

**RESUMED**

**[12.00 pm]**

15 COMMISSIONER: We'll reconvene at 1200, and I'm delighted to welcome Mr Parry Agius to this session on consultation with community. Counsel.

20 MR JACOBI: Mr Agius is the presiding member of the Alinytjara Wilurara Natural Resources Management Board. The Alinytjara Wilurara NRM Board was established under the Natural Resource Management Act in 2004 and is  
25 comprised of Aboriginal voting members. Together they are responsible for developing a natural resources management plan which aims to achieve ecological and sustainable development through a diverse range of projects. A key aspect of the Board's role is to support effective communication and partnerships with organisations, agencies, communities, traditional owners, elders and individuals to manage the environment for mutual benefit.

30 The NRM region encompasses the northwest third of South Australia, including the Yalata lands, the Anangu Pitjantjatjara Yankunytjatjara lands, and Maralinga Tjarutja lands. Mr Agius has extensive experience in leadership positions in numerous organisations focused on indigenous issues, such as the CEO of SANT and the chairperson of the SA Aboriginal Advisory Council, and the Commission calls Mr Parry Agius.

35 COMMISSIONER: Can I say at the outset, Mr Agius, how appreciative I am for the work that you've put in to this part of the very critical section of the Commission's work? I realise the amount of time you put in and I'm very appreciative. I want to say at the outset, having read your submission, that I recognise the limits of the Commission's ability to consult in relation to the activities which are still hypothetical, and about the viability of which the  
40 Commission still has yet to establish. I do understand from your submission the significant negative associations particularly felt by indigenous people with nuclear activities, given the events of Maralinga.

45 I also understand from submissions from many indigenous communities more generally the deep concerns, and in many instances, the opposition of

Aboriginal people to the activities being considered by the Commission. If such activities were to go ahead, a fair, full and informed process would need to occur. I invited you today, and I'm grateful that you're prepared to develop our understanding of what would be necessary to have meaningful  
5 negotiations, consultations, to build community confidence in nuclear activities were they to go ahead. Understanding how one might develop a social licence that enables us to consider these issues is just a critical piece of the Commission's work. Counsel.

10 MR JACOBI: Mr Agius, I was hoping we might start with a bit of a discussion about the Awnrm Board's role, and I think I picked up in the introduction that it had these two key responsibilities of community leadership and connection, and to also provide technical information to assist with  
15 decisions within Aboriginal communities. I'm just hoping you might be able to take us very briefly through the key roles of the Board and how the Board functions.

MR AGIUS: Yes. Thank you, and thank you, Kevin, for the opportunity to come and talk. I'd just like to make you aware that I'm not here to talk about  
20 my issues, my personal concerns or anything like that. I'm here to present to the Commission a series of practices that produce results based on consultation practices. So that's the first thing I'd like to - - -

COMMISSIONER: We do appreciate that.

25 MR AGIUS: Okay. If I may, Kevin, is lead the Commission through 10 slides, and it creates a structure as a structure created these results and, as you saw from my written submissions, those results are real from it. So if I may, somebody can follow me through. We'll look at the map of the  
30 AW Board. That's the region on the left-hand side. And when you look at it from a non-Aboriginal perspective, you can just see it's a map with roads and stuff like that. When you look at it from a non-Aboriginal perspective, you see how Aboriginal people see it. They see it from a different perspective, from animals, from plants, from their culture connected to that stuff. So when  
35 people come and sit on our Board, we get this story and this story is represented right through all our work, and the consultation process is based on that story that you see on that map.

If we go to the next slide. So what we've been doing over the last few years is  
40 creating partnerships, connect with the community and actually provide leadership, and as you see there, you've got the government, community industry stakeholders, all who have an interest in that region, from water, to pest, to the ecology and so on, and then trying to advocate that perspectives to the wider government agencies and to government as well, and now to the  
45 Commission. So when we're looking at all the NRM boards across South

Australia, there's eight boards, they've all got that sort of representation: experts of different kinds, people from the community, and so on.

5 Next one. When you look at our Board, you can see it comes from the landholding authority. So you've got Maralinga land, you've got APY land, you've got ALT land, and you've got the Nullarbor Plains and the coastline.

10 COMMISSIONER: So this is a combination of Aboriginal and non-Aboriginal people?

15 MR AGIUS: No. This is all the Aboriginal leaders in those areas, and in recent times, the inclusion of Tjuntjuntjara because the community is really connected to the Tjuntjuntjara community. It's just on the outskirts of the Western Australian-South Australian border. And so they've had a bigger role here, not only in our decision making, but also in a cultural sense and the connection of country to people. So when you look at that, we've got an internal structure inside the government. So the minister for the environment has access to that knowledge, to that information, to that expertise.

20 Next. One of the things we suggested to the Board was, "Let's have our own policies. The government will have policies. All boards, whether they're private sector, whether they're non-NGO boards or they're - they have policies." And so, Kevin, what we've done is created those policies about different topic matters. It saves us repeating the same messages. So what we have now is a policy on climate change. Here's our set of words. Here's our set of policies. And so whoever reads that is getting a picture straightaway, instead of us trying to, you know, re-hash it up, in case we won't forget things.

30 And so we've got the Board, Board policies, as who we are. We've got people and country and the rationale behind that, for example, intellectual property, economic development, community-based NRM, recognise gender in the process. We've got the water, land, sea and country, and so in this case, the Commission is looking at facts and information about matters that have affected the particular topic matter. Well, then we haven't got one there, but somewhere down the track we may end up going down that road to create a policy. You can see we've got mineral tourism, camels, the dingo, climate change, water, fire, removal of specimens from the country. So they're information that we give to departmental staff, advice to the minister to say, "This is our thinking on matters relating to this region."

