or sacred knowledge  
31 in relation thereto. Indeed, we say that what has been  
32 documented goes a long way to proving the negative.  
33 Namely, that there was no secret sacred women's business  
34 referable to Hindmarsh Island.

35 Whatever is finally claimed, finally found by you to  
36 be the secret sacred women's business referable to  
37 Hindmarsh Island, there is no doubt that, on any view,  
38 it required women and women alone separated from men to

## ADDRESS (MR ABBOTT)

1 attend. Whether that was to abort foetuses, to be  
2 trained to be women, to give birth, to menstruate, to be  
3 instructed in other ways, to take part in ritual or  
4 ceremonies, is beside the point, because there is no  
5 evidence of any of this ever happening with specific  
6 reference to Hindmarsh Island.

7 That is the problem that the proponents of this  
8 women's business have. If they were claiming that all  
9 over the Ngarrindjeri nation women left a camp where the  
10 men and women were situated and moved a short distance  
11 away from wherever the camp was and carried out a  
12 ceremony, then it is a totally different matter to  
13 suggest that women did not, from time to time, go off on  
14 their own for birthing or other reasons. But what is  
15 claimed here is that they went off to Hindmarsh Island  
16 for it. It is one thing to assert the existence of  
17 separate women's business, put aside the secret sacred  
18 nature, it is one thing to assert the existence of  
19 separate women's business requiring women to separate  
20 from men and go some short distance away. It is a  
21 totally different matter to assert and suggest a  
22 wholesale removal of Ngarrindjeri women at certain times  
23 of the year to Hindmarsh Island to a special part  
24 thereof to carry out, learn or be involved in secret  
25 sacred women's business referable to Hindmarsh Island.

26 As we have heard in evidence, the purely  
27 geographical problems and prolems resulting from the  
28 locale, women - with or without men - could not travel  
29 throughout the Ngarrindjeri empire and then congregate  
30 without men on Hindmarsh Island unless many men knew  
31 about it. In the sense that they would know at least  
32 the purpose of the women's departure. They would know  
33 where they had gone or where they said they were going.  
34 And they would know of the subsequently congregation of  
35 women on Hindmarsh Island and that it was to do in some  
36 way with secret sacred women's business. How else would  
37 the men who lived on Hindmarsh Island in one of the  
38 three clans we know occupied Hindmarsh Island know to

## ADDRESS (MR ABBOTT)

1 keep away? Men had to know. And, if women went from  
2 Victor Harbor, or anywhere else, to Hindmarsh Island and  
3 left men behind, men had to know that they were going  
4 off to take part in secret sacred women's business.

5 Alas for the proponents of this secret sacred  
6 women's business, no hint of this occurring is to be  
7 found anywhere, in any account, documented or oral.  
8 And, despite the efforts of Hemming, Draper and Fergie,  
9 no historical source which remotely suggests this sort  
10 of activity took place can be produced for the simple  
11 reason that it doesn't exist and this sort of activity  
12 didn't occur.

13 In this context, the comments of Dr Clarke and  
14 Philip Jones are apposite.

15 They told you - and I commend this to you - the  
16 secret does not exist in a vacuum. That was the thrust  
17 of what they were saying. It is not a butterfly which  
18 is suddenly caught in the net of the Royal Commission  
19 and identified as a rare species for the first time.

20 If secret sacred women's business referable to  
21 Hindmarsh Island ever existed, it had to have had an  
22 impact on Ngarrindjeri culture as a whole. If it was so  
23 significant, so site-related, so special, so secret and  
24 so sacred, it had to impact widely across Ngarrindjeri  
25 culture, both to men and to women. Hindmarsh Island,  
26 like other places to which genuine secret sacred  
27 business, regardless of gender, attaches, had to be  
28 known to the Ngarrindjeri as a whole as a special place.  
29 It had to be known to all as a special place, sacred to  
30 women. Where women went to practice their secret sacred  
31 women's business from time immemorial. It would have  
32 had to have been common knowledge that men could not or  
33 should not go to the island at all or to certain parts  
34 of the island at certain times. There would have to  
35 have been a very large number of Ngarrindjeri women in  
36 the early days of Raukkan who either had taken part in  
37 the secret sacred women's business, or knew of it,  
38 because female ancestors in their family had taken part.

## ADDRESS (MR ABBOTT)

1       And, yet, if we are to accept Doreen Kartinyeri and  
2       Dr Fergie, they chose not to mention it to their  
3       children - the Dulcie Wilsons, the Bertha Gollans of  
4       this world, or to the European ethnographers, or to the  
5       anthropologists, or to anyone at all - because none of  
6       this material exists. And everywhere you look for  
7       independent correlations and corroboration for the  
8       claims of the existence of secret sacred women's  
9       business relating to Hindmarsh Island, such independent  
10      corroboration is lacking.

11      As I have said, in essence, any secret sacred  
12      women's business or women's business, for that matter,  
13      that is site-related must involve a knowledge at least  
14      of the site. Conceivably women could know of the site,  
15      but not know of the secret sacred women's business. It  
16      is, I accept, possible that a large number of women knew  
17      of the secretness of Hindmarsh Island, but didn't know  
18      of the women's business. And, if that has been  
19      documented and was said to anthropologists and the  
20      workers in the field, that might be a pointer.

21      If there was a claim that they only knew the site  
22      was secret, but they didn't know what the secret  
23      business was, that would be strong corroboration for the  
24      claims that are now made. But, according to Doreen  
25      Kartinyeri, she knew of the women's business, but didn't  
26      know the site. 'I knew all about secret sacred women's  
27      business, but until recently I didn't know where it  
28      related to.'

29      Not only must women know of the site, but so must  
30      men, even if to avoid the site.

31      When you add in the factors that the Ngarrindjeri  
32      were apparently unlike most other Aboriginal tribes in  
33      that there was a paucity, I don't say none, but a  
34      paucity of gender-specific secret sacred business, and  
35      that their main dreaming story referable to the very  
36      same geographical area which is claimed to be secret  
37      sacred women's business was the Ngurunderi dreaming, a  
38      male ancestor, the odds favouring a hitherto suppressed

## ADDRESS (MR ABBOTT)

1 and undiscovered secret referable to Hindmarsh Island of  
2 the magnitude and importance of Uluru and known only to  
3 women must be very long indeed.

4 In essence, it is obvious that all these factors  
5 substantially militate against the existence of the  
6 secret sacred women's business referable to Hindmarsh  
7 Island and show that any claim suddenly made when  
8 avenues under State laws had been exhausted and those  
9 who wanted to stop the bridge were now trying to work  
10 around Federal laws should be treated with the greatest  
11 caution, because of the potential political agenda which  
12 they were following in making their claims.

13 In our submission, Dorrie Wilson told you the plain,  
14 unvarnished truth when she told us of a conversation  
15 when Vic Wilson said that the men had done their best,  
16 now it was the turn of the women. 'Let's see what they  
17 can come up with.'

18 Mr Meyer has already said something about Mr Vic  
19 Wilson and I want to say a little more.

20 Mr Vic Wilson has chosen to have a lawyer acting  
21 throughout. In fact, he has had two. He has had Mr  
22 Kenny and Mr Tilmouth. He has put in a final address.  
23 The address, that is, the submission that has been put  
24 in is on behalf of Mr Victor Wilson. Mr Victor Wilson  
25 has declined to give evidence. He is has not proffered  
26 any explanation of any sort, not even a bad back, as to  
27 why he can't give evidence. So, there is, I suggest, a  
28 very big question mark over why it was that Mr Vic  
29 Wilson chose to instruct counsel throughout this Royal  
30 Commission. Chose to instruct counsel, we heard from Mr  
31 Tilmouth, to go to the Supreme Court in relation to the  
32 ALRM matters, as well. And, yet, when the time comes  
33 for Mr Vic Wilson to step into the witness box, I  
34 suggest, in a cowardly fashion, he has declined to enter  
35 the witness box to be cross-examined and tell us what he  
36 knows.

37 At the end of the day - and I suggest you may wish  
38 to approach Doreen Kartinyeri's evidence in this way -

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ADDRESS (MR ABBOTT)

- 1 there are two crucial criteria relevant to any issue of
- 2 fabrication: motive and opportunity.
- 3 CONTINUED

## ADDRESS (MR ABBOTT)

1 In this case, Doreen Kartinyeri had both. Doreen  
2 Kartinyeri, the Aboriginal activist, Museum worker,  
3 researcher, may have acted on what she considered to be,  
4 at the time, the best of motives - namely, to stop the  
5 bridge - and that she lied to her fellow Ngarrindjeri  
6 women because, on what we have heard in this Royal  
7 Commission, I suggest it is clear that she has  
8 fabricated this women's business. That once committed  
9 to the big lie that she told about the existence of  
10 women's business, she was unable to retract it.

11 What we saw about the Graham's Castle meeting when  
12 she spoke to 34 other, or more, other Ngarrindjeri  
13 women, was nothing more than a latter day form of  
14 pyramid selling where she decided to tell another 30 and  
15 the 30 would then be able to disseminate between another  
16 30 people, and so on, and so forth, in the hope that  
17 there would be a body of Ngarrindjeri women - as indeed  
18 there subsequently turned out to be - who would accept  
19 this lie and believe in it.

20 I'm not challenging Aboriginal beliefs, ancient or  
21 modern. If Ngarrindjeri women wish to believe in Doreen  
22 Kartinyeri's fabrication, that is their business and  
23 they are entitled to do so. We are not in this Royal  
24 Commission examining the genuineness of Aboriginal  
25 women's beliefs as to whether or not what Doreen  
26 Kartinyeri told them were true or false, we are  
27 examining whether what Doreen Kartinyeri said was true  
28 or false. We are concerned to determine whether she  
29 fabricated the secret, the claim of secret sacred  
30 women's business. The answer to that must, in our  
31 submission, be answered in the affirmative.

32 The truth is, as Dr Fergie finally admitted in this  
33 case that she had a single informant to elaborated a  
34 single text. (Transcript p.5637). We know, therefore,  
35 from Dr Fergie that the claim of secret sacred women's  
36 business referable to Hindmarsh Island came exclusively  
37 from Doreen Kartinyeri and forms appendix two, being one  
38 of the two appendices inside the sealed envelope; such

## ADDRESS (MR ABBOTT)

1 appendices, that is by Dr Fergie, to be examined only by  
2 women, but now, according to Fergie, to be examined only  
3 by those Ngarrindjeri women who believe in it. Not by  
4 Ngarrindjeri women who want to critically assess it  
5 against the background of their culture. So much for  
6 testing and assessing the validity of the secret sacred  
7 women's business.

8 Ngarrindjeri women, like my clients who want to know  
9 about it so that they can further assess whether or not  
10 it fits in with what they know about their culture,  
11 can't even see it. The only people who can, apparently,  
12 are those Ngarrindjeri women who already believe in it;  
13 in which case they presumably wouldn't want to see it to  
14 test it anyway.

15 In any event, Doreen Kartinyeri, Sandra Saunders and  
16 Deane Fergie have made sure that no copy of the two  
17 secret appendices will see the light of this Royal  
18 Commission. They have been lodged in the Alsatia of the  
19 ALRM vault - a situation which demonstrates, as nothing  
20 else can, I submit, how dubious is this claim of secret  
21 sacred women's business. I suggest that you would have  
22 agreed to almost any restrictions and conditions to be  
23 placed on those envelopes and the appendices had they  
24 been produced. It would have been proper for you to  
25 have excluded men and done other things to protect any  
26 claims and concerns of confidentiality. But Sue Keye,  
27 Ann Mullin, Deane Fergie, Cheryl Saunders - all white  
28 women - have seen and read the secret envelopes, the  
29 appendices. They can see it and read it, but no  
30 Ngarrindjeri woman, particularly my clients and not you  
31 the Royal Commissioner and no independent female  
32 anthropologist, can see them. That, I suggest,  
33 demonstrates the sort of evidence that is put forward in  
34 support of the claim for secret sacred women's business.  
35 The reason why it's so secret and sacred, or perhaps  
36 just so secret in the vault at the ALRM, is because if  
37 it was revealed to any critical eye, it will be seen for  
38 what it is: a cunning fabrication made up to serve the



## ADDRESS (MR ABBOTT)

1 political ends of Doreen Kartinyeri.

2 Fergie asserted in her report at p.10 that the  
3 sacredness of Hindmarsh Island resulted in very strict  
4 laws about where people could go on Hindmarsh Island.  
5 Where you went on Hindmarsh Island depended upon your  
6 status in life. For example, it was 'too sacred for  
7 children'. Whilst the reason for the strict laws might  
8 be that the culture demanded that they be created,  
9 whilst they might not be known by men or only by some  
10 women, as I made the point before, all Ngarrindjeri  
11 would need to know the existence of these sorts of laws  
12 if they ever existed, otherwise how could the site be  
13 defined?

14 Yet, of course, none of this is recorded either.  
15 The absence of all these records is all the more telling  
16 when you consider that Hindmarsh Island is not a small  
17 area. The secret sacred women's business, so it is  
18 claimed, relates to the whole island, the waters around  
19 it, Mundoo, Tauwitchere, not just part of it. And so we  
20 are not talking about a solitary rock, a single sacred  
21 spring, a small outcrop or prominence, a small  
22 geographical area that might only be knowledge to a few  
23 people that might be within the knowledge of only a  
24 small part of the Ngarrindjeri tribe, we are talking  
25 about an island of considerable size, of waters around  
26 it that, presumably, were known to, in pre-European  
27 days, all Ngarrindjeri people. This was an island  
28 which, as I have said, was apparently the home to three  
29 separate clans of Ngarrindjeri people: One related to  
30 the Encounter Bay tribes and two others related to other  
31 aspects of Ngarrindjeri empire. Presumably, all of  
32 these clans, at some stage, would have had to have been  
33 consulted in relation to women's business, even if they  
34 didn't know the full details of it.

35 One of the great problems facing the proponents of  
36 secret sacred women's business, apart from the fact that  
37 it is not recorded in any way, is the fact of the  
38 existence of the barrages. Those barrages were built in

## ADDRESS (MR ABBOTT)

1 the late '30s early '40s and had to have been explained  
2 away if they could be. The fact of the matter is that  
3 they cannot be. There is not only the barrages, but  
4 there is also the old bridge linking Hindmarsh Island  
5 with Mundoo built 30 years or so before the barrages.  
6 The barrages are, in truth, bridges. Their existence  
7 as a fact destroys many of the proponents' arguments and  
8 assertions. No convincing explanations as to why the  
9 barrages would not have destroyed the Ngarrindjeri  
10 cosmos and the preproductive organs of all Ngarrindjeri  
11 women, but a bridge would have.

12 Dr Fergie made an attempt, but singularly failed.

13 Dr Fergie, as we know, said in the secret envelopes in  
14 appendix three - because this was set out in Dr  
15 Saunders' report at p.42, this is Fergie's words from  
16 her secret appendix:

17 'A critical point may be that Kumarangk and Mundoo are  
18 connected together by the life-supporting waters of the  
19 Goolwa Channel.'

20 Dr Fergie, when she wrote this secret appendix three,  
21 apparently didn't even know that the Goolwa Channel  
22 didn't pass between Hindmarsh Island and Mundoo.  
23 Hindmarsh Island and the Goolwa Channel, as we know,  
24 passes between Hindmarsh Island and Goolwa. She says:  
25 'How then could it be that Kumarangk, Hindmarsh Island  
26 and Mundoo are mediated by the the life-supporting  
27 waters of the Goolwa Channel.'

28 It is just plain arrant nonsense. Can't happen. Dr  
29 Fergie went on:

30 'The complex relationship between contingent separation  
31 and the togetherness of life and death is achieved by  
32 water. The separations of all the major organs in this  
33 system is mediated and achieved by water.'

34 That is the womb, the ovaries, et cetera. They are the  
35 organs. It is just nonsense, I suggest, to have this  
36 sort of reconstruction not only in a geographical sense  
37 but in an anthropological sense to put forward this sort  
38 of explanation.

## ADDRESS (MR ABBOTT)

1       Then, Dr Fergie dealt with the barrages. She did it  
2 in these terms:  
3 `Whenever women were called upon to explain what was  
4 different about the barrages and the proposed bridge,  
5 they referred to the water in some way. It occurs to me  
6 that it may well be that the women haven't been able to  
7 articulate. It may well be that what the women haven't  
8 been able to articulate clearly is that the problem with  
9 linking Kumarangk and the mainland together by a bridge  
10 is precisely that a bridge goes above the water.'

11       Presumably the barrages don't. She goes on:  
12 `It is a shore to shore direct and permanent link. It  
13 would make that link unlike the barrage or the ferry  
14 cable unmediated by water. It would make the system  
15 sterile. Think about those concepts that a bridge makes  
16 the system sterile, because it's not like the barrages.  
17 The barrages allow the islands to be mediated  
18 by water. The bridge wouldn't.'  
19 That has to be nonsense. The barrages are a more  
20 substantial impediment to the waters flowing than a  
21 bridge ever could be. The barrages stop any mediation  
22 by water, unless it's an operation which is allowed and  
23 permitted by the separation of sluice gates that  
24 specifically let the waters flow only as the engineers  
25 chose to let them flow, otherwise the barrages have  
26 resulted, for better or for worse, in the islands not  
27 being mediated by water at all. They have cut off the  
28 water. A bridge at least allows water to flow  
29 underneath it. The barrages don't do that, unless you  
30 happen to especially open the gate.

31       There seems to be some suggestion - I withdraw that.  
32 Dr Fergie, I think, as was made clear in my  
33 cross-examination of her, doesn't have any idea of how  
34 the barrages work. Doesn't have any idea what the  
35 barrages do and doesn't have any idea where the barrages  
36 went. To suggest that a bridge should not or would be  
37 in breach of the Ngarrindjeri reproductive cycle and the  
38 cosmos because it goes above the water and is a shore to

## ADDRESS (MR ABBOTT)

1 shore direct permanent link unlike the barrages, is, in  
2 my suggestion, again a demonstration of her inability to  
3 properly assess the situation and an example of someone  
4 venturing into dangerous waters that they know nothing  
5 about whatsoever in accepting the consultancy.

6 She is the one who recorded that the barrages act  
7 like a pacemaker. A pacemaker. I mean, apart from the  
8 fact that a pacemaker is a relatively recent concept -  
9 and I can understand Doreen Kartinyeri employing a  
10 recent concept to explain a recent invention. Even  
11 assuming that there was some substance in that, what  
12 does a pacemaker do? A pacemaker, presumably, makes the  
13 heart function at a proper rate. Is it suggested that  
14 these barrages open their gates from nine to five or  
15 from 10.30 only on every third day. The barrages  
16 remain closed and the locks are opened only on a needs  
17 basis, or only when there is a great deal of water  
18 coming down or a great deal of water coming up. There  
19 is no suggestion of any regularity that the barrages  
20 produce and an irregularity that the bridge will  
21 produce. Again, to assert that the barrages are like a  
22 pacemaker in assessing the proper function of the  
23 waters, only that statement could demonstrate its  
24 absurdity.

25 Even accepting that Aboriginal people were powerless  
26 - as I do accept that the Aboriginal people were in the  
27 '40s powerless or relatively powerless to stop the  
28 bridges - if the sacred secret women's business in  
29 relation to Hindmarsh Island was true, then the  
30 cataclysmic effect of the barrages and the Ngarrindjeri  
31 women on the Ngarrindjeri people, particularly  
32 Ngarrindjeri women's spirituality, would have had to  
33 have formed part of Ngarrindjeri culture and life.

34 I say that because it seems to be a fundamental  
35 proposition against the existence of secret sacred  
36 women's business in relation to Hindmarsh Island. We  
37 have seen in graphic detail, in film and photo, just how  
38 great the disruption was to the Murray River and to the

## ADDRESS (MR ABBOTT)

1 division and to the separation between Hindmarsh Island  
2 and the mainland, to Mundoo island and Hindmarsh Island  
3 and Tauwitthere, to Tauwitthere Island and the mainland  
4 caused by these barrages which took months or, indeed, a  
5 better part of a year to build. They involved massive  
6 disruption to the riverbed, and if there was any  
7 substance to the claims now made for secret sacred  
8 women's business, whilst accepting that, unfortunately,  
9 the Aboriginal people were powerless to stop them, if  
10 they had the cataclysmic effect that they must have had  
11 in the sacred secret women's business was to be true,  
12 then at least there would have been mention of the  
13 cataclysmic effect of barrages in Ngarrindjeri culture  
14 and history. In fact, there is some mention, but it's  
15 to do with the fact that fish, salt water fish are no  
16 longer found, and it's to do with the mud that was  
17 created and the sandy beaches that were destroyed. All  
18 entirely proper and appropriate. The barrages obviously  
19 significantly affected the culture of the Ngarrindjeri,  
20 even though most of them were then at Raukkan. It  
21 destroyed the sandy beaches and it turned them into mud.  
22 It stopped the jumping mullet being found up as far as  
23 Murray Bridge. It ruined many of the estuaries and  
24 stopped the reeds. They did know of the very grave  
25 effects upon their culture of the barrages, but where do  
26 we find any account of any Ngarrindjeri person saying  
27 'This destroyed our spirituality'?

28 You see, the failure to explain the damage done both  
29 geographically and in terms of the wildlife, the  
30 ecology, by the barrages is significant. The fact that  
31 they knew, the Ngarrindjeri people generally knew well  
32 of that damage is significant. Yet, Doreen Kartinyeri's  
33 attempts to explain away the barrages is not that they  
34 have had a cataclysmic effect and are disastrous and  
35 ecologically damaging, she doesn't take that line. To  
36 read her account as evinced to and vouched to us via Dr  
37 Fergie, they apparently were only of a minor destruction  
38 and the net effect was good and that their function is

## ADDRESS (MR ABBOTT)

1 as a pacemaker. That also is arrant nonsense.

2 There is a perception aboard in some sections of the  
3 community well represented, if not at the front row of  
4 this Commission and certainly from the second row to  
5 some distance to the back of this room, that Aboriginal  
6 assertions cannot and should not be challenged. Dr  
7 Fergie is the paradigm example. She accepts what she  
8 has been told of secret sacred women's business and goes  
9 on from there. Anyone who does challenge any assertion  
10 made by any Aboriginal person about their culture is met  
11 with 'You don't know anything about Aboriginal culture'  
12 which is the kind of comment I got from Veronica Brodie,  
13 or as hailed down in the Royal Commission by Muriel Van  
14 Der Byl and Sandra Saunders.

15 The position taken by the Fergies and Drapers of  
16 this world is, in my submission, an insult to  
17 Ngarrindjeri people in particular and Aboriginal people  
18 in general. It is an insult because it suggests there  
19 must be some special treatment in assessing aspects of  
20 Aboriginal culture as distinct from any other person's  
21 culture. It is exactly the same racialistic pernicious  
22 attitude that has bedevilled the reconciliation of the  
23 black Australian people and the white Australian people  
24 since the settlement of Australia.

25 For Dr Fergie and Mr Draper to uncritically press  
26 the views of a few Ngarrindjeri people as being the  
27 views of all Ngarrindjeri people, whilst it may be  
28 immediately beneficial in terms of a short-term  
29 solution, can only, in the long run, do irreparable harm  
30 to the provisions of reconciliation of black and white;  
31 a process which my clients, my women, unlike their  
32 detractors fervently believe.

