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TRANSCRIPT OF DAY 6 – WURREK TYERRANG

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**DR WAYNE ATKINSON, Commissioner**  
**MS SUE-ANNE HUNTER, Commissioner**  
**DISTINGUISHED PROFESSOR MAGGIE WALTER, Commissioner**  
**PROFESSOR THE HON KEVIN BELL AM QC, Commissioner**

**THURSDAY, 5 MAY 2022 AT 10 AM (AEST)**

**DAY 6**

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Yoorrook Justice Commission

CHAIR: Good morning. We welcome everybody to Charcoal Lane today. We are continuing the Yoorrook's wurrek tyerrang, the public hearings, at which today we will be hearing from First Peoples' Assembly of Victoria to hear contextual evidence around our Terms of Reference. Before we get started, I would like to ask Commissioner Hunter to give an acknowledgment of country.

COMMISSIONER HUNTER: I would like to acknowledge that we are on the lands of Wurundjeri and pay my respects to Elders and those that come before me. I also pay respects to your Elders and those who come before you, particularly Marcus and Aunty Gerry and may our Elders watch over us and guide us in Aboriginal business today. Thank you.

CHAIR: May I say a special welcome to the co-chairs of the First Peoples' Assembly of Victoria, Marcus Clarke and Aunty Geraldine Briggs - Atkinson. Sorry, back in the past. Thank you, Counsel.

MR McAVOY: Thank you, Commissioner. I announce my appearance as Counsel Assisting together with Ms Fitzgerald.

CHAIR: Thank you. May I have appearances, please.

MR McAVOY: Yes, I appear on behalf of the Commission.

MR KNOWLES: If the Commission pleases, I appear with my learned friend Ms Tiplady for the State of Victoria. My name is Richard Knowles.

MS KNOWLES: And if the Commission pleases, my name is Ms Knowles. I appear on behalf of the First Peoples' Assembly of Victoria with Maya Narayan.

CHAIR: Thank you. Thank you. Mr McAvoy.

MR McAVOY: Thank you, Chair. Today's witness is Mr Marcus Stewart. Mr Stewart is the co-chair of the First Peoples' Assembly of Victoria. Might the oath be administered.

**<MARCUS STEWART, AFFIRMED**

CHAIR: Thank you, Mr McAvoy.

MR McAVOY: Thank you, Chair. So, Mr Stewart, your name is Marcus Stewart. Your position is Co-Chair of the First Peoples' Assembly of Victoria.

MR STEWART: Yes, it is.

MR McAVOY: That is correct. I offer you the opportunity, Mr Stewart, just to give a formal introduction of yourself to the Commissioners the ceremonial way.

MR STEWART: Thank you. And as is our custom, I do want to extend my acknowledgment of country, acknowledge Elders past, present, and acknowledge I'm a visitor on this land. My name is Marcus Stewart. I'm a Nira illim bulluk man of the Taungurung Nation, central Victoria. And I'm the elected Co-Chair of the First Peoples' Assembly of Victoria.

MR McAVOY: Thank you. Now, I understand, Mr Stewart, that you would like to make some opening remarks to the Commission before we engage in examination of your evidence?

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MR STEWART: Yes, please, if that's okay with the Commissioners. Importantly, I wanted to acknowledge the work of the Commissioners and the Commission to getting to this point in time. It's been a lot of work. It's been hard work. But I really want to acknowledge the enormous efforts and, I guess, the momentous occasion of how we're now hearing and we've had Elders come forward and we're hearing stories, we're hearing our history; people are speaking their truth, and I think that's critically important and a milestone in the history of Victoria.

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I also wanted to request that we play a video on behalf of the First Peoples' Assembly of Victoria on who we are, if that's okay.

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MR McAVOY: Thank you. I think that the video is ready to play.

**(Video plays)**

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**(Video stopped)**

MR McAVOY: Thank you. Are there any comments you wanted to make about that particular video?

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MR STEWART: Only comments that I would make is that I think it's a - it's a true reflection and inspiration of the work and the effort of our elected members who represent, you know, Victoria across the State, and I guess the ability to meet the aspiration of our community by, you know, (1) seeing us here today but also the importance of - we are on the verge of making history in treaty for the first time in nation.

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MR McAVOY: Thank you. Is it important also in a sense that you are a representative of the Assembly and so you are representing other people, some of whom we've seen on the video?

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MR STEWART: So I'm the elected Co-Chair of the First Peoples' Assembly of Victoria, along with my fellow co-chair and respected Elder Aunty Geraldine Atkinson, and our job is the public voice of the First Peoples' Assembly of Victoria. So today we will speak or I will speak on some of the work we have done, what we've heard across our community and some of the challenges we face and the opportunities we see.

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MR McAVOY: Thank you. Now, you've prepared a statement for use in this Commission. You read over that statement?

MR STEWART: Correct.

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MR McAVOY: Are you happy with the contents?

MR STEWART: Yes, I am.

MR McAVOY: There are no changes that you want to make and it's true and correct to the best of your knowledge?

MR STEWART: Yes, it is.

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MR McAVOY: I will tender the statement at the end of this witness' evidence, Chair. But I propose to take him to various parts - the witness to various parts of it. Mr Stewart, is it correct to say that throughout the statement, you, at times, express a personal opinion about some matters, or is it all - are they all matters that are the view of the Assembly?

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MR STEWART: Throughout the statement there are times where I express a personal opinion; that's correct.

MR McAVOY: And so, in the course of your evidence, when you are expressing a view which is your own view as opposed to the Assembly's view, I ask you, if I'm not - if it's not prompted by me, to make it clear that that's your own view rather than an Assembly view. You have nodded in response to that. I would ask that you say yes when you agree with propositions.

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20 MR STEWART: Yes, I will.

MR McAVOY: Thank you. And that statement that you've provided has been prepared in response to a request from the Commission.

25 MR STEWART: That's correct.

MR McAVOY: So there are a number of issues that the Assembly has been asked to respond to and the statement that's been prepared for you, your statement, responds to those issues. But there are a number of other issues that you could have commented on and some that do you comment on throughout the course of the statement. That's correct?

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MR STEWART: That's correct.

MR McAVOY: I should also indicate to you that it's intended that the Assembly will be called again during the course of this Commission at later stages to give further evidence, and that may be evidence which you give or some other person that may be nominated by the Assembly. Of course, that's the Assembly's decision as to who appears. But I say that so that you understand that this isn't the only occasion on which the Assembly will have to address the many topics that your statement covers.

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MR STEWART: Thank you.

MR McAVOY: Thanks. And I just need to be sure that you understand that the statement or Balert Keetyarra will be available to the public on the Yoorrook website, this current --

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MR STEWART: I understand that.

MR McAVOY: So your position as Co-Chair of the First Peoples' Assembly of Victoria, how long have you held that position?

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MR STEWART: A little over two years. So since December 2019, which feels a lifetime ago. But that was our inaugural sitting of the First Peoples' Assembly of Victoria.

MR McAVOY: And the appointment is for a limited period; that's correct?

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MR STEWART: That's correct.

MR McAVOY: Now, what is - what is the limits - what are the limits upon that appointment, if you can just explain?

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MR STEWART: Can you explain to me what you mean by "the limits", this term?

MR McAVOY: The time limits. What - so - yes.

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MR STEWART: Fours years.

MR McAVOY: So it's a specified term of four years.

MR STEWART: Correct.

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MR McAVOY: And when does that expire?

MR STEWART: Our next election has to be held, I believe, before November 2023.

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MR McAVOY: Thank you. At page 4 of your statement, you set out your background, including that you worked for some time as a child and family therapist; that's correct?

MR STEWART: That is correct.

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MR McAVOY: And also as a - as a cultural advisor in the Department of Justice?

MR STEWART: That is correct.

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MR McAVOY: And then you held a position as the CEO of the Federation of Victorian Traditional Owner Corporations.

MR STEWART: That is correct.

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MR McAVOY: Those roles have all been roles in which you were involved intimately with the First Peoples communities of Victoria?

MR STEWART: That is correct.

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MR McAVOY: And is it - is it the case that the experience that you gained in those roles has assisted you in your position as Co-Chair?

MR STEWART: Yes, along with growing up in the Aboriginal community and being a part of our community.

MR McAVOY: And so you've drawn on those experiences and your life experience in preparing the statement?

MR STEWART: That's correct.

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MR McAVOY: I want to ask you just a general question about the - the First Peoples' Assembly of Victoria. And I will refer to it as the Assembly from hereon.

MR STEWART: Yes.

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MR McAVOY: Can you explain for us all - and many people will already know this - but how it is that the Assembly came into being?

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MR STEWART: In short, if I think - I think back to February 2016 of when there was a community meeting of where our community called for treaty and a treaty process in Victoria. That's - from that date is when the journey towards treaty started. And it was in the establishment of an interim working group, made up of representatives across different sectors and community organisations, as well as community members, which provided the strategic oversight for State-wide consultations and I guess consultations on how we were going to represent ourselves, how are we going to negotiate the architecture of treaty, which we are doing - we are doing now. What does that need to look like.

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But, ultimately, what does voice look like in Victoria to negotiate the next phase of treaty? It was then Aunty Jill Gallagher, AO, Treaty Advancement Commissioner, who was tasked with designing the nuts and bolts of what a representative body would look like. And I believe that was done over an 18-month to two-year period. Up until when we and our community for the first time in a long time - and for the first ever time in the context of treaty - went to the polls and had had the opportunity to elect - elect people - elect community members who they felt best represented their voice in taking the treaty journey forward.

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And I believe on 10 and 11 December 2019 in the Upper House of the Victorian Parliament, we held the inaugural sitting of the First Peoples' Assembly of where we elected a nine-person executive, which is our board, and looking from a - I guess a parliamentary structure, it's the executive arm, it's our cabinet. And then our Chamber elected to the roles of male Co-Chair and female Co-Chair and that's where I was elected as the male Co-Chair to lead the Assembly and Aunty Geraldine Atkinson was elected to the female Co-Chair role. And since then we have been tasked with developing - well, basically building the architecture and the process for treaty as set out in the Act.

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But, importantly, in building that, our community members, who all have a voice in this process, are the architects and the designers of this process, and what we are building is in their aspiration.

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MR McAVOY: Thank you. Is the Assembly a government agency or statutory corporation?

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MR STEWART: No.

MR McAVOY: So it's independent of government?

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MR STEWART: Yes.

MR McAVOY: And is there a reason for that?

MR STEWART: It was during this - the time of where I spoke about the working group which had strategic oversight over community consultations which I believe reached over 7,000 Aboriginal community members consulting on that process. One of the key design principles that were made loud and clear is that it had to be completely independent of government and hence where the - it became a company limited by guarantee.

MR McAVOY: Thank you. And you referred to the Assembly representing all First Peoples in Victoria. We have, during the very short course of the evidence that's been heard in this Commission, already heard much about people who have been displaced and descendants of or suffered from the - what's called the Stolen Generations policies themselves. Does the structure of the Assembly accommodate and represent those people?

MR STEWART: It's - that's a big question in a sense of we are a membership of Victorian Traditional Owners, set out - which was decided on through the community consultations - to build a representative structure, to negotiate the next process of treaty. And everyone, Aboriginal and Torres Strait Islander person in Victoria, had the - has the opportunity to enrol and vote at our elections of the voice that best represents them.

And it's also important to say that the membership of the First Peoples' Assembly now isn't necessarily what the membership of the First Peoples' Assembly will be when we go back to the polls because that will continually expand. Because we are learning on what representation looks like and how that may evolve over time and including, you know, a piece of work we've done around alternate pathways where every nation of Victoria can apply to sit on the First Peoples' Assembly of Victoria.

So in your question of representation for our Stolen Generation survivors, I'm not sure how to answer if we - I don't - I wouldn't classify the First Peoples' Assembly of Victoria being a representative body for our Stolen Generation survivors. Our responsibility is really clear, in the *Advancing the Treaty Process with Aboriginal Victorians 2018*, of what we need to deliver. The four sort of outcomes. At our first inaugural meeting in Parliament, what we called on was a Stolen Generation redress scheme because justice was long overdue.

What we were - what we have done was build on the decades of advocacy and decades and generations of activism to support our people who are still finding their way home or who have found their way home. But something that we all need to look to and think about - and we are, as we speak, without getting into too much detail - is what does our representation look like in the next phase of the treaty journey? And how do we shape ourselves to be the most or how do we create that representation that is the tide that raises all ships, that everyone feels that they have a voice in this process or they are represented in this process. That's one of the challenges that I think will just be evolutionary as we go. So our representation isn't static. It will change over time, I would imagine, and I think - if that answers your question.

MR McAVOY: Yes, thank you. I just wanted to ask you another related but slightly different question in relation to the notion of voting for representation and a democratic process being adopted by the Assembly. My - if I can put it to you this way, my understanding is that the processes for determining representation on the Assembly is not purely democratic; there's a mixture of representation pathways. Is that correct?

MR STEWART: Yes, we are a hybrid model.

MR McAVOY: And so can you explain to the Commissioners what that hybrid is?

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MR STEWART: So, yeah, we have - we have got our general elections, which is a composition of 21 elected members across five regions, which was built by the Treaty Advancement Commission, based on population data. So our north-west, our south-west, our north-east and our south-east are all three - a composition of three elected positions. And our metro is a composition of nine - nine positions. We also have 11 reserved seats which are Traditional Owner groups who hold rights under the *Aboriginal Heritage Act*, the *Traditional Owner Settlement Act* or *Native Title Act*, and we currently have 10 active - 10 active reserve seats on the chamber, taking our composition to 31.

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MR McAVOY: So going back a couple of steps to your discussion about the evolution of the representative model - - -

MR STEWART: Yes.

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MR McAVOY: It must be the case that you envisage that more nations will receive recognition, one way or the other, through settlements or native title determinations or by being recognised as a registered Aboriginal party; that's correct?

MR STEWART: Yeah, and also we hope to see through treaty making as well.

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MR McAVOY: I just wanted to talk about the context of the Assembly - the Assembly in the context of the national developments. It's certainly something that I - I would expect that the Assembly is aware of and considers, the relationship between the Assembly and the treaty process and the truth-telling processes here and what's being called for nationally and is happening in other jurisdictions. That's correct?

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MR STEWART: That's correct.

MR McAVOY: Is it fair to say that, in fact, what's occurred in Victoria is largely a replication of what was asked for in the Uluru Statement from the Heart?

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MR STEWART: From the point of view of voice, treaty, truth, that is correct.

MR McAVOY: And there's a bit of overlap in terms of timing, but is that by design or has it come about more organically than that?

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MR STEWART: It's been - it's been more organic in a sense that, being the elected voice and entrusted voice for Aboriginal and Torres Strait Islander people in Victoria on their journey towards treaty, one thing that we had to do early days was get out and consult. We had to hold the conversations in every corner of Victoria and make sure that everyone had a voice in this journey. And what we heard very clearly and very early is that without truth there can't be treaty. And so that's where the organic nature of it occurred.

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So we had our representative body, which was the elected voice within the treaty process, and we were obviously going down our journey towards treaty. And what we heard loud and clear

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from our community - and I really want to emphasise that point. It was - it was very prominent in our conversations, that there needed to be a truth-telling process that delivered justice, and without truth there couldn't be treaty or justice.

- 5 MR McAVOY: And so can I ask you just to explain that a little bit further. So why is it - from your understanding of what you've heard, why is it that the Assembly says that there can be no treaty without truth-telling?

- 10 MR STEWART: I think it's probably important to categorise that statement of the Assembly amplifying the messaging of our community, of what they've told us. This is not the Assembly saying, "This is it. This is it." We are simply an amplification of our community's voice in the treaty process, and what we heard loud and clear was without truth, there can't be treaty. And that was built off, you know, an enormous amount of consultation, and it was built off this - this consistent and persistent nature of that our culture and our people and our  
15 history was invisible. And it was so comfortably dismissed, it was so comfortably ignored and criticised.

- And we heard that there needed to be a process for healing and there needed to be a process for justice, which led us to the call for a truth and justice - a truth and justice process on the  
20 back of the leadership of - of our north-west member Jason Kelly who brought forward the resolution to our chamber, that we called publicly for a truth and justice process, and the government, to their credit, met the moment.

- 25 MR McAVOY: So I've listened carefully to your answer. Are you - are you saying that what you heard is that people have no confidence in the government to participate in a treaty process or is it something else?

MR STEWART: What - what do you mean by - - -

- 30 MR McAVOY: Without a truth-telling process?