40 Next. So it's broken down even further. So when you're looking at our overall purposes, you can see working for the community and then you've got the theme, which is Board, people, country and water, and then you've got the goals. So this is about structure. This is about having an organised approach to NRM in the region and encourage the community leaders to think about

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structure and then taking information back to their structures and their decision making process back at home. And so when the leaders around our table are looking at this document and looking at what we have created there is the examples of members have taken this concept and actually starting to apply it back at the decision-making. So there has been a two way learning process and it has made me quite proud and also the community that a system is being created in taking it back to help them with their systems to a decision making (indistinct)

10 So when you look at the big picture in the sense, you get the landholding authority at the top and you have got employment plan, you have got a country plan which is what we call healthy country plan. So each area is going to have its own country plan and then an MOU between the NRM Board and the department and the landholding authority. So in this case we have got an  
15 MOU with APY. We have got an MOU with Yalata and we have started the process with an MOU with Maralinga and far west coast and same with Alma. So it's about creating – connecting the leaders in those areas to be connected to the Board which helps with information flow, communication flow and  
20 consultation. So that just sets the scene about what the Board is about and it is the only Aboriginal Board in Australia. We are one of 58 NRM Boards and so we have a uniqueness to add in to the NRM management of the natural resources in Australia.

MR JACOBI: The Commission understands from – and the material that you have provided us, that NRM Board has significant experience in conducting consultations on complex issues. And that is what the Commission are seeking to learn from and in some of the materials that you have prepared for us, you have identified one of the critical issues in terms of making decisions about the information that you provide to communities and the sorts of tools that you  
30 provide to communities and I am just wondering perhaps whether you might expand on the importance of that and the factors that affect the decisions that you make about the information that you provide.

MR AGIUS: Yes, okay. I suppose if I just go to my paper, just comment on that. Firstly is information; people need information about a topic matter. So  
35 in this case, we have got a policy about water. The policy was presented throughout the department, the department then used that policy to create a set of language and then we turn that language in to simple pictures, simple (indistinct) to help people understand what it means and then how it relates at a  
40 world level in this case and then how it relates to a local level, so people can get that picture. And these are the sort of documents that we present to the community on topic matters of specific. So that is just one example - - -

MR JACOBI: I think what you have picked up is a water plan - - -  
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MR AGIUS: A water plan, yes.

MR JACOBI: - - - and that was associated with the community – that was a  
5 consultation process that the Board itself ran with respect to making decisions  
about water use in the APY Lands? Is that right?

MR AGIUS: That’s right. And across the whole region, so not only in  
APY Lands - - -

10 MR JACOBI: Yes.

MR AGIUS: - - - it is also in the other regions.

MR JACOBI: Yes. And what sort of decisions was the community going to  
15 be involved in making decisions about there, that the – as I understand, the  
booklet was designed to provide information about?

MR AGIUS: It was to create a water plan under the NRM Act. At the moment  
20 there is no prescribed water laws for that region and so the creation of a water  
plan using NRM was the only way to create some measuring tools and tools to  
manage water in the region. Also managing the water for community use,  
managing the water for economic use, such as pastoral industry and other  
industries and then managing the water for the environment. And so the  
25 community was able to see and hear that from the experts and then the  
community would marry their cultural knowledge and their knowledge of the  
environment to that discussion in forums.

MR JACOBI: In fact, I want to pick up on some of those things and perhaps  
30 first of all in terms of the booklet itself, are there any key principles that  
informed your thinking about how information was going to be provided to the  
communities there? Bearing in mind the experience and knowledge that the  
community had with respect to those resources?

MR AGIUS: One of the things we had to do is marry the community  
35 knowledge with the technical knowledge. So in this case, water – underground  
water and the age of water, the type of salt in the water and drinkable or non-  
drinkable water for animal use and so on. So it was connecting technical  
information to community information and then trying to work out an  
40 understanding between the two.

MR JACOBI: In the evidence given this morning by Bob Watts from Canada,  
we talked about the process of gathering traditional knowledge. Was there any  
particular experience, or any particular method you went about using to gather  
45 that sort of traditional knowledge for the purposes of preparing the handbook  
for - - -

MR AGIUS: Yes. A community plan was – consultation plan was developed, a list of communities were put on that list and then we went a 12 month programme going from one place to another place with a team doing that presentation. So that team would have consisted of experts, a Board member for the location and they would have dealt with the landholding authority decision maker which is the Council or the Board and then from there they would have dealt with each community separately. So people at the decision-making level and people at the community level in the lands were part of the process.

MR JACOBI: Did that involve the provision of – by the Board of perhaps hydro geologists or others with particular expertise in water to go and talk to the communities about these issues?

MR AGIUS: Yes. They had experts that were attached to the team and an expert facilitator as well as a person who has already had ecological knowledge as well. And so they were part of that team that went and spoke with the community.

MR JACOBI: And I gather they were also involved in collecting some of the information in terms of - - -

MR AGIUS: And – yes, when you are thinking about that from a technical point of view, there is an historical data from the department that was also able to be pulled out and taken to the community and saying look there are so many wells here, these wells have been here for 30 odd years, or 50 odd years. We don't know the conditions of them; some of the conditions are very good, some of them – and so on. So there was that infrastructure concept as well.

MR JACOBI: In the notes you have provided us, I think your notes refer to the importance of thinking about the tools that you provide to the community in terms of how you present the information. Do you have any observations to make generally about how it is best to go about providing information in those particular circumstances?