33 I refer to what fell from Mason CJ, a former Chief  
34 Justice, in 1994 in Walker's case (1994), 76 ACR p.173.  
35 I quote from that page:

36 'It is a basic principle that all people should stand  
37 equal before the law ... laws impose.'

38 We have in this Commission, I suggest, an attempt by

## ADDRESS (MR ABBOTT)

1 those who enjoy the benefits of our domestic laws to  
2 remove themselves from the burdens which those laws  
3 impose. To suggest that we should not examine  
4 critically claims made is, in my submission, to vitiate  
5 that principle.

6 Against this background, the parade of proponents of  
7 the secret sacred women's business must be seen for what  
8 they are; in my submission, people who have willingly or  
9 unwillingly, to greater or lesser extent, sacrificed  
10 their integrity for the ends they seek to achieve.

11 Betty Fisher, to be blunt, she is suffering not from  
12 AIDS but from ADS, attention deficit syndrome. She was  
13 doing all she could to claw her way into the spotlight  
14 of the Royal Commission at any cost. She would make up  
15 any story to get the attention which she obviously  
16 craved. If that wasn't enough, she has attempted to  
17 further ingratiate herself in the role of life and has  
18 chosen to become an honorary Aboriginal woman.

19 What does she say in her evidence? On her story,  
20 she was almost accidentally selected as the recipient of  
21 the greatest story of the Ngarrindjeri people on that  
22 one day in 1967 when speaking to Rebecca Wilson or  
23 Koomi, whilst Gladys was off making a cup of tea. That  
24 Rebecca Wilson, or Koomi, imparted to this white woman a  
25 secret which, until then, was known to one other:  
26 Veronica Brodie.

27 Rebecca Wilson is a woman who is not on the  
28 matrilineal line of a Ngarrindjeri women. You will  
29 recall that the word `matrilineal' was volunteered by  
30 Veronica Brodie. She volunteered that in answer to my  
31 question about Rebecca Wilson not being a Ngarrindjeri.  
32 On the matrilineal side, she was not a Ngarrindjeri.  
33 So, we have a Ngarrindjeri women's secret, a major  
34 secret known to Ngarrindjeri women, being told to a  
35 white woman by a woman who was not Ngarrindjeri on the  
36 matrilineal side but was Ngarrindjeri because she was  
37 married to a Ngarrindjeri man but who was Kaurna on the  
38 matrilineal side.

## ADDRESS (MR ABBOTT)

1 As the ad goes on the television, there is still  
2 more. There is no extrinsic evidence produced to you  
3 for the existence of that information. The taperecorder  
4 was turned off, the notebook turned over to ALRM, and so  
5 is the typed transcript from what is in the notebook.  
6 Only Alison Caldwell and the award winning 7.30 Report  
7 can see it. They can, but we can not. What absolute  
8 hypocrisy.

9 And finally on the last day of the Royal Commission,  
10 we have learnt that Alison Caldwell has gone off to  
11 Sydney and that is why she was not there to collect the  
12 award. We learn that Betty Fisher now asserts a second  
13 interview with Koomi, this one taped but, alas, the tape  
14 has been erased. Her children were recording trains.  
15 This shows that the Betty Fishers and the Veronica  
16 Brodies of this world are in this Commission for  
17 publicity only and should be disbelieved. That what  
18 they say is at odds with responsible, honest witnesses  
19 who come here to assist you and help you in deciding the  
20 truth about your Terms of Reference.

21 Dr Fergie, the anthropologist who ventured far  
22 outside her field when she accepted this consultancy,  
23 who is in breach of her own society's rules, has  
24 trumpeted at every possible opportunity as a means of  
25 denegrating Dr Clarke. Fergie, as I said, who thought  
26 the Goolwa Channel ran between Mundoo and Hindmarsh  
27 Island and who told us of the limited focus of her  
28 report, the report that accepted the existence of secret  
29 sacred women's business referable to Hindmarsh Island,  
30 merely deals with what is assumed to exist, secret  
31 sacred women's business. Her starting point was not as  
32 she was trying to tell us, does this exist, but how  
33 significant is it which, I assume, exists. Her bias is  
34 self-conferred. She was there obviously, as she started  
35 off saying, to help the Aboriginal Legal Rights  
36 Movement, not help to look for the truth.

37 Dr Draper, like the white knight in Alice Through  
38 the Looking Glass, was only too happy to show women the



## ADDRESS (MR ABBOTT)

1 Ngarrindjeri way to stop the bridge. It is not  
2 coincidental that he has no note of Sarah Milera's  
3 revelation pre-Christmas 1993. It is not coincidental  
4 that he has no note of her and Robert Day's revelation  
5 in April 1994. He has no note because nothing was said.  
6 And he has now invented discussions which did not take  
7 place and observations he did not make. His records on  
8 his site cards record that discussions took place in  
9 May, even though he said they were definitely in April.

10 His explanation was that he wouldn't be putting the site  
11 cards into the department until May. For how this man  
12 really functions, see Exhibit 240, his private comments  
13 on those who came forward to criticise Fergie's glib  
14 assertions that cannot be tested because the means of  
15 testing them lies in the secret appendices which she  
16 won't provide, having handed them over to the ALRM.

17 I have to say this: that I predicted on the first  
18 day that I came to the Royal Commission that we would  
19 never see the secret appendices, and I was right.

20 At the end of the day, you have Dorothy Wilson  
21 supported by Doug and Sarah Milera - at least until  
22 someone in the ALRM got to them - with Woolley going  
23 along with what Dorrie Wilson said about the Mouth House  
24 meeting being correct. Then, poor old George Trevorrow  
25 who, for his sin has a responsibility for Vic Wilson and  
26 who remained always, as we know, out of sight, but  
27 according to George he showed the women the area where  
28 they were.

29 As I read the transcript - I wasn't there, of  
30 course, because I was unable to be there, thinking that  
31 the evidence would have finished the day before - he  
32 claims he was only showing the women on the aerial photo  
33 in the Mouth House which was 'You are here, down this  
34 end of the island'. That is nonsense. He didn't say  
35 as Wooley submitted he did. It's obviously been said  
36 because that raised the question of what was he saying.  
37 If it's obvious, what would seem to be obvious? Why  
38 would he pointed to something if it was obvious? He

## ADDRESS (MR ABBOTT)

1 says that his words are obvious and that he is trying to  
2 protect it now. Again, stating the bleeding obvious,  
3 one might think.

4 What were they doing at the Mouth House if they were  
5 not there to protect it? Now, why point to the map to  
6 show them if George Trevorrows is right? This is a man,  
7 I suggest, who fronted for Victor Wilson, and his little  
8 lies show how desperate the Lower Murray Aboriginal  
9 Heritage Committee is to avoid the truth coming out, the  
10 truth that Dorothy Wilson said that Vic Wilson pointed  
11 to the map.

12 You, Madam Commissioner, must commend Dorothy Wilson  
13 for telling the truth and coming out and being hurt for  
14 standing up. You should measure out due criticism to  
15 the Woolleys and the Trevorrows and to the Wilsons for  
16 their attempt to pull the wool over your eyes.

17 Your greatest measure of criticism should be left  
18 for those who have paid for lawyers to be present but  
19 have not come along to rebut Dorie Wilson: Doug Milera,  
20 Vic Wilson, Sarah Milera, Doreen Kartinyeri. And I say  
21 that Dorothy Wilson was refreshingly honest. It's a  
22 measure of her character that no-one in  
23 cross-examination of her made any suggestion that she  
24 was partisan, that she had a reason to invent things,  
25 that she was not telling the truth.

26 CONTINUED

ADDRESS (MR ABBOTT)  
(MS NELSON)

1 So, in conclusion, it is our submission that the  
2 real nature of this claim of secret sacred women's  
3 business can be seen for what it is, the invention and  
4 creature of Doreen Kartinyeri.

5 Fergie admits that what is in the envelopes is  
6 basically what the women were told on the evening of 19  
7 June at Graham's Castle. Veronica Brodie tells us none  
8 of what was discussed at Graham's Castle was, in her  
9 view, secret sacred women's business.

10 In any event, by one revelation or another to the  
11 media, it now can be seen that this claim of secret  
12 sacred women's business is not and apparently never was  
13 a secret. It is a distillation of various strands of  
14 information obtained by Doreen Kartinyeri on the one  
15 hand, by Sarah Milera on the other, which we have set  
16 out at length in our submission, and which we invite you  
17 to accept and act on.

18 In essence, we invite you to find that this was a  
19 fabrication, and we invite you to find that our clients  
20 have told you the truth.

21 MS NELSON: It may be that I will not occupy the  
22 same length of time. It is not necessary for my purpose  
23 which is circumscribed by reason of the representation  
24 necessary for my client. Although, I do propose to make  
25 some general observations that I hope you will find  
26 helpful.

27 In my written submissions I have outlined, in some  
28 detail, what I suggest is the appropriate approach for  
29 you to take. It seems to me that this commission is, in  
30 fact, hybrid in nature. Although, you have been at  
31 pains throughout the proceedings to say that this is not  
32 a trial, it is an inquiry and it is directed to the  
33 gathering of information, which would put it within the  
34 category of investigatory commissions, nevertheless,  
35 there are aspects of it which incorporate those aspects  
36 peculiar to inquisitional commissions.

37 Nevertheless, having regard to the Terms of  
38 Reference and the stated reason for the commission, it

## ADDRESS (MS NELSON)

1 is my respectful submission that your approach should be  
2 that of an investigatory commission, in particular when  
3 you come to formulate your report. The preamble to your  
4 Terms of Reference sets out that the reasons for your  
5 commission is the necessity to investigate allegations  
6 in order to provide a factual basis for the resolution  
7 of the disagreement within the South Australian  
8 Aboriginal communities.

9 Having considered carefully the manner in which this  
10 commission has proceeded - I do not say this in any way  
11 critical of you, but simply as an observation of what  
12 has happened - I cannot think of any approach that you  
13 can reasonably take which will result in a basis to  
14 resolve the disagreement within the Aboriginal  
15 community. There are extreme views expressed, both  
16 directly and indirectly, and it is difficult to see that  
17 any report from this commission will assist in the  
18 optimistic hope that that disagreement can be resolved.

19 The second reason advanced is to enable the  
20 government to determine whether it would be unreasonable  
21 and inappropriate to proceed with the construction of  
22 the bridge, and the third reason is to enable the  
23 government to determine what, if any, submissions it  
24 should make both to Commonwealth Government and to the  
25 inquiry established by that government.

26 On that basis, you are urged to calculate the  
27 material before you, and, in answering the questions  
28 formulated in para.1, to use, as your parameters, the  
29 stated reasons for your commission in para.6 of the  
30 preamble. Notwithstanding that, this commission is not  
31 bound by the ordinary Rules of Evidence.

32 I would ask you to bear in mind that not only  
33 reputations may be very much at stake, and indeed have  
34 been in the course of this commission, but your report,  
35 from which there is no appeal and, in the event of  
36 adverse findings, no legal redress on the part of  
37 individuals, may well result in ongoing injury to

## ADDRESS (MS NELSON)

1 professional reputations, and that's a category unto  
2 which my client, amongst others, falls.

3 Apart from that, as I have set out in my written  
4 submissions, your report may well provide a basis for  
5 civil and even criminal proceedings. Mr Meyer, who  
6 represents Mr and Mrs Chapman, has remarked on more than  
7 one occasion in the course of these proceedings that his  
8 clients' loss is to be measured at the rate of \$20,000 a  
9 day.

10 I think it is not unreasonable to infer that in the  
11 event of a report which provides a favourable basis,  
12 that it is anticipated, at least by Mr and Mrs Chapman,  
13 that some civil proceedings would be instituted, and  
14 presumably against any individual or individuals that  
15 you, Madam Commissioner, may find to be responsible for  
16 the manufacture or fabrication of the matters which led  
17 to the ban on the bridge or the construction of the  
18 bridge.

19 It is common knowledge that the report of Mr Jacobs  
20 QC, who conducted the State Bank Royal Commission, has  
21 resulted in considerable litigation which is still  
22 ongoing. Having said that, it is my submission that  
23 your approach should be to evaluate the evidence in  
24 accordance with the probative value of that evidence,  
25 and whilst you have admitted hearsay evidence into this  
26 commission, that should be treated carefully, and it  
27 should be balanced, having regard to the fact that it is  
28 hearsay evidence, and with the knowledge that the  
29 hearsay evidence exists in courts of law for a very good  
30 reason.

31 In other words, you should make no finding which  
32 affects the rights of an individual, or exposes that  
33 individual to ongoing litigation, until you have  
34 received convincing proof that that finding is  
35 appropriate.

36 That takes me to the question of onus of proof. It  
37 is obvious from other submissions, and I include in that  
38 the submissions made by counsel assisting the inquiry,

## ADDRESS (MS NELSON)

1 by way of a closing statement, that the onus of proof  
2 should be as stated by Dickson J in his classic  
3 statement in Briginshaw's case. I will not give you the  
4 reference to any cases to which I refer, because they  
5 are set out in my written submissions.

6 Essentially, the Briginshaw test is that the onus of  
7 proof is somewhere between the balance of possibilities  
8 and the criminal onus, and that depends upon the  
9 seriousness of the allegation and the gravity of the  
10 consequences which would flow from a particular finding,  
11 amongst others.

12 Having regard to the possible consequences, and  
13 including the possibility of criminal proceedings, I  
14 would urge you to adopt, in relation to any finding that  
15 a person or persons was responsible for any fabrication,  
16 the highest onus of proof.

17 Further, I would urge you to consider the effect,  
18 not including litigation, and the ongoing effect, of a  
19 finding which directly attacks someone's good reputation  
20 and character, which imputes not only their standing in  
21 the community, but which affects their existing  
22 employment and their prospects of employment.

23 Whilst I am dealing generally with the question of  
24 proof and evidence, I would simply like to comment, in  
25 passing, on two references to the High Court case of  
26 Jones v Dunkel. That case is referred to by Mr Meyer at  
27 p.54 of his written submissions, and also Mr Abbott at  
28 p.164 of his. Both counsel there urge you to say, in a  
29 simplistic way, that because Dr Kartinyeri has not given  
30 evidence, that you should draw an adverse inference as a  
31 result.

32 Jones v Dunkel is a well known case, and it has been  
33 applied in this jurisdiction, and in particular by Cox J  
34 in the case of March v Stramare. I will give you the  
35 reference in due course. He does not elaborate in any  
36 in way on the Jones v Dunkel decision. Jones v Dunkel  
37 does not stand for the proposition that is put, I say,  
38 with respect to Mr Abbott and Mr Meyer.

## ADDRESS (MS NELSON)

1 Jones v Dunkel is dealing with the classic  
2 adversarial civil situation where, if a witness is  
3 within one's camp - and that's the word which is  
4 employed by the court - of the plaintiff or the  
5 defendant, and is available, and that particular party  
6 does not call that witness, then it is open to the court  
7 to draw an inference that that witness would not have  
8 supported the case of the plaintiff or the defendant, as  
9 the case may be.

10 It is for that reason not applicable to the present  
11 situation, because this is not a true adversarial  
12 proceeding, although from time to time one might have  
13 been pardoned for thinking it was. Jones v Dunkel  
14 really has no application.

15 Further, Madam Commissioner, you have power to  
16 compel the attendance of Ms Kartinyeri and indeed others  
17 - and I notice Mr Abbott referred to Victor Wilson - and  
18 for perfectly proper reasons you chose not to do so.  
19 Although, you did elect to issue summonses to witnesses  
20 who did come and give evidence.

21 It might, therefore, be unfair to take the view that  
22 because you properly chose not to use powers of  
23 compulsion that therefore a very adverse finding should  
24 be made in relation to Dr Kartinyeri. At the highest,  
25 however, I think it is proper to say that the fact that  
26 Dr Kartinyeri, knowing that this Royal Commission was  
27 proceeding, elected not to give evidence, is a matter  
28 which permits you to draw some inferences, but whether  
29 the proper inference is that she was fabricating matters  
30 is another thing.

31 I have indicated in my written submissions that  
32 there were some very serious allegations made in  
33 relation to my client. I have outlined some of those on  
34 p.7. They came essentially in the opening statement  
35 made by counsel assisting the commission, before any  
36 witnesses were called.

37 COMSR: The opening statement or on the second  
38 day after counsel was requested to give details?

## ADDRESS (MS NELSON)

1 MS NELSON: I can't be sure, because I wasn't here.  
2 One thing I am sure of is that they were on the front  
3 page of the `Advertiser', because I wasn't due to be  
4 here in the commission, I think, until about Friday and  
5 it necessitated me catching a small plane from Amata to  
6 be back here on Wednesday. So I can be absolutely  
7 certain they were in the front page of the `Advertiser'  
8 on Tuesday morning, which I think would have been 1  
9 August. Mr Smith tells me it was the more particular  
10 address.

11 I have raised those, in particular, not simply  
12 because I need to deal with them as matters that you  
13 should look at in terms of findings, but also because  
14 those allegations having been made, and attracted very  
15 widespread publicity, unless they are dealt with and  
16 subsequently fairly reported, will tend to stand in the  
17 public view.

18 It is not uncommon to see that somewhat sensational  
19 allegations made about people are widely reported, and  
20 subsequent findings, whether by jury or otherwise, which  
21 tend to negate those allegations are relegated to about  
22 p.6 in a small patch down the bottom.

23 It is interesting, looking at the evidence now as it  
24 has unfolded, that the evidence does not support the  
25 allegations that were made, and, indeed, I am further  
26 supported in that by the fact that no-one in his closing  
27 statement or in written submissions has suggested that  
28 my client is in any way implicated in this alleged  
29 fabrication. Not even Mr Abbott has subjected my client  
30 to the sort of scathing remarks to which he subjected  
31 some of the other witnesses.

32 And I stress that, because it is my concern to  
33 ensure that proper findings are made in relation to Mr  
34 Hemming. I am suggesting that you make some positive  
35 ones, and, irrespective of what view you form about  
36 other witnesses, that you accept and say that Mr Hemming  
37 was not involved in any fabrication.



## ADDRESS (MS NELSON)

1       The only reference which is made, I think, to Mr  
2 Hemming in the context of the events which led up to the  
3 declaration in relation to the bridge is made by counsel  
4 assisting in his closing statement, and he simply says,  
5 in a non-sinister way, that Hemming offered Doreen  
6 Kartinyeri the suggestion that Ronald Berndt and said  
7 something about the shape of or the topography of the  
8 region as bearing some resemblance to a woman's body.

9       I have analysed that evidence fairly carefully in my  
10 written submissions. It is certainly a conversation  
11 which took place at which Clarke and Jones were also  
12 present. The timing of that conversation is very  
13 relevant I think. Jones is quite vague really about  
14 when it happened. The only link that he has in terms of  
15 identifying the conversation is that it occurred in the  
16 context of a discussion to do with native title.

17       You will recall that Mr Hemming, in his evidence,  
18 placed that conversation quite definitely after February  
19 1995, and he produced the costing report which he had  
20 produced in February 1995 to further identify the time  
21 at which that discussion took place.

22       In my submission, you should accept that evidence,  
23 and if, on that basis, you do, then it is obvious that  
24 there was a lot of discussion about the resemblance of  
25 this area to a woman's body prior to February of 1995.

26       If you accept what Doreen Kartinyeri is alleged to  
27 have said to Philip Clarke, it is equally consistent  
28 that what has happened is that this has become known  
29 throughout the museum and, in the course of debate,  
30 Hemming has done no more than, having heard this  
31 reported, to say 'Maybe there is some support for what  
32 she is saying, because I recall Ronald Berndt saying in  
33 the tearoom that he was starting to theorise about this  
34 area having some feminine aspect'.

35       In any event, and I do not want to dwell on that  
36 particular topic for any length because it is not put  
37 forward in the context that my client was party to or  
38 assisted in any fabrication.

## ADDRESS (MS NELSON)

1       There is an obvious division of opinion between the  
2 experts, and by that I mean the anthropologists and the  
3 academics in this area. The book by Berndt and Berndt  
4 is put to you and has almost come to be regarded as a  
5 sacred site itself. Any attempt to suggest that the  
6 Berndts might not have been quite right or might have  
7 omitted something is greeted by scandalised horror.

8       There is a real danger in accepting the written word  
9 as being the fons et origo of all knowledge. As I have  
10 indicated in my written submissions, it isn't part of my  
11 brief to prove or disprove the existence of secret  
12 sacred women's business, but I acknowledge that that is  
13 part of your task, and I have addressed it by way of an  
14 overview in the hope that some of my submissions may be  
15 of assistance to you.

16       The Berndts carried out their study when they were  
17 newly married in the early 1940s, at a time when  
18 certainly Catherine Berndt was a fairly new researcher,  
19 and, as she herself has acknowledged in her later  
20 written works, there were certain flaws in her approach  
21 to the Yaraldi people. She identified perhaps too  
22 strongly with her husband and insufficiently strongly  
23 with the women, and she felt that that perhaps was an  
24 impediment to her receipt of information.

25       It is said that Pinkie Mack did not disclose to them  
26 any secret business, therefore, secret business did not  
27 exist. However, there may well be a good explanation  
28 for that, in that she was withholding material. I have  
29 canvassed all that, and I do not propose, in the limited  
30 time that I have got, to reiterate what I have said in  
31 written submissions.

32       I thought there might be a fallacy in the approach  
33 that Mr Abbott adopted this morning when he was  
34 suggesting in his submissions that Hindmarsh Island was  
35 regarded as a sacred site, and because it wasn't used as  
36 a sacred site, therefore, there could be no secret  
37 business of any gender because it was not site-related.

## ADDRESS (MS NELSON)

1       It is not suggested, as I understand it, that the  
2 area itself has a quality which would put it into the  
3 category of a sacred site. Simply that it was the forum  
4 for certain ceremonies and at the time that the  
5 ceremonies took place, the topography took on the secret  
6 sacred quality. But it is the association of the land  
7 with the ceremonies that gives rise, as I understand it,  
8 to the material to which I am certainly not privy, and  
9 neither is my client.

10       In terms of the general approach, you have the  
11 unenviable task of deciding whether or not a negative  
12 has been proved. I think it would be inappropriate, in  
13 my respectful submission, for you to take the approach  
14 that, in the absence of positive proof that it exists,  
15 therefore this area has no religious significance or  
16 traditional significance for the Aboriginal people.

17       I think, with respect, the approach has to be that  
18 unless you are satisfied to a very high standard of  
19 proof that this traditional belief or religious belief  
20 does not exist, then you cannot find that there has been  
21 a fabrication. Without knowing who is responsible for  
22 the Terms of Reference, it is certainly not an easy task  
23 for you.

24       It is difficult to deal with the religious and  
25 traditional beliefs of any community. I listened to Mr  
26 Abbott with interest this morning, because he was  
27 applying logic to the situation. I think you can apply  
28 judicial knowledge to the fact that religions do not  
29 operate on logic, and, if they did, they simply would  
30 not exist.

31       Belief is a very difficult and sensitive area. It  
32 is simply a nonsense for Mr Abbott to talk about the  
33 barrages and the bridge and the flowing of the waters  
34 and say that, by a process of logic, it is illogical and  
35 therefore it cannot be believed. It is a very  
36 attractive argument in a scientific and dispassionate  
37 arena, but it is simply not an argument which has any

## ADDRESS (MS NELSON)

1 validity when it is applied to the question of  
2 traditional or religious beliefs.