- MR STEWART: I think what - I would probably categorise it differently. It's - with what I heard and what we heard and what, you know, many - and all of our members heard, that we needed an opportunity and a space that was non-judgmental, that was culturally safe,  
35 therapeutically informed. That when our people went home from telling their story, speaking their truth, they had, you know, the supports around them to - because some of it would be traumatic, some of it would be hard to heal. But for too long our stories, our history, was dismissed and ignored. And our community wanted the opportunity to speak their truth and to tell their stories.

- 40 MR McAVOY: And having that truth heard is - is essential to having a proper discussion around the matters that might form a treaty?

- 45 MR STEWART: That's - in the design process of the - what we call the mandate which later became the Letters Patent, what was - what we - what we heard and what we sort of wrestled with is that we know - through our community understand how colonisation has been rolled out and is active. We knew the stories would be different. But, systemically, it would piece together a jigsaw puzzle that told how the colony of Victoria, the coloniser through invasion, had deliberately dismantled our structures, our culture, our family. Removed us from country.

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And we wanted - so we knew that there was a structural and systemic issue at play. And we wanted the opportunity for our community to come forward and tell their truth about how this directly impacted them. Stories from our nation, stories from our Elders, stories from our people across Victoria and everyone who wanted to come forward and speak their truth, that there was a space and the place for that to occur.

MR McAVOY: Thank you. Turning, for a moment, to the issues surrounding identification in the First Peoples communities in Victoria, issues of identity, you're aware that that issue is what might be described as a hot topic and has been for some years. Is this an area in which the Assembly is engaged or proposes to become engaged?

MR STEWART: I would say it's - conversations such as that are present amongst - amongst the Assembly, on the simple fact that they're present amongst our community. Our elected members' responsibility is to engage and consult with their community. So they're hearing a lot of - a lot of these issues from all the different corners of Victoria. And my personal view would be it's something the Assembly will have to step into and do some work on at some point in time.

MR McAVOY: So you have expressed a personal view. Can I just ask you why it is you think that the Assembly ought to step into that space. I mean, it's a difficult space.

MR STEWART: Yes.

MR McAVOY: But it is one that appears to be both a live topic for discussion within First Peoples community but also one that is covered in mainstream media quite frequently. Can you explain why you think that the Assembly ought to be involved in that particular discussion?

MR STEWART: Yes. If - if the Assembly, as being an elected voice in the treaty journey for Aboriginal and Torres Strait Islander people in Victoria, don't step into that space, we know government already are in that space. We've seen throughout 200 years of colonisation, even though their role is more passive now, we know they're active. If we don't step into that space, government will. Elements of the media are. So if we don't step in and take that responsibility, we're leaving it again to government, and I don't think that is going to be in the best interests, for my personal view, for our community and for our people moving into the future.

MR McAVOY: I want to take you now - and as you will appreciate, I'm just asking you about some of the bigger issues before we go to the detail of your statement. But one of the things that falls from your statement, which wasn't - you weren't asked to address specifically is the role of the economic empowerment in redressing the past and ongoing atrocities. And I wonder if you might comment on your views or the Assembly's views as to the role of economic empowerment in this whole equation?

MR STEWART: We - we're currently out consulting and doing a significant amount of work around our Self-Determination Fund and what that will look like in its first iteration and what it potentially may look like into the future. It will be subject to negotiations of the next Assembly. I think - I'm not sure how you can have self-determination without economic independence.

I think it's kind of - they're magnets in a sense that how can you actively - or how can you activate the rights that sit within the United Nations of the *Declaration of the Rights of Indigenous People* without the resources to freely, you know, determine how you live a better life, how you can have a better life, how you can - I guess it's - without economic independence with - with self-determination, it's kind of the status quo.

It's - it would kind of be - it would kind of be selling short what self-determination would be. It would be window-dressing without empowering the rights of our people and our political power. So I think - yeah, I'm just unaware of how we could truly - we could truly activate self-determination without economic independence - without independence, without resources to improve the lives of Aboriginal people. Otherwise, self-determination will be at the discretion of political will and non-Indigenous policy makers with - inside bureaucracies, and that's not self-determination.

MR McAVOY: So you've mentioned the Self-Determination Fund. Can you just explain a bit about that fund, where it finds its origin?

MR STEWART: Yeah, sure. Part of our elected responsibility is designed - is to design four pieces - three substantive pieces: initially, an interim dispute resolution process for the negotiations to proceed, and design a Treaty Authority which will be the independent umpire which will oversee negotiations for treaty into the future. But also the Treaty Negotiation Framework, which is the ground rules, and the important and critical ingredient which is the Self-Determination Fund, which is an independent revenue source to not only fund the architecture of treaty, of how it becomes part of what, you know, the State of Victoria's furniture should be.

It should be part of what we know Victoria to be. Treaty-making and treaties for Traditional Owners. And that will play a critical and functioning role of how things are resourced and the opportunities that might come of that. That's - I really can't go much further than - than that, because that's still subject to consultations and our community's aspiration. But also it will be subject to negotiation as well.

But, ultimately, we're right now getting volumes of feedback from our community around what this could potentially be, because this is kind of a critical ingredient to the treaty process and architecture that we haven't seen before. So there's - there's an enormous opportunity to deliver something special.

MR McAVOY: I don't think that you put it this way, but is the Self-Determination Fund the centrepiece of economic independence, from the Assembly's view?

MR STEWART: I think it's a fair categorisation in a sense that is it centrepiece for our individual community members to live a better life, to have a better life? Perhaps. Or, you know - you know, there will probably be present arguments that, you know, reparations would need - you would need to look at individual reparations for Aboriginal and Torres Strait Islander people. But in the sense of the treaty architecture and the potential, the Self-Determination Fund is a critical ingredient to that.

MR McAVOY: Now, I want to take you to paragraph 22 of your statement. Sorry, at paragraph 21, you speak about the - the object of the Assembly being to promote empowerment of Traditional Owners and Aboriginal Victorians by - at subparagraph (a),

advancing the treaty process with Aboriginal Victorians, including treaty-making with Traditional Owners in the State of Victoria. Do you see that?

MR STEWART: Yes.

MR McAVOY: And if you scroll down, if you look at paragraph 22, you will see that there's a number of values that the Assembly itself is guided by, which include traditional laws - the legal tradition of cultural values and practices, respect and equality, respect for Elders and participation of young people. Then at paragraph 23 you say:

*"The core of the Assembly's work at the moment is progressing negotiations with the State on the Treaty Negotiation Framework."*

Can you just explain what the Treaty Negotiation Framework is?

MR STEWART: Yeah, sure. So the points laid out is what sits within our Constitution and our - or our rulebook, which was developed by the Treaty Advancement Commissioner, Aunty Jill Gallagher AO. And the core responsibility and work of the Assembly is to negotiate the ground rules of what we see as the Treaty Negotiation Framework which will set out - I have often best sort of described it - and hopefully it kind of makes sense - but will set out the groundwork of - the ground rules but also the schedules of what will be subject to negotiation within - potentially State-wide and shape the next or future negotiations of treaty within Victoria. So it's - it's critical to us progressing the treaty journey in Victoria.

MR McAVOY: Is this - is the Treaty Negotiation Framework, is that the place where the larger policy changes are negotiated that are necessary for treaty?

MR STEWART: I would see the larger - so, in short, no. The larger policy reforms within treaty I would see within - would be negotiated within the State-wide treaty.

MR McAVOY: And where does the State-wide treaty sit in relation to the Treaty Negotiation Framework?

MR STEWART: So, for context, our community through our consultations made it clear that they - they wanted to pursue a hybrid model, not just Traditional Owner treaties, not just a State-wide treaty. They wanted a hybrid of both. So Traditional Owner treaties for our sovereign Traditional Owner groups - our nations, family groups, clans - but also State-wide treaty to start looking at the accountability of, you know, we all understand the disproportionate impacts and the data that's supposed to shape our lives through the Closing the Gap process.

But to start - the State-wide treaty to start taking back political power and fundamentally put forward a First Peoples' voice on First Peoples issues, give our community members and our people agency and autonomy over the decisions that disproportionately impact them. I guess - sorry, I'm just thinking about this - I guess, through a State-wide or through treaty, only treaty will provide the dotted line to sign - it will be signed by government that will hold it and future governments to account for - you know, for our shared future as Aboriginal people within Victoria, and that's where we see the critical ingredient and nature of a State-wide treaty.

MR McAVOY: And so is it the case that the Treaty Negotiation Framework will be completed and that will set up the rules to then negotiate a State-wide treaty?

MR STEWART: That's correct.

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MR McAVOY: And I might just ask you a question about the State-wide treaty at - and come back to the Treaty Negotiation Framework. The - your experience in the Federation of Victorian Traditional Owners included some experience in negotiating agreements for Traditional Owner groups?

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MR STEWART: Not negotiating agreements for Traditional Owner groups. I guess negotiating agreements - I sort of lend my experience to when I was CEO of Taungurung Land and Waters Council, then Taungurung Clans Aboriginal Corporation. But there was experience in negotiating sort of State-wide policy positions as a collective but that was led by Traditional Owners at the time. So State-wide water policy, fire policy; that sort of stuff.

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MR McAVOY: And so the collective negotiating position of the Federation, if I can use that shorthand, as opposed to the ability of individual First Nations to drive State-wide policy change, can you say anything about that?

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MR STEWART: I can only talk about my experience, and my experience is that governments politically wedge you, if you are an individual nation trying to negotiate, you know, collective policy. They wedge you against your neighbours or other Traditional Owner groups saying, "Well, that's not what we are hearing from here." So it - it seemed like, from my experience, a power move.

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And when you've got a coalition or an alliance, those voices are powerful because governments still try to wedge, but - and I think it's just a pattern behaviour of how - of how they were negotiating at the time. And I think the success of what we're kind of seeing through some State-wide policy measures - are they perfect? No. But they're a really good start. And I think to sort of simply answer your question, there is a dramatic difference in unity at the table negotiating as opposed to individually trying to negotiate. I've - from my experience, it's a real struggle if you're negotiating in isolation.

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MR McAVOY: And that experience that - on your part and perhaps on the part of others in the Assembly is something that has been taken into account in forming the realisation that a State-wide treaty is appropriate for Victoria?

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MR STEWART: Yeah, I think that's a fair characterisation, yes.

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MR McAVOY: Now, while your - the Assembly has been undertaking the Treaty Negotiation Framework stage of its responsibilities, that's when the request to government to establish this commission of inquiry came about; is that correct?

MR STEWART: It kind of - it's hard to answer. Yes and no. I mean, we're negotiating substantive matters and our community were really keen on - we understand what your role is, but this is kind of what needs to happen, and it's our responsibility to represent that. So, yeah, during the consultations that we were - we were having, that, yeah, it was prominent and that's how it sort of come about, so - - -

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MR McAVOY: So perhaps it's best expressed - you correct me if I am wrong - as there being some connection between the creation of Yoorrook and the Treaty Negotiation Framework, but it was essentially - the establishment of Yoorrook came from the community via the consultations rather than a direct realisation from the negotiating team that a commission of inquiry was needed?

MR STEWART: Correct. The Yoorrook Justice Commission isn't an outcome of Treaty Framework Negotiations. It's an outcome of our community aspiration and drive to - for truth-telling.

MR McAVOY: The time period that has been allocated to this commission of inquiry is that a final report is due in July 2024.

MR STEWART: Yes.

MR McAVOY: Is there any particular reason for that timeframe or not?

MR STEWART: That would be a best question asked of the Minister for Aboriginal Affairs, because I personally would not agree with that timeframe. I think this needs to run much longer. Conversations amongst our elected members is that it needed to run longer, but that would be a question for the Victorian State Government.

MR McAVOY: And given that the evidence and findings of this Commission are intended to inform the treaty process, if the Commission were to run longer, would there be a need for further interim reports to galvanise some of the findings to make them useful for the treaty negotiation process?

MR STEWART: I don't - I mean, I don't have a yes or no answer to that. Perhaps, yeah. I mean, how, in a three-year period, do you unpack 200-plus years of colonisation and its contemporary effects that it's still having today and will have tomorrow? I - I can't - I struggle to understand how that is - is possible. And I think the treaty journey will continue for a number of years to come. We are going to see State-wide negotiations. Then we will see Traditional Owner - probably at the same time, I would imagine, Traditional Owner treaties, if not before.

There's going to be an evolution of negotiations that will see treaty negotiation probably happen for another 10 years. And truth-telling - I think what I've described earlier, what I've described in my evidence and what we've discussed today is - goes hand-in-glove to treaty making. And there's a prominent role of where that fits within that process. So - I mean, if that answers your question.

MR McAVOY: Thank you. I would like you to now look at paragraph 28 of your statement. I will just have you read it for a moment. In this paragraph, you discuss the impact of colonisation on the First Peoples of Victoria and the need for profound structural change, removing the shadow of colonisation. I first want to ask you, what do you mean by the shadow of colonisation?

MR STEWART: I think - well, I don't think - my statement talks to 230 years-plus of colonisation and the shadow that has cast over our people today, what it currently - what and how colonisation occurs today and how it will tomorrow. I think it's why we think system and

structural reform is critically important to treaty and to truth-telling. So if I was to - if it's okay with the Commissioners to read my statement 28, if that's:

5 *"First Peoples in Victoria live in the shadow of colonisation. It follows them whenever they go within Australian society, tarnishing all interactions they may have with the system and instrumentalities of the State. Accordingly, while targeted, issues-specific reforms may cast discrete beams of light into the lives of First People, only more profound structural change can remove the shadow of colonisation."*

10 MR McAVOY: So that profound change, that profound structural change, you then go on in paragraph 29 to say, "can only be achieved through a treaty which enshrines First Peoples' voice and power". Can I ask you, can you explain why it is your view or the Assembly's view that it can only be achieved through treaties?

15 MR STEWART: Treaty is the opportunity we have right in front of us now. I think if - most if not all Aboriginal people in the State of Victoria, if not across the country, will be aware or acutely aware of the history of broken promises from consecutive governments. I think there's an acute awareness of the unfulfilled recommendations of past Royal Commissions, past inquiries, past investigations. We - or - so, to your question - and as I spoke earlier, that  
20 only treaty will provide the dotted line signed by the government to hold it and future governments to account for our shared future. And that's the opportunity we see within treaty.

MR McAVOY: Now, you've referred to the enshrinement of the First Peoples' voice and power in the first sentence of paragraph 29. To some degree through that paragraph, you talk  
25 about the ways in which that power might be exercised. But when you talk about structural change that enshrines First Peoples' voice and power, what do you mean?

MR STEWART: If I could take a minute, because I refer to this later in my statement. If I could just take a minute to find my page?

30 MR McAVOY: If I can give you some assistance, at paragraph 134.

CHAIR: Counsel, do we need to have a short break?

35 MR McAVOY: We might just deal with this one issue, if that's suitable, Commissioner s, and then we can have a short break. As long as Mr Stewart is still comfortable.

MR STEWART: Yeah, I'm happy just to catch my thoughts on this and then take a short break, if that's okay, Commissioners.

40 CHAIR: Yes.

MR STEWART: Is it okay if I read section 134?

45 MR McAVOY: I would be grateful if you did.

MR STEWART: So as stated in my evidence:

50 *"Although the substance of any proposed State-wide treaty is yet to be determined, the Assembly considers that State-wide treaties should provide for fundamental reforms,*

*including constitutional change, to establish the structures and powers necessary for First Peoples to decide this issue - the issues that affect them. That may relevantly include the creation of new - a new First Peoples' representative decision-making body, whose decisions have the effect of law and who can hold government to account. Options for constitutional reform may include providing for consultation mechanisms between the new body and the Parliament of Victoria, the creation of seats - the creation of seats reserved for First Peoples in the Parliament of Victoria, and/or quotas for ministerial appointments."*

MR McAVOY: Thank you. I think what we might do, if it's convenient, is take a break now and I will have some questions for you on that topic when we come back.

**<ADJOURNED 11:01 AM**

**<RESUMED 11:17 AM**

CHAIR: Mr McAvoy.

MR McAVOY: Thank you, Chair. Mr Stewart, I did ask you some questions before the morning adjournment about the timeframe over which this commission of inquiry is presently scheduled, and you've expressed the view that it's too short. Are you able to indicate what an appropriate timeframe is from your perspective?

MR STEWART: An - I've - - -

MR McAVOY: How long do you think it should last? How long do you think it should run?

MR STEWART: I'm on the public record as saying that it should run as long as it needs to run, which probably is an unrealistic answer. And if my memory serves me of commissions, it may be the Truth and Reconciliation Commission in Canada and perhaps most famous Truth and Reconciliation Commission in South Africa based on the Apartheid, I think, ran between five to 10 years, maybe longer. I'm not - I mean, I - I don't think - I don't have the exact time, but I think - I think it's - three years is not long enough. And I think it needs to run longer.

