

COMMISSIONER: Good afternoon. We return to topic 13, "Community Engagement and Nuclear Facilities" and I welcome Mr Keith Thomas. Counsel.

5 MR JACOBI: Mr Keith Thomas is the CEO of the South Australian Native Title Service, the Native Title Service provider for South Australia. Since its establishment in 2008, SANTS has focussed on delivering a range of services to secure sustainable social, cultural and economic outcomes for Aboriginal people, including the recognition of native title rights and interests. SANTS
10 aims to work towards such outcomes by working cooperatively with all stakeholders including through the negotiation indigenous land use agreements and consent determinations and the facilitation of projects and partnerships and the Commission calls Mr Keith Thomas.

15 COMMISSIONER: Thank you Mr Thomas for joining us this morning. Before I ask you to provide evidence, I need to state from the outset that I have read and considered the many submissions made to the Royal Commission by the prescribed bodies corporate representing Aboriginal communities which have been prepared with the assistance of SANTS. I have read in those
20 submissions the consistent themes of deep concern held by many of those communities about the activities being considered by the Commission. I invite Mr Thomas to give evidence today on a similar basis to other witnesses, addressing the topic of community engagement in nuclear activities. I am seeking to identify the most appropriate processes to negotiate with Aboriginal
25 communities on these complex issues.

I hope that we can learn from recent experience of successful negotiations with Aboriginal communities and as I said last week, my intention is to provide some applicable principles were a government or a proponent minded to
30 proceed in the future with some of these nuclear activities. And again, I thank you for joining us. I think we might sort of start, because what we are really interested here is the process. The process that works, and perhaps you could walk us through those successful negotiations in relation to native title and what remains to be achieved in to the future?

35 MR THOMAS: Yes. I think from my view, native title ushered in a new era of community communication. Prior to that it was largely programme based service delivery based and you just talked to the individual communities that ran services. Native title made it more of a state wide encompassing all
40 Aboriginal people who have links to land in South Australia. So we have people who of course have shifted interstate and that but they all become part of still having a say about what happens on their country. So in the process of achieving native title, we've brought native title groups together, we've brought the community for each of those individual groups together and it is
45 that community then who has selected a committee, what we call the

Native Title Briefing Committee initially which then morphs in to the PBC usually. So the briefing committee is established with guidelines from the community about their – how they operate and where they might need to come back to the community if there is something that means there is going to be a
5 loss of rights for – or interest in the land then they needed to come back and talk to the community about that. Community didn't want committees making those decisions without consulting the wider community.

10 COMMISSIONER: Was there a process of making the selection of those peoples sit on those initial committees?

MR THOMAS: It differed from community to community. Some communities wanted to make sure there was an even share of the different family groups, the ethical ancestors which we identified for that particular
15 claim. So some of them would pick an equal number, male, female maybe from each ethical ancestor. If there was six ethical ancestors there would be 12 people on that management committee and then they would select the officers as per any normal sort of corporation.

20 COMMISSIONER: Okay. All right. So these are the areas now that have negotiated a successful agreement?

MR THOMAS: They are. There is quite significant, even the far north east one that white space at the top far north, these – that will be coloured in
25 December the 16, there is a consent determination happening, up at Innamincka, so that will be coloured in and most of that Eyre Peninsula there is a determination there for the Bungala people that the Federal Court has given. They still haven't finalised that though because of tenure issues. They are tidying those up and the boundary issues and then the – what's that, the eastern
30 side of Eyre Peninsula well, mainly right up to the purple will also be decided.

COMMISSIONER: Okay. So the process is a representative group to consider it, that then morphs in to the prescribed body - - -

35 MR THOMAS: Yes.

COMMISSIONER: - - - and then the prescribed body is the negotiator with the state and the federal governments on these issues?

40 MR THOMAS: The prescribed body corporate is the one that is there to manage the Native Title Rights and interests and that includes negotiating with governments, mining companies, other interests that might want to use the land for some purpose.

45 COMMISSIONER: Okay. And the state of play for those negotiations that

are ongoing?

MR THOMAS: The state has played a significant role in the establishment of the Native Title Management Committees through the ILUA process - - -

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COMMISSIONER: Yes.

MR THOMAS: - - - and that and once they become the PBC, the state at the moment hasn't had that much engagement, we're in the process still of looking at how the state might have some involvement in that process because we think having a body which represents the traditional owners makes it the ideal body to also be representing that area for heritage and maybe speak for other matters of the state as well in those regions.

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15 COMMISSIONER: Does it have broad community support that one body to look after various interests?

MR THOMAS: When we say community support, I say within the community - - -

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COMMISSIONER: Yes.

MR THOMAS: - - - of that group.

25 COMMISSIONER: Yes.

MR THOMAS: It does. For sure it is – it has probably been the most engaging process in terms of engaging community. In the past, people have gone say to – I don't know say Oodnadatta for example, talk to the committee and bang, whatever people decided would happen, without any consultation or input from any other people who might have different ideas about how things should happen. But in native title it is – there is the prescribed body corporate who will manage most of the day to day stuff but if there is – something comes up that affects the rights and interests of native title holders then they have to get the authority of the native title holders which are separate to the members of the PBC because holders don't necessarily have to become members if they don't want to of the PBC.