MR AGIUS: Yes. Firstly, understand that language – the wording needs to be broken down. So if you are using a technical word, what is the Aboriginal meaning to a technical word? If you are meaning looking at a word that there is no Aboriginal meaning to it, then how do you find a way to explore that? Secondly, the use of interpreters, male and female interpreters is critical because the people who come to those forums are men and women and they are there for different purposes, listening to the discussion and they too need to understand. So having interpreters able to translate the technical knowledge in to community language and share that information with each other, and also

the interpreter may go and have a quiet chat with somebody to expand a bit more on that; but the community meetings is the way we do that process.

5 MR JACOBI: I understand that the Board itself went about addressing and conducting consultation in relation to the NRM plan itself and I am just interested, do you have any observations about dealing with something that is really that conceptual, in the sense that it is a legal framework, in terms of the communicating those sorts of concepts to the community? And what the lessons were from that?

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MR AGIUS: Just to help design that was using that sort of picture. That picture came from the NRM consultation plan.

MR JACOBI: Right.

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MR AGIUS: So the community was saying, well in our – where our animals are, where our different types of plants are and where there is none, where the land is bare, they were talking about that. And then when you look at it from that angle, you can see the difference when they think okay well that is a map that is going to be showing. So you have got a live map of information and another map to help people read it. So they were able to talk about protection of a particular plant from particular type of use or a pest. They understood the concept of camels and the damage that camels did even though camels have been part of their life for so many hundreds of years. The food source that they have got. So they were actually able to marry some of the technical knowledge with cultural knowledge.

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MR JACOBI: One of the other materials that struck me in the materials that you have provided us is the decision-making tool that was provided with respect to a camel plan. I'm just wondering perhaps whether you can make some observations about the process that went into thinking about how to communicate information in that plan.

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MR AGIUS: When you look at this document, the Feral Animal Emergency Management Plan, it talks - you can see that you send in a picture. So straightaway it's not words. So the technicians put it in words what somebody has converted into simple language, and used, you know, as in the sense of a tool, the whiteboard or butcher's paper to actually draw this, and the community also took place to draw it themselves. So what they drew was taken onboard and then the end result was a picture like that which, you know, when you're dealing with camels, it's much bigger than that.

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Photographs of camels doing damage to waterholes, photographs of camels in pens, photographs from a helicopter looking down on camels, all those sort of things were put into the mix so that people were able to look at camel

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management. And then when you marry that against this map, you can marry about where the camels hang out and where they go, what's a cycle, what's a water cycle, what's a rainwater cycle. So they were able to marry that along with the technicians and the experts of the Department.

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MR JACOBI: The tool, as I read it, presented the community with a dilemma, in a sense: there was one outcome, or then if a question posed, "What do you do?" was that effective in permitting the community to make a decision with respect to the choices that they had available to it?

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MR AGIUS: Some community members see a camel as an economic advancement and others saw it as a pest, and so of course a community process allows that community to debate to take place, and so out of that, you would have a set of rules that would've been part of this process. It's not seen here, but behind that in the plan.

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MR JACOBI: And I guess just on reflection, did you consider that to be an effective tool in terms of presenting the community with the sort of decision that it had that you could replicate in other areas?

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MR AGIUS: It is, because it didn't exist before. Right? So now you've got something that was previously blank paper or lots of technical books about as thick as those books. That came out, people wouldn't have understood them. But because the Natural Resources Management Board and its team from the Department were able to break that down and put it into people so they can use it in their thinking about a plan.

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MR JACOBI: I'm also interested the issue of reaching agreement on the tools that are used, that is, that all the stakeholders agree on tools, and again, in one of the materials you provided me it spoke of a consultation document for fishing and aquaculture where there'd been agreement when there was discussion with respect to an (indistinct) for fishing, and I'm just interested in your view about the need to reach agreement on consultation materials and whether that's helpful in terms of their being a common platform from which people can work.

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MR AGIUS: Yes, and that, for example, is from the native title days in my past experience, is where a state-wide process was put in place by the peak bodies and there was a process using the Native Title Act to look at an agreement on the ground between the fishing industry and the local traditional owner group. So the system was able to create the reason why the fishing people are there, the reason why the Fishing Act is there, the reason why those things were there, and that information was tabled with the community for the community to look at, and then vice versa, the community put forward its reasons why they're interested in the sea, why they're interested in the animals,

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why they're interested in - and then marry that against why that animal is so important to their culture or why that animal is so important to their feed source. So it was a two-way process between the industry and that traditional owner group to come up with an arrangement to deal with fishing issues in the Native Title context.

MR JACOBI: In the material that I've read, it speaks of there being a common platform, that is, that there was in fact agreement on the document itself. I'm just interested in your experience about whether that assisted in the process that was later conducted in terms of actually negotiating a (indistinct)

MR AGIUS: Yes. I suppose we call it shared vision, shared direction, shared approach, because everybody has an interest in the same piece of land. So it was either we go to the courtroom and let the court make a decision or we try and find out own solution through an agreement process, and what would that mean. So we brought in a range of experts, process experts, technical experts about the topic matter itself, to actually be able to inform the community, and vice versa, to inform the industry in this particular case. One of the tools was walking in each other's shoes. So the community was the fishermen or the pastoralists or the miner and the industry reps were the Aboriginal community, and so understanding two different perspectives through a process of a friendly environment, friendly way of doing business with each other.

MR JACOBI: Did you conduct that as a separate step as part of this negotiation process?