3 If I can simply say by way of analogy, the Christian  
4 religion accepts matters which are set out in the Old  
5 Testament and the New Testament. Internal examination  
6 of a lot of that in a logical sense tends to suggest  
7 that that is something which cannot have any credence.  
8 But even if you look at the various academic debates  
9 that have gone on since the discovery and the  
10 interpretation of the Dead Sea Scrolls, it is quite  
11 evident that there is yet another body of interpretation  
12 relating to the historical fact, if it be a fact, giving  
13 rise to that particular set of beliefs.

14 So I simply say that this is an area to be treated  
15 with a degree of sensitivity, and there is a danger in  
16 applying that sort of scientific logic to the area of  
17 individual and community belief.

18 Having said that, there is another area which became  
19 apparent in the evidence to which I think you need to  
20 have regard, and it is the question of: what is  
21 tradition? The definition of tradition in both the  
22 State and Federal Acts is a very wide ranging  
23 definition, and it encompasses, by definition,  
24 contemporary as well as historical belief.

25 There are, it seems to me, three avenues which you  
26 can take. One is to find that this is a belief or a  
27 tradition which has existed for many many years, but  
28 which has been eroded, both in terms of its content and  
29 in terms of its dissemination, by reason of the European  
30 invasion, the disruption generally to Aboriginal life,  
31 the removal of children from traditional communities,  
32 the removal of people from their traditional way of life  
33 to a mission way of life, where there is absolutely no  
34 doubt that their own traditional beliefs were frowned on  
35 and so forth.

36 CONTINUED

## ADDRESS (MISS NELSON)

1 All those matters have been well canvassed.

2 The other avenue is to say that there has been a  
3 basis of belief which has been reinterpreted, or if I  
4 use Dr Clarke's phrase, there has been a reinvention of  
5 tradition, but that there is now a genuine belief and,  
6 therefore, within the terms of the definition, a genuine  
7 tradition.

8 I have referred to the statement of David Rathman,  
9 the Chief Executive of the Department of State  
10 Aboriginal Affairs, and it seemed to me that his  
11 comments are worth bearing in mind in your approach to  
12 this.

13 He says:

14 'Aboriginal people have their own way of looking at  
15 knowledge.'

16 And this is not something which has been disputed by  
17 anyone.

18 He says further:

19 'Sometimes Aboriginal people withhold knowledge, because  
20 of previous undertakings given at the time when they  
21 were told the knowledge. Aboriginal people will go to  
22 extreme lengths, if there is a fear that knowledge would  
23 fall into the wrong hands, even at times allowing the  
24 sites related to the knowledge to be destroyed.'

25 If I can interpolate there: some of the written  
26 submissions seem to argue that, because there was a  
27 delay in the secret sacred women's business coming to  
28 light, as it were, that therefore it must be  
29 manufactured. And there are two matters to be borne in  
30 mind relating to that sort of process of logic.

31 First of all, it is apparent, from Henry Rankine's  
32 evidence, that he was unaware that a bridge was involved  
33 in this development until fairly late in the piece, late  
34 1993, I think.

35 Secondly, as Dr Fergie said in her evidence, the  
36 whole of the objection to the construction, as a whole,  
37 or the consultation relating to the development, as a  
38 whole, was male managed. It was undertaken by the male

## ADDRESS (MISS NELSON)

1 members of the Aboriginal community. And both of those  
2 two matters are compelling reasons why, apart from the  
3 natural reluctance to disclose the existence of  
4 knowledge, they are compelling reasons why these matters  
5 did not come to light until it was essential for them to  
6 be revealed.

7 Rathman goes on to say that:  
8 `There is evidence of a process occurring where  
9 Aboriginal people who have been dispossessed of their  
10 traditional lands are adopting archaeological sites  
11 which are important historically.'

12 Which would, as I understand what he is saying, not  
13 ordinarily be described as sacred sites, but they are  
14 being adopted as sacred sites, because of their  
15 historical and other traditional importance.

16 And he says:  
17 `It is a process of spiritual and cultural heritage and  
18 rediscovering a contemporary connection with the  
19 country.'

20 In a way, he is saying much the same as Dr Clarke  
21 said when he spoke about invention of tradition as a  
22 cultural process whereby events are reshaped:  
23 `The perception of the past is reshaped to make a new  
24 sense of the present.'

25 And Mr Jones agrees with that.

26 He says:  
27 `By gradual process, the ground has been prepared for  
28 this emergence.'

29 And I interpolate to say, as I read his evidence, I  
30 think he was talking about the Hindmarsh Island issue:  
31 `And that process has been preceding probably for  
32 several decades.'

33 Having read most of the written submissions - and I  
34 put to one side, in this comment, the submission or the  
35 closing statement of counsel assisting the Commission -  
36 it is unfortunate that there are extreme views taken.

37 There is the view of the dissident women that this  
38 is a lot of nonsense. It is all manufactured. It

## ADDRESS (MISS NELSON)

1 couldn't possibly exist. It never has existed.

2 There is the other view, which is put forward by the  
3 proponents of the existence of secret sacred women's  
4 business, which is that it has existed in an unchanged  
5 sense for centuries. And it seems to me that both of  
6 those extreme points of view overlook what may very well  
7 be the truth of the matter, which is that there is, in  
8 the historical past, a basis for the existence of this  
9 tradition and belief. But that, as the culture and  
10 tradition has evolved, there has been, if you like, an  
11 evolving reinterpretation, having regard to contemporary  
12 views traditions and beliefs.

13 If that is right, then it falls within the  
14 definition of tradition, as set out in both the State  
15 and the Federal Act.

16 I refer to those matters simply in an attempt to  
17 assist you in your task, but also to reinforce my  
18 client's position.

19 You will recall that he gave his evidence in a  
20 perfectly straightforward way. He was, I suggest, one  
21 of the few anthropologists or academics who gave  
22 evidence from an unbiased point of view and who didn't  
23 appear to have a hidden agenda.

24 It is quite plain from some of the other museum  
25 witnesses that there was very much of a personal agenda  
26 in their approach - and I have commented on that in my  
27 written submissions - but he wasn't there to advance a  
28 point of view. He didn't have a thesis to support, or  
29 justify. He hadn't been commissioned by any group to  
30 comment on this issue. He hadn't been paid for any  
31 reports. He hadn't given interviews to Channel 10. And  
32 he hadn't in any way aligned himself firmly with one  
33 group or the other. He maintained a perfectly proper  
34 point of view, which was that he supported Dr  
35 Kartinyeri's right, as he put it, to have her say.

36 In other words, he supported her right to  
37 communicate her views to Mr Tickner, but he really has  
38 adopted a very fair substance. He hasn't dismissed the

## ADDRESS (MISS NELSON)

1 proponent point of view out of hand, but he hasn't gone  
2 in to advocate it vigorously either. He does no more  
3 than to say the existence of this secret sacred women's  
4 business is a possibility. And he has pointed in his  
5 statement to the various matters to which he has had  
6 regard in arriving at that conclusion. And of course it  
7 is true that one of those was Alison Brookman, which she  
8 has since explained, but, of course, at the time, when  
9 my client read it, it certainly would have had a  
10 significance for him, which has probably abated to some  
11 extent. But that is only one factor. There are other  
12 matters upon which he has relied, and I think, for those  
13 reasons, you may well find his evidence helpful, but it  
14 isn't tainted with that sort of personal approach and  
15 the advocacy of a point of view which has to be  
16 justified, for whatever reason.

17 In summary, I think that, unless you find convincing  
18 proof, and to the standard which I suggest is proper,  
19 negating the existence of secret sacred women's  
20 business, even if you find it is reasonable as a  
21 possibility, then I don't think you can find that there  
22 has been a fabrication. As I say, the truth may lie  
23 somewhere between the two extremes which have been  
24 argued before you.

25 In any event, it is plain that Mr Hemming wasn't a  
26 party to any fabrication and indeed, as I understand it,  
27 it is no longer urged that he was. My concern is that,  
28 having received that extraordinary amount of publicity,  
29 that a positive finding be made by you to somehow  
30 counteract that sort of allegation, because it tends to  
31 linger in the public mind in the absence of something  
32 very positive.

33 Those are my submissions.

34 COMSR: Mr Steele, do you wish to address today?

35 MR STEELE: Yes.

36 COMSR: Is it your intention to address?

37 MR STEELE: Yes, it is my intention to address. It  
38 is also my intention to be very brief and, having heard



ADDRESS (MISS NELSON)  
(MR TILMOUTH)

1 Miss Nelson, I can be briefer than I anticipated.

2 Mr Smith suggests that I might go next.

3 I understand that Mr Tilmouth has to be elsewhere,  
4 so I am quite content to remain seated.

5 MR TILMOUTH: I am obliged to Mr Steele.

6 Unfortunately I had arrangements for tomorrow changed on  
7 me by the Chief Justice and it has caused confusion in  
8 my life.

9 What Miss Nelson has said to you, in terms of  
10 avoiding the risks of looking at the case from two  
11 polarised views, in my submission, has a great deal to  
12 commend it. And it shouldn't be seen, this matter  
13 should not be seen as simply a black and white, singular  
14 choice between apparently opposed and starkly  
15 conflicting views.

16 Indeed, Madam Commissioner, in some senses, as Miss  
17 Nelson hinted, there has been an air of forensic  
18 unreality about some of the way the case has been dealt  
19 with. The contentions that there is no reference in the  
20 books, there is no earlier writings about women's  
21 business and treating it as a stark forensic matter to  
22 be dealt with on that basis. The thesis is, in a way,  
23 that if it doesn't appear in the literature, the  
24 anthropological literature, it can't possibly exist.  
25 And that line of reasoning is clearly fraught with  
26 danger. Indeed, in 6,000 pages of evidence and 300 odd  
27 I think exhibits, one tends to forget what should be the  
28 real starting point in this case and stand back and look  
29 at the area and look at the Ngarrindjeri people and the  
30 other tribes around them.

31 And I have dealt with it, to an extent, in the  
32 written outline, but it doesn't take any degree of  
33 imagination at all to realise that this area, in its  
34 natural, pristine state, before European invasion, must  
35 have been a paradise. And I don't say that to be  
36 emotive to or overstate the issue.

37 The meeting of the waters, to use a nontechnical  
38 sense, was very much all part of that area because, with

## ADDRESS (MR TILMOUTH)

1 the natural forces of the River Murray and the sea, no  
2 doubt how far the salt water went up the Murray and how  
3 far the Murray brought down the fresh water would have  
4 been very much dependent on seasonal factors. And this  
5 area would have been alive with the ebb and flow of  
6 fresh and salt water to a very much more greater extent  
7 than it is now. Not only, of course, do we have the  
8 current day situation compromised by the barrages, but  
9 we know it has been compromised substantially by the  
10 drawing of the water, or drawing on the waters for  
11 irrigation purposes, right up the length of the Murray.  
12 And the situation we see today is far different and far  
13 more spoiled than no doubt the situation as it was in  
14 tribal times.

15 And, Madam Commissioner, it must be, in my  
16 submission, looked at in that respect. That it must  
17 have been an area of great natural beauty, intense flora  
18 and fauna, and a wonderful place for the Aboriginal  
19 people to live, in a fairly permanent situation.

20 And the other thing to say in parallel with that is,  
21 from all the writings we do have, all the  
22 anthropological literature, these were a very  
23 sophisticated people indeed. They had a parliament, the  
24 Tendi. Whilst it may not have had all the attributes of  
25 Westminster, it clearly was a very advanced institution.  
26 And I could go at length to what is recorded in all of  
27 the books, but we know we had a very sophisticated and  
28 advanced people and that should not be forgotten either.

29 What all of that means - the natural beauty of the  
30 area and the advanced state of existence that these  
31 people had - it should not be of any surprise at all  
32 that, in such a degree of sophistication, that they did  
33 have a detailed and intense and sophisticated religious  
34 culture and, likewise, sophisticated and detailed  
35 beliefs. And it should be of no surprise, Madam  
36 Commissioner, to postulate that there were  
37 gender-specific issues in such a society as this.  
38 Indeed, apart from the Tiwi people who were

## ADDRESS (MR TILMOUTH)

1 coincidentally also investigated by the Berndts, this  
2 area, if the thesis that there was no gender-specific  
3 knowledge or secret sacred business owing to men and  
4 women is true, they would be the odd tribe out in well  
5 over 300 tribes - and there were probably a lot more  
6 than that - on the Australian mainland, including  
7 Tasmania. And one needs to ask the question at the very  
8 beginning, why would this culture be entirely different  
9 from all or all but one of the other Aboriginal cultures  
10 in Australia? And one should search, in my submission,  
11 for convincing material to assume that state of affairs.

12 What, of course, is put to you is that Berndt and  
13 Berndt is an exhaustive code, or record and it contains  
14 no references which are capable of supporting the basis  
15 of separate men's and women's knowledge, or business, as  
16 it is referred to in the Terms of Reference.

17 What Miss Nelson said about the dangers in that kind  
18 of process of reasoning I would adopt as well. She put  
19 it very succinctly and, in my submission, clearly, and  
20 in a thought-provoking way and I adopt it.

21 What I would add, though, is that it would be a  
22 mistake in any religion to hold up any publication and  
23 say 'This is an exhaustive code, or an exhaustive  
24 reference work, which marks out entirely that religion,  
25 or the beliefs which surround it.' And one only needs  
26 to look at the Bible.

27 The Bible might be said, like Berndt might be said  
28 for the Ngarrindjeri people, to be the locus classicus.  
29 But, Madam Commissioner, to say that the Bible contains  
30 every last word and every last thought on Christianity,  
31 of course, is nonsense. If that were true, there  
32 wouldn't be theologies, there wouldn't be different  
33 branches of the Christian religion, there wouldn't be  
34 arguments about what passages mean or don't mean in the  
35 Bible. And, in my submission, the thesis that the  
36 Berndts' book excludes the existence of women's  
37 knowledge is to take that very view. And, in my  
38 submission, only to think about it and apply it to

## ADDRESS (MR TILMOUTH)

1 Christianity in the Bible is to defeat the thesis.

2 The other thing I would say, as a preliminary  
3 remark, is that the very word itself, 'Kumarangk', and  
4 the connotation which it imports about pregnancy - and I  
5 am referring to Dr Clarke's evidence in this regard - is  
6 also a good starting point for a consideration as to  
7 whether the things said about Hindmarsh Island are  
8 really true. In other words, what does the name, the  
9 Aboriginal name, convey in the process?

10 Next I would like to deal with the issue of  
11 consultation.

12 The next argument, putting aside 'Well, there is  
13 nothing in Berndt, so there is nothing in antiquity  
14 about it', is that, why did these people sit back and  
15 say nothing about it until the death knock?

16 A good deal has been said to you in answer to that  
17 already, particularly by Miss Nelson. But, Madam  
18 Commissioner, on the issue of consultation, there has  
19 been a tendency to look at it as a strict matter of law  
20 and as a matter of strict obligations. And what has  
21 been put to you, essentially is 'Well, the Lucas report  
22 cast an onus on the Tendi to call a meeting and to  
23 further the process of consultation.'

24 Now, in my submission, that is to look at it in  
25 entirely the wrong way.

26 I have dealt with it in the written outline, at  
27 p.12, if you want to reference back to the submission.

28 COMSR: Yes, I have read the submissions.

29 MR TILMOUTH: But the fact remains, even if one was  
30 tempted to be critical of the Aboriginal people for  
31 inaction, the inaction was equally shared by both  
32 parties. It may be reasonably asked, what did the  
33 developers or the Government do to try and stimulate the  
34 Aboriginal people into the consultation process as  
35 promised in the Lucas report and as formed part of the  
36 conditions of approval? Where did anybody write and say  
37 what are you doing? Why aren't you doing it? Where is  
38 your meeting of the Tendi? And the fact of the matter

## ADDRESS (MR TILMOUTH)

1 is that, at best, in my submission, inequities are quite  
2 equal in the area of inactivity. The fact of the matter  
3 also is that what Lucas promised and the Aboriginals  
4 relied upon was never, ever fulfilled. When Lucas wrote  
5 in 1990, he wrote, not on behalf of the Aboriginal  
6 people, he wrote a report for the developers and for the  
7 Government. And you know, from the extracts that I have  
8 quoted, that there were positive statements about the  
9 necessity for further consultation with bodies that he  
10 identified. And I emphasise 'bodies'. Not advise, like  
11 Henry Rankine, at a park on the way to a football match.  
12 Aboriginal bodies at the expense of the developers for  
13 the purposes of ensuring that adequate consultation  
14 occurred with respect to this area.

15 That expectation, which nobody ever said to the  
16 Aboriginal people 'That no longer applies', became part  
17 of the conditions in the assessment report, which was  
18 part of the original conditions on 12 April 1990 by the  
19 Aboriginal Heritage Branch. And they are set out at  
20 p.15 and 16 of our written submissions, in full. But  
21 they particularly picked up by express reference Dr  
22 Lucas's original statements about the necessity for  
23 consultation. And the assessment report specifically  
24 said that there were those recommendations in his report  
25 which needed to be addressed:

26 'It is necessary for the proponent, the developer, to  
27 consult with the Aboriginal Heritage Branch about  
28 implementing these recommendations, particularly with  
29 regard to the burial skeletal remains and discovery of  
30 other material.'

31 And the report went on to say that there was a  
32 necessity for liaison between the proponent and the  
33 Branch and that all relevant Aboriginal representative  
34 bodies should be notified and fully consulted.

35 Now, there was just not one attempt to deal with the  
36 Aboriginal bodies involved. More particularly, the  
37 Lower Murray Aboriginal Heritage Committee, which was  
38 specifically named in Mr Lucas's report as a proper

## ADDRESS (MR TILMOUTH)

1 vehicle for those consultations. Nor was there any  
2 attempt to deal with, in any way, the Raukkan community  
3 or any of the other organisations, Aboriginal  
4 organisations which existed, at the time.

5 So, the Aborigines gave evidence, George and Tom  
6 Trevorrow, and said `Well, we relied on Lucas. Nobody  
7 came to speak to us in the way that was contemplated.'

8 And the fact of the matter is that that evidence is  
9 correct, as a matter of history, unmistakeable history.

10 And they can't be criticised for sitting back and  
11 waiting for the maturation of the conditions precedent  
12 to the development which had been included as conditions  
13 in the official documentations to which the developers  
14 and the Government were a party. And, without those  
15 conditions being fulfilled, then of course you don't get  
16 to the next stage, where the development proceeds. And  
17 there is a great air of unreality, in my submission, in  
18 simply saying that the Aboriginal people sat back, when  
19 one looks at the requirements which were imposed upon  
20 this development, there were specific and affirmative  
21 obligations on the developers to do things, which they  
22 plainly did not do.

23 And more importantly in that respect, in Mr Lucas's  
24 report itself, which is Exhibit 15, he notes that the  
25 opposition by the community was expressed to him in  
26 1990. It is said to be a big gap in the opposition.

27 At para.5.2.2:

28 `Henry Rankine, chairman of the Raukkan community,  
29 expressed profound concern over any ... over burial  
30 sites.'

31 And the report went on to note that the Aboriginal  
32 Heritage Act appeared to now deal with the situation.  
33 And, of course, the expectations of Tom and George  
34 Trevorrow in their evidence was that the Act had to be  
35 complied with.

36 And the report goes on:

37 `Henry Rankine's expressed ... Aboriginal  
38 communities - '

## ADDRESS (MR TILMOUTH)

1       `Communities', not individuals:  
2       ` - on the part of developers ... remains will be  
3       required at all times.'

4       None of those things, in my submission, were  
5       fulfilled.

6       And, Madam Commissioner, I also point out that this  
7       is not a specific issue to Hindmarsh Island or specific  
8       to Draper. The necessity for full consultation with  
9       communities is a common consideration when it comes to  
10      Aboriginal communities and I have quoted an extract from  
11      the waterhole dam inquiry by Mr Wootton. And the  
12      relevant part of that is at p.18. This is a common  
13      theme. It is not something that is idiosyncratic to  
14      this area.

15      Now, the other thing that needs to be said loudly  
16      and clearly is that Mr Lucas's report of 1990 contained  
17      not one reference to the bridge. This is a report, I  
18      repeat, not written for the Aboriginal community. It is  
19      written for the developers and the Government. Mr  
20      Lucas, without being legally too technical, is their  
21      agent. His wife, Dr Fergie, has given evidence that she  
22      believes, from what he has told her, that there was no  
23      reference in what he was asked to do on this occasion  
24      with respect to the bridge.

25      Now, Madam Commissioner, that must be right, because  
26      it could hardly be expected that, if the bridge was a  
27      part of his remit, that it would somehow have been  
28      omitted altogether in the report.

29      The only conclusion to draw is that he was not  
30      instructed as to the bridge proposal at all in this  
31      survey. And, of course, when he went around doing what  
32      he has described in that report, it must have been  
33      conveyed to the Aboriginals concerned, as Tom and George  
34      Trevorrow said, that there was nothing to do with the  
35      bridge in that area. And, of course, this postdated,  
36      this superceded the Evans report, especially that second  
37      report. And it must therefore be true what George  
38      Trevorrow said `When we got this report and the bridge

## ADDRESS (MR TILMOUTH)

1 was omitted, we assumed from that that the bridge was  
2 off the agenda, at least for the time being.' It could  
3 hardly have been part of Mr Lucas's instructions to deal  
4 with the bridge issue and the bridge approaches. If, in  
5 fact, he had been given specific instructions, it must  
6 surely have appeared in his report.

7 So, the only conclusion you can make, especially  
8 given the fact that he has not remarkably been called,  
9 is he was not instructed about the bridge at all.

10 CONTINUED



## ADDRESS (MR TILMOUTH)

1       Of course, people will say that the difficulty with  
2 the Lucas report is that it has this one line throw away  
3 that there is no extant mythology. That must be  
4 remembered in the context of the fact that he is not  
5 dealing with the bridge proposal for the reasons that I  
6 have mentioned.

7       The other thing to say in this context, that is to  
8 say in the context of his suggested late speaking up, is  
9 that at the Coorong Consultative Committee on 2 July  
10 1993 - you will remember that George Trevorrow said that  
11 there was no consultation, he had been very consistent  
12 about all of this, but that report, that minute also  
13 records that that committee recommended at the time that  
14 the bridge not be built. That is at p.19 of our written  
15 outline. So there is, in fact, quite a deal of recorded  
16 opposition over the key period to opposition to the  
17 bridge in the context of the Aboriginal people  
18 concerned.

19       On the issue of late disclosure, there's a lot been  
20 put in our written outline which I adopt by sheer  
21 research with the water hole dam issue. In any other  
22 context, it would have been idle to suggest - in any  
23 other context in relation to Aboriginal people, it would  
24 have been idle to suggest that, well, there is none as  
25 they came out late with this secret sacred knowledge  
26 and, therefore, it doesn't exist. It is relied on very  
27 heavily in this case and strongly indicative of the fact  
28 that the secret women's business, as the Royal  
29 Commission calls it the Terms of Reference calls it, did  
30 not exist.