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COMMISSIONER: Yes.

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MR THOMAS: But the holders still have a significant say on matters where it affects their native title rights and interests.

COMMISSIONER: Okay. I know we'll come back to that in a bit more detail - - -

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MR THOMAS: Sounds a bit complex but - - -

COMMISSIONER: No. We need to unpick some of that as we go through.

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MR THOMAS: Yes.

COMMISSIONER: But could I just get a sense of those areas that are still to be negotiated?

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MR THOMAS: Yes, the two blue areas on the west Eyre Peninsula - - -

COMMISSIONER: Yes.

15 MR THOMAS: - - - as I said that one next to it, the Bungala that has been determined. I envisage that will be completed maybe by the end of the year hopefully. Fingers crossed. The one up the far northeast is done. There is an overlap at Oodnadatta, there's a small area and there's a trial happening at the moment over Lake Torrens between three groups with competing interests.

20 Pardon me. The yellow area, the top yellow area in that little - - -

COMMISSIONER: Mm'hm.

25 MR THOMAS: - - - dotted area above it, they will be a consent determination happening on the 8 December, so that has already been decided so that is cleared up. And then we have – we are getting in to the area where we have got a lot of work still to do in terms of doing native title reports and everything else, getting people's stories. There is some overlap issues there which we are in mediation at the moment. There's Ajmanat as part of that, the group
30 abutting the New South Wales side Wilyucali and the Njuderi in that sort of – what is it, a light green area.

COMMISSIONER: Green, yes.

35 MR THOMAS: But they all overlap each other there and there's mediation taking place and a report has gone to state council in relation to the possible resolution of that area as well. But then once we come down there's a whole lot of new claims still to come in, down the southeast; there's nothing there at the moment, all the way up. There's parts of the River Murray which are
40 determined up there but it's probably just along the river, it's not that clear on the map there.

COMMISSIONER: Mm'hm.

45 MR THOMAS: But there is a portion of the River Murray and across to the

top of the Adelaide hills and Mount Barker which still will be a new claim probably come in there as well. And then we will have virtually covered the whole state then.

5 COMMISSIONER: All right, thanks for that intro.

MR JACOBI: Can I perhaps – we are very interested in learning from the negotiation process that SANTS is engaged in and I am just interested to understand just to round out where we have gone, the scope of the issues or the
10 scope of the topics that have in fact been the subject of agreements by negotiation that have been conducted by SANTS?

MR THOMAS: Yes. There is a whole range – I suppose that are part of the ILUA process have been the foundation agreements I suppose that form part of
15 the consent determination and they would include ILUA or settlement ILUA of course over the whole claim. Parks, ILUA's pastoral ILUAs with the individual pastoralists, local government or even like our back areas or whoever is involved there in a local government sense and waters or sea
20 fishing and that type of thing as well. So that is probably the range of the different ILUAs that were dealt with in different sectors. But there was also a number of agreements, negotiated with mining companies under part 9B of the Mining Act, with movie makers and that type of thing to access land, like around Coober Pedy where they made all the Mad Max movies and a couple of
25 others there and that so – and some people each year have got access to Lake Frome and that where they have a day out up there and that but they're – so there's all different levels of negotiations that take place, mainly about access. And then there is – with the mining companies and that if what they find initially is good, then it could develop in to negotiations about actual mining and what that means.

30 MR JACOBI: In the notes you provided to us, you have spoken of there being a change in the level of sophistication in the negotiations over the last – perhaps the last couple of decades. I am just hoping you might be able to expand on that for us?

35 MR THOMAS: I think there's been a greater input from the Aboriginal side in terms of lifting their knowledge about what's been negotiated. We've been able to get advisors and that who talk about the mining and what is involved in that and what – even come down to determining what might be an appropriate
40 sort of compensation deal to talk about with the mining company because previously I think there was just that – the offer from the mining company and people accepted cars or motorbikes or whatever else and a job here and there. And I think that sophistication has become a lot better now and it's still
45 improving but we're looking at, you know business opportunities, economic development to participate in the mining process itself. Not just the mining but

it's the set up and maybe jobs in providing catering and cleaning and all of that type of thing within the mining sector. So it's a lot more sophisticated in that sense, joint ventures as well, of actually – if we're going to get in to the preparation for mining sites, or even some of the mining, joining with people who have the experience in doing that type of work so that we're providing a greater opportunity for Aboriginal people to participate and the economic opportunities that are available in their country especially.

MR JACOBI: I want to come back to the issue of structures at the end but I just wanted also to pick up on the extent to which negotiation – there is a distinction that we have read about, drawn between rights, which I think we are discussing in this context, in interests and I am just interested in the extent to which you've also been able to address interests that aren't necessarily the product of a legal entitlement?