And if that's between five and 10 - I mean, I don't want to put a number on it because it needs to achieve what it was designed and set to do. And if we truly want to meet the moment of what truth is set up to achieve in Victoria, then it will need to run as long as it needs to run. But I also want to be clear, that while this process was designed with us holding the pen and through negotiation with Government, at no point in time did we have any decision-making over how long this would run.

MR McAVOY: Okay. So certainly your view, from where you stand, is that it's going to take some time longer than three years?

MR STEWART: Absolutely.

MR McAVOY: But you are reticent to put a - a figure on it?

MR STEWART: I think I would - my personal observation - but I would hate to sort of cap it - would be that it would need to run a minimum, you know, probably, you know, six to 10



years, maybe seven to 10 years. But I think that - I want to be clear in what we have achieved through the First Peoples' Assembly of Victoria has been by representing the majority view of our community, and we would need them to be the decision makers around how long this would - would need to run.

5

And as I've stated earlier, it just fails me to understand how this - how you unpack 233 - or 230-plus years of colonisation, how you - how you unpack the past to understand the present in such a short window, and then how we provide the culturally safe and therapeutic responses for our community to heal, to be supported within that - within that timeframe. I - I don't - - -

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MR McAVOY: Thank you. I want to take you now back to paragraph 134 of your statement. In the last sentence of that paragraph, you set out some options for constitutional reform. Are you looking at paragraph 134?

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MR STEWART: I am now.

MR McAVOY: Okay. Thank you. The last sentence sets out the options for - some options for constitutional reform which are expressed as being options that may be considered. I take it from the way in which that sentence has been expressed that that's not a closed list or an exhaustive list?

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MR STEWART: That's correct.

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MR McAVOY: Is that form of - is the form of the constitutional reform something that's presently under discussion in the Assembly?

MR STEWART: That's correct. Which - yes, that's correct.

30

MR McAVOY: Okay. In - - -

MR STEWART: Can I just add some context. Through the conversations we've heard through our community - and it's been - it's been spoken about publicly, this notion of a Black Parliament or a voice, an expanded - an expanded voice. So through those conversations of First Nations' voice on First Nations' issue, that's the conversation that we have been hearing, but understanding that that will be subject to negotiation by the next Assembly.

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MR McAVOY: So you see that - these options being fixed upon in a State-wide treaty process. Is that the case? Or is it going to come before that - that time?

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MR STEWART: Just so I understand the question, if I was to say the State-wide treaty was to bring to life these options, is that consistent with what are you asking? Yes. Yes.

45

MR McAVOY: And so these matters are being considered within the Assembly. Are they matters that have been raised with the government at this point?

MR STEWART: With - at the risk of disclosing, you know, what's subject to negotiations with government and what are good-faith negotiations, there's numerous things that we're continually having conversations around but, you know, sifting through to where that sort of lands is a continual conversation. And - so the answer, in short, we obviously - everything we

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hear from community, we're working through of how that can be subject to negotiation. But as far as what's - what is on the table for negotiation, I wouldn't be able to disclose at this point.

5 MR McAVOY: I'm not asking you to disclose that.

MR STEWART: Yes, sorry.

10 MR McAVOY: I want to take you back to something that - a term you used a few moments ago. You referred to a Black Parliament. Can you just explain for Commissioners what that term is intended to mean?

15 MR STEWART: As I understand it of how it's been described to me through, you know, the conversations and the regular conversations I have with community, is that - it's also been described in other ways. That's one sort of description that I've used. But, ultimately, within the Victorian - I just probably need to go back one step to actually describe how I lay this out, and that - in Victoria, we've got an elected voice in the treaty journey: the First Peoples' Assembly of Victoria.

20 What will be negotiated by the next Assembly will be what a future voice will look like, with expanded responsibilities. And we see, you know, that voice expanding, which can be described as a voice; it can be described as a Black Parliament. I think it's been also - I've heard it being described as a Tribal Council, within our chamber and among our members. But where we land on, as far as we call it - I mean, I don't want to get stuck on what the name is.

25 But, ultimately, it's our highest level of representation for Aboriginal and Torres Strait Islander people in the State of Victoria who will be a First Nations' voice on First Nations' issues. Does that answer your question?

30 MR McAVOY: It does. So that - if I understand it correctly, Black Parliament is a term that is a slightly broad expression. There's no fixed model of Black Parliament that's being referred to when you use that term. Is that correct?

35 MR STEWART: That's correct.

MR McAVOY: But the - by using the term "Parliament", is it intended to convey the notion there is some law-making power?

40 MR STEWART: I think as I've kind of articulated within - sorry, I will just - as I've articulated in section 134, that the conversations and the present conversations that we've heard and we continue to hear are that a Black Parliament, a voice, or what we may call it - that, you know, what powers and the aspiration of what that may have, and with the principle that we've approached negotiations, that nothing is off the table, that law-making, you know, powers are a potential opportunity, a potential option and - - -

45 MR McAVOY: If that's - - -

50 MR STEWART: Sorry.

MR McAVOY: If I can just take you back to paragraph 134, the second sentence in that paragraph, starting on the fourth line reads - in relation to the structures and powers, it reads:

5 *"That may relevantly include the creation of the First Peoples representative decision-making body whose decisions have the effect of law."*

10 So that doesn't necessarily mean on its own law-making power. But it does mean that the decisions of executive government might be made by this body. Is it intended to convey to the Commission and the community at large that that sentence - that, in fact, there is - there are discussions around having law-making powers in that body?

15 MR STEWART: From what we're hearing from our community, yes. Which it's just important to stipulate that that's subject to the next phase of negotiations around the State-wide. It's not something we negotiate, but we - we have heard from our community. I've personally heard from community around this notion of a Black Parliament with law-making ability or can bring effect to law.

20 MR McAVOY: Can I ask you this: is - are you able to comment on the notion of First Nations or First Peoples having such powers in a - what we understand as settler states in other jurisdictions on an international basis?

MR STEWART: I could, but not probably in depth, and probably important to note that I'm no lawyer either. So if I plagiarise anything I do apologise in advance. But if I was to use - - -

25 MR McAVOY: Please go on.

30 MR STEWART: If I was to use a modernised example, I would point to British Columbia and their modernised treaty-making process where they have law-making ability over their treaty lands, and the exact, you know, decision-making and autonomy they have, or - kind of escapes me at the moment but that would be the - the example that I would - that I would point to. There's also the - from a State-wide treaty-making perspective, there is the Sámi Parliament.

35 So there is examples out there. There's examples of - not necessarily through treaty, but through executive order through the executive arm of government in the US, Arizona, the Pascua Yaqui or Tohono O'odham people who also have law making powers and abilities as well. So there's numerous international examples. I - - -

40 MR McAVOY: So the - what we can draw from that answer is that it's not something that is - is a new concept on - in the international arena?

MR STEWART: Not at all. I think it would be quite the opposite. It would be somewhat quite common across First Nations communities in a lot of countries.

45 MR McAVOY: The last sentence of paragraph 134 speaks about potential for the creation of reserved seats for First Peoples. You're aware that in New Zealand, the Maori have had reserved seats for some 160 years or 70 years? Is the Maori experience something that the Assembly is aware of and sees as a model to consider?

MR STEWART: Yes. But qualifying that statement, that it is subject to the next phase of treaty negotiation. But through - we had numerous conversations with, you know, Maori people and Tairāwhiti in New Zealand, around the reserve seats, how they work, how they function and the political power that they hold within, you know, that environment. And - and our community are acutely aware of that situation and that's whose predominantly driven it up to us through consultation, through conversations, through hearing the aspiration around, you know, the conversations of our community sitting there and having the opportunity to think about what life with treaty looks like. And that's a - that's a key aspiration that's come up.

MR McAVOY: Just going one step further in relation to paragraph 134, there's a reference to potential for quotas for ministerial appointments. Is that something that's also come from recommendations or consultations with the community?

MR STEWART: Yes. So we've heard that through our consultations. How - it is important to say how and what that may look like, we - we haven't had those conversations. Predominantly, the conversations we've had is the foundations: how do we build strong, robust, lasting foundations of a voice and what the mechanics of that voice may be. But we've kind of - well, we haven't kind of - I have - I've heard around the quotas for ministerial appointments amongst other things, but that is something that's been driven through conversations into our members throughout the community.

MR McAVOY: So is it fair to say that that issue, whilst it's been flagged, is something that's in its infancy?

MR STEWART: Very - very much so.

MR McAVOY: So if I can take you back to the front end of your statement, you talk at paragraphs 25 and 26 of your statement about the consultations that the Assembly has undertaken with First Peoples. And then at paragraph 30 - if I can ask you to turn to paragraph 30 - you say:

*"The Assembly has heard from our community that only truth can lay the foundation for treaty."*

We've had some discussion around this issue already. That's the message that the community has given to the Assembly. Is that correct?

MR STEWART: That's correct.

MR McAVOY: And so if I then ask you to turn to paragraph 34, you then set out a number of issues which the community or communities of First Peoples of Victoria have considered for inclusion in a treaty or treaties and if - if you look at - I think it's at the sixth line down, you will see there is reference to:

*"... resources and reparations; social services; health; healing; law and justice; Country and land; culture and identity; language; education; tackling racism and prejudice; and Indigenous data sovereignty."*

So do I understand that these are the issues that have come up in the consultation as being matters that the community wants the Assembly to pursue?

5 MR STEWART: It's not - this is not sort of an exhaustive list. It's not the final list. But these - these are matters that have come up through consultations. Our responsibility through the Framework is to set the ground rules and the schedules of what's subject to negotiation. So like we spoke about Black Parliament, ministerial quotas, resources and reparations, social services, Country also, you know, amongst a number of other things, these are what we're hearing, as our community are, as I've said, the key architects and the designers of this  
10 process. So this is what will be fed in.

MR McAVOY: So when you - you refer to resources being included in it a treaty or treaties, what is that a reference to?

15 MR STEWART: It's a number of different things. I think the way it's been described to us through the consultations and the way it's been described to me personally is it's - you know, it's a vast range of things. You know, what will shape the Self-Determination Fund, so resources in the monetary value. There is, you know, how do we lift the Aboriginal people up above the poverty barrier, who can't access housing. So resources can be determined as  
20 numerous things.

And what I think is - is important is probably the statement I spoke about earlier and that's this, you know, if we deliver true self-determination, it must be matched by economic independence for us to truly succeed, to thrive and to live a good life and have a good life.  
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MR McAVOY: We see that there is a reference to reparations. Reparations for injury to First Nations people is not something that's unheard of. Is that what's intended by the - in the consultation? Is that your understanding of what the consultations are seeking?

30 MR STEWART: That's probably the exact description of what we are hearing through consultations.

MR McAVOY: So we might come back to that later. I just want to go through the rest of these, so that we have an understanding of what the consultations have sought specifically. In  
35 terms of social services, what is your understanding of what the consultations have told the Assembly?

MR STEWART: I think - this is a big question of where do I actually start? You know, we think about the amazing work that our Aboriginal community-controlled sector do in  
40 Victoria, but completely strangled by funding and political goodwill and potentially bureaucracy decision-making that don't understand and don't know. So - so I think social services is - it's never been - well, it's an aspiration that's long stood in our community, to be able to deliver culturally safe, informed services for our people, and to be delivered by our people.  
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But we've seen, you know, a sector that's had to live off, you know, one to two, at best, funding - like, funding cycles and, you know, how do you actually get continuity and how do you plan as a service of how you're going to service this - the state's most vulnerable with such limited assurances and guarantees on how to do so? So one thing that prominently

comes up is that - how do we actually - and I've spoken about this earlier, but we've got a strong civil service sector in Victoria.

How do we raise that? How do we invest in that so we can deliver the outcomes that we have long sought, through, you know, what are - what is a service responsibility? They obviously sit within government, but they obviously contract the service out. But I think we've never had the political power or decision-making to inform that, and that's partly what we're looking at and what we're hearing through these - these, I guess, conversations we are having with treaty.

But it's important to also state that what we are - and what we hear and what we're seeing through consultations and what is - what's been brought to my attention is - it's not an attack on the service sector that we - we're delivering. It's the lack of resources going in to, resources that are dramatically needed. And I think if we look at a recent example - and I don't purport to speak on their behalf and it's probably best to speak to the Victorian Aboriginal Legal Service.

But a last frontier for our most vulnerable that isn't significantly resourced or invested in to, you know - you know, and they're dealing with people who are hitting the justice system, the criminal justice system, and I think - I think when we think about social services or our civil service sector, we've got to think holistically around the investment doesn't match the demand. And so then how can you actually take responsibility for delivering against outcomes that are continually growing. But I do sort of explore a couple of key topics in my - later in my evidence.

MR McAVOY: So you have spoken there about social services generally. That also, I think, picks up the issue of health and, to some extent, law and justice. I understand from your statement that there are a number of immediate urgent justice reforms that are needed, in the Assembly's view. I just want to ask you, what - what is meant by the reference to "healing" as a - for inclusion in the treaty processes?

MR STEWART: Pretty big. Pretty big topic. But if we use the Yoorrook Justice process as an example, which we see as a process of healing, as a process, at the end, of creating a - a better Victoria, a fairer and connected Victoria where our culture is celebrated, our identity. And I think just this - this understanding of our culture is no longer invisible or dismissed, that it's actually celebrated; it's taught in schools. So when I talk about or what we hear about healing, it's on a magnitude of things. It's therapeutic services and access to those.

There's - I mean, it's the experiences of trauma through colonisation for those who have directly been impacted or those who have been vicariously impacted. There's just - healing goes to a magnitude of different scenarios, but I think, from a holistic approach, it's probably - there's numerous elements. Yoorrook is one of them. But we can look at it from a service lens, we can look at it from a political lens, but healing is - is critical to the success of treaty.

MR McAVOY: So just exploring that a little bit, you've referred to healing in a way that suggests that it involves the whole of the Victorian community and not just the First Nations communities. Is that - is that correct or - -

MR STEWART: I refer to it in a way that - so if I'm to - in your question is how I understand reconciliation at the end of this process. So it's going to be both, you know. It's going to be Aboriginal and Torres Strait Islander people and our non-Indigenous fellow Victorians. And that's why a big part of what we have often communicated publicly is this notion of standing with us on our journey of truth and walking with us on our journey of treaty.

Because a reconciled Victoria is a better Victoria. It's a Victoria where we feel we all belong to and our kids and grandkids feel a connection and a sense of celebration and pride in identity of what this great state and what its true history is. So here - but when I also talk about healing, I talk about the 200-plus years of colonisation and how that is still present today, the healing that needs to happen amongst our community, amongst - you know, amongst our people, amongst each other, but also broadly amongst us as a community and the broader Victorian community as well into the future.

MR McAVOY: Can I ask you about the reference to "Country and land" as - for inclusion in the treaty of treaties. Clearly, a treaty process must involve some land justice. But am I to take it or can the Commission take it that the reference to "Country and land" is just - is broader than simply handing over land?

MR STEWART: Absolutely. And I probably just qualify - this is what we're hearing through consultation. We just qualify that "Country and land" will be subject to Traditional Owner treaty negotiations, and they will be the decision-makers on their country. But, yeah, absolutely, it goes hand in hand with our culture, our language. And it's more than just the transaction of, you know, handing land back. There's a deeper connection there and a deeper purpose of why it is so critical, land and country.

It's our waterways, it's our practices, it's our, you know, cultural heritage. There's just - there's a multiple - there's multiple sort of layers to that. And I just want to be cautious that I'm not portraying to speak on behalf of any nation in regards to that.

MR McAVOY: Certainly. It's understood that your answer is just reflecting parts of what have come up in the consultation process. Is it intended that this reference to "Country and land" also include the - the - what is often described as the obligations to country and the obligations to manage country? Is that wrapped up in this short reference?

MR STEWART: Absolutely.

MR McAVOY: And is - in your understanding, is that something that people talk about, are concerned about and in which the government could do better?

MR STEWART: Yeah, absolutely. I mean, we hear it from reserve seat holders on our Assembly. And, you know, the responsibilities over countries - country, our creation stories, protection of our waterways, our cultural fire. There's just - there's a magnitude of different - but all - all which falls into any nation or any clan or family group's lore, ultimately. It's their - it will be defined by them over their country. So - but to answer your question, in short, yes, it does incorporate that.

MR McAVOY: Just turning to "culture and identity". I wonder if you could explain how it is that a treaty process might include protections for accommodations of culture and identity.