31       The fact of the matter is that in all cases, where  
32 you have the kind of secret knowledge that has been  
33 talked about here, late disclosure will be the  
34 invariable product of the process which gives rise to  
35 the no to reveal the material. In other words, if there  
36 weren't late revelation but early revelation, that would  
37 have been very powerful that it was secret sacred  
38 knowledge because of the ease and early stage at which

## ADDRESS (MR TILMOUTH)

1 it was prepared to be revealed. One's got to look at  
2 this in the context of what our experiences tell the  
3 Commission; that is, if it is truly secret sacred  
4 knowledge, it will not, by definition, be revealed until  
5 the bulldozers are moving in to start construction.

6 As I emphasised as much as I can, if it had been  
7 revealed earlier, that would have destroyed itself, the  
8 view, the contention that it was secret and sacred  
9 because it just doesn't come out this easily. The  
10 comment may also be made that the Aboriginal people  
11 would have been damned whether they revealed it early or  
12 whether they revealed it late. They couldn't win  
13 whatever they did. If it was revealed early and  
14 readily, Mr Abbott would have been shouting `Well, it  
15 cannot be secret and sacred because it came out so  
16 readily and easy and quickly'. If it came out late,  
17 he's shouting to the same extent. In my submission,  
18 one's got to step back again and look at this and see  
19 that the fact of the matter is that if it was truly the  
20 privilege knowledge of the women, it had to come out in  
21 this late way when the situation was desperate. It  
22 wouldn't have come out any earlier.

23 You can see a pattern, especially through early  
24 January, with Dr Draper and Mr Jacobs where the men are  
25 clearly trying to hint at this material without  
26 revelation. A little bit more is revealed from time to  
27 time. That is absolutely typical of the way that these  
28 things occur. Of course, Mr Abbott says there is no  
29 other example of this kind of thing happening, the water  
30 hole dam and other Aboriginal land claims are absolutely  
31 typical of these types of situation where there are  
32 recent examples of well documented anthropological  
33 areas, but where specific sites are still not documented  
34 and they are only revealed as sacred sites when the need  
35 arises. And the water hole dam is a very specific  
36 current example of exactly that kind of thing happening  
37 right now in Australia with respect to Aboriginal  
38 people.

## ADDRESS (MR TILMOUTH)

1 The other example we have - and it's not addressed  
2 by Mr Abbott at all - in relation to this particular  
3 area and these particular people was the Meningie  
4 Caravan Park example. We have a specific example of  
5 that happening right here with respect to these people.

6 On the issue of late disclosure, I also reinforce  
7 what Miss Nelson said about Mr Rathman's statement. He  
8 is the chief executive of the Department of Aboriginal  
9 Affairs and you would think would be in a good position  
10 to know and speak authoritatively. Nobody wanted him  
11 cross-examined on that. I refer but won't read p.25 of  
12 our written submission where this very important issue  
13 is again dealt with from the Wootton report.

14 The fact of the matter in this context is that the  
15 veracity of the so-called secret women's business, or  
16 more correctly called the secret knowledge, can't  
17 possibly be devined in this Commission without the  
18 attendance of the custodians of that knowledge or those  
19 persons, those elderly women, who have said to have  
20 harboured it close to their breasts. Of course, without  
21 Sarah Milera or Doreen Kartinyeri as chief informants to  
22 Dr Fergie and then Professor Saunders, and without the  
23 senior women - and they have been named in many respects  
24 on many occasions in my submission - it is wishful  
25 thinking to expect you to be able to find the existence  
26 of that business when those people have not entered the  
27 witness box and have not been tested in  
28 cross-examination.

29 A lot was said about their failure to give evidence  
30 and the Jones v Dunkell question. But the fact of the  
31 matter is that it's a very big thing, as Miss Nelson  
32 said, on the principle of Jones v Dunkell to draw an  
33 adverse inference from their failure to give evidence.  
34 Jones v Dunkell, for the reasons that Miss Nelson  
35 mentioned, don't apply in this context but it should not  
36 be forgotten that the Federal Minister has himself  
37 announced, in I think 7 or 8 June, a Federal inquiry and  
38 it's a very big thing to say that, well, these women and

## ADDRESS (MR TILMOUTH)

1 these other people are faced with a difficult decision  
2 about what they should do. They have got a Federal  
3 Minister reassuring them on the one hand that there will  
4 be a Federal inquiry under s.10 of the Federal Act and  
5 the State Government coming out in this inquiry and the  
6 women saying `Well, the Federal Minister made the  
7 decision in this case under the Federal Act. What's  
8 wrong with us co-operating with his inquiry?'. In my  
9 submission, the election not to give evidence should be  
10 seen in that light and in that light with the Minister  
11 of the Crown, a Commonwealth Minister of the Crown,  
12 making public statements about the holding of an inquiry  
13 under that Act, the very Act under which the decision  
14 was made. In that context here, it can hardly be the  
15 occasion for criticism of them, still less for drawing a  
16 positive inference out of their failure to give evidence  
17 in this case. As we put in our written outline, there  
18 was an explanation anyway within the Jones v Dunkell  
19 case.

20 In the written outline and to an extent this  
21 morning, Mr Abbott glossed over the importance of the  
22 meeting between the men and Mr Jacobs QC in January  
23 1993. The written outline of Mr Abbott in particular,  
24 which is of para.4.32 and those few that follow, played  
25 down that occasion and talked about it really relating  
26 to the land generally and the geographical detriment  
27 that the bridge would cause.

28 If you read, which I encourage you to do, carefully  
29 the cross-examination of both Mr Abbott and Mr Meyer,  
30 they endeavoured to draw out from Mr Jacobs the fact  
31 that the men were really worried about the visual  
32 aspects of the bridge and played down the importance of  
33 what was said by them to Mr Jacobs on the spiritual  
34 side. The centre of gravity of his whole evidence and  
35 the cross-examination, if you read it, is, in fact,  
36 quite the reverse. Mr Jacobs talked about the burden of  
37 their complaint being the area of spiritual intrusion  
38 rather than just the bridge being an eyesore. When you

## ADDRESS (MR TILMOUTH)

1 read the evidence, it's very important to see the hints  
2 the men were giving to somebody whom I accept they were  
3 probably regarding as equivalent of an elder in our  
4 culture, the very significant hints they were giving to  
5 him about the existence of what we have now called  
6 women's business. If you look at the particulars  
7 carefully about what Jacobs ascribe to the men, it goes  
8 a long way without naming it, of course, in specific  
9 terms. But, in my submission, that exchange was a very  
10 important one as early as it was in January because it  
11 shows that the men were alluding indirectly to what was  
12 later to become the major question about the women's  
13 issues.

14 In relation to the Berndt book, if I can refer to  
15 that for the moment. Nobody has addressed or at least  
16 nobody so far as has addressed the fact that in  
17 combination, Dr Fergie, Dr Draper and Mr Hemming have  
18 referred to a number of specific references in that work  
19 which give rise to references to or maybe regarded as  
20 references to the existence of a gender specific  
21 culture. We have endeavoured to collate them by  
22 reference number to transcript references in our written  
23 outline, but it should not be forgotten that there is a  
24 significant body of credible evidence by high standard  
25 people, highly qualified people, three of them, with a  
26 great deal of field experience - Draper and Hemming in  
27 particular - with these very people, which says that the  
28 Berndt book and Tindale references support the view that  
29 there is gender specific material.

30 If I could briefly - I think we have summarized  
31 them. There are ten of them. There is Tindale's  
32 Journal, South East Journal at p.223. There is a  
33 specific reference in Berndt itself at pp.175 to 176  
34 where there is a reference to the Narambi sacred and  
35 taboo and they talk about the practice they have  
36 recorded. It says:  
37 'Physical removal of the novice from the secular camps  
38 ... only to the elders.'

## ADDRESS (MR TILMOUTH)

1       There's a third reference in Berndt at p.12, a 4th  
2       at p.148, a 5th at p.149, a 6th at p.156, a 7th at  
3       p.193, an 8th at p.154, which, by the way, do have  
4       detailed with it the evidence of Betty Fisher and  
5       Veronica Brodie in the Exhibit, the 7.30 Report tape in  
6       22B at p.20. There's a 9th reference again from the  
7       journal, the South East Journal at p.245, and there's a  
8       10th at p.23 of the same journal. In my submission, it  
9       is not correct at all to say that Berndt not only is in  
10      error to say that it's an exhaustive code, but it is  
11      wrong to say that there is nothing in Berndt or, indeed,  
12      in the Tindale journals to support the view that nothing  
13      existed in the anthropological literature.

14      As to the Mouth House issue, which, of course,  
15      directly concerns my clients, there are some important  
16      things to say about that. Of course, there was, on the  
17      whole of the evidence, the initial exchange after Mr  
18      Wooley said that there was not enough for Minister  
19      Tickner to hang his hat on. There might be a difference  
20      to who did what and pointed the watering stick. There  
21      is the potential there because the reference to the  
22      aerial photograph there is an extra of gravity one can  
23      distill. What is overlooked is the material differences  
24      in at least two major respects. These are addressed in  
25      our written outline at p.40.

26      The fact of the matter is that both Tim Wooley and  
27      George Trevorrow absolutely deny that Doug Milera or  
28      anybody else made any reference to a female anatomy  
29      analysis at that time with an aerial photograph or  
30      anything else.

31      Of course, that's the linchpin of Mrs Dorothy  
32      Wilson's evidence. The problem with that theory is that  
33      if it was supposed to have had such a dramatic effect on  
34      Dr Doreen Kartinyeri, you will remember Mrs Wilson's  
35      evidence where everyone was transfixed on the map and it  
36      was Mrs Kartinyeri who saw some brand new revelation  
37      that was as literal as that on Mrs Wilson's evidence.  
38      The terms if that was such a powerful influence and what

## ADDRESS (MR TILMOUTH)

1 is a sine qua non of what eventually happened to  
2 influence Minister Tickner, there is not a skerrick of  
3 reference in that or in the key documents; that is to  
4 say, the Exhibit 206 the letter that went to Tickner  
5 that day that was faxed off or in Dr Kartinyeri's letter  
6 which was a couple of days later on the 12th.

7 Those two letters, because of the omission of that  
8 material, are themselves very telling of what, in fact,  
9 occurred or what did not occur at this meeting. My  
10 submission is that this anatomy illusion was ancient  
11 history, even with Mr Campbell rarely speaking at that  
12 time. But what is really significant about this  
13 evidence is that Mr Meyer in his statement, in his  
14 written submissions to you, tries to reconcile the  
15 conflicting events by suggesting that Mr Wooley may not  
16 have heard or he may have been mistaken about it. That  
17 is at p.43 of Mr Meyer's written submission. The fact  
18 of the matter is that Mr Wooley was very close at hand.  
19 Mr Abbott was very keen to have him close to the table  
20 and Mrs Wilson there too as well as Dr Kartinyeri. And  
21 Mr Wooley's evidence is close to an exhaustive account  
22 of what happened before he left the room and before the  
23 letter was written in. By the way, there is also a  
24 divergence of material, divergence about that because  
25 Wooley says that that extra bit was not added when he  
26 was there. Whereas, Mrs Wilson's evidence was that it  
27 must have been because she saw Dr Kartinyeri ask someone  
28 to dictate it, take it down and then she left the room.

29 In the cross-examination of Mr Wooley, and, indeed,  
30 George Trevorrow for that matter, these differences  
31 which are vital were not pressed upon. In fact, all  
32 that Mr Abbott does in his written submission at p.122  
33 is criticise Mr Wooley for claiming that which he was  
34 obliged to do until you made a ruling contrary to it and  
35 criticises him as well for saying that - well, his  
36 evidence was such that you can't exercise the  
37 jurisdiction under the Federal Act until you have  
38 exhausted the State Acts by pointing out that he wrote

## ADDRESS (MR TILMOUTH)

1 to Minister Tickner in 1939 and somehow argues, I don't  
2 understand it, he argues that that affects Mr Wooley's  
3 credit. Mr Abbott was not game to cross-examine Mr  
4 Wooley on the key areas of difference relating to the  
5 Mouth House exchange. He never put 'I put it to you  
6 that Doug Milera said this', 'I put it to you that  
7 Doreen Kartinyeri's reaction was marked' and 'I put it  
8 to you that something was added to that letter when you  
9 were there'. In fact, Mr Abbott's cross-examination  
10 very consciously withdrew from grasping that nettle. I  
11 refer you to the transcript at pp.4327 and 4328 where he  
12 specifically was afraid to crunch the issue.

13 The relevance is this. The problem is that there is  
14 George Trevorrow, Mr Wooley, and the objective evidence  
15 both before and after the Mouth House event which  
16 indicate together very strongly that what Mrs Wilson has  
17 said about Doug Milera referring to the map, et cetera,  
18 just did not occur. Now, of course, if you were to  
19 accept that, then the credibility of really the only  
20 informant in the whole case of fabrication of the  
21 women's business is stopped. It's such an important  
22 matter that it cannot be ducked or weaved as the written  
23 submissions try to do. They try to avoid the problem  
24 because they recognise that if Mrs Wilson cannot be  
25 accepted on this, a huge question mark and a dark cloud  
26 must necessarily hang over the entirety of her evidence;  
27 i.e., what happened at the Bunkhouse, what happened at  
28 Graham's Castle. At Graham's Castle, of course, you  
29 have the contradictions in material respects with Dr  
30 Fergie whether there was a big or a small map and so on.

31 The fact of the matter is that when, therefore,  
32 assessing the weight to be given to the competing  
33 evidence on the Mouth House, you are entitled under the  
34 Brown v Dunn principles to look at the way in which  
35 those contentions were approached by Mr Meyer and Mr  
36 Abbott respectively and notice the conscious tactical  
37 step of being willing to strike, but being afraid to  
38 wound. That was a very extraordinary tactic which was



## ADDRESS (MR TILMOUTH)

1 designed and only could have been designed to avoid a  
2 problem which was insurmountable in terms of Mrs Wilson.

3 I also point out that the reverse argument which was  
4 put by Mr Abbott to an extent in para.5.1.1.11 of his  
5 written outline is not true. I cross-examined fully on  
6 these versions of events at pp.3510 to 3520 and  
7 specifically with what George Trevorrow had to say at  
8 pp.3521 to 3023. The fact of the matter is that, as I  
9 said, the submissions may overlook the fact that there  
10 are two witnesses cumulatively who show that what Mrs  
11 Wilson said about that occasion cannot be correct. It  
12 also ignores the background material. It ignores, for  
13 example, what Sarah Milera had been saying on 15 April  
14 at the meeting with the Minister, what she had been  
15 saying to Dr Draper later that month during his Anzac  
16 Day long weekend survey which showed that all of this  
17 matter was well and truly out by then. It completely  
18 ignores what Dr Kartinyeri had said to Mr Rathman at the  
19 office of DOSAA on 13 April 1994 - and I'm running out  
20 of time. I have to refer you to my written submission  
21 in that respect at p.33.

22 COMSR: I have read your submissions.

23 MR TILMOUTH: You will recall that is what Dr  
24 Kartinyeri talks about what is the women's business at  
25 that time. Mr Abbott criticised the letters that passed  
26 between the ALRM and Mr Rathman in relation to this  
27 issue. But, in my submission, the ALRM letter, document  
28 180 in the bundle of Rathman documents, was a perfectly  
29 proper inquiry about his recollection. It says:  
30 'Doreen has asked me to write to you to see if you can  
31 recall such a meeting and whether ... of such'.  
32 There is nothing wrong with an inquiry.

33 You will remember in the next document of Mr Rathman  
34 which is additional to his statement and where he said  
35 that on 13 April in the letter in relation to what Dr  
36 Doreen Kartinyeri said to him then about Hindmarsh  
37 Island, he said:  
38 'Dr Kartinyeri ... to expand, et cetera.'

## ADDRESS (MR TILMOUTH)

1 That clearly shows that by the time it came to the Mouth  
2 House meeting, that there was nothing new to be learned  
3 by Dr Kartinyeri at that time and her surprise, her  
4 apparent surprise, at this revelation simply could not  
5 have taken place.

6 More importantly, this version of events, the Doug  
7 Milera conversation in particular was denied by Dr  
8 Kartinyeri in an article which appeared in the  
9 Australian on 4 July 1995, and it was also denied by  
10 Sarah Milera whom you will remember was also in this  
11 room at that time, per the evidence of Colin James at  
12 p.2152. I don't read to try and be a little bit  
13 sensitive, but you will remember in our submission we  
14 raised the question that even assuming quite contrary to  
15 all of our arguments what was said was said, where is  
16 there any fabrication in that illusion?

17 In fact, in Berndt & Berndt at p.13 there is a very  
18 interesting passage in this connection and if I could  
19 read it:

20 'The great River Murray that dominated the ... of the  
21 people'.

22 There is a lot of anatomy going on in that very vibrant  
23 passage. You might be excused for thinking that there  
24 is a lot of force in our submission that the great  
25 prominence that has been given to the Mouth House  
26 incident really ignores and belies the importance of the  
27 written work earlier, especially in Berndt. There is  
28 not a lot to be added to that report in Berndts to what  
29 has been alleged here to have been brand new, just  
30 revealed knowledge which Dr Kartinyeri strangely saw as  
31 the opportunity to influence events. In my submission,  
32 it's incredible to accept that she took this occasion in  
33 the light of that material.

34 There's another fatal flaw in relation to this  
35 inquiry and that is the question of whether the women's  
36 business has been defined.

## ADDRESS (MR TILMOUTH)

1 By the way, I join issue with Ms Eszenyi about Mr  
2 Brunton's material. In my submission, it is really  
3 putting another witness before you as an annexure. On  
4 the really important question of what the women's  
5 business is, in my submission, there has been a total  
6 failure to identify at all the content of the women's  
7 business.

8 Mr Smith, at pp.23 and 24 in his issues paper, if I  
9 can call it that, has quite correctly endeavoured to  
10 identify the women's business as being made up of at  
11 least the following features to which he points. As  
12 industrious as that exercise is, with respect, the fact  
13 of the matter is what it completely overlooks is that  
14 these references, the shape of the landscape, the  
15 reproductive organs, et cetera, are merely labels or  
16 oratorical references, not content. The content of the  
17 women's business, which only Dr Fergie knew of of the  
18 witnesses who gave evidence before you, has not been  
19 revealed, full stop.

20 These are not descriptions of the content. They are  
21 simply interchangeable labels which have nothing to do  
22 with the detailed degree of content of that material.  
23 The problem with this Royal Commission is, with respect,  
24 in the absence of all of key witnesses, there is simply  
25 no evidence which shows what the women's business is,  
26 except by round oratorical and figurative labels. The  
27 content is entirely lacking.

28 That, of course, was the evidence of Dr Fergie  
29 herself. He said specifically that the various public  
30 statements by Dr Kartinyeri, a great deal of this  
31 material in para.33 at pp.23 and 24 of Mr Smith's  
32 summary, come from the published material of Dr  
33 Kartinyeri.

34 Dr Fergie's express evidence was that only a  
35 fragment or fragments of that material related to the  
36 secret women's business, 5,237; only a fragment of what  
37 was said by Dr Kartinyeri at Graham's Castle comprise  
38 the secret women's business, 5,686; and you will

## ADDRESS (MR TILMOUTH)

1 remember as well that what is alleged to have happened  
2 at the Mouth House was only a fragment of the secret  
3 women's business as well, 5,838.

4 The other critical point, as outlined at p.79 and 80  
5 of our written outline, without reading it of course, is  
6 that nothing in relation to maps, diagrams, aerial  
7 photographs and the like were ever included in Fergie's  
8 appendices or in the secret envelopes that went to  
9 Saunders. In other words, there is a complete failure  
10 to show an evidentiary causal link between whatever the  
11 women's business is supposed to be, and the operating  
12 decisions in Professor Saunders' recommendations and Mr  
13 Tickner's final decision. In my submission, that is  
14 fatal to any finding about what the women's business  
15 comprises.

16 If I had more time, I would read to you sections of  
17 the interview between Mr Kenny and Doug Milera, but, on  
18 our count, Mr Milera confirms or alleges that there is  
19 fabrication on about as many occasions in that interview  
20 as he says that the women's business is true.

21 We very strongly adhere to our original submission  
22 that the interview is of no weight at all in deciding  
23 whether there has been fabrication or not. It can be no  
24 evidence that there was fabrication. It takes a long  
25 time, after a long series of questioning, before he even  
26 gets to use the word `fabrication'.

27 If one looks at the interview carefully, and in my  
28 submission you should look at it carefully, it is  
29 riddled with inconsistencies and other things which show  
30 that it is of little weight whatsoever. I strongly ask  
31 you to look at the video again to just demonstrate how  
32 very doubtful this material is. The particular passages  
33 I had in mind to make the submission I have just made is  
34 7, 8 and 10.

35 In relation to the criticisms which were made  
36 regarding Mr Clark - remember we prepared a statement  
37 for Mr Clark - made by Mr Meyer this morning, although  
38 it might have been on the last day or near the last day

## ADDRESS (MR TILMOUTH)

1 that he was here to give evidence, I do point out a  
2 statement was made available from him on 6 November.  
3 The commission closed on 17 November. He attended here  
4 apparently on the 6th as well as the 17th. So it is not  
5 true to say, with respect, that in fact he only came  
6 along on the last day, as Mr Meyer said.

7 In the end result, when one goes to the Terms of  
8 Reference, in my submission it is very difficult, as Ms  
9 Nelson said, to see any legitimate basis, as the Terms  
10 of Reference expect, for there to be any reconciliation  
11 - this is Term 6(i) - of the disagreement between the  
12 South Australian Aboriginal community. And, by the way,  
13 the measure of the respect or otherwise of the  
14 government is to be seen in the fact they don't even use  
15 a capital A for `Aboriginal' in the Terms of Reference.  
16 Although they use the word `Aboriginal' many times, they  
17 can't even see fit to give them that much respect.

18 It is very difficult to see, as well, how the  
19 government can decide out of this Royal Commission  
20 whether, as a matter of policy, it would be reasonable  
21 or inappropriate to proceed with the construction of the  
22 bridge, when they have already said they are committed  
23 to the previous contract.

24 There is no work, in other words, for that recital  
25 to do. As to whether or not it should decide to make  
26 submissions to the Federal inquiry, only reinforces the  
27 view that the Aboriginal women have taken that it is  
28 better to postpone their evidence to that inquiry. The  
29 specific reference to the Federal inquiry is, in other  
30 words, an acknowledgment that in fact the Federal  
31 inquiry, to an extent, not only will deal with the  
32 matter, but is an appropriate venue for the ventilation  
33 of these issues.

34 Moreover, although the Terms of Reference  
35 specifically ask you to determine whether or not the  
36 women's business was fabricated and the extent and  
37 circumstances, it is very hard, essentially for the  
38 reasons Ms Nelson gave, to remove both a racial and a

## ADDRESS (MR TILMOUTH)

1 religious connotation - racial to the extent that it is  
2 exploring the very existence of the culture of the  
3 Ngarrindjeri people. There were times in this  
4 commission when Aboriginal people were cross-examined  
5 and their beliefs and their mythologies and their  
6 stories were belittled and made fun of.

7 Also, of course, it is hard to ignore the fact as  
8 well that, in the end result, if you are talking about  
9 the existence of secret women's business on Hindmarsh  
10 Island, you are necessarily, of course, inquiring into  
11 the religious beliefs of these women.