MR THOMAS: It's more so I think something that certainly encompasses Aboriginal people, there are certain people within the group who have rights for that country, can speak for the country and that where other people will have the interest in that country, they can still camp there and that but they need to get permission from other people and that type of thing before they can go in to those types of areas. So especially in areas where that knowledge is still maintained and kept, it's important that those protocols are kept within those groups and that type of thing, otherwise there are sort of things within the cultural sense and that type of thing where people can be – what would you call it? Penalised for breaching those rules and that type of thing.

MR JACOBI: One of the things that we've read about the notes that we're interested in exploring with you is they identify a preference for negotiated outcomes and I'm just perhaps interested, and identified the position in South Australia is somewhat different than it is elsewhere in Australia and I'm perhaps interested in explaining – getting you to explain to us, how that particular position has developed and what the significance of that is in terms of development and activities that are carried out?

MR THOMAS: It's probably very important on a couple of fronts, one that we all work with limited resources and you want to make the most of the resources that you have and we could have been tied up in courts all the time, spending money just in the legal sense within a court timeframe and not being able to do anything else. We decided to – along with the state, it was actually the state who approached us initially to look at a negotiation process and we jumped at the opportunity because we could see the advantages that a negotiation process has because when you're talking about the negotiation process and you might've seen in the documentation that you've had to date about the ILUA process and that, it talked about building relationships and getting to know the people that you're actually talking to about things and I think you're working

from a much better position when you have that relationship rather than butting heads and a court process where it's all adversarial and that type of thing. So there were lots of advantages in looking at a negotiation process which was the relationships, the better use of resources and of course we thought better outcomes for Aboriginal people in South Australia.

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MR JACOBI: Has that been significant in ensuring that interests have been taken in to account in ILUA, that is things that are – that might otherwise strictly fall outside the concept of rights?

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MR THOMAS: I think we've been able to capture everything that certainly our Aboriginal clients have been looking to within the agreements. Some of the agreements probably don't go far enough but you've got to meet a middle ground when you're negotiating, so for example on a pastoral ILUA, the
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pastoralists will have certain conditions that they want to see met and Aboriginal people still want to be able to access certain areas to either camp or hunt, or whatever else. But there was a greater recognition between the groups when they got together and talked about each others' interests, about the running of the pastoral station and about how Aboriginal people wanted to
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access certain areas. And I think there was a greater knowledge, I suppose, placed on each others' importance for that country and that type of thing and pastoralists were now able to say, look don't go over there because we're calving over that area, you know we need things to be quiet but you're quite welcome to go over the rest of the station there and that type of thing. So
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created much better working relationships as well as, you know agreements at the end of the day.

MR JACOBI: The Commission is in particular interested in learning what are the key elements or the lessons from successful negotiations? And you've
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prepared some notes with respect to this and identified a range of topics and one of them is – and it's a consistent thing that we've heard in the evidence is the issue of providing for sufficient time to allow Aboriginal communities to make decisions and I am just interested in perhaps you can explain to us, bearing in mind the sorts of negotiations you've been involved in, what the
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importance of time has been?

MR THOMAS: Time is very important because in terms of the process, you've got to have time to be able to inform people properly in terms of what it is that they're agreeing to and that type of thing and what are the matters that
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they're negotiating so we did that at probably a couple of levels. There's a community level and then there's the more intense specific level with the Native Title Management Committees that looked after – that actually did the negotiating as well with the different parties and that type of thing. So it's very important to allow time for people to take in the information, to understand the
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information and then be making decisions based on having the – a level of

understanding about what they're actually making decisions about and that type of thing. So it's a bit of capacity development I suppose in terms of bringing people's knowledge and understanding up, about why we're doing these things in terms of procedural matters within the Act and that type of thing. But also about what were the areas, identifying areas where they might be able to say okay we can maybe do less of this if we get more of that, or whatever else.

So you need time to talk about those things and a lot of the times – and it depends on the different groupings because what we have in native title that's - to some extent, it's an unlevel playing field because we've got groups from all different areas of the states and some groups we've got people with English as a second language, so you need a lot more time because you actually have to have an interpreter and take the time to actually understand that people understand what you're saying and that. So it's a bit of a feedback process in there as well, asking questions back and so it does take more time because it is about how you communicate, if you go on – say you do a couple of paragraphs and you say to everybody, you okay with that, everyone will say yes. What are they saying yes to, you know. Because there might've been a whole range of things you actually asked in there, so you've got to be more specific and succinct in what you're talking about and making sure that people are understanding the things that they're going to be talking about. So in doing that, that all takes time.

MR JACOBI: And in that context, and no doubt you've had to do it, you would have had proponents or developers approach with particular commercial or political imperatives to do something within a particular timeframe and I am just interested in how is that managed in the context of what – in the context of what we're talking about?