MR STEWART: It's probably important to say that, for the purpose of laying out my evidence, it's hard to take any of this list in isolation. They're interconnected. So it's important, you know, when we talk about country, land, cultural identity, our culture, identity, language, healing they're sort of - it's kind of interconnected. Such is the nature of our culture and such is the nature of our nations, our clans, our family groups, lore - Aboriginal lore, that is.

So I think it all comes down to, to answer your question, is how that's interconnected with data sovereignty as well. And I wouldn't purport to be an expert on data sovereignty but, you know, culture and identity is best placed for our Traditional Owner groups, nations, clans and family - family groups to - to talk to. But it's something that we hear, you know, a significant amount through consultations and the - I guess the opportunities that are very minimal through native title, through *Traditional Owner Settlement Act*, through the *Aboriginal Heritage Act*, really leave this want and this, you know, unfulfilled desire to actually take control and agency and autonomy over country, culture, identity, language and what that means for any individual Traditional Owner group.

MR McAVOY: Is it - can the Commissioners take it that the fact that these issues have arisen in the consultation mean that people - that First Peoples and communities are concerned about protecting or are concerned that these issues are under some sort of threat and need to be protected in a treaty?

MR STEWART: Absolutely.

MR McAVOY: I'm going to ask you the same question that I've been asking about all of these topics about racism and prejudice. This is an enormous topic, I appreciate. It's something that's arisen in the consultations, obviously.

MR STEWART: Yeah.

MR McAVOY: It's a matter that you've listed here as something that might be considered for a treaty or treaties. Have - has the Assembly turned its mind to how racism and prejudice might be combatted in a treaty process?

MR STEWART: That's a very big question. I think it hasn't - I mean, it's very hard to answer how potentially it could be combatted through a treaty process, aside from the Yoorrook Justice Commission being one of the key and critical elements of education to - to help Victorians understand what our history - and I think, you know - well, I don't think; I know I lay that out in my early evidence around the - that importance of how do we lift, for some, the collective amnesia of or denial about what has actually happened in the State of Victoria, or what was known as the Colony of Victoria, to a big, big population of Victorians who want to stand with us and want to walk with us, but just aren't sure how they help - how they contribute and what role they play, how do they roll their sleeves up and do that?

But - but racism is so prevalent, whether it's through unconscious bias or whether it's the, you know, disproportionate impact of certain, you know, systems, structures, or western - western legal instruments on our culture, our people and our families that have continued, you know, to today, will be there tomorrow and have similar characteristics of early policing, early policies, law-making, back when invasion was at its - you know, at its peak.



I think, to attempt to personally answer that question through my own reflection because it's so big, the greatest opportunity to tackle racism, to tackle - to tackle that prejudice is through education. It's through the relationship of - that we have as First Nations in Victoria and our fellow Victorian. It's bringing that understanding of what's actually happened, and that's, I  
 5 guess, the - the point of - of truth-telling and what a reconciled Victoria looks like.

But, importantly, what does peace look like? Treaty is about peace and how do we bring peace to what's occurred over 200-plus years. And that's why treaty is so critical to addressing these fundamental wrongs that have occurred. But without treaty, what is now  
 10 called Victoria will remain, in our people's hearts, their minds, and in reality, the Colony of Victoria, if we don't deliver it.

MR McAVOY: So sort of just a moment ago you spoke of the similarity of the characteristics of the modern experiences of discriminatory treatment and the early colonial experiences. Do you say that the present day is a continuation of that which was brought here  
 15 when the colony was established?

MR STEWART: Yes.

MR McAVOY: And so with that in mind, it's - it can be understood that the - the changes that are sought to be made by the treaty process and the truth-telling commission are having to deal with systems and structures that have been in place for a very long period of time.

MR STEWART: Absolutely.

MR McAVOY: So I - can I take it from the firmness of your answer that you understand the size of the task?

MR STEWART: Absolutely. And if I'm to reflect on the amazing leadership and courage of the members of the First Peoples' Assembly - sorry, our members of, you know, our  
 30 Assembly, throughout that journey, throughout that design, but also their ability to meet the moment of what the aspiration of our community were for this enormous task ahead. And I don't need to tell any of our - the Commissioners here of how big a task that is and how important of a task it is.

But in saying that, there's the role that we play as the First Peoples' Assembly of Victoria. There is the role that the Yoorrook Justice Commission plays in that. But there's also the role that Victorians play in this, and they're critical. And we can't do that without them.

MR McAVOY: So I'm coming to that in a moment. At paragraph 35 of your statement, you talk about the - direct it towards the Yoorrook Justice Commission's Letters Patent, and you set out the background matters. And you discuss the - the - you note that the background as set out in the Letters Patent speaks of historic wrongs and ongoing injustices. In  
 40 commissioning this inquiry with those Letters Patent, does that signal to the Assembly some degree of goodwill on the part of the government to address these ongoing injustices and discriminatory conduct?

MR STEWART: I think - I don't think we can underestimate the amount of goodwill and the amount of courage for a government to step in to a process such as this with a mandate laid  
 50 out as it is, but be prepared to actually be part of this process, step into this process and

commit to this process. I think we often - we often forget how - I mean, there's often a bit of a disconnect of what some people understand as truth-telling and what we're actually doing here in Victoria through truth and justice and some of the modelling we'd actually gone through in developing the Terms of Reference in looking at Timor-Leste, looking at examples in Northern Ireland, the Apartheid, South Africa, Canada.

But it's a true testament to our community's will of wanting this and the leadership of our members, but Government's willingness to step into this is bold and hence why we've never seen it happen around this country before. So while I'm not here to give any accolades or pats on the back to Government, we can't underestimate - - -

MR McAVOY: Do you mean overestimate?

MR STEWART: We can't overestimate either, but we can't - - -

MR McAVOY: An understatement.

MR STEWART: Yeah, now, you're just confusing me. Anyone got a dictionary? I think this - to meet the moment of truth when we called for it is - is significant, and as I said in my opening speech, to be here at a hearing and see these hearings and to see the Commissioners is monumental. And we can't underestimate what that means for our communities who have long cried for this.

MR McAVOY: And so in meeting that moment, and rising to the challenge that the Assembly and the Government have set for this Commission and for itself, you've expressed in paragraph 36 the view that there are two important conditions that are vital to achieving the substantive redress for the wrongs done to First Peoples. The first being the process of truth-telling necessary to enable Victorians who are not First Peoples to genuinely see and understand the experience of First Peoples since colonisation. It's a condition, if I can put it this way, that seeks to enliven genuine empathy for the position of First Peoples in Victoria. Is that - is that a correct description of it?

MR STEWART: Yes.

MR McAVOY: And can you just explain to the - for Commissioners why it is so important that this condition is met in order to secure those better outcomes and a more equal relationship? That is, the understanding and empathy from the broader community.

MR STEWART: I talk to it in my - earlier in my evidence, and if I can just find my page, I wouldn't mind quoting.

MR McAVOY: So if I might help you, you discuss it in some greater detail at paragraphs 38 through to 44. And I'm happy for you to read and have a look at those paragraphs. But I was seeking, perhaps, in your own words to explain why. Why that is necessary that non-First Nations - First Peoples Victorians are fully engaged and come along in this process.

MR STEWART: I might just quickly read it, if that's okay.

MR McAVOY: Absolutely.

MR STEWART: And I hope that this would probably reflect my own words, even though I plagiarise the English language at the best of times. So - so I should have corrected myself and said "latter" in my evidence. I talk about it, because under 41 is a key point that I just wanted to - to emphasise and to, I guess, speak to your question around the importance, if I understand it correctly, of those two priorities is a relationship and relationship with our fellow Victorian moving forward. So I spoke earlier.

MR McAVOY: If I can perhaps do it this way, Mr Stewart. The paragraphs 38 to 44 are particularly pertinent to this inquiry. And they express sentiments that it may be very valuable for the public to hear and not just read. How would you feel about reading from paragraph 38 through to 44 for the Commissioners?

MR STEWART: I will be happy to. I'm happy to.

MR McAVOY: Could you start with paragraph 38 and it's under the heading of 'The importance of the truth-telling process'.

MR STEWART:

*"When the colonisers arrived on the lands that we - that are now known as Victoria, the traditional custodians of the land has already been here for over 60,000 years. By the advent of Colonisation, we had experienced - we had experienced millennia of successes and celebrations, of challenges and resilience and of stories passed down through generations about our people living on the land and speaking our language. When that rich and unbroken history met with Colonisation, we struggled for our survival against all odds. And despite the trauma and at injustice we had endured, our communities have shown incredible resilience and resistance.*

*Never has our sovereignty over these lands been ceded and never has it formally been recognised by a treaty. Our sovereignty reflects our ancestral tie between the land and First Peoples.*

*The means by which the colonisers sought to avoid recognising our sovereignty were violent, insidious and complex. (Some of those means are addressed further between sections 43 to 93.) In the two-and-a-half centuries since Colonisation, we have been fighting for our land, our culture, our language and our lives. We have been constantly regrouping in the face of seemingly insurmountable obstacles. The last two-and-a-half centuries of our over 60,000 years history have been brutal and unrelenting. They might - they might have destroyed us. But the tenacity, the strength, and the resilience of First Peoples have brought us here. We are still here and we aren't going anywhere.*

*The Commission was born of the Assembly recognising through generations of activism that you cannot build a house on rotten foundations - that is, that truth-telling is critical to enabling First Peoples and other Victorians to chart a course together for how to address the devastating impacts of Colonisation on Victorian First Peoples, through structural change. In this respect, the Assembly learned from its consultations with First Peoples that there was an overwhelming desire to tell our stories and to be heard. That desire formed the basis of the Assembly's advocacy of the State to establish the Commission. And the input received from First Peoples as part of the Assembly's consultation informed the mandate and the structure of the Commission, as designed in negotiations with the State.*

*In establishing a public record based on First Peoples experiences since Colonisation, the Commission will not start - sorry, the Commission will not start from a blank slate. But the need for truth-telling in this moment partly arises from the limited and often misled way in which our history is addressed in mainstream dialogue. The colonial nation-building project in Victoria was built on false methodologies about the 'civilising' mission of the colonists. Australian children were not taught the full history of what our people have experienced at the hands of colonisers, and the brutal aspects of our experiences are seldom acknowledged in discourse outside the First Peoples Community. The silence does not -"*

Sorry, I've lost my space:

*"The silence does not disservice to all Victorians because it prevents us from moving forward."*

Sorry:

*The silence does a disservice to all Victorians because it prevents us moving forward together. It allows false methodologies to persist uncorrected. By sharing our history and our truths, the Assembly hopes that they will become everybody's history and everybody's truths.*

*However, truth-telling is not a process unique to this moment. Rather, truth-telling has been occurring for generations with our community and is an important part of our history. Truth-telling was also central to the Uluru Statement from the Heart.*

*Nor is truth-telling intended to inflict shame, torment or retribution on Victorians who are not First Peoples, or to allow us all collectively to wallow in the injustices of the past. Instead, the truth-telling process is necessary to step towards reckoning with our past, committing to unpicking the tangled impact of Colonisation facing First Peoples today, and to motivating us all to do better. To be better. Indeed, the intention of the Commission's truth-telling mandate is that it gather evidence to create a comprehensive public record of our - of our historical and ongoing oppression and dispossession, so that evidence and public record may be the blueprint for how to repair the structures that continue to - to repair the structures that continue to oppress and dispossess us. Truth and justice must go hand in hand."*

To 44.

MR McAVOY: Thank you. The last paragraph that you read, paragraph 44, is one that invites the reader to look forward, to think about a future. Is it one that requires or invites hope for a different future?

MR STEWART: Yes, it is.

MR McAVOY: And is it fair to say that - that hope is something that is deeply embedded and invested in the work of the Assembly?

MR STEWART: Yes. It is.

MR McAVOY: The way in which the truth-telling process is described in paragraph 44 might be characterised as being a bit utilitarian in that it talks about it forming the blueprint for how to repair the structures that continue to oppress and dispossess First Peoples. But I think when it's read in the context of the earlier paragraphs, it speaks of correcting the - of

5 correcting the record. And does that not invite an element of social change and bringing the rest of the community with us all?

MR STEWART: In short, yes. If - treaty is about peace. It's about a reconciled Victoria. It's about all Victorians - First Nations Victorians and the broader Victorian population. So, to

10 shape a better future for the better and to be better, it requires all of us.

MR McAVOY: Does the sustainability of political change depend, to some extent, on the social conditions and social change occurring?

MR STEWART: I mean, it's - the best way I can answer that question is treaty is bigger than politics. Treaty is about all Victorians and First Nations Victorians. So it shouldn't be, because it's bigger than all - it's bigger than politics.

MR McAVOY: I'm just wondering, in terms of then achieving that social change, does the

20 Assembly have a role in driving that change? Or is its role elsewhere?

MR STEWART: I'd - my initial - sort of my - the first thing that comes to mind is we all have a role. The Assembly has a critical role in that. Yoorrook Justice Commission has a critical role in that. And Victorians have a critical role in that. I think when we often describe the notion of standing with us and walking with us and that, you know, many may want to be

25 part of that social change and roll their sleeves up, but some may only want to dip their toe in the water, some may want to dive straight in. Some may not know what their role is.

And I think what's important is that the door is open, the time is now, and we - we sit on the verge of history of - of making history here, and social change will come from everybody contributing. And that's what's important.

30

MR McAVOY: You accept, though, that the Terms of Reference or the Letters Patent for the Yoorrook Justice Commission place the - the pursuit of that social change fairly firmly within the Commission's court, if I can put it that way?

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MR STEWART: Sorry, can you say it again? I couldn't hear.

MR McAVOY: I am suggesting to you that the Letters Patent for the Yoorrook Justice Commission place the pursuit of the social change that's envisaged firmly within its ambit and remit.

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MR STEWART: Absolutely. And a way how we've described that is the Yoorrook Justice Commission task is to gather the evidence and treaty and First Peoples' Assembly is to deliver the reforms.

45

MR McAVOY: But you would also accept, that notwithstanding the Yoorrook Justice Commission came into being as a result of the request from the Assembly, that what's being established under the Letters Patent has a far broader reach than informing the treaty process alone?

50

MR STEWART: Absolutely.

5 MR McAVOY: Would you accept that the history of Victoria and the rest of the continent has been that the broader public has been resistant to historical narratives that reflect First Peoples truths?

MR STEWART: Yes, I would.

10 MR McAVOY: You've heard the expression "conspiracy of silence" as it relates to the reports of massacres? You are nodding your head.

MR STEWART: Yes, I have.

15 MR McAVOY: The - the - we know, though, that - that there is the capacity for the community to - the broader community to accept changes. If I suggested to you that one of the examples of the way in which that's occurred is the resistance that we - that was experienced in relation to the notion of there being Stolen Generations, would you agree that there was resistance to that - that terminology and the existence of people who are now  
20 readily understood to have been from Stolen Generations?

MR STEWART: Absolutely. I mean, we look to the false claims of *terra nullius* as to an example of that as well.

25 MR McAVOY: And through processes, the court processes or inquiry processes, once the facts come to light in an appropriate way, there has been some shift in community understanding. Do you accept that?

MR STEWART: Broader community?

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Mr McAVOY: Broader community.

MR STEWART: Yes. Probably - I would want to say one thing on that. I agree with the broader shift, but that shift could have been vastly different if it wasn't significantly restricted  
35 by previous governments. And we only have to look at the number of inquiries, Royal Commission reports, where the same themes keep coming up, that the same decisions keep getting made and that's not to act.

40 MR McAVOY: So are you saying - I don't want to put words in your mouth, but are you saying that the - that there are - whilst there are occasions where the presentation of evidence and the making of findings have resulted in shifts in community understanding, that's not uniform and there are many cases where such processes have failed to bring about a result?

45 MR STEWART: No, I wouldn't say processes have failed to bring about results. I would say government goodwill and lack of leadership have failed to bring results.

MR McAVOY: Commissioners, I'm about to go on to the next point. Is it a suitable time to break for lunch?

50 CHAIR: Yes, I think so.

MR STEWART: Great.

MR McAVOY: Thank you.

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10 MR McAVOY: Thank you, Chair. Co-Chair, before the lunch break, I was asking you some questions about the characterisation that you've given to the truth-telling process as being one of the conditions to - necessary to achieving substantive redress for wrongs. The second condition you've set out at paragraph 45, which is the importance of the State taking responsibility for the past and future. Can you see paragraph 45 in front of you? Given the  
15 importance of this paragraph, I might ask you to read it if - if you're happy to do that.

MR STEWART: Just 45?

MR McAVOY: Just 45.