12 The important thing here, of course, is that  
13 everyone now seems to accept, including Mr Clarke, and  
14 Mr Abbott in his written submission, at p.159 I think,  
15 that a large number of Aboriginal women presently  
16 believe in the secret women's business of Hindmarsh  
17 Island.

18 Irrespective of the roots of those beliefs, why  
19 can't those people be let to hold those beliefs as they  
20 see fit? In other words, those beliefs are both beliefs  
21 of a cultural and, therefore, a racial and necessarily  
22 of a religious kind. In the end result, no matter how  
23 it is dressed up, the fact of the matter will always  
24 remain that the inquiry is one which must explore  
25 religion and it must explore culture.

26 But the final thing to say is that, in the end  
27 result, and we have set this out - indeed, Mr Meyer gave  
28 us the courtesy of reading some of this this morning at  
29 pp.81 to 82 - in the circumstances where the Terms of  
30 Reference do not require you to look at the secret  
31 envelopes, you are simply hamstrung by the Terms of  
32 Reference themselves.

33 The deficiencies in the evidence which has been led  
34 here are very much the product of the deficiencies in  
35 the Terms of Reference initially drawn up. Ms Layton  
36 made a great deal about that in her early submissions  
37 before she withdrew. But the fact of the matter is that  
38 without those envelopes, and in light of the evidence of

## ADDRESS (MR TILMOUTH)

1 Dr Fergie to which I have referred, there is simply no  
2 proof, except by reference to labels and broad  
3 descriptions of what the women's business is, and there  
4 is no evidence upon which you can satisfactorily resolve  
5 what that even is, still less whether it was fabricated.

6 The answer is not a criticism of you, commissioner,  
7 it is a criticism of Terms of Reference which were  
8 doomed to fail because they, like Mr Abbott, when it  
9 came to the Mouth House, were not prepared to grasp the  
10 constitutional and legal nettle of saying that you  
11 should actually get hold of those secret envelopes and  
12 ascertain what is in them.

13 Of course, that simple but effective inquiry will  
14 tell anybody inquiring into them exactly what in fact  
15 influenced Mr Tickner, in the result, to ban the bridge.  
16 The inescapable fact is that, without that material,  
17 this Royal Commission is doomed to failure, and one is  
18 only left with what purpose a government could have seen  
19 since the other recitals I have gone through have no  
20 legs and no work to do. One can only ask what purpose  
21 it was intended to serve.

22 But one can certainly answer that question by saying  
23 it does not serve at all the reconciliation between the  
24 Aboriginal and white communities in this country. One  
25 might also say it does not serve at all well the  
26 Aboriginal people's genuine beliefs on all accounts of  
27 their religious and cultural and racial heritage.

28 There have been a lot of criticisms about the  
29 evidence of George and Tom Trevorrow, but, in my  
30 submission, they were honest and genuine witnesses.  
31 Could you not have failed to be impressed by their  
32 efforts in life. You will remember they were born at  
33 Three Mile Camp in very rough conditions. I don't want  
34 to be emotive here, you have heard the detail about  
35 that. They are now working very hard in the Aboriginal  
36 community down on the Coorong to preserve what is left  
37 of the culture and the environment.

38 Tom Trevorrow's and George Trevorrow's evidence

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ADDRESS (MR TILMOUTH)

1 about the Mouth House cannot be swept aside as easily as  
2 it is purported to be. Nor can it be reconciled in such  
3 an easy way as the written submissions try to deal with  
4 it. The fact of the matter is that the evidence is  
5 quite convincing that what has been alleged took place  
6 at the Mouth House in relation to Doug Milera's  
7 statement is simply disproved, and, of course, with it  
8 goes the only genesis of the women's business which has  
9 been able to be identified and, in my submission, that  
10 is fatal to the inquiry.  
11 ADJOURNED 12.50 P.M.



## ADDRESS (MR STEELE)

1 RESUMING 2.15 P.M.

2 MR STEELE: You have had the very great advantage  
3 this morning of hearing a dispassionate address from Ms  
4 Nelson of very considerable wisdom, I suggest to you, in  
5 the course of which she applied intellectual rigour to  
6 the matters at issue before you. That has made my task  
7 considerably easier, as I hope it has made your task  
8 considerably easier.

9 There are a number of matters that I wish to  
10 specifically join with Ms Nelson in putting a submission  
11 to you. The first issue is the relevance of the case of  
12 Jones v Dunkell. I wholly agree with the submissions  
13 put by Ms Nelson which were then taken up by Mr  
14 Tilmouth.

15 I say that that case is of no assistance to you in  
16 the consideration of the issue before you. I say that  
17 that case has its use only in an interpartes dispute,  
18 where one party has the capacity to call as a witness a  
19 certain person and who does not, which failure entitles  
20 the fact finder to infer that had the witness been  
21 called he or she would have been no assistance to that  
22 party. I say that Jones v Dunkell stands for no more  
23 than that, and that Mr Abbott and Mr Meyer seek to  
24 elevate it beyond its capacity.

25 Ms Nelson spent some little time with you this  
26 morning addressing on the onus of proof. Again, I seek  
27 to associate myself with what she has to say on that  
28 issue. The effect of what she said was that very  
29 serious allegations have been made against certain  
30 persons, her client included, and that you ought not be  
31 satisfied with respect to those allegations unless there  
32 is very good proof of them.

33 I submit that she was correct when she put to you  
34 that the onus of proof lies between the balance of  
35 probabilities and reasonable doubt, and I seek to  
36 associate myself, when she said to you that you should  
37 apply the standard at the higher level when giving  
38 consideration to the allegations which impinge on

## ADDRESS (MR STEELE)

1 people's reputation and integrity, and which will affect  
2 their reputation in the community and their ability to  
3 go about their lives and the earning of their  
4 livelihoods.

5 In that regard, I want to draw attention to those  
6 people who are named by Mr Abbott and Mr Meyer as either  
7 fabricators, or falsifiers, and on some occasions it is  
8 not easy to discern what is being alleged against them.  
9 The people named by Mr Abbott number these, and I do not  
10 pretend that the list is necessarily all inclusive, but  
11 they are: Doreen Kartinyeri, Doug Milera, Sarah Milera,  
12 Vic Wilson, George Trevorrow, Tom Trevorrow, Betty  
13 Fisher, Henry Rankine, Veronica Brodie, Robert Day,  
14 Deane Fergie, Neale Draper, and at least by implication,  
15 David Rathman, and perhaps one or two more.

16 Mr Meyer names these people: Doreen Kartinyeri,  
17 Doug Milera, Sarah Milera, Steve Hemming, Deane Fergie,  
18 Vic Wilson, George Trevorrow, Tom Trevorrow, Betty  
19 Fisher, Veronica Brodie, Robert Day, Lindy Warrell,  
20 David Rathman, Henry Rankine, Rocky Marshall, and  
21 perhaps even Professor Saunders.

22 That is a litany of names strewn like confetti  
23 before you as to people who have either falsified  
24 evidence, or have fabricated, or if they have not been  
25 before this commission at all have simply told lies. In  
26 my submission, the reputation of all of those people as  
27 to their integrity and honesty has been brought before  
28 you for consideration. I urge you to exercise the  
29 greatest caution in accepting the submissions which have  
30 been put to you with respect to those people. I say to  
31 you, if you do adopt the standard of proof suggested by  
32 Ms Nelson that you will not make findings against those  
33 people.

34 As to the result of this commission that I urge upon  
35 you, I draw your attention to para.6 of my written  
36 submissions, which is at the very end of the document  
37 beginning at p.31, where I pose the question `Are there  
38 confidential cultural traditions significant to women

## ADDRESS (MR STEELE)

1 relative to Hindmarsh and Mundoo Islands, the waters of  
2 Goolwa Channel, Lake Alexandrina and the Murray Mouth?'

3 I put the position of my client, Dr Draper in  
4 response. The position of my client is analogous to  
5 that of Miss Nelson's client, he is not in a position to  
6 know, but what he does say is that throughout Aboriginal  
7 Australia it is a commonplace that there be secret men's  
8 business and secret women's business, and there is no  
9 good reason to believe that the Ngarrindjeri were an  
10 exception to that.

11 He is unfussed by the smallness of the recording as  
12 to the existence of secret cultural traditions  
13 applicable to the Ngarrindjeri in the ethnographic  
14 texts. Unlike Dr Clarke and Mr Jones, he says there is  
15 such recording, but he would go on to say that, even if  
16 there was not, it proves nothing other than the fact  
17 that there was no recording. It certainly does not  
18 prove that there are no secret cultural traditions. In  
19 that regard, I accept the submissions put forward by Mr  
20 Tilmouth before lunch.

21 He speaks, as he spoke in his statement and in his  
22 evidence, of the issue of disclosure by Aboriginal  
23 people of confidential cultural traditions. Again, I  
24 can adopt what Miss Nelson had to say, which was also  
25 adopted by Mr Tilmouth, and which is shown throughout  
26 the literature and I think not disputed by anyone who  
27 gave evidence before this Royal Commission, namely, that  
28 where a cultural tradition is secret, it is only  
29 disclosed by the Aboriginal community when there is no  
30 alternative, and only to the extent that is necessary to  
31 ensure the required protection.

32 I refer you to that quite extensive part of Dr  
33 Draper's statement where he speaks of his experience in  
34 this regard. When you go there, you will recall him  
35 speaking of a lake in the north of South Australia,  
36 where Aboriginal Elders spoke to him of archaeological  
37 sites on the periphery of the lakes. That disclosure of  
38 those sites was sufficient to ensure protection of that

## ADDRESS (MR STEELE)

1 whole area. They spoke of nothing more than  
2 archaeological sites, and, in particular, they did not  
3 speak of any cultural traditions significant to that  
4 area.

5 But when later a nearby lake was under threat, they  
6 had to speak to Dr Draper of a cultural tradition which  
7 linked that threatened lake with the earlier lake. It  
8 had not been necessary for them to disclose the secret  
9 cultural tradition with respect to the first lake, until  
10 the second like was under threat. They could achieve  
11 their purpose by disclosure of the archaeological sites.  
12 It was not necessary to disclose cultural traditions.  
13 But when it became necessary, and only when it became  
14 necessary, they disclosed those cultural traditions, and  
15 they did so only to the extent necessary to ensure the  
16 protection.

17 Dr Draper says that there is no reason to believe  
18 that the Aboriginal behaviour in the context of this  
19 matter was other than he spoke of when detailing that  
20 experience to you.

21 Dr Draper was required, I suppose, at least in his  
22 own mind, to make an assessment of whether what he was  
23 being told as to the existence of confidential cultural  
24 traditions was not correct. In doing that and  
25 undertaking that process, he did what we all do in those  
26 circumstances, and that is, make a judgment as to  
27 whether the people imparting the information are telling  
28 the truth, whether they are honourable people.

29 His experience of his informants was that they were  
30 honourable people. His experience was that those people  
31 cherished their culture and actively sought to preserve  
32 it. They honoured their culture, and they were  
33 honouring their culture in making information available  
34 to him which had not been made available before. For  
35 that reason, he submits to you that he believed it was  
36 true, and he believes it is true in the context of all  
37 his experience.

ADDRESS (MR STEELE)

1 Ms Nelson also suggested to you this morning that it  
2 would be unfair for you to make very adverse findings,  
3 and the emphasis was on `very adverse findings', in  
4 circumstances where the commission has chosen not to  
5 exercise the powers it had as to summons of witnesses.  
6 CONTINUED

## ADDRESS (MR STEELE)

1 And, again, I support her in the submission she made.

2 She then went on to say that, unless you are  
3 satisfied to the highest standard that the belief in  
4 women's business did not exist, you should not find that  
5 there has been a fabrication. And I adopt that  
6 submission.

7 And, finally, with respect to Miss Nelson, she put  
8 to you what I think is eminently true. And that is  
9 that, in this Commission, there have been extreme  
10 positions adopted and that both of those extreme views  
11 overlook the truth. And the truth is that, in the  
12 historical past, there has been a basis for the  
13 tradition. And that, as culture and tradition has  
14 evolved, so there has been an evolution or a  
15 reinterpretation. And that the belief lives and that it  
16 is a tradition, as defined in both the State and Federal  
17 Act.

18 If you accept that, and I urge it upon you, then you  
19 will not make a finding of fabrication of women's  
20 business by any person.

21 Madam Commissioner, it is not my role to be speaking  
22 on behalf of persons other than Dr Draper and I don't  
23 seek to do so in anything other than the general sense  
24 that I have outlined to this point, but I do urge you to  
25 reflect on the names that I have put before you. And I  
26 do urge you to reflect on what the consequences would be  
27 on those people of a finding of fabrication, or the  
28 giving of false evidence. And I urge on you, as Miss  
29 Nelson did, that the consequences may well be criminal  
30 charges and civil proceedings. And this is not unknown.  
31 This is, in fact, a commonplace. As Miss Nelson pointed  
32 out to you this morning, the civil consequences of the  
33 State Bank Royal Commission are cluttering the courts of  
34 this State now and will be in the foreseeable future.

35 It is perhaps one of the ironies of this Royal  
36 Commission, Madam Commissioner, that both Mr Abbott and  
37 Mr Meyer have branded Doug Milera as one of the  
38 fabricators, as a key fabricator. And, in so doing,

## ADDRESS (MR STEELE)

1 they say that he is a man who is dishonest and lacks  
2 integrity. And yet Mr Abbott and Mr Meyer then do an  
3 about face and say that Mr Milera's assertions that  
4 there is a fabrication indicate that he is an honest  
5 man. A man of integrity.

6 Mr Abbott, in his written submissions, spoke of Mr  
7 Milera as a genuinely decent man. And yet in his oral  
8 submissions this morning Mr Milera became a liar and a  
9 fabricator. And there, if I might say so, is the kernel  
10 of the problem.

11 Madam Commissioner, all that said, I want to move on  
12 to what I submit will be a relatively short submission  
13 as to various things that have been said about Mr Draper  
14 in the course of the written submissions.

15 In fact, very little was said against Mr Draper in  
16 the course of the oral submissions. Perhaps getting a  
17 bit of a blast from Mr Abbott in the last five minutes  
18 of the address, but otherwise not mentioned at all.

19 And I suppose I should be grateful for the fact that  
20 Dr Draper has not been labelled by Mr Meyer as a  
21 fabricator, notwithstanding that every other man and his  
22 dog has been so labelled.

23 I don't seek to speak to my written submissions. I  
24 think I anticipated in my written submissions most of  
25 the attacks which were to be made against Dr Draper in  
26 the course of the written submissions which have, in  
27 fact, been made, but there are a number of matters which  
28 should be specifically addressed.

29 Madam Commissioner, at p.16 of the submissions of  
30 counsel assisting, in para.24, mention is made, at the  
31 very bottom of the page, of the barrages and that:  
32 'Dr Draper later recorded the incompatibility of the  
33 barrages with the Aboriginal traditions he described,  
34 but did not include the matter in his report.'

35 I say that there is nothing sinister in that  
36 omission. You will recall that Dr Draper was under  
37 intense pressure from the Minister for Aboriginal  
38 Affairs to prepare a report. He was given less than a

## ADDRESS (MR STEELE)

1 week to do so. The report was for a very specific  
2 purpose. And it was for a very specific person. And  
3 mention in that report of the barrages would not have  
4 furthered that purpose, in any way. It is entirely  
5 appropriate that Dr Draper make reference to the  
6 situation of the barrages when the time comes to  
7 consider the recording of the site he identified as an  
8 Aboriginal site, but it is not to the point to speak of  
9 those barrages in that report.

10 So, in so far as counsel assisting is criticising Dr  
11 Draper in that regard, in my submission, the criticism  
12 is without merit.

13 At p.17, at about .5, counsel assisting said this:  
14 'The inference may be that these matters were, at that  
15 time, still in the ... and his own stated expertise.'

16 In my submission, that submission overlooks the fact  
17 stressed by Dr Draper consistently throughout his  
18 evidence that information was being disclosed  
19 reluctantly. From the beginning of his involvement in  
20 this matter he was aware that there was something going  
21 on in the background which he didn't understand and he  
22 was not being apprised of it. And you will recall that  
23 that was his state of mind from the time that George  
24 Trevorrow gave him the coastal zone note. And  
25 specifically in the context of this long weekend, he was  
26 very conscious of the fact that Sarah Milera and Robert  
27 Day were having great difficulty articulating what they  
28 wanted to say to him. And I say that, in that context,  
29 again, this submission by or this suggestion by counsel  
30 assisting is not to the point. And the process that I  
31 seek to highlight is accepted by all the expert  
32 witnesses, and that includes Dr Clarke and Mr Jones.  
33 And it is certainly the very strong view of Dr Fergie,  
34 Dr Draper, Mr Hemming and, in so far as it is before  
35 you, Mr Wootton.

36 At p.21, in para.31, counsel assisting refers to all  
37 the historical and the anthropological literature  
38 exhibiting no indication of the existence of women's



## ADDRESS (MR STEELE)

1 business. Again, Dr Draper disputes that and I refer  
2 you to his report. I refer you to his evidence and I  
3 adopt the submission made by Mr Tilmouth where he  
4 specifically itemised the references that he has been  
5 able to find as to such references in the ethnographic  
6 literature.

7 Finally, with respect to counsel assisting's final  
8 submissions or outline, I take you to p.26. And it  
9 reads, at the top of the page:

10 'The possibility that secret women's knowledge has  
11 always ... appears to have overlooked the women's  
12 business.'

13 First of all, there is an error of fact.

14 Dr Draper's involvement with Hindmarsh Island  
15 commenced in late October 1993, but I take particular  
16 exception to the suggestion that he overlooked the  
17 women's business.

18 Women's business is not an object found lying on the  
19 ground to be seen by the keen-eyed and missed by the  
20 myopic.

21 Women's business is a secret cultural tradition  
22 preserved by Aboriginal traditional owners and not  
23 lightly disclosed. To suggest that Dr Draper or any  
24 other person overlooked it is, in my submission, to  
25 diminish the importance of the preservation of the  
26 secrecy of confidential cultural traditions.

27 I move to the submissions of Mr Meyer.

28 As I say, I am grateful for the fact Dr Draper was  
29 not named by Mr Meyer as a fabricator, but, nonetheless,  
30 there are matters which I need to clarify.

31 At p.12 of that submission, the paragraph numbered  
32 1, there is, in my submission, a misrepresentation of Dr  
33 Draper's position.

34 At all times he said that his information was coming  
35 from the Lower Murray Aboriginal Heritage Committee who  
36 were assigned informants. You will recall that he was  
37 questioned on this at length by Mr Meyer and then again  
38 at length by Mr Abbott. Mr Meyer has, in my submission,

## ADDRESS (MR STEELE)

1 wilfully misunderstood the answers, because the answers  
2 were consistent. At all times the information he was  
3 getting was from the Lower Murray Aboriginal Heritage  
4 Committee and they were assigned informants to him.

5 And I refer you to the submissions, the written  
6 submissions that I have made as to the appropriateness  
7 of that having regard to the Aboriginal Heritage Act.

8 On the same page, at about .6, Mr Meyer said and he  
9 was speaking of Dr Draper:

10 `However, he still drafted the letter of ... of  
11 inter-related women's business.'

12 There is nothing in the evidence to suggest, as Mr  
13 Meyer has assumed, that, at that time, Dr Draper was  
14 aware of the existence of men's business. In fact, the  
15 evidence of Dr Draper was to the contrary. His evidence  
16 was that, at the time that the letter of 9 November was  
17 written, there was no information available to him as to  
18 cultural traditions and it was for that reason that that  
19 letter was written. It is only in retrospect that Dr  
20 Draper came to label that letter the premature letter,  
21 because it was only in retrospect that it could be seen  
22 that the clearance given in that letter was premature.  
23 And it was only in retrospect, because the information  
24 which made it premature was not then known. So, the  
25 assumption made by Mr Meyer in making that submission is  
26 wrong.

27 At the bottom of that page and going over the page,  
28 Mr Meyer criticises Dr Draper for not going hunting for  
29 women's business.

30 Madam Commissioner, had he done so, he would most  
31 certainly have been accused by Mr Meyer of being a  
32 fabricator. It is not the business of someone in Dr  
33 Draper's position to go hunting for women's business.  
34 It is the business of someone like Dr Draper to record  
35 that which he is told. It is that business which shows  
36 respect and trust for the Aboriginal community. And,  
37 again, I submit to you that it must be remembered that  
38 for the purposes of this report Dr Draper was under a

## ADDRESS (MR STEELE)

1 very considerable time restraint.

2 At p.13, in the paragraph numbered 4, Mr Meyer is  
3 critical of what he says was an inability on the part of  
4 Dr Draper to identify references in the Tindale  
5 Material.

6 Dr Draper did identify references in the Tindale  
7 journals and he gave quite clear evidence as to what he  
8 was trying to say with respect to the Tindale maps. And  
9 what he was trying to say with respect to the Tindale  
10 maps was that, for all other areas, for all areas other  
11 than the that of Hindmarsh Island, the lakes, Mundoo  
12 Island, the channel, there is a wealth of appellation  
13 but, when it comes to that area, there is a dearth of  
14 appellation. The reason for that, Dr Draper submits, is  
15 that those providing Tindale with the information which  
16 enabled him to apply names along that coast were men.  
17 But those men were not able or not willing to provide  
18 Tindale with information as to names around the areas  
19 under investigation and the reason for that is that it  
20 was women's business.

21 Again, Mr Meyer's criticism of Dr Draper in that  
22 regard misses the point and disregards the evidence.

23 On the same page, in the paragraph numbered 5, Mr  
24 Meyer criticises Dr Draper with respect to the issue of  
25 traditional owners.

26 I won't tarry on that point. It is fully dealt with  
27 in my written submissions.

28 At p.14, in the paragraph numbered 6, Mr Meyer seeks  
29 to make some capital from the supposed warning off by Dr  
30 Draper of Lindy Warrell.

31 In my submission, Madam Commissioner, that is a  
32 somewhat silly sideshow which you can rightly ignore.

33 In the paragraph numbered 7, on p.14, Mr Meyer is  
34 critical of what he says was a speculation on the part  
35 of Dr Draper in the course of his written statement.  
36 But that speculation or the speculation identified by Mr  
37 Meyer and called speculation was really a question of  
38 professional judgment. Dr Draper was being given

## ADDRESS (MR STEELE)

1 certain information. It was information which he  
2 couldn't unravel. It was enigmatic. Later he could see  
3 that information in a different context and he could see  
4 that what he was being told fitted in with information  
5 that he was subsequently given. He is not to be  
6 criticised for not being in a position to unravel  
7 Enigmatic information.

8 As it turns out, his professional judgment, as to  
9 what he in fact was being told, turned out to be  
10 correct.

11 In the paragraph numbered 9, Mr Meyer criticises Dr  
12 Draper with respect to genealogy.

13 I have nothing to say on that other than to adopt  
14 what is referred to with respect to genealogies in the  
15 final part of Dr Fergie's written submission.

16 Madam Commission, at p.15, in the paragraph numbered  
17 11, there is extensive criticism of Dr Draper by Mr  
18 Meyer with respect to the site cards.

19 I have dealt fully with the cross-examination  
20 conducted by Mr Abbott with respect to site cards in my  
21 written submissions and I adopt, for the purposes of the  
22 oral submission in response to Mr Meyer, what I said in  
23 those written submissions.