MR THOMAS: Yes. Usually when we get to something that comes along like that you've got a certain time frame in which to respond. So usually then we would get on our bike, so to speak, and make sure things happen within that time frame and that means if you had to call a community meeting, if you had to call a management committee meeting, that you'd plan for all of that within the time frame that is provided for that particular matter. It might be maybe a mining development or something and of course that is going to affect people a lot more than just an access on property matter and that type of thing, so there's a lot more information, a lot more talk and probably a lot more interest because it's likely to involve compensation at the end of the day for the loss of native title rights and interest and that type of thing. That probably will cause a lot more debate in the whole process as well.

MR JACOBI: I'm interested in the extent to which you have been able to successfully negotiate the time frames themselves and that is say, look, I

understand what your time frame is but we need a bit more time. Has that been successful?

5 MR THOMAS: It has, it has. We've had to do that with the state, with the federal court in different matters. We do have a bit of tyranny of distance, so to speak, we're the only service provider in this state so we have to service groups all over the state and that in itself just takes time and getting people together. We could make every effort, get everybody together and then somebody might pass away on a community, it might be an important person.
10 All of that goes out the window. Generally we've got to go back to the court or the state and say look, we've got to change that date, we need to extend the time frame because we just can't bring people together again like that sort of thing. So it can be time consuming and frustrating at times as well.

15 MR JACOBI: I think also against that context of timing I am interested in the extent to which engagement at the start of the process is thought to be significant and what the consequences of light engagement are.

MR THOMAS: Are you talking about engagement with other parties?

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MR JACOBI: No, sorry, this is engagement by developments with Aboriginal communities, whether it matters to do it early and what's the consequence if you do it late?

25 MR THOMAS: Look, I think that engagement has to be early. People have to be up front about what they want to do. You have the opportunity to build that relationship, get to know the people over the time of your negotiations and that type of thing and I think it makes a better platform for actually negotiating. If people come in. We have had some instances in the state where mining
30 companies have taken upon themselves saying that they didn't have to come in and talk to the group, they have gone on country and drilled holes and that type of thing and we have ended up in court processes because of that. So we always encourage groups to – developers, miners, whoever to come in first and talk to the group and so that everyone's minds are at ease, everybody knows
35 what everybody is trying to achieve in the process and it makes for better relationships in the whole process.

MR JACOBI: You spoke previously about there being differences in communities in terms of not only language but in terms of economic
40 opportunity and I'm interested to the extent to which differences in Aboriginal communities need to be respected and the extent. Perhaps if you can point to examples by reference to negotiations you have conducted?

MR THOMAS: There's a range of diversity and that within Aboriginal
45 groups and when we're getting further north and there's still the strong cultural

practices and that type of thing, we have to have regard to the people who can actually speak for country and that type of thing. Understand that at the end of the day it's probably a men's group that is going to – the senior men that will have the final say on what happens, but we have put in place processes especially in those areas where we can factor that in, so that the senior men themselves are not the PBC but we have the PBC and then there's the senior men who there's a discourse between those groups and that type of thing. So the PBC actually won't make a decision on country matters without the senior men given the okay for that to happen. So they will get to a point and then they'll say we'll have to consult with the waddies, the senior men over this matter. Usually there's a senior person on the PBC as well and they'll say we need to take this to the waddies and do that.

MR JACOBI: I was going to pick up from that actually in terms of structure and the structures with whom communities negotiate and I'm just interested in terms of from the perspective of a proponent or developer does the Aboriginal community have a view that it's most appropriate to engage with the PBC only or is it also necessary to engage with Aboriginal communities, bearing in mind?

MR THOMAS: Yes, and it depends where it is, as I think the first part of your question was leading to. It is an un-level playing field in lots of respects for a lot of different reasons and diversity is a part of that and – sorry what was that – I just lost track of that last question?

MR JACOBI: I'm interested from a developer's perspective if one is motivated in speech with indigenous community, is it most appropriate to engage directly with the PBC or is it also necessary to engage with the community separately and what's the Aboriginal community's view of such an interaction?

MR THOMAS: Look, I think the PBC is always the starting point because the PBC are the ones who have the rights and interests in country and will also have the rights to talk about heritage interests and that in the country and that type of thing, whereas a community might have a different management structure. Probably – or may not have, but may not have an Aboriginal person in charge of that community as well and most of the members of the community are probably members of a PBC if it's not the specific one that covers their community. But having said that I think it's still important to talk to communities as well because if a mining company for example, you've got around Coober Pedy and that, there's great involvement from the mining companies in the community as well that have been able to do things which have benefited the whole community, not just Aboriginal people in the community like Coober Pedy has got the football oval and everything else which has come about because of those mining interests which started off as

negotiations with Aboriginal groups and that type of thing, with the PBC and that type of thing. So there are benefits to be had for communities I think and benefits to be had for the PBC, the native title group. A lot of those mining companies engage in social justice sort of programs and that type of thing
5 which does provide benefits to the communities as well.