20

MR STEWART:

25 *"While truth-telling will help us find the path forward together, meaningful change cannot be achieved without the State first accepting responsibility for the past and for our future. In this respect, the State - and the Colony of Victoria before it - played a critical role in the dispossession of First Peoples, and in the - and in perpetuating injustices inflicted upon First Peoples by the colonisers. Unless the State accepts responsibility for past wrongs, the formal instruments of the State cannot be fully brought to bear. Unless the state accepts responsibility for the past wrongs the formal instruments of the State cannot be fully be brought to  
30 bear - with open eyes and open minds - on the task of making good on those wrongs and implementing reform to ensure they cannot be repeated. Those formal instruments including legislation and public funds, but the most significant of all is Treaty. Only Treaty will provide the dotted line, signed by the Government, to hold it and future governments to account for our shared future. The State acknowledging responsibility for both our past and our future is  
35 a necessary first step towards - necessary first step on the road to Treaty. Without Treaty, what is called 'Victoria' will remain in our people's hearts, minds, and in reality, the Colony of Victoria."*

40 MR McAVOY: Thank you. Now, in that paragraph, you discuss the need to hold the government and future governments to account for the shared future. Yes.

MR STEWART: Correct.

45 MR McAVOY: And do we take it that, notwithstanding the expressions of goodwill which can be read into or inferred by the Letters Patent, you don't take it as any guarantee that future governments will feel the same way?

MR STEWART: That's correct.

MR McAVOY: How important is bipartisan support in the democratic system that exists in Victoria?

MR STEWART: It's - I mean, it's critical, but also what's critical is a relationship that crosses the aisle with both, you know, parties that can form government. That's what's critical. Because as I - as I mentioned earlier, treaty is bigger than politics, and treaty is about all of us. So the government of the day will always be a critical partner in - any sort of relationship with the First Peoples' Assembly and with treaty. But holding to - holding them to account in reaching that peace agreement which is treaty is - is absolutely critical for success.

MR McAVOY: And so the treaty is seen as a mechanism that has an enduring feature to it that outlives the political cycle.

MR STEWART: Yes.

MR McAVOY: But is it also the case that, to date, the political support in Victoria has been - has not been bipartisan?

MR STEWART: Well, up until today, that's correct. But today we have saw a public statement from the Victorian Opposition in support of treaty and in support of self-determination, which is, I guess, a true testament to this work, a true testament to the enduring future relationship that First Peoples and broader Victorians can have. And so this day, in a sense, is historic because treaty is very much normalised in a political sense and in the hearts and minds of Victorians now.

It's a journey that we all go on to create a better future, a better Victoria, and it's an absolute credit to the Opposition for making a clear-cut decision to stand with us and walk with us on this journey like our fellow Victorians have done.

MR McAVOY: And so is it - is this change in policy from the Opposition something that you were expecting?

MR STEWART: I think it's important to say through the work that I've been doing as Co-Chair and through the volume of work that Aunty Gerr has been doing as Co-Chair, we have heavily focused on our relationship with the Opposition and our political engagement. It's critical. At this point in time, we are building the architecture. You know, you could describe what we are trying to negotiate is negotiating somewhat from a point of poverty, because we have no infrastructure under us other than, you know, our community's drive, the aspiration.

The saying that we stand on the shoulders of giants, being our elders and ancestors, is absolutely correct. That's what we are building momentum off. But right now we're a company limited by guarantee, but we are an elected voice. So the productive working relationship that we've had with both sides is critical to - to success. Was it a surprise? It was a surprise. But the engagement we've had has been really productive, and - well, it's been productive and it's been - it's been good, in a sense, because we've been working through the mechanics of, you know, what this potentially could be, which is important.



So it's a surprise that, you know - the best way I can describe it is it's a surprise that I never thought I would live to see a day where we would have bipartisan support for treaty. I didn't think my son would see that. So, it's significant.

5 MR McAVOY: Is it something that signals that the treaty process can shift into another gear, if I can use that term - metaphor. So there's necessarily been a focus on ensuring the support that's needed at a political level. Does that allow you, then, to - the Assembly, then, to move into or focus on to other areas?

10 MR STEWART: I don't - I think the areas of focus haven't been driven by politics. They have been driven by our community's aspiration. What it means now is that we have the opportunity for anything we build to be sustainable, to be enduring, and that we can look to bring all Victorians along. And that's not saying that we were thinking we were going to bring part of Victoria, but it sort of - it takes a lot of anxiety, a lot of tension and a lot of  
15 stress out of the work we're doing.

Now, that doesn't mean we get complacent and we're not ambitious, because this is a two-party negotiation, and we will negotiate and work in good faith with the government of the day. But we will also make sure we have got strong, robust and frank relationships with  
20 any Opposition as well. But what it does now is it demonstrates that, you know, all sides of politics are going to stand with us as we go through the process of truth and as we go through our journey of treaty, that they will walk with us.

And, you know, that pathway is yet to be - yet to be walked. Some of it, we don't know - I  
25 don't know. We will find out in the next, you know, evolutions of the Assembly. But what's - what's important is that the notion of reconciliation, relationship and partnership is - is truly respected in how we are - how we approach this into the future.

MR McAVOY: I want to take you now to the discussion in your statement at  
30 paragraph - sorry, at paragraph 50 regarding historic dispossession. At that paragraph, you observe that prior to Colonisation, First Peoples occupied every part of Victoria, but that from the 1830s, European occupation commenced and gradual displacement occurred. In paragraph 52, you then go on to refer to the work of Emeritus Professor Judy Atkinson, who is an expert in trauma, First Peoples trauma.

35 And she, in that paragraph - paragraph 52 - speaks to various stages of the Colonisation process. And I will refresh your memory. You cite that they include - the stages include physical violence, which is invasion, disease, death, destruction; structural violence, which is enforced dependency, legislation, reserves and child removals; and psycho-social dominance,  
40 which is cultural and spiritual genocide.

Because you have included that summary of Professor Atkinson's work in your statement, can we conclude that you agree with those characterisations of the various stages of Colonisation? Is that something that rings true with you?

45 MR STEWART: Yes, it is.

MR McAVOY: And do you have, from your previous worklife, particular knowledge about the effects of trauma on First Nations people?

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MR STEWART: I - I do, in a sense, but it's going back quite a while ago. But I did - I did work in that field.

5 MR McAVOY: Your knowledge, though, both firsthand and perhaps learned knowledge, would be at a much higher level than the average community member?

MR STEWART: I - I was trained in that field so, yeah, perhaps.

10 MR McAVOY: I could tell you that in this Commission, we've heard from the very first witnesses about trauma and intergenerational trauma, and I've discussed this with you earlier today. From the - from the Assembly's perspective, how widespread do you think the effects of trauma and intergenerational trauma arising from the Colonisation processes is in the First Nations community - First Peoples communities?

15 MR STEWART: I - from my previous work and understanding, I would - if I think about intergenerational trauma, I think about vicarious trauma. I would struggle to see how trauma from a global sense hasn't potentially impacted every Aboriginal and Torres Strait Islander person in the State, probably let alone country, based on invasion, based on the human rights violations, based on the genocide that occurred on our shores against our people.

20 MR McAVOY: Do you think that the extent of the nature of trauma within First Nations communities is well understood by the broader community?

25 MR STEWART: No.

MR McAVOY: Do you think that the lack of understanding affects non-First Peoples' perceptions of First People?

30 MR STEWART: Absolutely.

MR McAVOY: Do you see it - or does the Assembly see that, in part, that it's the role of this Commission to identify and make recommendations as to the mechanisms to ameliorate the effects of trauma and the perceptions held by the wider community?

35 MR STEWART: Absolutely.

40 MR McAVOY: At paragraph 54 of your statement, you set out some forms of harm that have been meted out or used in the dispossession process. Of those, a number are of the type that might be regarded as systemic and operational in the sense that that's a part of the process of a colonising government. But there are also a number that are of the type that are perpetrated by individuals. So, by this, I mean the reference to massacres, the references to genocide, the reference to human slavery and domestic servitude, and the reference to rape and sexual violence. They are the sort of things that are perpetrated by individuals; do you accept that?

45 MR STEWART: Yes.

50 MR McAVOY: We've touched on this before, but the Assembly - does the Assembly have any view about whether there is also some need for acknowledgment of harm by the broader community and by individuals?

MR STEWART: If my memory serves me correctly, during the design of the mandate, these were prominent conversations, especially when we were looking at the South African Truth and Reconciliation Commission. A key priority in the work we were doing was justice, but also, you know, understanding there will have to be a process of reconciliation. And we believed our priority was for our community to come forward and speak their truth. But to answer your question, in short, yes, but our priority was for our people to come - come forward.

MR McAVOY: And do you consider or does the Assembly consider that, having had this process being conducted for the treaty process being conducted for a number of years now, across a general election and with today's news of bipartisan support from the Opposition, is that, in some way, a - an acknowledgment by the broader community of the validity of the claims to harm?

MR STEWART: I think there's a fair argument to say that, yes.

MR McAVOY: If we can turn to paragraphs 56 to 60. Those paragraphs of your statement appear under the heading Massacres, Battles and Conflict. You refer in those paragraphs to some of the massacres of the First People that are known to have occurred, and you cite the work of the University of Newcastle in paragraph 57, in which frontier massacres are described as "a defining strategy to eradicate resistance to the invasion." Can you see that?

MR STEWART: Yes.

MR McAVOY: Do you accept that that characterisation by the University of Newcastle is appropriate or correct?

MR STEWART: I do.

MR McAVOY: So that it's - by accepting that, it indicates that - that the process of massacres, whether they were performed by State agencies or by third parties with the sanction or the acquiescence of the State, was a part of a broader strategy to move or - First Nations people off their lands and to - to dispossess people generally?

MR STEWART: I would probably go one step further, in saying there was probably and potentially a more sinister objective than that. And I think why I say that is you look - or if we think about any resistance was seen as a criminal offence, I think the observation or assessment that it was an attempt to move them off their lands, I think it was more of an exercise of somewhat extermination.

MR McAVOY: So acts of genocide in order to acquire territory?

MR STEWART: Yes. A win-at-all-cost exercise.

MR McAVOY: And is the - the second stage of the process as identified by Professor Atkinson the one where - involving the removal of children from families, is that consistent with the notion of eradication of the original landholders?

MR STEWART: I'm not sure how it wouldn't be.

MR McAVOY: You've spoken of, in those paragraphs that I've just referred to, 56 to 60, of a number of massacres of which you're aware of. Are there any in particular that stick in your mind as being illustrative of the way in which dispossession was effected in Victoria?

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MR STEWART: I mean, just to qualify my statement, I think it's important - I mean, we're aware of the massacres that happened throughout Victoria and the south coast - or south-east coast. My job is not to speak on behalf of any nation or any individual or family that's been directly impacted by these events, and I think it's important that they have the opportunity to come forward and tell their stories and talk to that intergenerational trauma that's been inflicted and what that might represent.

10

But I think what's prominent in our mind is, you know, there's some key massacres that happened, you know, upon - you know, from 1830, when colonisation started to begin, and that resistance of how it was criminalised to how we see police behaviours, how they operate now, and, inherently, that relationship is still the same amongst our community members and the - and the police. So without going into specifics or one example in particular, I think - I would hate to elevate one ahead of the other, and I think it's important that we have the opportunity for our nations, you know, clans, our families and those impacted to come forward and do that. And I think the work that the University of Newcastle have done in mapping and setting that out is - is - is really powerful.

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MR McAVOY: Respecting your wishes not to discuss other people's ancestors, I would ask you to turn to paragraph 63 and where we pick up on the concept of colonial policing and the relationship that was established between the police services and First Peoples. Can you just have a look at that paragraph for a moment. So I suggest to you that the - the paragraph in total is - has a particular power in it, but that the - the sentence which refers to policing as a "tool of political suppression, which labelled resistance by First Peoples as criminality rather than dissent by sovereign peoples", is particularly telling.

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And that's - that is made more so when, later in the paragraph that you make the observation that there is a direct line between the colonial - early colonial policing practices and the contemporary criminal justice system. By - by that paragraph, should the Commission take it that you're saying - your evidence is that it's your observation or the Assembly's observation that First Peoples in Victoria are currently policed in a way which is - reflects a relationship that fails to understand the dissident nature of Aboriginal peoples' existence?

35

MR STEWART: Yeah, I think that's - that's an accurate assessment. And we have spoken in the past, you know, amongst our members, and how we - how we describe truth-telling bringing the past into the present and I think policing in the State of Victoria is I have much a reflection of that and, if it's okay, am I able to read section 63?

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MR McAVOY: Paragraph 63 certainly.

45

MR STEWART:

*"Colonial policing models reflect the believe that First Peoples were inferior and criminal. Policing was used as a tool of political suppression, which labelled resistance by First Peoples as criminality, rather than dissent by sovereign peoples. And this fundamental relationship between police First Nations people in Australia has remained unchanged to this*

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*day. First Peoples are persistently over-represented at all points of the Victorian justice system, and there is a direct line between structural conditions of colonisation, including policing practices, and the contemporary criminal justice system which continues to 'reproduce marginalised peoples as criminal sub-groups'."*

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MR McAVOY: And so it's the case, isn't it, that the rate of overrepresentation in incarceration for First Nations people continues to rise at greater rate than the rest of the community?

10 MR STEWART: That's correct.

MR McAVOY: Is it necessary to - to see some sustained reduction in that - the overincarceration rate for these structural conditions and policing practices to be addressed?

15 MR STEWART: Sorry, do you mind asking that question again?

MR McAVOY: Is it necessary for these structural conditions of colonisation and policing practices in particular to be addressed in terms - in order to see any sustained reduction in the overincarceration rates, or the growth of the overincarceration rates?

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MR STEWART: Absolutely.

MR McAVOY: And are you familiar with the recommendations of the Royal Commission into Aboriginal Deaths in Custody?

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MR STEWART: Yes, I am.

MR McAVOY: And so you are familiar with the underlying issues which were the subject of a large part of that report. Is it fair to say that many of those recommendations in relation to the underlying issues were aimed at trying to address the Colonisation - the structural conditions of Colonisation?

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MR STEWART: I think it was a fundamental feature, and, I mean, I should qualify my statement by saying I'm not familiar with, I think, all 334, from memory, recommendations.

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MR McAVOY: I was going to ask you to provide us with the recommendation number.

MR STEWART: But I think what many of our community members are familiar with is those that haven't been implemented, and I think there is roughly 30-odd, from memory, maybe more. Including - or, up until recently, public drunkenness in - or public intoxication in Victoria. But, in particular - which has come out through numerous inquiries, numerous report, including the Royal Commission into Aboriginal Deaths in Custody - which is independent police oversight.

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MR McAVOY: I will come to both of those issues. In talking about the historic dispossession, you cover in paragraphs 64 to 66 forced child removal, and I've asked you a question about that. You also cover forced relocation and detention on missions and in reserves. I want to, however, take you to the next section of your statement dealing with dispossession by classification. In that section of your statement, you refer to the 2011 report by the then Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda.

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And you've identified that that report refers to disempowerment by loss of autonomy, as well as loss of land. That's something that you feel is applicable to the Victorian circumstance?

MR STEWART: Yes.

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MR McAVOY: And you refer to colonial power structures resting on the premise that white European colonists were superior to First Peoples and to their culture and traditional systems of governance. That report from the Social Justice Commissioner refers to that process of disempowerment also leading to lateral violence within communities. Is that something that

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MR STEWART: Yes.

MR McAVOY: This process of control of removal of autonomy of First Peoples involved the use of a blood quantum calculations in order to try and classify First Peoples. Can you just explain to the Commissioners how - your understanding of what that means?

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MR STEWART: So - I missed the start of your question. Can you just - - -

MR McAVOY: I'm sorry, I will try and - I will keep my voice up. The - paragraph 70 refers to the - to legal force by colonial legislation and being given to systems which included blood quantum calculations for identification and classification of First Nations people. I just - I just wanted to know whether you could expand on what the blood quantum calculations were to any degree?

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MR STEWART: It was a - a colonial instrument of how they basically tried to destroy our culture, destroy our families and destroy our community, along with - you know, within the *Half-Caste Act* around the shade - or the colour of your skin, very similar to what's seen around the world. There was a time of where blood quantum was how they tried to determine if someone was - was Aboriginal or Torres Strait Islander or not. Well, in particular in Victoria, if they were Aboriginal.

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MR McAVOY: And following on from what I raised with you earlier about the lateral violence internally, that use of division within the community has effects across community?

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MR STEWART: Absolutely.

MR McAVOY: And the treaty process or the entry into treaty is seen as one mechanism for addressing the powerlessness of First Peoples in Victoria?