24 And, in paragraph no.12, Mr Meyer refers to what can  
25 be called the Lindy Warrell and Vanessa Edmonds note  
26 issue.

27 Again, I have dealt with that issue at very  
28 considerable length in my written submission.

29 Madam Commissioner, you will recall the  
30 cross-examination conducted by Mr Abbott at the close of  
31 the first day of Dr Draper's appearance in the witness  
32 box, which cross-examination was conducted under  
33 constant objection from me. And I say that that  
34 signifies nothing. Absolutely nothing. And that it  
35 avails you not one whit and it does not reflect on Dr  
36 Draper in any way other than to show that he was  
37 irritated, at that time. For that irritation to be  
38 elevated to an allegation of lack of impartiality is, in

## ADDRESS (MR STEELE)

1 my submission, outrageous.

2 On the same page, at about .8, Mr Meyer says this:

3 `Dr Draper's evidence is discredited by speculations and  
4 hindsight ... to stop the bridge.'

5 And, just dealing with that latter part: why would  
6 Mr Meyer be entitled to assume that the men's business  
7 would stop the bridge? What does Mr Meyer know about  
8 the men's business to entitle him to make that  
9 submission? The men's business may have absolutely  
10 nothing in it which can in any way impact on whether  
11 that bridge was built. That is pure speculation by Mr  
12 Meyer and utterly without foundation. And, although I  
13 submit that it is an irrelevant sideshow, for Mr Meyer  
14 to accuse Mr Draper of giving waffling evidence is  
15 breath-taking, in my submission. When one regards the  
16 examination conducted by Mr Meyer of Dr Draper, you will  
17 see that by far and away the winner in the word number  
18 was Mr Meyer.

19 At p.40, Mr Meyer refers to the conversation between  
20 Dr Draper and Mr Dobbs, on 12 April 1994. It is clear  
21 that the insinuation here is that Dr Draper got  
22 information from Mr Dobbs about the Federal Act and what  
23 was required under the Federal Act to get an order from  
24 the Federal Minister and that he passed this on to  
25 David Rathman. And that someone, whether it be David  
26 Rathman, whether it be Dr Draper, or whether it be some  
27 other person in DOSAA, passed that information on to the  
28 LMAHC. There is no evidence of that. In particular,  
29 there is no evidence that Dr Draper did that and he  
30 particularly denied doing it. Beyond putting the  
31 allegation and getting the denial, there was nothing.  
32 Mr Rathman was not called and yet this is an allegation  
33 which impinges or seeks to impinge very much on his  
34 integrity. And this is the man who is the CEO of a  
35 State Government Department. But, in any event, would  
36 the LMAHC need to have that information from the State  
37 Department? That information is clearly set out in the  
38 Act. There is nothing special about the information

## ADDRESS (MR STEELE)

1 disclosed by Mr Dobbs to Dr Draper.

2 COMSR: Which paragraph are you looking at?

3 P.40, in the second paragraph?

4 MR STEELE: No, further down the page.

5 COMSR: I thought I must have lost you somewhere

6 when you were talking about the inference.

7 MR STEELE: It starts there. The whole section

8 needs to be read. The episode being talked of is the

9 conversation between Draper and dobbs on 12 April. And

10 what my friend is trying to say is that this information

11 was passed on to the LMAHC and that this then led to the

12 meeting on 15 April between the Minister and the members

13 of the Aboriginal community. Which members, I might

14 say, were not limited to the LMAHC. It was a much

15 broader consultation. It was a consultation with the

16 body known as the committee as designated by the Act and

17 that is a much broader body than the LMAHC.

18 Finally, with respect to Mr Meyer's report or

19 submissions, at p.59.5, that is the middle of that page,

20 Mr Meyer says this:

21 `By the way, the men's fabrication ... that matter

22 perhaps cannot be taken any further.'

23 CONTINUED

## ADDRESS (MR STEELE)

1 I draw your attention to that. As I say that is a  
2 refreshing concession by Mr Meyer and is a concession  
3 which is certainly not made by Mr Abbott. Mr Abbott  
4 seeks to have you do exactly the opposite to which Mr  
5 Meyer seeks you to do.

6 I move onto the written submissions of Mr Abbott.

7 MR MEYER: Goes to show we didn't collaborate.

8 MR STEELE: Goes to show what a reasonable person  
9 you are on that issue. At p.10 of Mr Abbott's  
10 submission, being para.2.4, he says:

11 'The Commission has received evidence as to the content  
12 ... Draper and Fergie.'

13 There is no evidence from Dr Draper at all on the  
14 contents of that envelope at all, not one whit, nor  
15 could there be.

16 Then, if I can take you to p.25, at the foot of the  
17 page, Mr Abbott makes this comment, which is a matter of  
18 comment:

19 'That the relationship between Messrs Rathman, Draper  
20 ... with this matter.'

21 In my submission, that is an alarming comment to make.  
22 It is alarming in that it is made apparently in  
23 ignorance of the requirement of the Act for there to be  
24 close consultation with committees whose purpose it is  
25 to protect Aboriginal heritage. In other words, the  
26 department was doing what it was required to do by the  
27 Act and yet Mr Abbott sees fit to castigate the  
28 department and question its impartiality for doing its  
29 statutory duty. That is an alarming submission.

30 At p.32, again a somewhat irrelevant sideshow which  
31 cannot be allowed to pass. I refer to the remark made  
32 Mr Abbott presumably in a critical way:

33 'That DOSAA paid for a ... on Hindmarsh Island.'

34 So it should. Those people were working with Dr Draper  
35 to record sites. For that work to be effective, they  
36 had to live there. If Mr Abbott is seeking to criticise  
37 the fact that they were working - and he does so in  
38 ignorance of what is accepted in anthropological

## ADDRESS (MR STEELE)

1 communities throughout Australia, that it is appropriate  
2 and helpful to have Aboriginal field workers. Again, in  
3 my submission, that is an alarming remark to make.

4 At the top of p.34, Mr Abbott does that which Mr  
5 Meyer specifically had you not do and that is draw some  
6 inference with respect to the Onkaparinga. I say to you  
7 that there is not the slightest reason why you should  
8 draw the inference that Mr Abbott seeks you to draw -  
9 and I urge on you the concession made by Mr Meyer.

10 At the very bottom of that page, you come to the  
11 thrust of Mr Abbott's accusations against Dr Draper when  
12 he names him as a fabricator with respect to his  
13 recording of the meeting of the waters. Doubtless, you  
14 will recall the very hostile cross-examination to which  
15 Dr Draper was subjected to on that issue. I don't seek  
16 to dwell on that unless there is anything you require  
17 from me. I do say to you that I have spent an  
18 extensive amount of time in responding to that  
19 cross-examination and the allegations contained in that  
20 cross-examination in the course of my written  
21 submissions. I say that they fully deal with this  
22 aspect of these written submissions. That it is worthy  
23 of note that for some reason Mr Abbott seeks to draw  
24 some relationship between Dr Draper and Lewis O'Brien  
25 and Georgina Williams who reported on the Onkaparinga  
26 River. There is not the slightest evidence of that  
27 relationship, other than at some stage Dr Draper knew  
28 and may well continue to know Lewis O'Brien. Beyond  
29 that, there is nothing to make the link that Mr Abbott  
30 seek to have you make and there is no basis for that  
31 urging by him.

32 At p.35 in para.470, Mr Abbott seeks to make some  
33 capital out of the fact that Dr Draper had with him on  
34 the island topographical maps by which to assist Sarah  
35 Milera and Robert Day to identify the location and the  
36 topic of women's business. It would be an extraordinary  
37 thing for an anthropologist or archaeologist recording  
38 sites not to have field maps with him. There is not the



## ADDRESS (MR STEELE)

1 slightest sinister piece of evidence with respect to the  
2 carrying of those maps. As Dr Draper pointed out in the  
3 course of giving his evidence, he had been using those  
4 maps with those people for months. The only  
5 extraordinary thing would be if he did not have those  
6 maps with him.

7 The thesis of Mr Abbott with respect to Dr Draper is  
8 that there was an embellishment by him of what Sarah  
9 Milera said to him and there was subsequently a merger  
10 of that information with information carried by Doreen  
11 Kartinyeri to create two strands of a fabrication which  
12 ultimately went to Dr Fergie and then to Professor  
13 Saunders. In my submission, that is a most fantastic  
14 thesis. I urge upon you to have close scrutiny of the  
15 language used by Dr Draper in his recording of the site.  
16 I urge on you a re-reading of the cross-examination by  
17 Mr Abbott on the site cards. You will find that all the  
18 questions put by Mr Abbott as to that reporting were as  
19 misleading as I contended they were at the time. Taken  
20 as a whole, there is not the slightest doubt that Dr  
21 Draper was recording exactly what was the final  
22 recording of the meeting of the waters. The language  
23 was different, but the geographical area and the fact  
24 that it was women's business is as apparent in the  
25 pencilled site card as it is in the subsequent draft  
26 site card and in the cover sheet. There is no basis at  
27 all for the submission that Dr Draper embellished or  
28 embroidered, let alone a basis for the submission that  
29 somehow this shred of the fabrication became involved in  
30 the Doreen Kartinyeri fabrication in the way that Mr  
31 Abbott contends. In my submission, that is a fantastic  
32 theory.

33 I then move to p.93 para.54.33. Mr Abbott says  
34 this:  
35 `None the less, the position of Dr Clarke and Mr Jones  
36 ... women's business.'  
37 In my submission, that's a somewhat curious and circular  
38 logic. It means that to make allegations of fabrication

## ADDRESS (MR STEELE)

1 against Fergie, Draper and Hemming is to discredit them.  
2 The fact that there is no allegation against Clarke and  
3 Jones of fabrication is to make their evidence  
4 acceptable. It's not the making of the allegation which  
5 causes acceptability or non-acceptability of evidence,  
6 it is the evidence itself.

7 At p.110 and para.54.38, the same allegation is made  
8 as to embellishment on the Anzac Day long weekend. I  
9 won't tarry there. I refer you again to my written  
10 submissions and what I said to you just a few minutes  
11 ago.

12 Then, at p.115 the same point is made yet again.

13 Then, Mr Abbott moves onto the note found in Dr Draper's  
14 diary, the Lindy Warrell/Vanessa Edmonds note. I refer  
15 you to my written submissions on that.

16 COMSR: The one that I suppressed, is it?

17 MR STEELE: Yes. What I ought to stress there is it  
18 was stressed very much by Dr Draper in the course of  
19 giving his evidence that the note he made was not  
20 disseminated to any person. It was never intended to be  
21 disseminated to any person. He forgot, from the moment  
22 it was made, of its existence and it carries absolutely  
23 no weight and it carries the matter nowhere at all. It  
24 indicates nothing other than he became hot under the  
25 collar at that time at what he was told and nothing more  
26 than that. It certainly cannot be elevated to the  
27 degree sought by Mr Abbott. It cannot serve to  
28 discredit Dr Draper in any way.

29 Finally, on that page at p.116 at the bottom of the  
30 page, Mr Abbott refers to the proofing notes taken by  
31 the Crown. He seeks to make some capital out of the  
32 absence in those proofing notes of reference by Mr  
33 Draper to the conversation that he says he had, or the  
34 conversations that he said he had with Sarah Milera in  
35 December 1993. I ask you to contrast the detail in  
36 those proofing notes with the detail provided by Dr  
37 Draper in his written report to you and the detail that  
38 he was able to provide in giving evidence. The purposes

ADDRESS (MR STEELE)  
(MS PYKE)

1 of that proofing note, or the purpose of that proofing  
2 is quite different from the purpose to which Dr Draper  
3 was subject when he knew that he would give evidence  
4 before this Royal Commission. The absence of one  
5 particular thing in the overall scheme of things  
6 signifies nothing.

7 In conclusion, I submit to you that there is not the  
8 slightest ground for you to find that Dr Draper was in  
9 any way misrepresenting any aspect of his knowledge to  
10 you, let alone playing the role of fabricator. You will  
11 recall that Mr Abbott suggested to Dr Draper that he had  
12 said that he was the saviour of the Ngarrindjeri people.  
13 You will recall that Dr Draper gave that a vigorous  
14 denial, and that was the last we heard of it. It was a  
15 remark made with a shot from the hip. Although it was  
16 said to be supported by instructions, no such  
17 instructions were apparent and no further evidence was  
18 forthcoming. I say that that just forms part of the  
19 straw-grabbing in which Mr Abbott indulged in making an  
20 attack on Dr Draper. That a close scrutiny of the  
21 evidence gives a lie to all the allegations made by Dr  
22 Draper. I urge upon you that you make a positive  
23 finding, as Miss Nelson urged upon you to make a  
24 positive finding, that Dr Draper was simply doing his  
25 job to the best of his ability, that he fully  
26 co-operated with this Commission and was plainly at  
27 pains to be as helpful to the Commission as he possibly  
28 could. Thank you.

29 COMSR: I have read the submission through.

30 MS PYKE: Thank you. Of course, they incorporate  
31 substantially what our submissions are to this  
32 Commission. There are perhaps some features that, in  
33 view of some of the submissions that have been made by  
34 Mr Meyer and Mr Abbott in particular, that perhaps need  
35 some particular emphasis and highlighting.

36 COMSR: I'm saying that so you can speak to it.

37 There is no need to read any parts to me.

38 MS PYKE: No. Thank you. It's important to

## ADDRESS (MS PYKE)

1 recall that Dr Fergie had a particular function that  
2 she, we would submit, fulfilled in a most appropriate  
3 and professional way; that is, that she was engaged by  
4 and on behalf of the ALRM to prepare a report for  
5 submission to Mr Tickner, a declaration pursuant to the  
6 provision of the Aboriginal and Torres Strait Islander  
7 Protection Act. She was called upon to provide her  
8 report, having already commenced a process that she  
9 called a 'facilitation process'. It was a two-part  
10 process. After a partly fulfilling facilitation role,  
11 she was requested to making a report.

12 There has been criticism of Dr Fergie by Mr Abbott  
13 and Mr Meyer to the effect that Dr Fergie somehow or  
14 other had a partisan point of view and that she was an  
15 advocate for Dr Kartinyeri and the proponent women.  
16 Their submission, in my submission, just fails to at all  
17 appreciate the two-part sequence of Dr Fergie's brief.

18 Dr Fergie is quite clear in her evidence that by the  
19 time she had embarked upon her facilitation, she formed  
20 a preliminary view that it was a case with some merit;  
21 that is, the secret women's knowledge. However, when it  
22 came time for her to prepare her report, she embarked  
23 upon a process of making further and other enquiries and  
24 testing the nature of the information that was being  
25 given to her.

26 It's my submission that it is an entirely  
27 inappropriate submission to make and one that you,  
28 Commissioner, should not find. Dr Fergie at no stage  
29 was an advocate for the women who have been called the  
30 'proponent women'. She's quite entitled to form a  
31 preliminary view and if, having gone on to do the  
32 further inquiry, she had formed the view that her  
33 preliminary view was not of merit, it would have been  
34 quite open for her to do so. But to suggest a bias  
35 simply because the function that she undertook changed  
36 is, in my submission, not tenable.

37 Dr Fergie is an eminently qualified anthropologist.  
38 She is a woman of substantial experience and substantial

## ADDRESS (MS PYKE)

1 academic skill and qualifications. She has come to this  
2 Commission by way of summons. That has been, as we  
3 indeed indicated right from the very commencement of  
4 this Commission, because of the contractual nature of  
5 her employment with the Aboriginal Legal Rights  
6 Movement, it would have been quite improper for her to  
7 attend without a summons. The request for a summons was  
8 not any attempt to avoid or evade giving evidence before  
9 the Commission, it was simply an attempt to behave in a  
10 most responsible professional manner.

11 There have been criticisms of Dr Fergie that she has  
12 in some way deprived this Commission of the evidence  
13 contained within the secret envelopes. That, I say to  
14 you, is just nonsense. Dr Fergie has attended to give  
15 evidence. You have ruled for a variety of quite cogent  
16 reasons that it was not appropriate for there to be any  
17 evidence led about the contents of the envelopes, let  
18 alone what was in the envelopes. Of course, that was  
19 quite consistent with what you indicated at the  
20 commencement of this Commission and, indeed, quite  
21 consistent with what the Premier, Mr Dean Brown - sorry,  
22 the Premier maintained when he called this Commission.  
23 Dr Fergie has not deprived this Commission of anything  
24 that would have assisted this Commission. Your ruling  
25 would have been the same, I suggest to you, whether the  
26 envelope sat here on the bar table as part of the  
27 documents produced or whether, indeed, it was in the  
28 safekeeping of the ALRM. There has not been any attempt  
29 whatsoever to deprive this evidence from the Commission.  
30 It is evidence that quite rightly you, Commissioner,  
31 have ruled was not appropriate for you to have before  
32 you to see or, indeed, anyone else to give evidence  
33 about.

34 The submissions by Mr Abbott and, indeed, Mr Meyer  
35 in that regard I say are the type of inflammatory  
36 submission that perhaps one has come to expect. A lot  
37 of smoke, no substance. Certainly no fire. It's an  
38 example, I suggest to you, of trying to demean the

## ADDRESS (MS PYKE)

1 professional qualifications and integrity of Dr Fergie  
2 without any basis whatsoever. As we set out in our  
3 submissions, the particular purpose that Dr Fergie's  
4 assessment required meets the provision of the Act. She  
5 is the only person who has given evidence in an inquiry  
6 which in any way or who in any way purports to deal with  
7 the provisions of the Act, as I would call it; by that,  
8 I mean the Federal Act.

9 Dr Clarke and Mr Jones were quite clear that they  
10 had little or no knowledge of the workings of the Act.  
11 It's my submission that many of the criticisms of Dr  
12 Clarke and Mr Jones have been made in vacuo with no  
13 regard to the context of Dr Fergie's report. Their  
14 criticisms are tainted by their fundamental lack of  
15 appreciation of the nature, purpose, extent and  
16 constraints of her assessment process and ultimately  
17 report.

18 It has been suggested by Mr Meyer that in some way  
19 Dr Fergie is trying to hide behind the provisions of the  
20 Federal Act. That, I submit, is an astounding  
21 submission to make. How can Dr Fergie be said to be  
22 hiding behind an Act? The Act related particularly to  
23 her task. She is not hiding behind it, she is simply  
24 explaining to you, as she has done as some length, that  
25 she had a particular purpose for which she had to  
26 provide her report. There is no hiding. She is  
27 fulfilling her professional obligations and her  
28 requirements.

29 As Dr Fergie herself has pointed out and referred to  
30 in the written submissions, there are, as she perceives,  
31 some defects and deficiencies in the manner and  
32 operation of the Federal Act. Dr Fergie is not  
33 responsible for those deficiencies; and the deficiencies  
34 in the Act in no way can be said to reflect upon the  
35 professional standards of Dr Fergie. In essence, what I  
36 say is the fact that Dr Fergie makes a report for a  
37 particular Act in a particular circumstance and that Act  
38 itself may have a deficiency, does not reflect on Dr

## ADDRESS (MS PYKE)

1 Fergie, but it may reflect on aspects of the Act.

2 You must bear in mind that none of the experts - and  
3 I use that phrase generally because we have had a  
4 variety of experts and not just anthropologists - have,  
5 I put it to you bluntly, any knowledge of what is  
6 contained within the secret envelopes. This Commission  
7 has no knowledge of what is contained in the secret  
8 envelopes. To suggest that anyone knows what is in the  
9 envelopes is misleading. Dr Fergie, in her evidence,  
10 has indicated that at the very best, there are fragments  
11 in the public arena and those fragments are ambiguous.  
12 There has been much attempt to endeavour to ascertain, I  
13 say by a backdoor method, what is in those envelopes.  
14 Those attempts to put to you fragments of what is in the  
15 envelopes and then ask you to draw conclusions about (a)  
16 what is in the envelopes in its entirety, and, (b) to  
17 then draw an inference and, indeed, make a finding that  
18 what is in the envelopes is fabricated, is a process  
19 that is flawed in the extreme. You are being asked to  
20 do something and draw an inference that is quite  
21 impossible to be drawn. You don't know what is in the  
22 envelopes. I don't know what is in the envelopes. The  
23 only person in this room who knows what is in the  
24 envelopes is Dr Fergie.

25 It is quite wrong for the assertions to be made, as  
26 they have been, by Mr Abbott and Mr Meyer that you can  
27 in some way consider yourself to have any knowledge of  
28 what is in the envelopes. It is important for you to  
29 remember that whilst you may have some fragment of what  
30 is in the envelopes, that fragment is entirely out of  
31 context. You cannot guess how that fits into what is in  
32 the envelopes. You cannot guess how the fragments that  
33 you have heard relates one to the other. It is not  
34 appropriate for you to do that.

35 There has been much evidence led about the various  
36 anthropological issues. We refer to them in our written  
37 submissions as debates. Anthropology, by its very  
38 nature, has substantial areas of debate. What is

## ADDRESS (MS PYKE)

1     happening, I suggest to you, is that Dr Clarke and Mr  
2     Jones are purporting to put to you an absolute view.  
3     They refuse to acknowledge that what is actually  
4     unfolding amongst the Ngarrindjeri community and,  
5     indeed, amongst the anthropological community is debate  
6     - and we would say healthy debate.  
7     CONTINUED



## ADDRESS (MS PYKE)

1       There is not an absolute answer. I say to you that  
2       you must weigh the evidence of Dr Clarke and Mr Jones  
3       with that very much in mind. You have had before you  
4       many very qualified expert witnesses. There is, to coin  
5       a phrase that has been used here frequently, a dichotomy  
6       of views. Mr Hemming perhaps operates in the middle  
7       ground a little, but you really do have very strong  
8       views from Clarke and Jones on the one hand, Draper and  
9       Fergie on the other, with Mr Hemming perhaps more to the  
10      middle.

11      But I urge you to understand and appreciate the very  
12      nature of debate in anthropology. It is not, as has  
13      been put to you, a science. There is no simple answer.  
14      I have referred, in our written submission, to a number  
15      of the areas of debate. One in particular that I  
16      referred to is the new age theory, if I can put it that  
17      way, the pan-Aboriginality. That clearly is an area  
18      that is the subject of great and major debate.

19      To underline the submission I make to you, I ask you  
20      to particularly, when assessing Dr Clarke's evidence,  
21      bear in mind his comment that it is what has been  
22      described a provocative and controversial argument, an  
23      argument that has been highly debated, that provides an  
24      explanation as to why he has argued secret sacred  
25      women's business on Hindmarsh Island is a recent  
26      fabrication.

27      The fundamental thrust of Dr Clarke's argument calls  
28      in its aid 'a highly controversial provocative  
29      argument'. I say to you, as we outline in our  
30      submissions, that you must weigh up very heavily the  
31      nature of the debate. It is particularly important to  
32      weigh up the nature of the debate given the serious  
33      allegations that have been made against some of the  
34      expert witnesses in this case.

35      It has been put to you by Mr Abbott and by Mr Meyer  
36      - and this is in summary - that the experts who say that  
37      there is or there could be secret sacred women's  
38      knowledge, as it has been referred to in this commission

## ADDRESS (MS PYKE)

1 - restricted women's knowledge, as we would have it -  
2 are implicit in fabrication, conspiracy and distortion,  
3 and implicit in those assertions, given the evidence of  
4 these various experts, is perjury here in this  
5 commission.