MR JACOBI: Could I just pick up the concept of leadership within the Aboriginal community. It speaks to the idea of leadership needing to be self-defined. I was wondering whether you could perhaps explain that and explain
10 how that fits with the concept of the PBC which has an elected - - -

MR THOMAS: Yes, well certainly PBCs have come out of necessity because of the Native Title Act and the process that that happens. That provides a certain structure and a certain level of leadership, probably one that I'm not
15 entirely happy about but that's the way it's eventuated but it seems that it was thought that those people would have the leadership skills and the skills to run a PBC once they became a PBC and it doesn't happen that way. So there's been a lot of support and capacity development and that type of thing
20 happening with PBCs to try to bring people up to scope to show leadership within their group and that type of thing and to provide good governance and financial management skills and all of that type of thing on behalf of their native title holders and members of the PBC. But outside of that there is also other levels – structures within the Aboriginal community, particularly if we're
25 looking at who can talk for country and that type of thing. So you've got to also have an understanding of who are the senior people for those areas and that type of thing and the groups will willingly tell you, we can't speak for that but these are the people you need to talk to and that type of thing. So there are those structures. There are other contemporary structures I suppose in terms of
30 if a heritage committee had been set up separately and that type of thing so there are people if they haven't amalgamated with the PBC as yet, there still may be other people to talk about heritage interests and that type of thing and other interests in the area if there are Aboriginal corporations and that established and that type of thing you may have people for example at Maree. Reg Dodd runs a tourism thing around the place as well, so there are other
35 people who have interests that should be talked to about how things might affect their interests in the country and that type of thing.

MR JACOBI: I'm interested in the design of a negotiating process. I wonder if you've got any observations about where negotiations have been successful
40 how the process was designed and whether there were key elements to the way that process was thought about at the outset.

MR THOMAS: Look, our negotiation process largely is in line with the Human Rights Commission sort of process, for engagement with indigenous
45 groups and that type of thing, so it's important to create that relationship,

provide the information upfront, so that people can have that, what they call now “free prior” or give free prior informed consent to matters when they’re negotiating, and that type of thing.

5 We mentioned earlier about time and how we do that, and I don’t know if there’s a perfect answer to that, because sometimes as you mentioned before, you do have a very short time frame, and you wonder whether you’ve been able to give people enough information for them to be able to make informed decisions and that type of thing, because sometimes people are only -
10 especially if we’ve called a community meeting - people are only getting that information at the meeting, or if there was the mail out, but then they’re only getting an understanding of what that means at the meeting itself, before they make a decision.

15 MR JACOBI: In terms of the processes themselves, do you have a view about the extent to which they themselves need to be negotiated with communities, that is, are the communities comfortable with the process and the format that’s going to be used?

20 MR THOMAS: Indeed. We talk to all the groups and that type of thing, about especially saying that we’re only the support agency in terms of SANTS, so it’s up to the groups to be up there. We’ll advise them and provide the information and that, but we’re saying, “It’s your country, you need to speak for your country,” and talk about then looking at who they want to be a part of
25 that negotiating committee and that type of thing.

So they’ll go through a selection process who they think should do that, and that in itself can take a long time sometimes as well, as people try to get together a group I suppose, which they think will represent their interests as best they can.
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MR JACOBI: Have you been involved in negotiating processes which have needed - where the initial process that was adopted or the tools that were used as a negotiating process needed to change subsequently? I’m just interested,
35 do you have any reflections on the need for flexibility?

MR THOMAS: Not so much change so much, but sometimes something can come out of left field, where people will say, “We need to break, we need to talk about this, we didn’t talk about this before,” so a mining company or the
40 state or whoever will be asked to leave while there’s some discussion take place around that matter, because they haven’t had the opportunity to talk about it previously.

So sometimes those things happen within a meeting process. But in the main,
45 once that structure’s in place, there are usually not significant changes that take

place.

MR JACOBI: Do you have a view about the kinds of methods that are available to negotiate with Aboriginal communities, the sorts of tools that you might use in order to engage them and the variety of techniques that might be available?

MR THOMAS: As I said, yes, given the diversity, there's a whole range of different things, but we find that visual use is very important; people can actually see and can understand from having visual aids and that type of thing. As I said, we use interpreters as well, and that can be interesting in itself. You probably need someone there who can tell that you're starting on the right thing as well, because sometimes individuals can have their own perception about things, and sometimes the way we say something is not perceived in the way we think it is being done and that.

That's where I said it's important sometimes to gain an understanding about what people are saying yes to. I suppose while it's on my mind, when I talk about that, it's also important not to make promises, especially if they can't be kept because people generally don't forget what's been promised at a meeting. So we always say, "Never promise anything, wait until the final agreement is in place about what are the elements that come into that agreement."

And there's a word they use, say, up on the APY lands, which means "generoo -maybe, we'll have a look," that it might be or might not be, essentially.

MR JACOBI: In terms of making promises, do you have in mind promises that are sometimes talked about with respect to the economic benefits that might flow from an activity?