MR AGIUS: Yes. We did that a few times at Coober Pedy and in the region where we called it relationship building. We had to understand each other before you can do anything else, but we also had to create the program for the program to actually happen. So at the leadership level, between the peak bodies we would say, "So if we want to get information across, we have to understand each other. What is the strategy we're going to use?" and we used a strategy called relationship building and working on the ground together. And so from that point on, we had a thinking - and then we're able to put the concept into action through projects and bring in the right type of people to actually facilitate that process. So in this case here, a recommendation to the state government about dealing with this topic matter, you could do the same sort of thinking.

MR JACOBI: You speak in your notes about the need to be clear before conducting a consultation about whether you already hold a policy position on a particular issue, and I'm just interested here to understand the extent to which you need to be clear about either the policy position of a third party that is ruling something out or your own policy position or the policy positions of the community itself.

MR AGIUS: You saw the list of policies there. Some of those are fairly confrontational and before we had a policy written. Right? So everybody had a different view. So you would've had a view, I would've had a view, you  
5 would've had a view, and we would've been arguing over it across the table. But having a policy with a set of words that we all argue on actually helped remove the confusion, remove the perceptions, and created the ability for us to actually say, "Okay. We now know what that position is." We can actually put it out and then articulate it, support it, and let the system then deal with that  
10 policy in a way it takes information back to the community. So in this case here, the AW Board, our policies are there ready for people to pick up and read and for the departmental staff to take with them when they're out in the field.

MR JACOBI: We spent some time this morning dealing with the issue of time  
15 frames for decision making, and I'm just interested in the extent to which when you start a consultation process you have some idea in mind about how long the process is going to take in fixing a constraint to that, and perhaps we need to be flexible with that. I'm just wondering whether you'd make some observations about time.

20 MR AGIUS: Yes. Think about it from the region: you know, distance, the need for information, the cost of bringing people together, are all things that were part of our consultation process. So you had the logistical matters, and then when you got people together, catering for their needs then there, because  
25 you've got people who are keen to come along and listen and to engage, and so you have elders, young people, kids from school, unemployed people, you know, people just generally interested in what's happening on their piece of land, and so you cater for the whole community.

30 We send people out first, get the people to start thinking about it. We send out information. We send out newsletters so that people can see that we're about to come out and talk, and then we meet with the key people in the community, key drivers, people who want to volunteer, and they help set up the process when we're out on the ground. So timing is important. The region is  
35 important, the location is important, where you are going to have it, so let the community make it – inform you about where you wish – where they wish to have a meeting because you don't want it to be close to a particular interest point relating to culture. You want it to be in a place where there is shade, where there is – the environmental considerations are taking place – climatic  
40 conditions.

MR JACOBI: I am interested to understand, bearing in mind those  
45 considerations, the extent to which it's possible to accommodate political or perhaps commercial constraints on time. That is, for example a commercial developer's need to in fact make a decision as to whether it can proceed or not

and how that can be accommodated if it can be?

MR AGIUS: Yes. If we are looking at it from a research perspective, for example if the university wanted to go out and talk to the community to get out  
5 and do a research project, and so in this case, with the climate change, we got people from the Adelaide University to work with our team and people were interested in that topic about climate change. What it meant for them to understand it and so people from the university went out and actually did that. If we were looking at somebody just doing it, relating to a particular animal, or  
10 wishing to go on country there is – what do they call it? Different types of decisions are required for different types of – sorry, different types of processes required for different types of decisions. So if it's a small matter, give that delegation to the – in this case, our departmental staff. If it's related to a matter like that then it is the Board, the community would be involved in that. If that  
15 makes sense?

MR JACOBI: One of the notes to the materials you provided – spoke to us in terms of major developments that one can assume reasonably long lead times with respect to major developments and there, I think the note spoke of – about  
20 a decade in terms of the major development. I am just wondering perhaps whether you can give some insight in to why that is your view, in terms of the need for both negotiation and then perhaps, I assume your decade also included some aspects of project delivery. But the extent of why long periods of time are required when you are dealing with major developments?

MR AGIUS: If you are looking at it from the community's point of view, part of it is about culture, part of it is about things that happen inside the community, going to funerals, they do in fact impact on community  
25 consultation. The resources are another issue. If you don't have enough resources to call the community meetings you are going to have a non-effective approach to getting the right answer. You are going to – just can we now look at a way we can explain that?

MR JACOBI: Yes. What I am interested in is the note speaks of a really, a  
35 decade long time frame for consultation - - -

MR AGIUS: Yes.

MR JACOBI: - - - and process and what we are trying to get at is why you  
40 think that long time frames are required for that engagement? I think you have spoken to issues of resourcing.

MR AGIUS: Yes.

MR JACOBI: Perhaps that leads us in to the next thing which is - - -

MR AGIUS: (indistinct)

MR JACOBI: - - - in terms of whom to engage with?

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MR AGIUS: Yes, okay.

MR AGIUS: A couple of examples, clear example now one is the water plan that relates to the road going through the APY Lands. Right, so it's  
10 300-kilometre road and it's going to be changed, it won't be a straight road, it's going to be realigned and so on. So the process there deals with the landholding authority which is the APY Executive; the people who own the cultural knowledge along that particular road. And so the need for anthropologists to be pulled in to assist with that and then bringing the people  
15 who have that knowledge about that area becoming part of a process of gathering evidence to demonstrate that Aboriginal heritage issues exist or don't exist in that particular area. And then the internal process of APY Executive to actually tick off on heritage issues. So from our point of view, we would be concentrating on the environment alongside the road, so the kerb – the – what  
20 do you call it? Where the grader side, so you have got buffel grass issues, you've got transferring of seeds and so on. The realignment of the water creek direction, so all those things take time for people to understand and then you have got the proponents, which is the state government, wanting to get in there and get the job done as quickly as possible. They have got to deal with  
25 where's the water coming from? Where do we get the natural resources for making the actual road from? And so on, like that. So all those things take place – take a long time, as you know.