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MR STEWART: Do you mean from a - an internal sense? So, I mean, across community or, I mean, as far as - because, I mean, it all connects back to political suppression and instruments that were use by then colony, now state, of where - and I spoke about earlier in the day, if we are going to take responsibility and identity that the State will suddenly continue as is or might even step further into the space, but is that - in that sense, is that what - - -

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MR McAVOY: Yes.

MR STEWART: - - - you are asking?

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MR McAVOY: Thank you.

MR STEWART: Yes. I'm not sure what I can further add.

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MR McAVOY: Thank you. So at paragraph 73, you talk about the processes which have uniquely affected First Nations women. Is it the case that the targeting of women is a fairly common feature of European colonisation processes?

10 MR STEWART: Yes. Yes, sorry.

MR McAVOY: And - so just - I don't know whether you will be able to answer this, but does that have a particular effect that you've been able to observe or that the Assembly feels the need to respond to or address in its work in ensuring that First Nations women are particularly catered for?

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MR STEWART: It wouldn't be something I - I would speak to. That would be the responsibility of, you know, Aboriginal women coming forward to this hearing and perhaps seeking further information on - on that matter. We've talked about it in a sense of connecting the dots, but I wouldn't be in any position to speak on behalf of Aboriginal women, nor would I be in any position to speak on behalf of our LGBTQIA-plus community or First Nations people with a disability, who we would also encourage to participate in this process.

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MR McAVOY: But - and as you've just said, it is something that the Assembly encourages this Commission to investigate and inquire into.

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MR STEWART: Wholeheartedly.

MR McAVOY: You - at 75 and 76, you discuss briefly data sovereignty, but you discuss it in some more detail later in your statement, and I will come to it at that point. What I want to ask you about now is this ongoing - this notion of ongoing dispossession through law. And you've provided at paragraphs 77 and onwards a great deal of detail about the way in which the *Native Title Act* and the *Traditional Owners Settlement Act* have operated and the failures - the failure of those pieces of legislation to provide the land justice that is - was perhaps intended.

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Your statement is quite critical of the failures of the native title process for - in providing justice for Victorian Traditional Owners. Is that informed by your knowledge as - from your role at the Federation of Victorian Traditional Owners or is it broader than that?

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MR STEWART: It's broader than that.

MR McAVOY: And so in what - what other sense have you applied information about the - - -

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MR STEWART: In the context of being a participant in native title processes, along with my family and in the context of when I was working for Taungurung Land and Waters Council, my Traditional Owner nation.

MR McAVOY: And so your observations include being - are drawn from your position as a native title claimant? You have made some observation about the way in which the decision in *the Yorta Yorta Aboriginal Community v State of Victoria* impacted on Victorian First Peoples and their - their confidence in the native title processes. The Yorta Yorta case was the first native title matter tried in Victoria. As we are aware, that case was unsuccessful.

The point that you've raised at paragraph 79(a), though, is as regards - goes to the - what you've termed the "validation of colonial policy for forced and violent removal of people from country" as being something that can be taken into account in a - a negative way in terms of the maintenance of connection to country. Can you just explain what the consequence of that decision is in the Victorian context?

MR STEWART: Won't speak to - I will speak to the sort of ripple effects as felt through my nation, but I won't purport to speak on behalf of that case or any other cases. But I think - we think about a process of native title that, based on the policies that we've heard today about the forced removal or removal from country and then being requested to go down a process using colonial research to prove connection, documented connection of them forcibly removing you in order to achieve any level of rights, I think - it just sets up these numerous barriers and opportunities for failure, especially within Victoria.

And we think back - potentially over the last 20 years, I think there's been three successful determinations under the *Native Title Act* within Victoria. We think about - on the back of the negative determination and the creation of the *Traditional Owners Settlement Act*, which was supposed to be a better alternative - I think it's been around roughly nearly 12 years, with two successful settlements to date - and very much was set out and had the aspiration to achieve better outcomes, but was met with the same sort of consequences for Traditional Owners and the same outcomes - not for all, but for some. And I acknowledge the - you know, the successful claims and settlements. But I think what it's demonstrated is there is still a lot of work and a lot of improvement that needs to happen across the board.

MR McAVOY: Can I just take you back to the *Native Title Act*?

MR STEWART: Sure.

MR McAVOY: The consequence of there being only a small number of positive native title determinations is widespread. But it also has an effect on the capacity to access native title compensation for loss of rights. Yes?

MR STEWART: Yes.

MR McAVOY: And so the levels of compensation that might be able to be acquired by people in other parts of Australia are particularly out of reach for First Peoples in Victoria?

MR STEWART: Completely out of reach.

MR McAVOY: The other observations you make about the *Native Title Act* is that unlike the *Aboriginal Land Rights Act* in New South Wales or the *Aboriginal Land Rights (Northern Territory)* legislation, the native title doesn't provide for tenure. Doesn't provide for the delivery of the ownership of any land.



MR STEWART: Correct.

MR McAVOY: What does that mean for those Victorians who do - are able to successfully prosecute a native title claim?

5

MR STEWART: What does it mean those who have - - -

MR McAVOY: Who have won their native title?

10 MR STEWART: Well, I wouldn't purport to speak on behalf of those nations, but, I mean, it's - I guess we can't - we can't - - -

15 MR McAVOY: Can I ask you just at a general - as a general proposition, because of the extent of extinguishment in Victoria through previous land dealings, the rights that are usually recognised are largely almost entirely non-exclusive rights, and they are rights to hunt and fish but not own the land or waters.

20 MR STEWART: Correct. Under native title. A little bit different under the *Traditional Owners Settlement Act*, where - - -

MR McAVOY: We are coming to that. One of the other aspects that is seen around the continent is the use of resources for commercial purposes. Is that something that is - has been able to be achieved in Victoria, to your knowledge?

25 MR STEWART: Not to my knowledge, no.

MR McAVOY: So that economic aspect of the native title process doesn't tend to extend to Victorian First Peoples.

30 MR STEWART: Not to my knowledge, no.

MR McAVOY: So I want to come now to the *Traditional Owners Settlement Act*. I know you have been wanting to discuss this. I - I - can I ask you how this Act is known in the First Nations community?

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MR STEWART: The Tosser Act.

40 MR McAVOY: Are you - I will ask you this. It's often said that humour is used in First Nations, First Peoples communities to deal with the anguish and suffering of trauma. Is it your observation?

MR STEWART: Absolutely.

45 MR McAVOY: And using names such as the Tosser Act for the legislation that's supposed to deliver land, is that consistent with that?

MR STEWART: Sorry, say that again.

50 MR McAVOY: Is that consistent with that use of humour?

MR STEWART: Yeah, I think, and I think it's also an accurate observation of what government served us up. But you do - I just might make the point, you do actually get land back through the Tosser Act, land of no economic value and surplus that the Crown doesn't want. So it's actually a very generous process. Sorry.

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MR McAVOY: I'm going to ask you a few more questions about it, but I think Commissioner Atkinson wants to ask a question.

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COMMISSIONER ATKINSON: Thank you, Counsel. I just want to make a correction to the 85:

*"The TOS Act attempted to (a) develop a flexible approach to prior extinguishment and issues of rigid connection requirements established by Yorta Yorta ..."*

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And change that "by the injustice of the decision in the Yorta Yorta case."

MR McAVOY: Thank you.

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COMMISSIONER ATKINSON: That's why the title is misconstrued.

MR McAVOY: Thank you.

COMMISSIONER ATKINSON: Yeah. No reflection.

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MR McAVOY: Thank you. So at paragraph 86, you - you note the intentions of the *Traditional Owners Settlement Act* to - to perhaps get around the rigid requirements of the High Court decision in Yorta Yorta and provide an efficient method for the resolution of claims. But then you raise a number of issues as to why that hasn't been achieved. Can you just perhaps have a look at that at paragraph 86 and then explain to the Commissioners your observations about why that legislation hasn't delivered on its promise?

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MR STEWART: From my observations and experience, that it's due to Tosser mirroring native title processes. As I've said here, you know, it largely replicates - which it does - but it looks no further than when the *Racial Discrimination Act* was introduced in 1975. And so everything post that is considered, but nothing pre of when the significance of invasion, land theft, stolen land, all occurred. So by simply feeling that that could be resolved by returning surplus land, which is, in essence, everything the state doesn't want or is a liability on their books, kind of - it's kind of demoralising, in a sense.

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I mean, I'm sure it was meant with goodwill. And at the time it probably is the best scenario we could have got, but I think the fear of potentially section 108 of the Australian Constitution and the Australian Parliament being able to come across and intervene on state legislation is why every aspiration and endeavour that was - they tried to meet here through the development of the Tosser settlement rather become more uniform and largely replicating the *Native Title Act*.

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MR McAVOY: Did anybody ever say that to you, or that's your assessment?

MR STEWART: That's my assessment.

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MR McAVOY: But the reality for First Peoples in Victoria is that - in terms of acquiring land, reacquiring land, the only two mechanisms that exist are the Federal *Native Title Act* and the *Traditional Owners Settlement Act*?

5 MR STEWART: Unless it's a purchase in freehold, yeah.

MR McAVOY: And so the notion of First Peoples or Nations settling with settler states such as Victoria usually involves land settlements that enable those First Peoples to have their homelands and territories upon which they can live and exist. You would agree with that  
10 proposition?

MR STEWART: Yes.

MR McAVOY: And that's a particularly important fact for First Peoples because of the  
15 connection of First Peoples with your lands.

MR STEWART: Correct.

MR McAVOY: Your spiritual and cultural and your identity emanating from the lands of  
20 your ancestors and your spirits. How does a Victorian Government accommodate the need for homelands for First Peoples with the existing tools?

MR STEWART: It's - in the current state of play, I don't know how it does, aside from in  
25 geographical boundaries of where you might protect cultural heritage or you might register an ILUA. But as far as the return of lands, it's predominantly surplus Crown land or joint management over national parks - state-owned nationals, but that still doesn't award you any operational control. It's predominantly strategic direction. Does that answer your question?

MR McAVOY: Kind of. The - the proposition that I'm putting to you is that, in other places,  
30 it's expressed as having the need to be able to live and exist in one's own territory. And it's my understanding from your comments a few moments ago that the surplus Crown lands are not going to be sufficient to provide for those places to live and exist for First Peoples in Victoria. Is that the case?

35 MR STEWART: That's correct. I will qualify that statement in some instances, because there has been, you know, hand-backs of a old police station which happens to be a house. So it might be suitable for one family, but not a mob. But, in essence, to answer your question, no.

MR McAVOY: So which brings me to the next point. Given that your criticisms of the  
40 *Traditional Owners Settlement Act*, is it something - is it a piece of legislation that really ought to be replaced with something else? Or is it a piece of legislation that can be amended or salvaged in some way to fulfil its purposes and go some way towards providing that territorial homeland for First Peoples in Victoria?

45 MR STEWART: Firstly, I thought my commentary was quite positive on the - on the *Settlement Act*. I think it's a question - I mean, it's a question I don't take lightly, because there are some rights that are well hard-fought and are critically important to a lot of mob out there. And I think I've always had a view - a pragmatic view of - of trying to fix things and improve them and that process of continual improvement. So I would hate to see such a  
50 critical piece of legislation just basically whitewashed.

I think there's opportunity for it to be improved, but also we have to be conscious of we're talking about Traditional Owner treaties that - where that may fit within that grander scheme, and that's something that will be subject to a significant amount of consultation and design work to the First Peoples' Assembly, which will then go in our negotiation process. But I think, at this point in time, there's always areas for improvement, and I've outlined some of my constructive criticism of the Tosser Act.

And I think we need to create space for what Traditional Owners treaties will be, and they will be designed, developed by those Traditional Owner groups, nations, families and the clans.

MR McAVOY: Yes. It's a difficult scenario, though, for First Peoples in Victoria, perhaps more so than anywhere else in Australia. You would agree with that?

MR STEWART: Absolutely.

MR McAVOY: I wanted to take you now to the paragraphs 89 and 90 of your statement in which you address the *Aboriginal Heritage Act*.

MR STEWART: Is it possible to take a five-minute break before we jump into that?

MR McAVOY: Absolutely. I was going to say to you - I will take to you paragraphs 89 and 90, if you are happy to proceed.

MR STEWART: Yes. Perfect.

MR McAVOY: Okay. So if we might have a short break, Chair.

**<ADJOURNED 3:01 PM**

**<RESUMED 3:08 PM**

MR McAVOY: Thank you, Commissioners. Co-Chair, if it would assist you, you should feel free to stand. We might need to ensure that your voice is being accurately recorded, but certainly if that will assist you to get through to the end of your evidence, then we will try to accommodate that, if possible.

MR STEWART: Thank you.

MR McAVOY: So before the break, we were - I had taken you to paragraphs 89 and 90 and - of your statement and you - in those paragraphs, you address the *Aboriginal Heritage Act*. At paragraph 89 of speak of the current failures of the legislative protections are "widespread and not unique to Victoria." And then at paragraph 90, the - you refer to:

*"The approval process for Cultural Heritage Management Plans as illustrating a failure of the current legislative protections in Victoria."*

You explain that a little bit in the sentences that follow, but can you just explain your - what you say are the failures of the current legislative protections in Victoria?

MR STEWART: I think - I think it - the best way - I think the best way I can explain it in the most simplest of terms is that the current *Aboriginal Heritage Act* has a hierarchy of interests which are the State, the developer, and then Traditional Owners. So the *Aboriginal Heritage Act* is geared to allow development to occur, to protect culturally sensitive areas, but ultimately to protect the interests of the State, of the developer, and then of Traditional Owners.

MR McAVOY: Do you say that that's somewhat inconsistent with the title of the legislation?

MR STEWART: Absolutely. And, therefore, probably the way in which the government markets the Act as well.

MR McAVOY: Are the cultural heritage protection arrangements in Victoria something that might be the topic of future negotiations between the Assembly and the government of the day?

MR STEWART: Potentially.

MR McAVOY: At paragraphs 91 to 94 of your statement, you talk about the "emblems of dispossession", if I can summarise it in that brief way. What do you mean by the "emblems of dispossession"?

MR STEWART: Did you say 91 and 92?

MR McAVOY: 91 to 94. So at the beginning of paragraph 94, you refer to "emblems of dispossession also living on in English names used for traditional lands".

MR STEWART: Sorry, I was on the wrong page. I think - I think back to the discussions and the conversations we had as members in designing - I mean, building the mandate, really, and the consultations that we held but also the expert advice that we - we sought. The significant concept that kept coming up was this notion of memorialisation, and - I mean, we don't have to look too far around the country in a certain - you know, on a certain day of a certain month every year around the memorialisation of - and this - again, I use the term this collective amnesia of what this actually means for the subjugated of this country and the most vulnerable of this country and what they've been - what's actually occurred.

I think the continual - I mean, one could argue that you don't have to walk too far from where we are right now to see the memorialisation of certain figures who have had a destructive impact on Aboriginal communities and culture. And I think it's something that needs to be addressed and it's something we hope may be addressed through the Yoorrook Justice Commission, but, in that sense, also looking at how - or the memorialisation of our people, their achievements, their successes, their resistance, their struggle, but the - the absolute, you know, success of what we've achieved in - that we are still here. So - - -

MR McAVOY: Has the Assembly formed any view as to how those people ought to be treated or understood in the history of Victoria? Those - I will be a little bit more specific. The, for instance, people who came here impoverished and, through the dispossession of First Peoples from their lands, became wealthy and have provided for intergenerational wealth at

the expense of First Peoples. How should those people be treated in - historically? Is that something that's - first question is that something the Assembly has turned its mind to?

MR STEWART: No, we - we haven't turned our mind to that. Ultimately, if you would ask me the question of how we may turn our mind to those who are memorialised who were perpetrators of human rights violations and genocide, I probably have a different answer, but we haven't - we haven't turned our minds to that, and I'm sure that it will be potentially a discussion. It will potentially be a discussion post the Yoorrook Justice Commission's findings, I would imagine.

Because we - I mean, ultimately, there's a lot of information, there's a lot of different stories, but there's a lot of work that needs to happen. And the question that we will have to sit with at a point in time is how do we - how do we start and how do we tackle it.

MR McAVOY: At paragraph 93 of your statement, you have specifically referred to Angus McMillan as being someone who is an example of a - an historical figure who was given a degree of reverence and is glorified, to some extent, but was well-known to be involved in acts - in atrocities. How, then, should those figures be treated in Victoria and Australian history?

MR STEWART: I think there needs to be a broader conversation about how that gets dealt with. I don't think it's something the Assembly alone should make a decision on. That's my personal view. I don't think it's something that I personally should just have a casual observation or potential criticism about. I think the objective of the Yoorrook Justice Commission, or one of, is to set a public record of the true history of this nation - or this state, sorry, this state.