MR THOMAS: There's a whole range of things I think, we've even had people who at election times who want to get elected they go up and say, "Yeah, we'll give you cattle," so people are waiting for the cattle to turn up and they never come sort of thing, and then the next time that person comes, they haven't forgotten. They say to that person, "Where's our cows," you know? There's that whole range of different things, so it's important to know what are the things that you are going to say yes to, at the end of the day.

Changing things half way through a negotiation can have disastrous effects on that because people say, "Well, you said, you told us, you told us this," you know?

MR JACOBI: I'm interested in picking up something I think that's going to be a theme at the session later this afternoon in terms of the provision of independent scientific or technical advice to communities, and in terms of the

experience that you've had with that with native title negotiations and the extent to which that's been important to achieving a successful outcome.

5 MR THOMAS: It's become very important. As I said earlier, it's about having that better understanding about what you're actually dealing with, and you actually get a better idea of what the actual benefits might be for a mining company in that process. Generally a mining company might not be forthcoming in terms of that level of information to a mining group, but if you've got an understanding about the approximate size and the length of the period of the mine, then experts are able to work out what they think you might get out of that sort of mining process.

10 So you're in a much better informed process in terms about negotiating outcomes and that type of thing. I think I said before that it's a lot more sophisticated in terms of having that higher level and technical understanding about what are the benefits achieved through mining for the mining companies, so that you're then better able to negotiate a compensation package for yourself.

15 MR JACOBI: Moving aside from the economic benefits, I'm also interested in scientific and technical information, including impacts on environmental outcomes and so on, or something like the impact on fisheries.

20 MR THOMAS: There's all that, and there are different processes that happen. We've been involved in projects which we partner with the groups which go out and go trappings and that type of thing, to identify the fauna, and even identify the plants that are in certain areas to have some measure of what the impact of that development or the mining might have in that region.

25 But it also affords the opportunity for groups that we've been involved with so far to go through and do seed gathering and all of that type of stuff, so that they're better placed at the end, when the mining's finished. It might only be a 25 year mining cycle or something, but they're better placed once the mine has been reinstated, to plant those seeds which they gathered from that area.

30 MR JACOBI: The Commission's keen to understand about how long term benefits or outcomes can be achieved, and I'm just interested as to whether you have a perspective on it. I think this might pick up from where we've already talked about the level of sophistication of negotiations - - -

35 MR THOMAS: Yes.

40 MR JACOBI: - - - about the sorts of long term benefits and long term thinking that might now be involved in (indistinct) and other sorts of arrangements.

MR THOMAS: In some respects, I think it's one of the more unfortunate things about native title, in that it does create an uneven playing field in terms of the resources you might have. If you've got a mine on your native title claim area, then you're pretty well set up in terms of having an income stream for a while, which supports the PBC, which enables them to get into other economic development opportunities, or to participate with the mining company.

Far west coast for example has bought mining machinery and leases it back to the mining company, so they've been able to do that, it's paid for the machinery and they're now investing monies in funds management and that type of thing, so they're going to be well set up for the future. A lot of groups are not as fortunate, they don't have mining, so some of them have very little, and some of the funds that they have to, they might put into charitable trusts and the like, to enable members to access funding for, it might be funeral, it might be education support, it could be for housing goods.

So there's a range of different things. So that's one of the things I'm looking at, at the moment is to how to better even that playing field, to create opportunities for more economic development for groups that don't have that access. It's something that we're still working on, but we're working closely with other agencies, the state and IBA and the ILC in terms of trying to look at how we might achieve something which is going to be of benefit to all Aboriginal people in South Australia.

Part of that was we'd set up the Aboriginal Foundation of South Australia, which was setting up that like a trust, from which if there were for example, all the coastal groups, if we were able to negotiate a fishing licence from the state, I don't envisage that each group would get a fishing licence, but if we were able to get one then the Foundation would hold that and operate on behalf of all of those groups, and they'd all share the income stream that would be created by having a fishing licence.

You can see that happening in different areas within the state for different purposes, and you know, there is great opportunity out there, but it's trying to make the best of that opportunity. The problem is, it doesn't happen overnight and it's not a simple thing. I'm quite hopeful that coming into the near future, that we'll be able to look at a couple of projects which are going to be beneficial to all Aboriginal people in South Australia.

MR JACOBI: I'm interested in picking up the reference you made to charitable trusts, and I wanted to come to this issue of structures. Do you have a view about the sort of flexibility you might need in structures to deliver those sorts of long term outcomes? Do trusts offer sufficient flexibility for that

outcome?

5 MR THOMAS: I think what trusts offer is a modicum of financial management that's not available within the community. I think if there's one area where the Aboriginal community really falls down is in the management of funds. There's just not that understanding, even if they've got somebody who manages their funds, there's not that understanding of even reading a basic balance sheet and your income/expense sort of sheets.

10 So it's very important to have people in there who are trustworthy people that can provide that level of security to groups about their funds, and how they're used. In that sense, yes, but I think it's also important to look at lifting the level of financial knowledge and management within the Aboriginal community as well.