MR JACOBI: I want to pick up and you spoke of the landholding authority  
30 and we have had discussions in terms – this morning, in terms of the notion of the organisations with which you need to build consent and I am just interested to pick up on something in your notes with respect to the issue about the links between community and landholding authorities and perhaps you can offer some observations, certainly given your experience with SANT and dealing  
35 with the importance of the relationship between the community and the landholding authority.

MR AGIUS: Okay. In relation to our region, the AW region, you have got the landholding authority which is a legislative body and that body makes  
40 decisions about what happens on that piece of land. Then you have got the communities that live within it and so they too have a right to be consulted and be heard. And our job is – what we have been trying to do is make sure that the relationship between the community and the decision makers at that statutory level is quite open, transparent, accountable and the amount of – some  
45 information we save there is the same information we say here. What we say

there, is what we say here. So that there is no mixed messages and that is one of the important things that we have done to actually make it successful in our region, by having that relationship between the community and the executive in this case.

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In a native title context, the native title context they have been established as per the Native Title Act, so the creation of a native claim group. The claim group description, the authorisation by the individuals in the claim group to establish the claim, the creation of a named applicant and the one thing we did throw in there which was additional to the Act was a native title management committee. So each group had a native title management committee. They were the people that would deal with whatever is happening to that piece of land and whatever is happening with third party interest in that piece of land. And also progressing their native title claim towards the Federal Court and getting the evidence to do that. And so, doing that 30 times – and the biggest group that we had was the Adnyamathantha people with 25 people on a native title management committee versus six people of another traditional group.

And so it was – and the creation of them then all working together as a package to actually manage how they were going to communicate with each other at the community level, within the traditional group and how they were going to deal with the legal issues. How they were going to deal with the third party issues? How they were going to deal with thinking about indigenous land use agreements? So it was all put on the table that they would have to actually make decisions about. And it was a good process to go through to bring about that empowerment, so that they were able to sit across the table from the pastoralists or from the explorer, or from the local council.

MR JACOBI: One of the points that you emphasised is the importance of engaging through the existing structures and that is through the PBCs or the relevant landholding authority of their statutory. And I am just wondering perhaps whether you might expand on your view as to the importance of that?

MR AGIUS: Yes. That is really an important question. It has taken 20 odd years to get the native title groups in to a position where they are taking responsibility for their claim? And get it before the Federal Court and the Federal Court ticking off on it and giving a consent determination. That process is established. So suggest not to work outside that process and give that process what it deserves and that is if a new project is going to come in to that particular region, you deal with that, because that body has been given court jurisdiction, the creation of a prescribed body corporate, the native title groups agreeing to that creation. Anything else that is different to that would actually create more conflicts. So you stay with what you have created. It took 20 years to get it to where we are, and it took 20 years to move it away from the politics of Aboriginal communities into a legal framework.

5 The legal framework now positions the Aboriginal group to actually make  
decisions about their land, and so if you were looking to talk about uranium  
then you would talk about the topic of nuclear and you would take that topic to  
that prescribed body corporate. They have a legal responsibility to deal with  
that within their internal framework and if they were looking at a piece of land  
being extinguished, then they have a bigger responsibility to bring the whole  
traditional group together to make an informed decision about whether they  
would do it whether they would not do it, and engage with the proponent,  
10 engage with the state government, engage with other people who have an  
interest in that particular topic matter on that particular group.

MR JACOBI: Yes. That's something I actually wanted to pick up, and that is  
15 the issue of the link between the community and the PBC if we're dealing in a  
native title context. I'm just wondering whether perhaps you might expand on  
the need for a PBC to actually with the community depending on the nature of  
the project.

MR AGIUS: The law, as I understand it, says if a piece of land is going to be  
20 extinguished within the native title context, then everybody has a right to know  
what that means. So if we were looking at what culture means to the  
community and they were going to close off the size of Adelaide CBD district  
and just give full exclusive rights to the miner, that means the Aboriginal  
community who have an interest can no longer be here. So they have a right to  
25 have a say whether that's going to happen or not going to happen and  
participate, and it's the responsible of the PBC leadership to actually make sure  
that that happens, and if that's not happening, then the members of that PBC  
have a right to actually challenge using the legal system to challenge why they  
weren't part of that process.

30 MR JACOBI: One of the things that arose in discussion earlier today was a  
discussion of potential impacts on culture from potential projects, and I'm  
interested to understand your views about the need to make assessments of  
impacts on culture, particularly in circumstances where you don't necessarily  
35 understand what the impact on culture might be.

MR AGIUS: Yes. In the native title game, the native title management  
committee would gather from the community people who have knowledge  
about a specific part of their country. So if we were looking at the CBD of  
40 Adelaide, then people who have a relationship with a connection to Adelaide  
would be called together, work alongside an anthropologist and archaeologist,  
and present a cultural picture about this particular point. Right? The people  
who don't have an interest in that area but are also part of the traditional group  
may have an oversight in perspective or a general comment.

45

But that group of people might be 10 or 12 people made up of men and women and young people and anthropologists, and then they would scour the area, taking notes of matters of importance, matters of not importance, and then coming up with a report that says, "Sorry, but, you know, there's so much  
5 cultural information here, it will have an impact on the cultural and an impact on the community." You have to go back now and say that to the proponent and to the state government, saying, "Well, we cannot allow development to happen in this particular spot, and then it's up to the system then to take on how they will deal with it, but the process to allow for it has been around for a long  
10 time. It's a proven process.