That should be part of that conversation. It should be part of a bigger conversation of how do we memorialise and celebrate our people. Obviously, there's - that's already happening. But how do we deal with situations where we could have, you know, perpetrators of human rights violations and active participants in genocide. I think we need, as a State and a broader state, First Nations people and non-Indigenous people to have that conversation.

I think it's not a conversation that can be had behind closed doors. I think we need to tackle it as building a better future, you know, in our attempts as Victorians to - to build a better future and be better. Sorry I've answered that in a a roundabout way, but I think it's a big topic that can be achieved through true reconciliation.

MR McAVOY: But I think, from your answer, it can be detected that it's certainly a topic that you think that this Commission of Inquiry should receive evidence on and consider?

MR STEWART: Yes. Absolutely. From my understanding of truth and justice processes, transitional justice processes around the world, that memorialisation is critical in that process of transitioning conflicting societies, creating peace, and that journey towards healing.

MR McAVOY: Thank you. At paragraphs 95 to 97 of your statement, you refer to - well, they appear under the heading of 'Systemic injustice'. You refer to injustices in those statements that permeate all levels of Australian society. Can you see that? That's in paragraph 95.

MR STEWART: Yes.

MR McAVOY: And you refer - sorry, I make the observation that much of the work of the Assembly appears presently directed to the negotiation of the framework agreement. That's your evidence earlier today. That is necessarily an agreement with executive government? Do you accept that?

MR STEWART: I do.

MR McAVOY: Do you accept that in a very real and large manner, the systemic injustices - some of the systemic injustices to which you refer occur at the level of the government departments? Would you accept that?

MR STEWART: Yes, I do.

MR McAVOY: And we've had a discussion earlier today about there being a disjunct between executive will and government departmental action.

MR STEWART: Yes.

MR McAVOY: Does the Assembly see or has it considered mechanisms for particularly addressing those injustices within government agencies? Those systemic injustices? How do you go about bringing cultural change that eliminates those biases and injustices, I suppose, is the question.

MR STEWART: I mean, it's a tough one. We talk about keeping governments accountable through - through treaty. I spoke about earlier the dotted line where we can hold government and consecutive governments to account for our shared future, but there's another layer to that, that's a political arm: bureaucracy and the Public Service who are very comfortable and very casual in their level of comfort of making decisions on behalf of Aboriginal people and for Aboriginal people and will often choose the Aboriginal people they want to speak to, to get the answer that they want.

So while the bureaucracies do many great things, they also perpetuate a lot of terrible things, and we, through treaty, need to also hold and look at ways that hold the Public Service to account, whether that's through partnership, joint decision-making - I'm not sure. But there has to be a level of accountability. They can't hide behind the shadows of government. We know they are there. We know the decisions they make. We know the impacts that they have because it's felt by us all.

So we need true partnership from that level, not just from the executive arm of government, not just from the Parliament of Victoria but we need accountability in the Public Service. And how and what that looks like, we need to, you know, further detail through a treaty process, but that - that is - we are consciously aware of the need for Public Service accountability. And that's not diminishing the significant role they play, but - - -

MR McAVOY: Sorry for interrupting you. Do you want to finish that sentence?

MR STEWART: No.

MR McAVOY: Are there - you've just been talking about some positive aspects. Are there examples that you have prepared or are able to point to today of policies or agencies that are working well in respecting self-determination for First Peoples?

5 MR STEWART: You really put me on the spot there. I mean, we can point to examples. I mean, there is numerous examples. You know, what comes to mind - I think about the work we are doing in the education space. You know, there's significant outcomes that are happening in health. There's - I mean, we can't underestimate the goodwill and the policies, but the - the reason we sit here today, why the First Peoples Assembly went to the polls to  
10 elect a representative voice to negotiate the treaty architecture and why we called for a truth and justice process, is because, regardless of the amount of great initiatives, the great intent, the potential enormous goodwill, the system is broken.

That's why the outcomes are growing. That's why we have the highest Child Protection rates of Aboriginal children in the state. The system is broken. And we have the opportunity to fix it. By putting Aboriginal people in the driver's seat, we can fix it. By letting us make  
15 decisions on policies and, you know, systems that disproportionately impact us, we can fix it.

MR McAVOY: That's - that's the genuine shift in control and decision-making that you are talking about at paragraph 107 of your statement, I think. Is that correct? Paragraph 107 is in  
20 the context of the Child Protection system.

MR STEWART: Yes.

25 MR McAVOY: And that might a be a useful vehicle for this type of discussion, but you mention there a genuine shift in control and decision-making power. That's what you're referring to - you were referring to a few moments ago, putting First Peoples in the driver's seat in terms it of decision-making?

30 MR STEWART: Yeah. So I think it probably helps to provide a bit of context, because we often hear government use the term "self-determination" throughout everything they say, but they don't understand self-determination. We understand it as we have been told it is by our community, and we've heard loud and clear that we should be in the driver's seat for decisions that impact our - our communities, our people, our children, our families.

35 Now, that's not an exercise of outsourcing risk and responsibility on - or kicking the can down the road on certain matters. True self-determination is autonomy and agency over decisions that disproportionately impact us. And the Child Protection sector, criminal justice sector, you know, lend examples of how that potentially can be done differently. Now, there  
40 are much - there are people much better placed to provide comment on, you know, such opportunities and examples, such as the Victorian Aboriginal Child Care Agency. But, ultimately, in short, to answer your question, yes. That's - - -

MR McAVOY: So you might be aware that - that the *United Nations Declaration on the Rights of Indigenous Peoples* speaks of Indigenous peoples having the right to give or  
45 withhold their free prior and informed consent to administrative decisions which affect their interests and rights.

MR STEWART: Yes.

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MR McAVOY: But an important part of that particular article is that - and the articles around that article are that those decisions are - about consent are made by the representative bodies of the choice of the First Peoples in question - Indigenous peoples in question. Earlier today, you talked about self-determination, seeking to be delivered on some agencies by grabbing the first person that they can speak to. Is that a serious problem?

MR STEWART: Yes.

MR McAVOY: And is it the position of the Assembly that - that in order for there to be proper self-determination and free, prior and informed consent that government needs to observe and respect the decision-making representative organisations that exist within the First Peoples of Victoria?

MR STEWART: Yeah, absolutely. And I think also that I wouldn't see this government or previous governments observing the principles of FPIC.

MR McAVOY: You don't see or you haven't seen?

MR STEWART: I haven't yet seen - I haven't seen it through the *Aboriginal Heritage Act*. I haven't seen it through native title. I haven't seen through Child Protection, the *Traditional Owners Settlement Act*. I mean, the list goes on. I have - I'm yet to observe them upholding the key principles of FPIC, but I'm also happy to stand corrected, if they can prove me wrong.

MR McAVOY: So - but that's your observation. You are entitled to give your observation, of course, and your observation is that you haven't seen the principles of free, prior and informed consent observed in a range of areas. That's correct?

MR STEWART: That's correct. Actually, to qualify that statement, I haven't seen it used at all.

MR McAVOY: So you can't comment on whether you - whether you've observed government agencies have any clear or informed understanding of what free, prior and informed consent is, because you haven't seen it used or adhered to. Okay.

MR STEWART: That's correct.

MR McAVOY: I just want to come back to the - the issue of removal of children from their families. And you've provided a lot of material in your written statement on this topic. But there is - there is plenty of research and data around about the impacts of removal of children from their parents. That's correct?

MR STEWART: Correct.

MR McAVOY: And particularly First Nations children and First Peoples children. And is it correct to say that the removal of children from their families and communities is understood to have life-long impacts upon those children?

MR STEWART: Absolutely.

MR McAVOY: And one of the potential impacts is further institutionalisation through the criminal justice system.

MR STEWART: Correct.

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MR McAVOY: Given that those things are known and that the impact upon First Nations families and communities is - is devastating - it's known to be devastating - is the reform of the Child Protection system something that is on the radar, so to speak, for the Assembly in terms of treaty topics?

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MR STEWART: In a sense that it may be when negotiations begin around are State-wide, but as it sits right now, it wouldn't be - that's not the subject of any negotiations.

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MR McAVOY: Is it something that the Assembly has acknowledged requires urgent attention?

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MR STEWART: I think from what we've heard from our community, through our consultations, yes. There's - in saying that, though, we're - there's a lot of great work happening in this space. I don't want to diminish that. But the rate of removals that continually increase of Aboriginal children and Victoria, being a progressive State, having the highest removal rates, I think that's something that should alarm every Victorian.

25

And I think government need to be held to account of - why is that the case? As I mentioned earlier, the correlation of child, or a child going through the Child Protection system, to Youth justice and then the adult justice system is - is significant and substantial. And then if we think of how that cycle may repeat, what parenting skills is that child learning from institutions, that they will be first judged on how they parent their son, their daughter, and the cycle goes on.

30

So how - unless we start looking at how we keep families together, rather than how quickly we can remove a child from its family, the cycle is just on repeat. I mean, they say the sort of definition of crazy is doing the same thing over and expecting a different result. Is this not reflective of our Child Protection system as we sit here today?

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MR McAVOY: In your answer, I've detected a degree of exasperation. And that is because - is it - why is that?

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MR STEWART: I think if I reflect back on my experience, I guess it still makes me angry to this day and upsets me.

MR McAVOY: Would you like a moment? Okay. Commissioners, can we break for a moment?

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**<ADJOURNED 3:38 pm.**

**<RESUMED 3:45 pm.**

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MR McAVOY: Commissioners, Co-Chair, I have about 10 or 15 minutes of questions to go. You're able to stay on for that?

MR STEWART: Yes.

MR McAVOY: Commissioners, are we able to sit in order to complete this witness' evidence today?

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CHAIR: Yes.

MR McAVOY: Thank you. I just want to – beg your pardon?

10 CHAIR: I just said “Thanks, Counsel”.

MR McAVOY: I just want to take you to paragraph 120 of your statement.

15 MR STEWART: Can I just make one statement on the previous topic before we broke, if that's okay.

MR McAVOY: Sure.

20 MR STEWART: I still find Child Protection hard to - difficult to talk about. But the kids' names and faces of who we've lost still haunts me today. They - they should still be here, but, unfortunately, the system has failed them.

25 MR McAVOY: I don't intend to press you on this, and I know it's a difficult discussion, but the knowledge of what - of the failings and errors in the system and the inability to bring about any change, is that something weighs heavily on you?

MR STEWART: Sorry, I missed the start. Can you ask me that again?

30 MR McAVOY: I asked whether the knowledge of the failings in the system and the inability to bring about the change that's necessary, is that something that - that weighs on you?

MR STEWART: Yes, it does. As I said, I see their faces, I hear their names in my head every day.

35 MR McAVOY: Thank you for sharing that with the Commission, Co-Chair. I want to take to you to paragraph 120 now. In particular, I would ask whether you - if you feel up to it, to read the first sentence of paragraph 120.

MR STEWART: Just the first sentence?

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MR McAVOY: The first sentence.

MR STEWART:

45 *"In a Victorian context, the Assembly considers that Treaty is the clearest and most effective way in which the Victorian Government can enable First Peoples the degree of empowerment and self-determination necessary to address the overrepresentation of our people in the criminal justice system."*

MR McAVOY: Thank you. Now, the rest of the paragraph speaks in general terms about re-imagining these systems so that they no longer perpetuate or compound the historic injustices. What does that mean? What - when you talk about reimagining the systems so that they don't continue these injustices, what's intended?

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MR STEWART: I think it's just a system on repeat. I spoke about earlier the statistics that are supposed to define our lives continually grow. I spoke about the definition of madness. By achieving true self-determination, by us being in the driver's seat to make decisions that impact our lives, we can start to reimagine what those responses, what those solutions - in accordance to the outcomes we want to achieve. But right now there's no autonomy now to be able to do that. We might get cherry-picked to engage in a consultation process and that's about it.

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So if we truly believe in self-determination, it requires us being in the driver's seat and it requires us looking to, you know, the solutions that can change and improve the lives of our people. What they are, I can't answer that question. The beauty of how we've gone about our work with the Assembly has been from the ground up. Consultations, designed, driven and the aspiration of our community. And so that's how we envisage that any outcome - if we're talking about, you know, system transformation, that's potentially how the outcome will be - will be built. Built by those who are impacted most. But understanding how we can do things differently in our way, by our people.

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MR McAVOY: Thank you. At paragraph 136, in response to the Commission's request, there's some comment in relation to three justice-related issues. The first is the finalisation of the public health model to support the repeal of the public drunkenness laws. And the second is the legislative amendments regarding the age of criminal responsibility - minimum age of criminal responsibility. And the third is implementation of independent oversight in the case of police. Is there anything that you would want to add to your statement in relation to the finalisation of the public health model to ensure the repeal of the public drunkenness laws?

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MR STEWART: Only that I think prior to submitting my evidence I think public drunkenness has been extended the - of when the laws will actually come into effect. Now, it has been raised with me, is it actually an extension or is it actually being deprioritised? That's a question I don't have an answer to.

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MR McAVOY: Is it of concern that it hasn't been brought to fruition?

MR STEWART: It's of concern.

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MR McAVOY: In respect of the proposals to raise the minimum age of criminal responsibility, does the Assembly have a position on that or is there something that you would like to add on that point?

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MR STEWART: I think, as the Assembly has in the past and as we've seen in the advocacy of numerous Aboriginal organisations, including the Victorian Aboriginal Legal Service, I think - and if I think about my experience, the simple fact that we lock up children, we put them in concrete walls and behind iron bars, who are yet to lose all their adult teeth, is horrific. And I think it's something that's a great shame to this great State.

MR McAVOY: And there may be other statistics, but I suggest to you that there's statistics in 2017 which suggested that 80 per cent of the children incarcerated between the age of 10 and 14 were First Peoples children. Does that - that would give you greater concern about that particular issue and the need for urgent reform?

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MR STEWART: It's alarming. And as I've said publicly, the age should have been raised to 14 yesterday.

MR McAVOY: The third issue is the independent oversight of policing. I just - you - your statement makes some observations about other reforms that can happen now, including bail reform. I will come back to that, but I just - I just want to ask you in relation to the oversight of policing, and your statement picks that up at paragraph 143 onwards to paragraph 154. How important is it for Victoria's First Peoples that there is some independent oversight of police?

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MR STEWART: I think there's sort of a difference of view amongst our community members. Some hold a view of defunding the police; some hold a view of accountability mechanisms. I think, as I've said in my earlier evidence - and there's that correlation of policing at the brunt of colonisation to policing now in the present day. There is still a lot of parallels and there is still a lot of experienced and lived trauma through how Aboriginal people in Victoria respond to police and interact with police.

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And we know it through the Royal Commission into Aboriginal Deaths in Custody. We have heard it through, you know, Coroners reports, inquiries. We are yet to see a government with the guts to truly create an independent body to police the police. And I think the simple fact that we leave it to police officers to investigate the misconduct and crimes of their own colleagues doesn't make sense.

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And I think we've provided some evidence - I've provided some evidence of what, you know, a best practice model per international standards would look like in reference to what's happened, off the top of my head, in Northern Ireland. I have forgotten what page I've got that on, but I know it's nearby.

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MR McAVOY: If you can look at paragraph 152, at the top of - it goes over to the top of page 54.

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MR STEWART: So I think - Northern Ireland, obviously, we have set out some examples and I won't go through them. But as a best practice model from an international standpoint. And I think I've stated that we are yet to see a government with the guts to actually implement independent oversight. And I think we have to think about this from the context of protecting our people and their interaction with the justice system.

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But until we see a level of independent oversight, until we see a lack of fear from consecutive governments of ending up on the front page of The Herald Sun being criticised by the Police Union, we will then see true independent oversight, which will only be a good thing for the people of Victoria. It will only be a good thing for Aboriginal people in Victoria. We will start seeing these statistics start dropping.

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MR McAVOY: So you see a direct correlation between the - the oversight mechanism and the - the abuses that are reported?

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MR STEWART: Absolutely.

MR McAVOY: And so at the beginning of paragraph 152, your statement says.

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*"The current framework for police oversight is entirely inadequate to address the issues of police contact deaths, misconduct, corruption and racism that affect First Peoples."*

MR STEWART: On page - sorry, what page did you say it was?

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MR McAVOY: That's page 53 at paragraph 152. The first sentence. Then you go on to refer to the Irish - Northern Ireland model as the gold standard for police oversight. Now, I understand that this work is being led by the Victorian Aboriginal Legal Service, but can the Commission understand - is it correct to say that the Assembly fully supports VALS's call for urgent action in this regard?