15 MR JACOBI: The issue I had in mind was, there are sometimes limits on the purposes for which charities and trust funds - - -

20 MR THOMAS: Indeed.

MR JACOBI: - - - can be used, and I'm just wondering about whether you have a view about whether there might be more flexible vehicles that you could use to achieve the sorts of long term benefits you're talking about.

25 MR THOMAS: Yes, there may be. We've been looking at, and groups are using things like the ANZ Trust and other bank trusts. IBA has its property trust and are now also setting up a money trust called the Prosperity Fund, which is looking to get groups to put their funds into those. There's a higher level of interest return; the property trust I think was 12 per cent last year, but if you've got monies in the bank you're only getting what, 3, 3.25 or something.

30 So there is a greater level to start building wealth, but I think we've also got to lift the understanding of people that you are putting these funds away for long term, for a better purpose, for setting up your organisation for the future, for your grandchildren and that type of thing.

35 COMMISSIONER: That might be a good time to come to think about the sorts of activities that we're envisaging in the nuclear cycle, and to get your views about what might be appropriate when we think about the sorts of long term decisions that might be necessary.

45 MR THOMAS: Are you talking about what happens prior to the process or during the process?

COMMISSIONER: Perhaps we could just walk through - - -

MR THOMAS: All right.

5 COMMISSIONER: - - - in a step process. If the government were minded to take this activity, and they certainly aren't at this stage, what would be the process, based upon your experience, of how you've walked through what is a many-generational decision?

10 MR THOMAS: There's probably an interesting example with the Federal Government with their nuclear dump proposal at the moment, which you know, they've put a big carrot out there with \$10 million on the offer to a group, so groups are going to have to think seriously about that type of thing, so they need to sit down and talk. I know there is an ideology strongly
15 opposed to the dump and uranium and that, because of past experiences that happened from Emu and the like, and what happened to people on the APY lands and that type of thing, so there's that strong history about those things not being repeated, and the damage that it does to country and not being able to access country.

20 You know, Aboriginal history has largely been by word of mouth, and that's carried through from generation to generation about the effects of radiation on people, and things that happen to people that were never in your mainstream papers, and that type of stuff.

25 So it's not a good experience, but I think people still have to sit down and talk, and come to the party if the state want to, because at the end of the day the state can say, "Well, we need this thing, we're going to do it," and then really I suppose you're going to be just talking about compensation as such. But from
30 our point of view, if there is a starting point, then people get the information, people get together, have the time to talk about that, and I think we talked about it in terms of the process in leading up to the Royal Commission.

COMMISSIONER: Yes.

35 MR THOMAS: There's been a lot of time, technology has changed a lot over time, let's sit down and have a look and see what is happening at the moment, and what is the history. So I think the opportunity is there to sit down and talk to people about how this thing might happen and how it might be progressed,
40 but people are going to be strongly concerned about what happens to themselves, what happens to the land, what happens to the resources on the land? If you're putting stuff directly into land, what happens if it gets into the water system in a fragile environment and that type of thing.

45 COMMISSIONER: Can I just pick away at that a little bit? You've talked

about communities, or larger communities. In this process, because there is an enormous amount of complexity and risk, is it important to have that broad initial dialogue with all of the Aboriginal community, or do you think it's more specific once locations are identified?

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MR THOMAS: If locations are known, then I think it's got to be more specific, because people will just say, "Hey, you can't speak for our country, go away."

10 COMMISSIONER: Yes.

MR THOMAS: So once you know, if you have a location, and there's a specific group, native title group or whoever involved in that, then they're the ones, you need to talk to the people who can speak for the country, essentially.
15 So that's the PBC, and it starts from there. Because something like that is quite complex and quite divisive in the community in some respects - - -

COMMISSIONER: Yes, it is.

20 MR THOMAS: When I think about it, it's going to be even more so, when you see a carrot of \$10 million, because really, something like \$10 million can really set up a community for the future and that type of thing, especially if you can invest properly. \$10 million, you know, if every group had 10 million I think they'd be set, virtually.

25

So it's going to be important for those groups to look at that, and not just dismiss it offhand I think. I think from my point of view, we'd be encouraging groups to have a look and talk about it. At the end of the day, some people might just say, "No, we don't want anything to do with it."

30

COMMISSIONER: Yes.

MR THOMAS: But we've seen in the lead up process that there's been a couple of Aboriginal groups which have said, "We've mined the stuff, we'd be prepared to take it back, but we'd want to talk about what's involved in that."
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COMMISSIONER: Just exploring this concept of the foundation, that's some sort of benefit to the whole of the South Australian community. Is that something that can be negotiated with a single group, or is that more likely to be achievable with a number of PBCs? Is there a - - -
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MR THOMAS: What we've tried to look at in the past is, the group is still able to negotiate with the mining company or the developer, and still get their interest. But we've been looking at a similar system as what they've set up with the Aboriginal Lands Trust, in that the state government gets the 3 per
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cent mining royalty, why can't they stream some of that money into the Foundation for the benefit of all of South Australia, not just that group who has negotiated their own package? But there is an income stream into the Foundation which then can be used for the betterment of all Aboriginal people in South Australia.