The informants who are part of that process are informing the anthropologist and the archaeologist, are people with knowledge and/or understanding of the area in question, and they also know that they also can be challenged as  
15 individuals if the proponents think that that report is biased to one side of thinking and we want to challenge the informant about where that information is available. Yes, it's correct.

MR JACOBI: The topic that your notes to us bring out is the notion of the  
20 need to have a relationship of trust, both in the consultation process, but also between proponents of projects and the community, and I'm interested in whether you can make some observations about what you think is important for building that relationship of trust.

MR AGIUS: Yes. I'll give two examples. At the state-wide level, the  
25 organisation that I work for, which was the Aboriginal Legal Rights and Native Title Unit, when it was approached by the state government about doing a state-wide negotiation rather than going to the court, we presented a response back and we said that, "You'll need to bring in all the other traditional owner  
30 groups and bring them into one place," and we had to develop a trust there. Even though we were an organisation to service them, we were still seen as not trustworthy. So we had to actually develop trust.

So, yes, we had to find ways of showing that we weren't there to make a  
35 decision about their business, but we were to give you the information. So we get the lawyers in. They'd give us a set of information. We get other experts in. They'd give us a set of information, and so on. So we fed the community system with information so that they could see what they were being faced with. They also could see us as individuals and as an organisation, how we're  
40 reacting, how we're behaving, how we're seeing and how we treat them, how we listen to them, and so on, and that interaction was just as important as a piece of paper that was going across a table.

And over a two-year period, six meetings of 400 people to a meeting, we did  
45 that, and over that period of time, we earned the respect, we earned the trust, we

5 earnt that for the community to make a decision that they will do a state-wide negotiation program with the state government of South Australia. So we had to earn it, and trust, demonstrating that you were committed to what they believed in, having interpreters available, showing that you were really were interested in making sure that they had enough information and the way the information was being explained that they could actually make informed an informed decision.

10 We found tools to deal with internal debating that took place. Somebody might have a stronger view about this one, and another one over there might have had a lesser view. Others would've felt like they were being left out of the picture. We would bring a mechanism to bring that back into play so that everybody was able to engage and be part of the process. So trust, what you say, what you do, having resources available to do what we said we would do, having the  
15 experts who were independent of us to actually make it work - that was a critical point, so having somebody who was independent of that. And the other - - -

20 COMMISSIONER: Can I interrupt there for a minute, please?

MR AGIUS: Yes.

COMMISSIONER: When you say "independent experts", who chose them?

25 MR AGIUS: We would put a list before them, or we actually said, "Look, these guys are experts and the top of the field." So we'd explain that, "You can't get any better than what you get, because these guys are available to do it for you right now. You get somebody else, we don't know what they're like because they're not experts in field."

30 MR JACOBI: So it was your recommendation - - -

MR AGIUS: So it was our recommendation as well them seeing them. So then we would actually take the experts to them and say, "Have a look at them.  
35 See if you like them." Then if they liked the way they're dressed - I'm just being silly, but, you know, if they liked the way they were presented, the way they were engaging, the way they communicated, then you might get - say, "Yeah, we'll take that bloke, we'll take that lady to help us do the risk problem." And that's really important as well.

40 COMMISSIONER: And was that a unanimous decision? How did you manage the obvious friction that might be there within a large group on selecting people who were going to be providing you with very important advice?  
45

MR AGIUS: The interesting thing was that the people we chose were known somewhere in the system and known to the community somewhere. Sometimes we had to bring somebody from Western Australia or from Sydney, but they were introduced by a local. So if we brought a barrister in from  
5 Sydney, there would be the local lawyer here giving a tick off for that person and, "Off you go." So it's that sort of relationship-building-type exercise.

MR JACOBI: And in the process of developing a relationship with trust and organisations always face the issue of people coming and going, and I am just  
10 interested to understand how you might have managed continuity in the context of that relationship, given that sometimes that is a barrier to trust developing and actually causing trust to break down?

MR AGIUS: Yes. That was an interesting comment because we had a list of  
15 experts; we used them for different native title groups and different purposes. They were seen as experts by their peers and in our own team, I guess would be – not guess but we didn't lose many staff because people wanted to be there. The passion of the team was there because native title was a brand new  
20 phenomenon and being out there to assist a group of people to get their interest in to the justice – in to the legal system was what kept people to stay with the game, and same with the native title groups. They were – didn't matter how old they were, or how sick they were, they turned up and so we had to cater for that type of circumstances that they were experiencing.

MR JACOBI: But has continuity been an issue with, say for example I know that some of the NRM plans and water plans, they take a long time to do and as I understand in these cases they were five, six year projects.

MR AGIUS: That's right.

MR JACOBI: Have there been issues with continuity that have arisen there in terms that need to be managed?

COMMISSIONER: Particularly in view of government ministers?

MR AGIUS: Well, government – as you know the government ministers come and go, CEOs come and go. In the AW region, the leadership hasn't changed that much in terms of the leadership. The community members are still part of the community and they are engaging and you have seen the same photograph,  
40 same person that photograph relating to camels and the same person relating to something else because their interest is in there. And then you will see them in the work games and the work programmes that take place and natural resource management. So continuity in our region is very good, these people want to be part of the process. And what we introduce say in your – if the statement  
45 government is looking at the nuclear programme for South Australia and said

going to go ahead with it; then you would have the community saying well, we have been dealing with mining in petroleum, we have been dealing with explorers, we have been dealing with the local government, we have been dealing with this, so this is just another – type of matter that we have to deal with.