6 It has been put to you that the experts who maintain  
7 a position in relation to the opponent women are  
8 fabricators and liars, people of professional and  
9 intellectual dishonesty. I say to you that, on all of  
10 the evidence, that is a most untenable position for you  
11 to take and for you to find.

12 I adopt the submissions of Mr Steele and Miss Nelson  
13 in putting to you that you most seriously consider any  
14 finding that you make that there has been any  
15 involvement by any of the expert witnesses in  
16 fabrication. These witnesses have come along, they are  
17 entitled to their professional view. They are entitled  
18 to have professional views that differ to Dr Clarke and  
19 Mr Jones. They are, heaven forbid, entitled to have a  
20 view that is different to that of Mr Abbott and Mr Meyer  
21 and their respective clients.

22 To have a different view does not brand you as a  
23 fabricator and a conspirator and a perjurer. To assert  
24 otherwise, I say, is untenable. The finding that you  
25 would make, if you were to make it, that there has been  
26 any involvement certainly by Dr Fergie in any  
27 fabrication, would have the most far reaching  
28 consequences for her professionally and personally.

29 As Ms Nelson, I think pointed out, you are talking  
30 about exposing these expert witnesses - and I speak of  
31 Dr Fergie in particular - to litigation, criminal and  
32 civil. I say that you should not proceed to make any  
33 finding which in any way suggests any impropriety on the  
34 part of Dr Fergie.

35 The sorts of allegations that have been made in the  
36 written submissions and oral submissions I say to you  
37 are allegations that are being made using what usually  
38 is referred to when one is talking about our parliament,

## ADDRESS (MS PYKE)

1 the cowards' castle of this Royal Commission. Mr Abbott  
2 and Mr Meyer know that they can make allegations in this  
3 commission with impunity. They have made allegations of  
4 the most serious nature. Mr Meyer in particular, on  
5 behalf of the Chapmans, has made the most outrageous  
6 slurs on the professional and personal integrity and  
7 credibility of Dr Fergie. They are contained at pp.62  
8 and 63 of the written submissions.

9 In the case of Mr Meyer, he did not put those most  
10 serious allegations to Dr Fergie. He did not give her  
11 any opportunity to answer these most outrageous attacks  
12 upon her. He did not give her any chance to defend her  
13 personal and professional integrity. I say to you that  
14 it is the most intellectually dishonest manner of  
15 casting aspersions upon Dr Fergie's integrity.

16 If, indeed, they were Mr Meyer's instructions, why  
17 didn't he put them? Why raise them now, at the last  
18 minute, in his written submissions, when Dr Fergie's  
19 only recourse is for me to stand up and say that they  
20 are outrageous?

21 The basis upon which Mr Meyer put his conclusions  
22 was equally misleading and outrageous. I will perhaps  
23 deal with that in due course. The only attack upon the  
24 integrity of Dr Fergie during the course of the  
25 proceedings when she was in the witness box, and able to  
26 do something about it, is what I might refer to as the  
27 scatter-gun general assertion of Mr Abbott. He accused  
28 her, I think, at one stage of fabricating with Dr  
29 Kartinyeri.

30 There is no evidence that Dr Fergie has fabricated  
31 anything. There is no evidence that Dr Fergie has  
32 conspired. There is no evidence that Dr Fergie has  
33 perjured herself. It is the easiest allegation to make.  
34 It is very easy to attack someone's professional  
35 integrity. It is easy to cast the stone. It is even  
36 easier to do it when the witness has left the witness  
37 box and cannot defend herself.

## ADDRESS (MS PYKE)

1 I say to you that you must look at the manner in  
2 which Dr Fergie has been attacked, and her integrity has  
3 been attacked, and say to yourself: It is a totally  
4 unfounded attack. It is one that they did not have the  
5 courage, they did not have the intellectual and indeed  
6 moral integrity to put to her in the witness box, and  
7 they should not now be able to make it, where Dr Fergie  
8 is not able to defend herself. It is the most serious  
9 allegation and one, I say to you, that should have been  
10 put to her.

11 These experts, that I would say to you, on the  
12 evidence in front of you, Mr Hemming, Dr Draper, Dr  
13 Fergie, are all eminent and qualified members of their  
14 respective professions, are all accused of fabricating.  
15 What earthly motive would these people, from different  
16 walks of life, possibly have to come together, jointly  
17 and severally, to put a grand conspiracy and fabrication  
18 theory to this commission? There is, I suggest to you,  
19 no skerrick of evidence as to what the alleged motives  
20 of these people are.

21 You must not lose sight of the fact, as I am sure  
22 you won't, that what you are being asked to determine  
23 here is not whether or not women's business exists or  
24 not, you are being asked to determine that there has  
25 been a deliberate manufacture of women's business, as  
26 you have defined it in this commission. That is quite a  
27 separate issue.

28 We are not involved in an interpartes proceedings,  
29 where it is a matter of looking at one lot of evidence  
30 and comparing it with the other, and saying, on the  
31 balance of possibilities, it does or it doesn't exist.  
32 It is being asserted that there has been a deliberate  
33 manufacture by the proponent women. I suggest to you  
34 that there is simply no evidence of that. There is no  
35 credible evidence that the proponent women have in any  
36 way consciously fabricated a story.

37 The evidence of the experts in this matter, if I can  
38 put them in the general, is that Dr Kartinyeri genuinely

## ADDRESS (MS PYKE)

1 believes secret women's business, secret women's  
2 knowledge. The same is asserted on behalf of the other  
3 proponent women. None of the experts to this inquiry  
4 have asserted anything other than the genuineness of Dr  
5 Kartinyeri and the other proponent women.

6 The allegations of conspiracy and fabrication have  
7 emanated, I suggest to you, from counsel in this  
8 commission. They were first raised as set out in our  
9 submissions in the press, having their origins in the  
10 Channel 10 news footage and in the 'Advertiser' article,  
11 'The great lie of Hindmarsh Island'. That is where  
12 fabrication arose.

13 It didn't arise from the opponent women themselves.  
14 They have not asserted that there is a fabrication.  
15 They have not asserted that Dr Kartinyeri and the  
16 proponents have been involved in some great conspiracy.  
17 I invite you to look again and again at the evidence of  
18 the opponent women. Nowhere do they assert any  
19 fabrication. That is a position quite at variance with  
20 the position adopted by their counsel, Mr Abbott.

21 Mr Abbott, as referred to in our written  
22 submissions, alleges that he is making those assertions  
23 on instructions that there was a fabrication in April of  
24 1994. If indeed they were Mr Abbott's instructions from  
25 the opponent women, it is beyond comprehension why those  
26 opponent women did not, at the very least, avert in  
27 their evidence to that assertion.

28 The only one of the opponent women who comes close  
29 to making any assertion of fabrication is Dorothy  
30 Wilson, and that relates to only one element, and that  
31 is the element pertaining to the appearance of the  
32 female anatomy and its connection with Hindmarsh Island  
33 and the Murray Mouth. She is the only opponent woman  
34 who has in any way given any evidence that might be  
35 construed, at its highest, as some fabrication.

36 The evidence of the opponent women centres around  
37 their assertions that either Hindmarsh Island is not  
38 mentioned, or they never heard of women's business in

## ADDRESS (MS PYKE)

1 relation to Hindmarsh Island, and that I suggest to you  
2 is the majority position taken by the women. Five of  
3 the proponent women assert that. One opponent woman  
4 asserts that Hindmarsh Island was never mentioned. Only  
5 five people of the opponent women say they weren't told  
6 and they don't believe. Only one opponent woman asserts  
7 there was any fabrication.

8 Of course, it is a huge quantum leap to go from  
9 saying 'I wasn't told and I don't believe in it', to  
10 assert that people who do believe have fabricated. That  
11 is the leap that you are being asked to make. You are  
12 being asked to make a finding that the women who do  
13 believe have fabricated it. I suggest to you that that  
14 is a leap, on the evidence, that is not open to you, on  
15 any reading of the evidence.

16 There have been various criticisms of Dr Fergie and  
17 her report, criticisms about whether the Graham's Castle  
18 meeting was truly representational. There has been  
19 criticisms about the form of her report. I say to you  
20 that Dr Fergie, of course, as outlined in our written  
21 submissions, meets and rejects those criticisms.

22 But the fact is, even if you were to find that there  
23 were - which we say is not appropriate - some  
24 limitations in her report, some defect in the processes  
25 that she adopted, that does not entitle you to say that  
26 Dr Fergie is some fabricator and conspirator. Nor does  
27 it entitle you to say that Dr Fergie's informants are  
28 fabricators and conspirators.

29 The position that we put in our written submissions  
30 are that Dr Clarke and Mr Jones have taken an  
31 intransigent stance, if I can put it that way, from very  
32 early on in these proceedings. Dr Clarke was telling Dr  
33 Fergie in the first telephone call, I refer back to July  
34 1994, that the women's secret knowledge claim was a bad  
35 claim and that she was wrong, at a time when Dr Clarke  
36 hadn't even read Dr Fergie's report.

37 Mr Jones was making assertions about Dr Fergie and  
38 the nature of the women's business prior to the Channel

## ADDRESS (MS PYKE)

1 10 interview that we have heard about and certainly was  
2 giving some assistance to the press. He also admitted  
3 that he hadn't even read Dr Fergie's report. Let us not  
4 concern ourselves with the fact that they hadn't had any  
5 knowledge of what was in the secret envelopes. They had  
6 been prepared to form a view right back in July of 1994  
7 about the existence or otherwise of women's business.

8 What is particularly important, I say, in weighing  
9 up their views and their intransigence, is that neither  
10 Dr Clarke nor Mr Jones appear to have in any way spoken  
11 with any Ngarrindjeri women about the existence or  
12 otherwise of secret or restricted women's knowledge;  
13 neither the opponents, nor the proponents. They have  
14 not in any way sought to inform themselves about the  
15 nature of the debate since they formed their view. I  
16 say to you that you must weigh that up in a most serious  
17 manner.

18 We, of course, say that Dr Clarke and Mr Jones have  
19 completely misconstrued what Dr Fergie alleged. She was  
20 never alleging a Western Desert model. She was only  
21 ever alleging a domain of restricted women's knowledge.  
22 What Dr Clarke and Mr Jones have done is really to take  
23 the debate and to assert, as a fact, their version of  
24 the debate. They refuse to acknowledge any view other  
25 than their own.

26 I say that, quite clearly, there is debate. There  
27 is the most serious debate amongst the experts, and that  
28 is the nature of anthropology. It is not to detract or  
29 demean the views of particular experts to this inquiry,  
30 or indeed in the community generally. That they  
31 participate in debate, is merely to bring to your  
32 attention, and indeed that of the community generally,  
33 the nature of debate.

34 Dr Clarke in fact, in his evidence, when talking  
35 about the debate in relation to the Swain articles, made  
36 the point that the discussion that Swain was making is  
37 the sort of question where he would be savagely  
38 attacked. That is the nature of the academic game.

## ADDRESS (MS PYKE)

1 As we submitted in our written submissions, it seems  
2 that that is what is happening here, that Dr Fergie has  
3 asserted a proposition, she has asserted it from a  
4 position of having spoken to the Ngarrindjeri women,  
5 having been involved in an approach, having formed a  
6 view, having prepared a report, and she is being  
7 savagely attacked by Dr Clarke and Mr Jones. They would  
8 say that is part of the academic game.

9 It does not mean that Dr Clarke and Mr Jones are  
10 right, as they would have you believe. It means that  
11 there is a savage attack about a particular topic  
12 underway. The nub of the debate is Dr Clarke and Mr  
13 Jones are of the view that there are no indicators in  
14 the literature that secret women's business has existed  
15 previously. Mr Hemming, Dr Draper and Dr Fergie assert  
16 that there is. In many ways that is the distillation of  
17 the argument between them.

18 I say to you that the evidence from Hemming, Dr  
19 Fergie and Dr Draper is well thought out - and I will  
20 not go through it all - well documented, and well argued  
21 on their part. There are sign posts in the literature.  
22 There is every basis for you to find that the secret  
23 women's knowledge for which Dr Fergie argues exists, and  
24 has existed and is resonant with the literature.

25 Our conclusions - and I will go to them in a moment  
26 to address some specific things that have been raised by  
27 some other counsel - are that what you are confronted  
28 with here are, in effect, debates between the  
29 Ngarrindjeri people themselves, debates within the  
30 anthropological and allied communities, and that debate  
31 is vigorous.

32 The opponent women who have given evidence before  
33 this commission represent only a very small proportion  
34 of Ngarrindjeri women. We are told that there are  
35 thousands of Ngarrindjeri women. It is only a small  
36 number that you have heard. A number far less, I might  
37 say, than the women that Dr Fergie has had contact with  
38 at the various meetings she has attended and, in



## ADDRESS (MS PYKE)

1 particular, the Graham's Castle meeting. They are not  
2 purporting to speak on behalf of all Ngarrindjeri women  
3 - I am referring there to the opponent women.

4 Given the very heated nature of the debate, we say  
5 to you that you must not make a finding that that debate  
6 equates to a fabrication on the part of people on one  
7 side of the debate. It may be a difference of opinion,  
8 it may be very interesting, it may be very divisive and  
9 destructive, but that is what we have heard, conflict  
10 and debate, not right and wrong, not the one true  
11 position and the fabricators.

12 CONTINUED

## ADDRESS (MS PYKE)

1 And it would be quite inappropriate and wrong for you to  
2 make a finding of fabrication. And you must always bear  
3 in mind that one half of the argument has basically not  
4 been put. The opponent women, bar Veronica Brodie, have  
5 not attended to give evidence. Dr Fergie has not been  
6 able to give evidence about a side of the debate that  
7 would be most relevant and most interesting. As we say,  
8 Dr Fergie has been nobbled by the rulings of this  
9 Commission and the complex circumstances surrounding the  
10 preparation of her report.

11 To make a finding of fabrication would be tantamount  
12 to trivialising and demeaning the beliefs of the  
13 proponent women and to hold them up to ridicule. That  
14 is not something that you should do in the absence of  
15 the most compelling evidence to do so. The proponent  
16 women have not been, as we have outlined in our  
17 submissions, summonsed to appear before this Commission.  
18 It is a power that you have, if you chose to exercise  
19 it. I am not suggesting, for a moment, that you should  
20 have exercised it, but to then suggest that the absence  
21 of the proponent women should be the subject of adverse  
22 findings, or adverse inferences drawn from their failure  
23 to give evidence, I say to you is inappropriate. The  
24 reasons that you gave for not compelling the women to  
25 attend, including, amongst other things, the Racial  
26 Discrimination Act, indicate the very nature of the  
27 sensitivity of the material the subject of this Inquiry.  
28 And the proponent women are entitled to their  
29 sensitivities about their most fundamentally held  
30 beliefs.

31 The position that is adopted by Mr Meyer and Mr  
32 Abbott almost assumes that these beliefs are not  
33 genuinely held. That they have just made them up. Come  
34 along and tell us about them so that we can test you.

35 These women do hold these beliefs genuinely and why  
36 should they come along here voluntarily, if they don't  
37 wish to?

38 As to this Inquiry, quite clearly - and we know this

## ADDRESS (MS PYKE)

1 from the statement of the Minister, at the time of the  
2 second s.35 authority - 85% of the Ngarrindjeri  
3 community do not agree with the processes of this  
4 Commission, or with the holding of this Inquiry. The  
5 proponent women are not alone. And they should not be  
6 penalised by adverse inferences being drawn from their  
7 failure to attend to give evidence about most sensitive  
8 personal beliefs that they hold.

9 There have been a number of particular assertions  
10 that I want to address that have been made by counsel in  
11 the matter.

12 Mr Meyer, in his submission, referred to and  
13 criticised Dr Fergie for her comments about the  
14 political saleability of her report.

15 The inference from Mr Meyer's criticism was that Dr  
16 Fergie had somehow or other worked her report around for  
17 political purposes.

18 I point you to p.5,797 of the transcript, where Dr  
19 Fergie clearly sets out that the political decision she  
20 is talking about and the saleability of that is Mr  
21 Tickner's. He is the Minister who was being called upon  
22 to assess the submission and that he would have to make  
23 a decision and he would have to, in essence, sell it to  
24 the Cabinet. It was nothing to do with Dr Fergie making  
25 her report politically saleable. She was merely  
26 advising the meeting that it had to be recalled that Mr  
27 Tickner, as any minister making a submission to Cabinet,  
28 has got to be able to sell the assessment. It is not Dr  
29 Fergie's political agenda, at all.

30 It has been suggested by both Mr Abbott and Mr Meyer  
31 two things.

32 One is that Dr Fergie had only one informant. And,  
33 2. That she relied upon that informant, without testing  
34 the beliefs of that informant. And I am paraphrasing  
35 the submissions in the interests of saving time.

36 Firstly, as outlined in our submissions and in the  
37 statement of Dr Fergie, Dr Fergie had several  
38 informants. She had one key informant and she had

## ADDRESS (MS PYKE)

1 another layer of informants who had the secret women's  
2 knowledge and another layer of commentators. She did  
3 not ever say that she had one informant.

4 Mr Meyer, at p.21 of his submissions, takes a  
5 comment of Dr Fergie completely out of context and  
6 distorts it. And that is when he says this:

7 `The truth is, Dr Fergie - '

8 Inferentially, she had not been truthful beforehand:  
9 ` - in this case ... a single text.'

10 It has never been anything other than Dr Fergie's  
11 position that the text to which she referred was  
12 provided to her by Dr Kartinyeri, but there had been a  
13 whole process, prior to the formulation of that text,  
14 involving Dr Fergie speaking with other informants,  
15 being present at other meetings and other groups.

16 What is being suggested in the submissions of Mr  
17 Meyer and Mr Abbott is that Dr Fergie accepted, at face  
18 value, the beliefs of Dr Kartinyeri.

19 I won't go through yet again our submission, it is  
20 fully detailed in our written submissions, but there  
21 seems to be a fundamental misunderstanding by many  
22 people in this Commission as to the ability to test  
23 beliefs.

24 If I say `I believe in God', how are you going to or  
25 how can we test that? I have said it. How do you test  
26 whether I believe in God or not? One might ask how do  
27 you test that there is God? Beliefs unto themselves are  
28 not capable of empirical testing. But to suggest - and  
29 this is what Dr Fergie has asserted, time and again,  
30 through her evidence - you cannot test that belief in  
31 the way in which it has been put to her, applying some  
32 logical eurocentric process of analysis. That is not to  
33 say, however, that Dr Fergie did not embark upon an  
34 appropriate anthropological evaluation and testing of  
35 what it was that Dr Kartinyeri was telling her. To  
36 assert otherwise is misleading.

37 There is a whole segment of Dr Fergie's statement  
38 that deals with exactly the way in which she went about

## ADDRESS (MS PYKE)

1 testing, in an appropriate anthropological way, what Dr  
2 Kartinyeri was telling her.

3 That is contained in pp.39 and following of her  
4 statement. And, in particular, she outlines, at the  
5 bottom of p.46 and p.47, what she did:  
6 'I had engaged throughout this period as part of my  
7 assessment process ... process in which Doreen had been  
8 elected spokesperson.'

9 And I won't read the rest of it.

10 In her evidence, Dr Fergie goes on to say that she  
11 applied that testing process. She was testing it  
12 against what she could garner from the literature. That  
13 is part of the dispute and we accept that was what Dr  
14 Clarke and Dr Jones say. We disagree with them. We say  
15 it is resonant with the literature. But this assertion  
16 of Mr Meyer and Mr Abbott that Dr Fergie has embarked  
17 upon a process of a single informant, believing what  
18 that single informant told her, without any evaluation,  
19 is just, we would say, misleading nonsense. The whole  
20 of Dr Fergie's process was an evaluation from the time  
21 that she came to be requested to provide a report.

22 At p.63 of the submissions of Mr Meyer, he makes, in  
23 support of his contention that:

24 'Dr Fergie is a willing assistant to Doreen Kartinyeri,  
25 collaborating with her in rendering her conclusion  
26 beyond the reach of examination by anybody versed in  
27 anthropology.'

28 Or, in fact, it is in the preceding page, on p.62,  
29 he talks about Dr Fergie providing assistance to Dr  
30 Kartinyeri and thereby assisting her, in putting it  
31 bluntly, in fabricating the contents of the envelope.

32 Firstly, as I indicated earlier, that insinuation  
33 was never put to Dr Fergie in her evidence, but it is  
34 totally misleading for that assertion to be made by Mr  
35 Meyer.

36 As this Commission is well-aware, in the notes on  
37 methodology, which were handed up by Dr Fergie as part  
38 of the production of her notes process, sets out her

## ADDRESS (MS PYKE)

1 methodology and sets out the way in which Doreen  
2 Kartinyeri would stop and talk around a topic to clarify  
3 her thoughts and, at other times, she would ask her to  
4 stop while she expressed her inner-most thoughts.

5 I am referring to the notes on methodology:

6 `Sometimes I would ask ... by Italics.'

7 Mr Meyer never bothered to cross-examine Dr Fergie  
8 about those notes on methodology. A look at those notes  
9 on methodology absolutely gives the lie to the assertion  
10 by Mr Meyer that Dr Fergie is somehow or other complicit  
11 in collaborating with Dr Kartinyeri and fabricating the  
12 notes.

13 Dr Fergie, of course, is further hampered by the  
14 fact that she is not able, of course, to give evidence  
15 about what is in the envelopes and you can't see what  
16 actually happens. But that, I suggest to you, is a most  
17 misleading part of the submission of Mr Meyer.

18 There is, at p.19 of Mr Meyer's submissions,  
19 discussion about Dr Fergie referring to a phrase `It has  
20 become a tradition', in answer to a question I think  
21 that, in fact, came from me.

22 Again, I invite you to look at that answer in its  
23 context.

24 Dr Fergie had been asked by you some questions. Dr  
25 Fergie asked you or purported to make an answer and  
26 tried to pinpoint the particular case at hand, the  
27 subject of this Inquiry. And you, Commissioner, made it  
28 quite clear that you were not dealing with the current  
29 case at hand. You were putting a different situation.  
30 And it is quite clear, from the context of Dr Fergie's  
31 answer, that what is being put to her is a hypothetical  
32 situation. She is not in any way purporting to deal  
33 with the case before this Inquiry.

34 Mr Meyer has, I suggest to you, been entirely  
35 misleading.

36 The submissions of both Mr Meyer and Mr Abbott - and  
37 I do this in summary - fundamentally misapprehend the  
38 nature of the layering of information, inside and

## ADDRESS (MS PYKE)

1 outside knowledge, and it permeates a number of their  
2 criticisms, including what is and is not in the public  
3 arena. It is quite clear that there are and it is clear  
4 from the literature, it is clear from the evidence of Dr  
5 Fergie, it is clear from the evidence of Mr Hemming, Dr  
6 Draper and indeed Veronica Brodie, the Aboriginal men  
7 who gave evidence, it is abundantly clear that there is  
8 no secret knowledge, open knowledge. There are layers  
9 of knowledge within that continuum and knowledge is  
10 imparted in degrees.