So it's not taking anything away from the group themselves, and it might dilute the state's income a little bit, but we see - well, naturally enough, for the betterment of the state and for Aboriginal people in South Australia. So it's not taking anything away from the group itself and it might dilute the state's income a little bit but we say naturally enough for the betterment of the state and for Aboriginal people in Australia.

MR JACOBI: Thanks. I wanted to pick up this issue of flexibility and given the sorts of activities the Commission is required to contemplate and considering activities that might have very, very long periods of operation, I was interested in the need to build flexibility into the arrangements so that there can be adjustments or changes made with communities along the way and your views about that.

MR THOMAS: I don't think it's unheard of in terms of in agreements that you have sort of milestones and you might sit down and talk about the next stage or whatever else and that type of thing. So I think generally there is flexibility in that. I think that happened a bit with the BHP negotiations with all of the groups involved there, there are different stages and different set ups, about how that happens and who benefits and that type of thing.

MR JACOBI: Does that provide for the opportunity for review later on, so if Aboriginal communities for example are not happy with a particular outcome they can come back and have a think about how they might have shared that result better in the future if the state of technical knowledge is moved on.

MR THOMAS: There is the ability - I know that within some agreements there is a review process locked into some agreements that they will revisit after a certain period of time. There might be requirements for the group to actually go and do a report or something to provide to the group which then leads into the next stage or something like that, you know. We've had different agreements where they've had to do like a native title report so to speak about what are the rights and interests and what's impacted in that and there might be for example onto Rose Hill with the pastoralists in that there was a whole map done pointing out the watering points and that, and so it's not all sites but certainly the sites that were mentioned within the trial process for Rose Hill. So pastoralists in there now have a good idea about where things are and they have actually allowed - that relationship's built there and they've actually fenced off some of those places now so that the cattle can't sort of destroy sites

and that type of thing. That's a really good example about how negotiations and agreement making has made for better relationships and something that's probably never happened before in South Australia in terms of protecting Aboriginal sites on a pastoral station.

5

MR JACOBI: I just want to pick up something else. The question asked by the Commissioner in terms of negotiating with the community more broadly or just in particular groups. I was interested in the extent to which there would be an expectation for example people that might be indirectly affected by such a facility might also need to be negotiated with. That is for example if there was a transport corridor that was related to the ultimate operation of the facility with it, whether that would be something else that would need to be addressed.

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MR THOMAS: Yes, and I think I touched on that earlier where I said anybody who has interests in that country should probably be looked at and spoken to and depending on some of those might be Aboriginal interests, I think I mentioned Rag Dodd for example, he's a part of the native title group as well, so he'd probably want to talk to the native title group about how – what their negotiating is affecting his rights but the communication, I mean a road corridor and that type of thing is a different matter altogether and it may have already been negotiated if a developer or someone had to build a road through their country then they would have already had to negotiate the outcomes of that.

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MR JACOBI: I had in mind the idea of even the use of the existing road.

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MR THOMAS: That's probably been dealt with in terms of native title already because they would have – most groups that have been affected say by the main highway going north, Stuart Highway, have negotiated compensation. There's still a couple of groups outstanding but most groups have done a settlement (indistinct) which looks at – and really the road and the railroad, some of those areas it's just all pastoral stations so there's not a lot of extinguishment and the road and the road and the railroad is it essentially.

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COMMISSIONER: Can I just pick behind the answer that you gave and you will tell me if you're not comfortable giving the answer. But if the government were minded to go ahead with this activity and therefore recommended it, it might take a number of years to come to a location. Does it make sense to have that broad engagement with the Aboriginal community about the sorts of activities that are being considered before we actually come to a discussion about location?

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MR THOMAS: It probably makes it difficult because you're probably setting people up with an expectation and then if it doesn't eventuate in their area - - -

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COMMISSIONER: You run into the problems you mentioned.

5 MR THOMAS: Indeed, that's right. So I think it's important to proceed once you know – once you have more certainty about where you're actually going to put it. I mean things in general I think its fine to put out there but not to start talking about the nitty gritty sort of parts of or how it might affect your country or whatever.

10 COMMISSIONER: I was thinking about an education program but again that raises the level of expectation.

15 MR THOMAS: Yes, but just in general terms I think to put information out there and that, it's important from my point of view I think communication is the key to any successful organisation or any successful project and it's how you communicate that that's which is going to lead to the success of that particular activity. So I think it's important to get information out but it's also important in that information to say this is just general information.

20 COMMISSIONER: Not to raise expectations.

MR THOMAS: Indeed, indeed.

25 COMMISSIONER: Mr Thomas, that is very clear evidence, thank you very much for your submission which we found very useful and for the evidence you have provided this afternoon, we are very grateful for that.

MR THOMAS: Thank you very much.

30 COMMISSIONER: We will adjourn now until 14.15 when we will talk with the Maralinga Tjaratja community.

ADJOURNED

[1.26 pm]