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COMMISSIONER: Can I pick up on that because you have given us some very insightful thoughts about what we should consider in terms of engagement? Does it matter that we are thinking about some very, very long term issues and would there be other considerations in view of the length of some of the activities that we are considering? Are there additional checks or thoughts that you have about what we might need to do?

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MR AGIUS: Yes. If I may, you are at the moment looking at – if I may (indistinct) that's a blank sheet of paper.

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COMMISSIONER: Yes.

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MR AGIUS: Right. Nuclear is a blank sheet of paper in that sense, so the state government says, Commissioner could you please go out and find facts? Give us some information? And you go out and so every line you start to fill in and all of a sudden when you get down to here, you're going to make a recommendation. Now that recommendation is going to say to the government, now it's your decision, you go and make that decision about what you want to do. Now in your recommendations you may want to suggest that if the government – sorry, the government may think about them taking two years to make a decision about whether they are going to go with a nuclear programme. Nothing stopping the state government saying, well let's start that process now. Once they get the report on their table – once they get the recommendation on their table, let's start thinking about what the community needs from information to make a decision about it, what the decision they think need to think about related to the future aspirations of the community? How they cater for that? How the legal issues are going to be catered for? Let's enter in to that process, as if the decision was made today.

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COMMISSIONER: Right.

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MR AGIUS: Right. Even though it's going to – it's not going to be made for a couple of years. But if it was made today, we would run a concurrent programme and start that ball rolling. So we have identified who would be involved, how big the consultation might occur. So for example, if I put that there, my glasses there and that is the spot where the mine is going to happen - -

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COMMISSIONER: Yes.

MR AGIUS: - - - it is going to affect one particular traditional owner group. Right. Now – but the process is starting here and saying well there is all the other groups in South Australia going to have an effect by that programme  
5 somewhere down the track? And over time, the more information that goes in and the more information that comes in, the more (indistinct) going, there will be less people being involved in the process because it may end up coming down and saying well traditional groups that live in – over here, a long way from where that potential site is going to be, they may say well that’s their  
10 business now but we wouldn’t mind being part of the continuing flow of information.

COMMISSIONER: Okay.

15 MR AGIUS: So that’s the sort of thinking in one sense. The other part is that if the decision to proceed down the road for a programme to occur and you start thinking about what tools you need to actually do it. So if the community is going to go down the track – sorry, if the government is going to go down the track, what is the tool for managing the economic advancements? Now the  
20 transfer of royalties, the transfer of this? How does the community get a wider benefit out of this programme? For example, if something happens – sorry, if the APY Act allows for one third, one third, one third relating to a project on country, on their country. So one third would go to the state government, one third to the APY and one third to the state for the benefit of all people in that  
25 region. So what sort of concept would be adopted in this process? What sort of mechanism would be adopted for the group to think about the employment within that region and any other groups that part of – on the outside of that? So what would be the employment, training programme for that? What would be the management of the royalty fund programme? And if we start that ball here,  
30 so people can get engaged in the discussion, so if the decision is made in two years time, we don’t have to start there?

COMMISSIONER: Yes.

35 MR AGIUS: We start here because we have already started without it being too much of a hot potato cake.

COMMISSIONER: Yes.

40 MR AGIUS: Whereas here when the decision is made, you are straight away in to an us and them, you are straight away in to a process where – give us time to make a decision and so there may not be enough time for the decision – to wear that decision.

45 COMMISSIONER: Yes.

MR AGIUS: Whereas this way here, you are actually preparing. It's all about preparation and consideration for that. And then so you use that sort of expertise – is it better to spend two million dollars now for the next two years to bring about a consultation process even though it doesn't happen, or if it does happen you're already prepared and the community is already prepared. So it is that sort of thinking.

COMMISSIONER: Okay. That answered my question.

MR JACOBI: I want to talk a bit about some things that are picked up in the submission that you have made to the Commission, that is the Board made to the Commission and particularly I want to pick up on the concept of the assessment of the net positive impact and I am just interested in perhaps you can give some explanation as to what you have in mind by assessing a net positive impact from a proposal? And then going from that to thinking about who needs to evaluate or make a decision as to what? That there is a net positive impact associated with the project?

MR AGIUS: Yes. Couple of fronts with that one. Firstly, if we look at the native title groups, this is the first time in history that they as a traditional group, who have got a legal process, a legal house and the ability to make – excuse me, make decisions about what happens on their piece of country, right. And how they enter into negotiations with the proponent, the royalty funds that come out of that. First time ever, right. So we have got a group of people who are managing that life and that prescribed body corporate. And that's a fantastic position to be in. Sorry, just go back to - - -

MR JACOBI: Yes. I just want to come back to the concept was net positive impact and - - -

MR AGIUS: Okay.

MR JACOBI: - - - I think you were going to - - -

MR AGIUS: Yes.

MR JACOBI: - - - think about how a PBC might think about that idea?

MR AGIUS: Yes. Okay. So that is just – so that structure is in place. It's a learning structure, people are going to make mistakes, they are going to learn by bad decisions and so on. But it is the first time ever.

When they're thinking about changing the way they do their thing from a new way of doing things is what needs to be put into place now. So one of those

things is called social return on investment. It's a mechanism that says, "We don't want to keep repeating the same program, same activity every time and continue spending money making people dependent. What is a new way of doing it?" That social return on investment is a new mechanism that says,  
5 "Well, let's re-examine if this is the right program to do, and if it isn't, let's throw it off the table and create a new one." It's that old saying about doing the same thing - - -

COMMISSIONER: Badly often.