11 It is abundantly clear from the evidence of Dr  
12 Fergie and, indeed, Veronica Brodie that what is in the  
13 public arena does not represent the core of the secret  
14 women's knowledge.

15 Many of the criticisms of Mr Meyer and Mr Abbott  
16 fail, we say, to apprehend that most fundamental feature  
17 of Aboriginal knowledge.

18 It is not like, as Dr Fergie says, Aboriginal  
19 society does not have the egalitarian approach to  
20 knowledge that is perhaps the European approach to  
21 knowledge. It is an economy of knowledge and it is  
22 knowledge that is owned by a particular person and  
23 disseminated in a particular way and what the custodian  
24 of that information can do is quite different to what  
25 the recipients can do.

26 We say that you must keep very much in mind that  
27 distinction.

28 The other area we say that Mr Meyer and Mr Abbott  
29 fail to properly appreciate is the nature of tradition  
30 and its capacity to change.

31 I think that that really meets the fundamental  
32 criticisms that they make. But by and large it is not  
33 an Inquiry about Dr Fergie's report. You might be  
34 forgiven for thinking that it is so. The fact that Dr  
35 Fergie has a view different to Dr Clarke and Mr Jones  
36 does not make her a conspirator and a fabricator. She  
37 has and I invite you to find that she has attended in a  
38 way to be of assistance to this Commission. She has

## ADDRESS (MS PYKE)

1     been here, as you well know, from the beginning, in  
2     those early days, when there was much difficulty about  
3     what was and wasn't in s.35. She was here endeavouring  
4     to give assistance. She has attended. She has given  
5     evidence. She has been the subject of  
6     cross-examination. And I ask you to find that she is a  
7     witness of the utmost integrity and credibility, in her  
8     evidence to this Commission and in the formulation of  
9     her report and in the performance of her professional  
10    obligations, both to the ALRM and to the women who  
11    provided her information. And I urge you not to make  
12    any findings that impinge upon the professional and  
13    personal integrity of Dr Fergie.  
14    CONTINUED



## ADDRESS

- 1 MR MEYER: Before you call the next counsel, I  
2 should rise to make one comment. I don't seek to answer  
3 or reply to any of the submissions by my friend, except  
4 for one comment she made. She said in relation to me -  
5 MS PYKE: I object.  
6 COMSR: Mr Meyer, I did say there was no right  
7 of reply.  
8 MR MEYER: This isn't a right of reply.  
9 MS PYKE: Well, I object -  
10 COMSR: Perhaps we will hear the nature of what  
11 Mr Meyer wishes to raise. If it's not a right of reply,  
12 what is it?  
13 MR MEYER: Miss Pyke has, in my submission, accused  
14 another counsel at the bar table of being dishonest, and  
15 that is totally untenable. She can attack my honesty if  
16 I am a witness or a participant in these proceedings.  
17 What she cannot say is that I have no moral or  
18 intellectual honesty. She can say that I have no  
19 intellect, she is welcome to say that, she can say I am  
20 misled, she is welcome to say that, but what she said  
21 was in fact unprofessional and I will write to the Bar  
22 Council because counsel at the bar table has accused  
23 another counsel of having no moral or intellectual  
24 honesty. I invite her to withdraw that. She can make  
25 any criticisms of the substance of the submissions that  
26 she likes, that is her duty. She cannot attack another  
27 counsel in the way that she has. I have waited until  
28 she has finished. I did not speak to interrupt her, I  
29 waited until she had finished.  
30 MS PYKE: I don't suggest that Mr Meyer is,  
31 himself, morally reprehensible.  
32 MR MEYER: You said my moral and intellectual  
33 honesty. They were your words.  
34 MS PYKE: I don't believe that Mr Meyer - I think  
35 that someone's intellectual honesty, in my experience,  
36 features in numerous - in various jurisdictions -  
37 COMSR: I think -  
38 MS PYKE: I withdraw the moral implication.

## ADDRESS

- 1 COMSR: Mr Meyer is saying that you personally  
2 said that of him as his role, in his role as counsel.
- 3 MS PYKE: I certainly didn't mean in any way to  
4 suggest that Mr Meyer was not himself morally honest. I  
5 think that the intellectual honesty is quite a fair  
6 comment. If it's so offensive to Mr Meyer, I withdraw  
7 it. I don't mean it as a personal criticism. I put it  
8 on the basis that it is not, as I put it, an  
9 intellectually honest thing to make a submission without  
10 having put it to the witness in the witness box.
- 11 MR SMITH: Perhaps Miss Pyke should take into  
12 account that you would not allow one counsel to  
13 cross-examine a witness, particularly Dr Fergie, in  
14 areas that were covered by other counsel. I wonder  
15 whether Miss Pyke has taken that into account?
- 16 MS PYKE: I think for such a serious allegation,  
17 this wasn't put by anyone and that was my point.
- 18 MR SMITH: It was put by Mr Abbott.
- 19 COMSR: I think Mr Meyer was not sure whether  
20 you have withdrawn the allegation.
- 21 MR MEYER: Somebody can make an accusation of  
22 another counsel that there is or it has intellectual  
23 strength in the argument, that he is a lousy liar. You  
24 can say any of those things, but what you cannot say  
25 about the other counsel is that they lack honesty. You  
26 can say that to the other party, but you cannot say it  
27 as a counsel. That is why barristers must withdraw if  
28 their partners happen to get into the witness box.
- 29 MS PYKE: Firstly, it was the submission that I  
30 complained about, not Mr Meyer.
- 31 MR MEYER: You directed it at Mr Abbott and I.
- 32 COMSR: I think what Miss Pyke is saying is that  
33 is what she said. She didn't mean it in that respect.
- 34 MR MEYER: If she withdraws it, I accept it.
- 35 MS PYKE: I withdraw it. It certainly wasn't  
36 meant as a -
- 37 COMSR: Is there any other counsel? Mr Sykes?
- 38 MR SYKES: Can I make a brief submission? Not in

## ADDRESS (MR SYKES)

1 relation to the last topic I must say. I will be brief.

2 COMSR: Is there any other counsel who wishes to  
3 address?

4 MR LOVELL: Only a couple of minutes after Mr Sykes.

5 MR SYKES: I have spoken to Mr Lovell and he  
6 graciously allowed me to address you first.

7 You will have observed that I am only an occasional  
8 visitor to your Royal Commission and I left it to the  
9 others to do it spade work in relation to unearthing the  
10 truth, as best it can be found, amongst the witnesses  
11 and the exhibits. That doesn't mean to say that my  
12 clients, the Campbell clan, are not as keenly interested  
13 in your findings or in what the evidence has been. They  
14 are in keenly interested.

15 You will recall that the evidence that you heard is  
16 that they are the descendants of the traditional owners  
17 and, therefore, they have a direct link to Hindmarsh  
18 Island which is the site of this claimed spiritual  
19 belief.

20 I've drawn brief final submissions almost as a  
21 position statement because I know that a lot of the  
22 material of other counsel would cover the same issues  
23 that I'm covering, but it's a position statement for the  
24 Campbell clan because of the way they have become  
25 involved in this dispute.

26 You will recall the evidence of Mr Alan Campbell  
27 that initially he was interested in the protest against  
28 the bridge because he has origins as a protestor, he  
29 described himself as an old protestor. On coming to  
30 South Australia to investigate the matter, two things  
31 occurred: He found that he had a direct connection to  
32 the island through his forebears; and he also made  
33 enquiries in regard to the claims of women's business.  
34 Further, he found that nobody amongst the people in his  
35 clan, and the people who should know amongst the  
36 Ngarrindjeri women that he knew, had heard anything  
37 about the claimed spiritual beliefs.

38 That might have been the end of the matter were it

## ADDRESS (MR SYKES)

1 not for the fact that the Campbells have been shunned to  
2 a large extent by the proponents of the claimed beliefs.  
3 They have been shunned, firstly, in the form of Alan  
4 Campbell who has a very high profile in the Ngarrindjeri  
5 and Aboriginal community. He certainly is not  
6 necessarily liked by all, but it's a profile that cannot  
7 be ignored. You only have to see what the witnesses  
8 have had to say, for instance, in regard to other actors  
9 in this Commission and their associations with Mr  
10 Campbell to realise that he was always considered a  
11 force to be reckoned with. But he was shunned. He  
12 claimed a traditional link to Hindmarsh Island and then  
13 he wasn't welcome at meetings that he attended.

14 Amelia Campbell, who attended at the Goolwa meetings  
15 which were meant to be set up to assist Dr Saunders in  
16 her fact-finding mission, was also shunned. I don't  
17 think it's exactly right to say about Amelia Campbell  
18 that she didn't voice opposition to the claims. You may  
19 recall the evidence of Dorothy Wilson and the evidence  
20 of Amelia Campbell and, to a certain extent, Veronica  
21 Brodie, that Amelia was vocal at that meeting on 19  
22 June. She said that she had never heard of this claimed  
23 women's business in relation to Hindmarsh Island. She  
24 questioned Dr Kartinyeri as to where she might have got  
25 this information from and she asked questions about  
26 where the traditional owners were at this meeting,  
27 pointedly obviously, because it raised the question  
28 about whether the right people were being consulted.  
29 The results of that was that she was shunned. The  
30 result of that was that she was effectively excluded  
31 from meeting Dr Saunders and putting her viewpoints  
32 across. This, you might think, is of great concern to  
33 the Campbell clan. They have been ostracised from the  
34 investigations that have occurred, the meetings that  
35 have occurred and the various fact-finding missions that  
36 have been put in train in coming to give their point of  
37 view. They have effectively been shunned and so this  
38 has been their opportunity to put across their story.

## ADDRESS (MR SYKES)

1 I might say on behalf of the Campbells that they are  
2 grateful to you for having had the opportunity to  
3 present statements to you and also in giving evidence.  
4 Their position, the position of the Campbells, is that  
5 they don't rule out altogether the possibility of  
6 spiritual beliefs, wherever they might be. That is not  
7 the issue in this case. The issue in this case is  
8 whether the spiritual beliefs that have been claimed in  
9 association with Hindmarsh Island are genuine - or  
10 fabricated, I should say. Certainly the Campbells are  
11 suspicious about that, not only because of the treatment  
12 they have received in trying to conduct their own  
13 investigations and making their own input, but also in  
14 regard to developments that occurred later, for  
15 instance, with Mr Doug Milera. And, once again, it's of  
16 interest to know that when Mr Doug Milera recanted,  
17 confessed that the claims were a fabrication, that it  
18 was to Mr Alan Campbell that he immediately sought  
19 refuge and it was to John Campbell's farm at Wellington  
20 that he went and stayed for those number of days while  
21 he had interviews. So, they are principal actors in the  
22 drama that has been explained to you in the evidence.  
23 They can't be ignored.

24 Their views are important because they are a  
25 sounding board for people who have been sceptical about  
26 the claims by the proponent women and they have been at  
27 the forefront of trying to bring to the public attention  
28 what they believe is a matter that requires far more  
29 investigation. They are sceptical about the claims that  
30 have been made to date.

31 Commissioner, I have set out that position as  
32 succinctly as I can in these final submissions. Once  
33 again, my clients are grateful for the opportunity of  
34 having been able to put to you in statement form and in  
35 evidence what they have to contribute to this  
36 Commission.

37  
38 MR LOVELL: I will be very brief, you will be

## ADDRESS (MR LOVELL)

1 pleased to hear. Can I just initially correct a  
2 submission that was made in Dr Fergie's submissions at  
3 p.56. I won't take you to it in view of the time.  
4 There is a reference to that. At the bottom of that  
5 page, there is no transcript reference given to you on  
6 that and, in my submission, that's taken out of context,  
7 that line of quotation there towards the bottom of p.56.  
8 It's dealt with in p.3 of my submission. In fact, I  
9 used the same piece of transcript to put a totally  
10 contrary proposition and invite you to read the entire  
11 page of 2593 to put that comment by Mr Kenny into  
12 context.

13 Secondly, I deal with the submission that was made  
14 by Mr Tilmouth in relation to the ubiquitous Mr Clark  
15 who appears to have, didn't give evidence and gave a  
16 very late statement and appears to have created some  
17 drama in this Commission. I point out that at the  
18 behest of Mr Smith, I was telephoned about Mr Clark and  
19 I was down here on 7 November, 8 November waiting for  
20 the ubiquitous Mr Clark to turn up. I was informed by  
21 people who had obtained the statement that after lunch  
22 on the 7th that Mr Clark was on his way from Murray  
23 Bridge. Well, he appeared to have gotten lost. He  
24 didn't turn up on the 7th or the 8th and he turned up,  
25 as I understand it, on 15 November very late.

26 In any event leaving aside the fact that he didn't  
27 turn up, it's a submission of no weight from Mr Tilmouth  
28 that asks you to draw any sort of inference from his not  
29 being called because, of course, his statement is not  
30 before the Commission, so you can't draw anything. Mr.  
31 Tilmouth attempts to draw some inference from it. We  
32 say, of course, that Mr Clark's statement was complete  
33 garbage and it has about as much weight as Mr Tilmouth's  
34 submission that you ought to take some note from it.

35 In our submission, we adopt what Mr Meyer put to you  
36 in that it was a consistent pattern by certain people to  
37 manipulate the calling of some evidence until very late  
38 in the Commission so that it couldn't be tested.

## ADDRESS (MR LOVELL)

1 Finally, I wish to deal with a submission this was  
2 made principally by Mr Steele but also to a certain  
3 extent by Mr Tilmouth. I disagree to a certain extent  
4 with most of my colleagues at the bar table. I remind  
5 you Madam Commissioner that this is not a court case and  
6 the niceties of *Brown v Dunn* and *Jones v Dunkell* really,  
7 in our submission, don't have a great role before a  
8 Royal Commission. The rules of natural justice clearly  
9 apply. To that extent, there has to be some compliance  
10 with *Brown v Dunn*. We urge you to take a commonsense  
11 attitude to this matter in particular as to whether or  
12 not witnesses could have been of assistance or not have  
13 been of assistance.

14 As an illustration of that, can I take you to p.50  
15 of Mr Tilmouth's submissions. That relates to a  
16 submission he really made in relation to Mr Denver and  
17 the Chapmans in some way suggesting that they had  
18 nurtured a vulnerable, confused and old and chronic  
19 alcoholic. That is Mr Milera.

20 That's a very surprising submission, we say, given  
21 that at the time Mr Milera was the secretary of the  
22 Lower Murray Aboriginal Heritage Committee. We say that  
23 you can use your commonsense when assessing that sort of  
24 submission to show that it demonstrates the extent to  
25 which people, who are challenged, are prepared to throw  
26 away colleagues and friends; and we say in this case  
27 they have sacrificed Mr Milera.

28 But the so-called problem of Mr Milera, which was  
29 what Mr Steele put to you, he put it to you as the  
30 kernel of the problem - that is, on the one moment he is  
31 a liar and the next moment he is telling the truth - can  
32 be dealt with very easily by adopting a very simple  
33 commonsense approach when one stands back and views the  
34 evidence as a whole. We invite you to do so in relation  
35 to this particular matter because it is the only one  
36 that affects Mr Kenny.

37 When one applies, as we suggest you should, the  
38 knowledge of ordinary human affairs, you have a very

## ADDRESS (MR LOVELL)

1 clear picture of what occurred in this case. You have a  
2 man along with his wife who was manipulated. He can't  
3 help but get swept along in the tide of events. When  
4 it's all over and some Ngarrindjeri people begin to  
5 question what occurred, they're threatened.  
6 Particularly a decent person such as Dorothy Wilson -  
7 and you saw her in the witness box and you will make  
8 your own assessment - we suggest to you that she came  
9 across as a very honest and decent person.

10 What you see with Mr Milera is a man who grappled  
11 with his own conscience. It's our submission that far  
12 be it from the sorts of remarks made by Mr Tilmouth  
13 about Mr Milera, we say that he was a courageous man.  
14 He made the correct decision after grappling with his  
15 conscience to tell us how it was. We say he showed  
16 enormous courage in doing what he did and resisted  
17 pressure for some weeks, repeating the same story - what  
18 we would say is the true story - to many people. That  
19 is our submission at p.13 of the submissions.

20 We put before you the fact that he reiterated his  
21 story. Mr Tilmouth was never able to get around that  
22 point in his submissions. We say that it was Mr Milera  
23 who used the last trace of his courage in resisting all  
24 the pressure that he was under after that interview with  
25 Mr Kenny. To many people, he predicted his own  
26 downfall; that is, the forces outside the Commission  
27 were eventually going to pressure him. His  
28 non-attendance confirms the events that occurred.

29 That's not a Jones v Dunkell point. That is not a  
30 legal technicality. It's a sad fact, we say, that a  
31 person who, at one stage, had the courage to stand up  
32 and be counted was eventually pressured into towing the  
33 line when forces greater than he could bear squashed him  
34 like a bug. That's the answer we say to that particular  
35 point. That Mr Milera told the truth to Mr Kenny and  
36 it's our submission that you should so find. That's all  
37 I wish to say.



## ADDRESS (MR SMITH)

1 MR SMITH: As counsel assisting, I do not wish to  
2 proffer a submission generally about the matter, but  
3 rely on the written submission which we have made. I  
4 seek only to answer some of the submissions primarily  
5 from Mr Tilmouth which criticised the conduct of this  
6 commission in a number of respects, and I will not be  
7 long.

8 The commission ceased taking evidence when it was  
9 content that it could answer the Terms of Reference in  
10 fairness and with justice, and leave itself enough time  
11 to report in accordance with the time extended by the  
12 commission to do that.

13 David Rathman and other possible witnesses from  
14 DOSAA were not called. Two volumes of documents from  
15 the department were tendered in evidence. The decision  
16 not to call Rathman and others from the department who  
17 may have been relevant, did not hinge upon who wanted to  
18 cross-examine them. Mr Tilmouth offered to you that you  
19 must draw from that that no-one wanted to cross-examine  
20 Rathman or others. In fact, some counsel did. But the  
21 commission took the decision not to call him, having all  
22 the documentary material at its disposal anyway.

23 Dr Lucas is another witness mentioned by Mr  
24 Tilmouth. There was a fulsome report from Dr Lucas  
25 tendered in evidence, Exhibit 15. And in deciding not  
26 to call Dr Lucas, I conferred briefly, in particular,  
27 with Dr Fergie's representatives, who expressed no  
28 position in the matter.

29 Female anthropologists, it was suggested. The  
30 commission, after some difficulty, did engage the  
31 services of a female anthropologist from the United  
32 States of America, Jane Goodall. We have not called or  
33 taken a statement from Jane Goodall, and in light of the  
34 fact that the details of the secret appendices were not  
35 disclosed in this commission, it seemed not appropriate  
36 to call that lady from the United States.

37 Professor Tonkinson has been raised in both Mr  
38 Tilmouth's submission and Ms Pyke's submission.

## ADDRESS (MR SMITH)

1 Professor Tonkinson has been retained by the commission  
2 as its consultant. The argument about that has been had  
3 before you. This commission has power, both under the  
4 Act and in its own Terms of Reference, to retain and use  
5 a consultant. I emphasize that the commission will not  
6 be taking evidence from Professor Tonkinson.

7 I will come to Alan Clark in a moment, but could I  
8 just pause to say that Philip Clarke and Philip Jones  
9 were two anthropologists/historians who gave lengthy  
10 evidence before this commission. They, unlike other  
11 experts who gave evidence, were not separately  
12 represented, but were the commission's own witnesses.  
13 They do not, therefore, have a counsel to watch out for  
14 every criticism directed at them - and there have been  
15 criticisms directed at both of them - to negate or  
16 mitigate those criticisms.

17 My submission is simply this, because the report is  
18 not long away, those two men had nothing to gain and  
19 everything to lose from giving evidence before this  
20 commission, and I say only that this commission accepts  
21 that they gave their evidence with honesty and  
22 integrity.

23 Now, Alan Clark. Not only has Mr Tilmouth  
24 criticised this commission for not calling the evidence  
25 of Mr Clark, but despite the fact that there is no  
26 evidence from him, he purports to make a submission  
27 about this non-existent evidence of Mr Clark at p.53.  
28 Because it is not an important enough topic for you to  
29 canvass it in your report, although that will be a  
30 matter for you in the end, I take this opportunity to  
31 put on record exactly what happened in respect of Mr  
32 Clark.

33 On Monday, 6 November at approximately 9.30 a.m.,  
34 the statement of Alan Clarke, together with that of  
35 Henry Rankine and Tom Trevor, unsigned, was proffered  
36 to the commission. The transcript will show that on  
37 Monday, 6 November, because of the late proffering of  
38 those statements, no evidence could be taken on that day

## ADDRESS (MR SMITH)

1 because nobody had any notice of the evidence from these  
2 three potential witnesses.

3 So the day was spent, Monday, 6 November, with  
4 myself conferring with Henry Rankine and Tom Trevorrow,  
5 and in the course of that day, 6 November, all three  
6 such statements were signed, that is, the statement of  
7 Henry Rankine, Tom Trevorrow and Alan Clark. Despite  
8 the fact that I sought to confer with Alan Clark, and I  
9 had conferred at length of Tom Trevorrow and Henry  
10 Rankine, as is usual, I was told by Mr Kenny that Clark  
11 would not see me.

12 I say, without providing any detail to you because  
13 that would be mischievous, that there were matters that  
14 I needed to speak to Mr Clarke about that had been  
15 raised with me by other counsel. Mr Clark continued to  
16 resist seeing me on 6 November, and then I didn't hear  
17 about Mr Clark until 16 November, when we took evidence  
18 at Camp Coorong, already some days beyond the time at  
19 which we sought to stop taking evidence.

20 I was told at about 5 o'clock at Camp Coorong that  
21 Mr Clark was now prepared to speak with me and would he  
22 come to town. In fact, he did come and arrived  
23 unheralded in the commission at about 10.15 on Friday,  
24 17 November. I then rang Mr Kenny, who spoke with him,  
25 and then I conferred with Mr Clark.

26 I made a decision that the commission would not call  
27 Mr Clark. It is my decision and I made it. It was  
28 made, in part, because the matters that I needed to  
29 investigate simply could not be investigated in relation  
30 to his evidence, and, of course, notice of what he was  
31 going to say on various topics had not been given to  
32 people.

33 That is the only thing I wish to say in answer to  
34 those things raised by Mr Tilmouth in his submission,  
35 and that is all I wish to say generally.

36 MR LOVELL: There is just one thing, Mr Kenny has  
37 just raised with me one of my submissions may have  
38 inferred that he was involved in some manipulation of

## ADDRESS (MR SMITH)

1 evidence. That is not my intention and certainly not  
2 suggested by me.

3 MR MEYER: Mr Abbott isn't here and I had a brief  
4 discussion with him when we adjourned last time, so I  
5 get up instead of Mr Abbott. On behalf of all the  
6 counsel at the bar table, I wish to thank you for your  
7 patience and courtesy in the conduct of this hearing.

8 Some of the procedural issues along the way have  
9 been a little difficult and some of the exchanges  
10 between counsel at the bar table have generated a fair  
11 degree of tension, but you have permitted enough humour  
12 to enable us to retain our sanity, you have made rulings  
13 that have enabled us to get on with the conduct of the  
14 matter, and you have accommodated our foibles without  
15 criticism. On behalf of us all, we thank you for your  
16 conduct.

17 ADJOURNED 4.43 P.M.