10

MR AGIUS: Yes, exactly. Is there ability now for that to change? Is this tool about to do that? And there's another tool that's come into play also, is results-based accountability, RBA, and that deals with trends. So if a trend is happening like this, but you don't want the trend to keep going and keep going,  
15 what will change it? And so those two mechanisms put into this context here would be ideal to shift attitude, shift thinking, and also shift the thinking of government and shift the thinking of the community to use those two tools to make a better decision about their resources. If a proponent comes in and says,  
20 "Well, for you to give your piece of land to us, we're going to give you this benefit in return," what do you with that benefit? What are the tools that make that benefit work even better?

MR JACOBI: I think, moving on from that, your submission picked up the concept of the importance of structures to ensure that those benefits and  
25 outcomes - we touched on (indistinct) today, but the submission also picked up on the concept of trust. So I'm interested in whether you've got any observations about the sorts of structures that would be important to ensure that there is in fact the delivery of those benefits that you talked about, including benefits such as local employment and the concept of economic development  
30 within regions.

MR AGIUS: That question I would throw into the current program. So as explained before, if we were going to go down that track to there, I'd actually throw that question in as part of the consultation process, so that when you get  
35 to this point you've actually got an answer, and it would be an agreed answer because everybody has been part of the process, whether it's two or three traditional owner groups or whether it's just one traditional owner group, in this particular instance people have been part of the process, and the others who are not in it will actually learn from that process when they have something  
40 coming up on their piece of country where they are directly involved in it. So that sort of problem (indistinct) that question.

MR JACOBI: I'm particular interested in the importance of structures in terms of ensuring that what are promised benefits are in fact delivered, and interested  
45 in your views about the significance of a trust or an (indistinct) to actually

achieve as a structure to actually ensuring that we actually achieve those long-term benefits and outcomes.

5 MR AGIUS: Yes. There's a debate in the community about trusts, the incorporated trust and how trusts work for the community and how it doesn't work for the community because of the legal rules attached to a trust, versus a payment that comes from a proponent. It comes into the bank account. You could do two things: (1) you pay tax on that. Once you pay tax on it you can then use it for whatever you wish as a group of people, but if it goes into a trust  
10 account you can't access to it unless it's a charitable purpose. The debate is about that particular point.

Now, there are some that will say, "Well, let's put it in a trust," but there's a whole range of negativities with that. People say, "Well, if you're getting a  
15 royalty are you getting payment for your piece of land?" You pay tax for it, then you've got the ability to use it for however you wish, because then you can use it to expand on your economic advancement. You could use it to expand on your wealth assets and employment program versus where this one has limitations. This has been around for 10 to 15 years. The concept of paying  
20 tax for that money gives you the ability to become more independent rather than dependent. That's just (indistinct)

MR JACOBI: Do you have a view about whether there might be new or different sorts of structures that you might want to deliver that offer perhaps  
25 some of the protections of a trust but allow for some adaptability, flexibility in a different way?

MR AGIUS: If the tax system allows for it, and it has the ability for it to be modified a little bit to allow for it, then fantastic, but (indistinct) with the Tax  
30 Office has been them done, and there's lots of papers about it, so you should be able to pick that up from the Tax Office.

MR JACOBI: Okay.

35 MR AGIUS: Sorry about that.

MR JACOBI: No, that's all right. The last thing that I wanted to pick up was, and you made the point that looking through the materials that you'd in fact provided the Commission, that you thought there were some common themes  
40 in terms of language and values that had been picked out.

MR AGIUS: Yes.

MR JACOBI: I just wonder whether you want to address that.  
45

MR AGIUS: If I may, Kevin. I called it words of significance or words of relevance. In 1999 to 2012, there's the set of words, and when you look at those words, they're the words that we use in the process of creating the native title framework that's happened to where we are now. Now, when you look at that from this concept of the nuclear program, we're going to have the same set of words. Those words are in all these reports that have been tabled that are of significance. So, for example, face-to-face dialogue. There's face-to-face dialogue in the native title game. So they met with the industry, they met with the state government, they met with the local industries. Equal partners, stakeholders, transparency. The same sort of words there exist here. So if we were looking at nuclear, what to people need to make an informed decision? Transparency.

So when you look at these words, they're non-adversarial. How would you deal with non-adversarial relating to nuclear? The same things that we experienced in native title. So those words are around and are locked into the minds of the community now--

COMMISSIONER: Understood.

MR AGIUS: And understood. Those words are tools and mechanisms in themselves to actually shift thinking, model thinking, create thinking, create innovation, because those words are in people's minds. Whereas before, when we moved into that space, those words didn't exist, except as an organisation you had to be accountable to the government because you got the grant. The native title group are accountable to each other as individuals in their own prescribed body corporate. So, you see, that's what I mean about words of relevance and words of significance.

COMMISSIONER: Mr Agius, I think that pretty much exhausts us. I do again thank you. It's a very fulsome presentation, a very useful presentation for us to think about what is a very critical part of our work, and the Commission is very appreciative of your contribution.

MR AGIUS: Kevin, I'd like to thank the Commission to hear the AW story, because the AW story is an important story, and the information that comes from the AW story reflects on how the community engages in the natural resource management concept and anything that affects it. So if this new program comes along, then the community is already ready to participate in a proper approach as a mechanism, and the structure for the mechanism to work is there because it's produced results in other topic matters. So thank you for listening the AW story.

COMMISSIONER: Thank you. It's an important one. We'll adjourn until next week.

**MATTER ADJOURNED AT 1.09 PM ACCORDINGLY**