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MR STEWART: I think it's fair to say that the Assembly supports our community's position on urgent action on this matter. And I think VALS have been a significant advocate in this space, given the role that they play as the Victorian Aboriginal Legal Service. But I think it is important to acknowledge the activism of our community around this and the continual advocacy for urgent change.

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MR McAVOY: So at 154, then, you speak about the Assembly's hope that treaties "can produce more innovative ways to get police violence and racism out of our communities." They are the words that you use. Can you see that?

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MR STEWART: Yes.

MR McAVOY: And you use the term "defunding the police". That's - that's a phrase or that's a concept that has been used - has been raised with the Assembly from - by the community.

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MR STEWART: That's been a concept that's been raised by community members about the approach to policing in Victoria. That's correct.

MR McAVOY: And is that one of the innovative measures that you say need to be considered for Victoria?

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MR STEWART: I think there's - so on this topic in particular, there's, I guess, a diversity in views, is what I'm trying to represent, amongst our community. We know there's a significant issue. And that's not to downplay that there are really good people working within these institutions. We need to be clear on that. What we need is we know that there's currently a gold standard of how this best can be handled independently to provide the best outcomes for our people.

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And that's what I've outlined in relation to the question - questions asked. But I think - in this instance, I think the Victorian Aboriginal Legal Service are significantly better placed at this point in time to - you know, to talk to the differences of models. Those for and against. But they're - they hold much greater expertise than I do on this matter, and so I would really rely on their opinion.

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MR McAVOY: I just want to ask you a couple of questions about Indigenous data sovereignty. What we know is that there's been a vast quantity of records and documents created and kept and are used in - that relate to First Peoples. And the - the Terms of Reference and the Letters Patent for Yoorrook directs this Commission to consider specifically the Indigenous data sovereignty implications. So can the Commission take it that the need to control and protect that information and the records was high in the thinking of the Assembly at the time that Yoorrook was established?

MR STEWART: Absolutely.

MR McAVOY: And the - at paragraph - I'm sorry, I've just lost the paragraph. It's the case that the Assembly is establishing its own policies in relation to data sovereignty; is that correct?

MR STEWART: Correct.

MR McAVOY: Are you aware of work that's being done within government to understand and embed the principles of - that underpin the notion of Indigenous data sovereignty?

MR STEWART: I missed the middle of that question, sorry.

MR McAVOY: Are you aware of any work being done within government to understand and apply the principles which underpin the notion of Indigenous data sovereignty?

MR STEWART: There could potentially be. I know it's been a topic of discussion within the Victorian Government for quite a while, and I think it might be one of the key pillars within the Victorian Aboriginal Affairs Framework, from memory. But it's something that we see as a critical piece of work amongst the Assembly, and also looking at - we currently have a verbal commitment from the State Government to work with us on potential data sovereignty laws in Victoria for the first time in this nation's history. So - which is significant, and we hope that that comes to fruition.

MR McAVOY: Given the Yoorrook Justice Commission's capacity to acquire, compel the production of documents to gathering information, is there a capacity for this Commission to provide guidance to both the Assembly and the government in terms of Indigenous data sovereignty management and protection?

MR STEWART: It's - I wouldn't say the Assembly would have a view on that, because it's not something we've spoken about. But, on the face of it, I can't see that as being an issue. I can only see it as being productive and helpful. The only thing I would say, though, is in the development of our processes and how we will build data sovereignty will be, again, with how we go about our business, which is built from the ground up and how our community aspire that to be built also.

MR McAVOY: But you are aware that part of the mandate of the Yoorrook Justice Commission is to develop - - -

MR STEWART: Yes.

MR McAVOY: - - - data sovereignty principles and mechanisms for the records that are obtained or collected during the course of this process.

MR STEWART: Yes.

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MR McAVOY: And more broadly.

MR STEWART: Yes. Yes.

10 MR McAVOY: I want to lastly take you to paragraphs 176 to 178. You've had a look at those paragraphs?

MR STEWART: Yes.

15 MR McAVOY: From our discussion a few moments ago regarding the principles of free prior and informed consent, can I take it that you're familiar with the *United Nations Declaration of the Rights of Indigenous Peoples*?

MR STEWART: Yes.

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MR McAVOY: These paragraphs, 176 to deal with to 178, deal with, in some respect, the role that the principles recorded in the *United Nations Declaration of the Rights of Indigenous Peoples* might have in the treaty processes. It is - almost goes without saying that the central right in the United Nations Declaration is the right to self-determination, and that really is a central aspect of the treaty process as far as First Nations people are concerned.

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But the treaty process that's to be undertaken to give full voice to the principles of self-determination really has to be spelt out in quite some detail as to how it's going to work. Is that correct?

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MR STEWART: That's correct.

MR McAVOY: And you expect that to be done in the treaty negotiations, do you?

35 MR STEWART: Through the next iteration, yes. The State-wide negotiations.

MR McAVOY: Through the State-wide negotiations.

40 MR STEWART: Yes, it will be – self-determination will be underpinned within the framework and everything we do, but how we bring that to life through Traditional Owner treaty-making and through a State-wide treaty will be the evolution of the next - the next First Peoples' Assembly of Victoria.

45 MR McAVOY: You make comment at paragraph 178 on - of your statement on the *Victorian Charter of Human Rights and Responsibilities*. And, in particular, you identify a clash between individual rights and group or collective rights. That's from some personal experience?

MR STEWART: Correct.

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MR McAVOY: The - in the human rights context, the clash between individual rights and collective rights is not an unusual one, though; you would accept that?

MR STEWART: Yes.

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MR McAVOY: In the particular case that you've observed, has it led to a result which is inconsistent with the collective rights of the First Peoples concerned?

MR STEWART: Yes, it has.

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MR McAVOY: Is there a way that that can be remedied within the Charter or is that something that you're unable to comment on?

MR STEWART: It's potentially something that could be remedied in time, in the Charter.

15

Ultimately when we talk self-determination as a collectivist right, when we talk about sovereignty based on our inherent rights, that's things that need to be unpacked and brought to life through State-wide treaty negotiation, Traditional Owner treaty negotiation. I note that there's long been calls for self-determination to be put into the *Victorian Human Rights Charter* - sorry, the *Charter of Human Rights and Responsibilities*.

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For us, it's about - we first need to unpack what a Black Parliament, a voice, a State-wide treaty, Traditional Owner treaties would actually look like. And that's why we haven't offered a firm and fixed view on - on that.

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MR McAVOY: It is the case, though, that - and you can disagree with me about this if you wish, but I put it to you that one of the consequences of the process of dispossession that we've talked about in so much detail today is that some of the internal management mechanisms that help us - help First Peoples operate and exercise self-determination and group decision making and exercise of group rights has been lost for some people. Where

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there is that vacuum, is it going to be difficult to then manage that broader collective right against individual rights - human rights?

MR STEWART: That's a big question. Within the context of Traditional Owner treaties, no. But as it potentially stands, it could, yes. And hence my comments that we need to bring to light what Traditional Owner treaties will be and that will be by nations, family, clans - whatever composition they decide to go down to negotiate under their Country - and through State-wide treaty and figuring out what that may look like. And we spoke about earlier around is it, you know, constitutional, what does it actually look like. I think that's where we need to see how that evolves.

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MR McAVOY: So there is work to be done in terms of nation-building and developing the internal governance mechanisms?

MR STEWART: Absolutely.

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MR McAVOY: For First Peoples. But your position, as I understand it, is let that occur before we start moving other pieces on the board.

MR STEWART: Yes.

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MR McAVOY: The final piece of evidence I want to take you to, Co-Chair, is the question of the denial and violations of international - internationally recognised human rights norms and the consequences of that. At paragraph 174 - no, sorry. It's at, sorry, 179. My apologies. So in that paragraph, you speak of other international instruments referred to in - on pages 1  
 5 and 2 of the Commission's Letters Patent which address the State's obligations to victims of serious human rights violations under international law and the degree to which those violations attract entitlement to reparations and they attract requirements for accountability for the State parties and they require the State parties to undertake preventative measures to ensure that they don't keep reoccurring. In that context, does the Assembly say that First  
 10 Peoples in Victoria are entitled to broad reparations in relation to the atrocities that have occurred?

MR STEWART: Yes.

MR McAVOY: Has there been work done to quantify what those reparations might look like, in terms of dollar value?

MR STEWART: Not at this point in time.

MR McAVOY: Is it something that is - that you would envisage will have to be done at some point?

MR STEWART: Yes.

MR McAVOY: Do you say - does the Assembly or do you say - that the accountability of government for human rights violations has to be built into the treaty processes?

MR STEWART: Yes.

MR McAVOY: And do you say that - or does the Assembly say - that First Peoples are entitled to have the preventative actions stopping future violations built into the treaties that are ultimately entered into?

MR STEWART: Yes.

MR McAVOY: These things aren't afforded to First Peoples in Victoria at present?

MR STEWART: No.

MR McAVOY: And so the role of the Assembly in bringing those international norms to life in a domestic context in Victoria is by - via the treaty process.

MR STEWART: Yes.

MR McAVOY: Does the Assembly see any role for this Commission in identifying and making recommendations as to how those responses to violations ought to be acted upon by government?

MR STEWART: We see the Commission's role as being critical in doing that.

MR McAVOY: Thank you, Co-Chair. They are all the questions that I have today, Chair. I have - I can indicate that I have informed the Co-Chair of the Assembly that there may be questions from Commissioners, and I believe we have time this afternoon for that.

5 COMMISSIONER BELL: Firstly, thank you for your evidence today which I have found to be of enormous benefit and look forward to considering it in more detail when the time comes. And I particularly say that because parts of it have been difficult for you and you have had to dig deep to give this evidence. I've got three questions. The first is - - -

10 MR McAVOY: Excuse me, Commissioner, I'm having a little bit of difficulty hearing you.

COMMISSIONER BELL: Yes. Maybe I was too far. Is that better?

MR McAVOY: Yes.

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COMMISSIONER BELL: Yes? Thank you. Mr Stewart, did you hear me?

MR STEWART: Yes.

20 COMMISSIONER BELL: The first is that very early in your statement you stressed the importance of making a recommendation in the interim report about the significance of treaty-making for realising self-determination, and I think you have used language which suggests to me that it's something that is urgent in your mind. In other words, it's urgent that we make a recommendation stressing the importance of treaty in the interim report. I wonder,  
25 could you please explain why you consider it to be urgent in that way?

MR STEWART: I think if we - if I was to reflect back on the discussions that we've had over the last couple of years and the, I guess, conversations that I've had before then around the priority for - for treaty in Victoria, for an opportunity to correct the past wrongs of history  
30 and how we see the significant role of the Yoorrook Justice Commission to gather the evidence and us to deliver the reforms, we think it critical that the interconnectedness between - between both, because we see, as I've said earlier, treaty being the dotted line of where we can hold government and future governments to account to our shared future.

35 COMMISSIONER BELL: Yes. Thank you. The second question relates to the level of detail at which we might conduct research and gather evidence in relation to a particular issue. And the issue I'm concerned about is the dispossession of land and waters from sovereign First Nations at settlement and since. On your evidence, 100 per cent of Victoria was owned, with respect to land and waters, by sovereign nations, and that sovereignty has never been ceded.

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And yet land, water, everything that goes with it, has been dispossessed piece by piece, systemically, over the history of colonisation since. That - research into that necessary subject could be conducted at different levels of generality. At a very high level of generality, it might not go much further than what I've just stated, which seems hardly adequate. At  
45 another level of generality, the Commission could undertake to examine the legal and administrative mechanisms through which the dispossession was done, beginning, probably, with the pastoral system which was supported by pastoral leases, then moving to the creation of private title and the auctioning off of the land parcel by passing, through to the creation of road reserves by which the pastoral industry was facilitated, through to the creation of  
50 reserves for public purposes, post offices, polices, and local councils and so on.

And then examining the Land Acts and the series of them through which the land that did belong to First Nations was carved up parcel by parcel and sold off. And I'm wondering in my own mind whether an exercise of the kind I've just described is too granular and too detailed and might lose the wood for the trees, as it were. Or whether, if it was properly connected with our Terms of Reference, it might be a useful exercise, because it has not hitherto been done.

MR STEWART: Thanks for the question, Commissioner Bell.

COMMISSIONER BELL: You don't have to answer it now, incidentally, if you want to reflect on it.

MR STEWART: It's not a conversation that we've had with our Assembly. It's probably something that I request if I can take on notice.

COMMISSIONER BELL: Take on notice, yes.

MR STEWART: And provide further information in a potential further submission, because I would need to seek the direction of my members on that one.

COMMISSIONER BELL: Thank you. And the last question goes to the issue of memorialisation. We know from the public record that massacres occurred in various parts - indeed, in many parts of Victoria - and there is an issue - and you've raised the importance of memorialising those places and those events. We have already received evidence that suggests that the - there are different views within local communities about whether and how that should be done.

For example, we have received evidence that there's a fear among some local Traditional Owners that certain places, if identified, will be desecrated and that that's a reason to pause about the memorialisation of particular places. Do you have a response to that and does it lead to the thought that local traditional owning communities should have a particular say in how their massacre sites should be dealt with?

MR STEWART: I think they absolutely should have a say on how they're dealt with. If that's the fear, then that's significantly alarming. I don't have a solution to that, but absolutely they should be front and centre on how that's - how those decisions are made.

COMMISSIONER BELL: Thank you. They are my questions.

COMMISSIONER HUNTER: Thanks for your evidence. I'm sure you can hear me because I'm loud anyway. And I know some parts particularly were hard so thank you and the Assembly as well for the work they have done in consulting community to be able to get the evidence that you gave today. I just want to take you quickly to the Letters Patent. And under 7, it's got the report and it says:

*"You are required to report your finding and recommendations to the Governor and to the First Peoples' Assembly of Victoria."*

So I'm sure you negotiated that in there, the First Peoples' Assembly.

MR STEWART: Yes.

5 COMMISSIONER HUNTER: Yes. I want a bit more understanding of why that's in there, that you would also get in - both our interim and both the - and the final report.

10 MR STEWART: In - the biggest concern I think we had and the biggest concern we had from our community is losing control of the process in a sense that government dictating or it being a government process. So coming to this as equals, which we agreed with government to co-author the mandate, was the same in how we would receive the reports, that this was the country's first ever truth-telling process, that the report would be received by the government on behalf of the non-Indigenous Victorian people and that we would receive the report on behalf of the Aboriginal community. And that we had an opportunity to enforce and hold government accountable to implementing the recommendations.

15 And so through the process of designing the mandate, as we called it, or the Letters Patent we saw that as critical to - to make sure that we could hold government to account and to, I mean, the credit of government they - they met the moment, they backed in the process and they backed in that position, and I don't think we've ever seen that done before. So, you  
20 know, I don't sort of take that opportunity of what they've awarded us - because it was ultimately their decision in the end - lightly, because we set the challenge and they met the moment.

25 COMMISSIONER HUNTER: Thank you.

COMMISSIONER ATKINSON: Thank you. Yes, thank you. I commend you on your witness statement and presentation - the manner in which you presented your witness statement and addressed those very - all of those substantive issues that were put to you, and also commend the Assembly on the work that you've done. And particularly in the  
30 culmination of that in terms of that reaching a bi-partisan position, which I will need to look more into the fine detail of that, but that's something really - a positive achievement, of course.

35 And, you know, in reading your statement, I picked out some issues and I think you've done a pretty good job because the ones I've picked out, you've ticked them off as we've gone along. And one particular one that I picked out was what is true self-determination in the truth-justice context. I said, "This is very interesting." So, you know, I was interested in the terms of the way that would go forward in the context of the human rights instruments and the broader definition of self-determination. I think you've done very well in developing that  
40 and dealing with it.

The other thing I commend you on is the way that you have dealt with the statutory laws that have been passed in regards to land justice, honouring native title, including cultural heritage, and I basically agree with your critique. I think it's a very good - a very strong one and you've  
45 probably left no stone unturned. So having all of that under hand, that's about all I could say except to say, once again, great news. And particularly on a final note, you talked about the system being broken. It's broken; it needs fixing. And putting Aboriginal people in the driver's seat. And I think that's a job for the Commission and the treaty Assembly to deal with together as we go forward. Thank you.

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MR STEWART: Thank you

COMMISSIONER WALTER: Thanks, Co-Chair. I'm sort of half-statement, half-question. I'm trying to formulate this as a question but I haven't quite managed it. So I think one of the  
 5 biggest tasks is the Commission has, is (b) in our objectives, which is to create a shared understanding of colonisation and the impact on First Peoples in Victoria past and present.

Everything you've raised today, all the horrific things you have talked about - incarceration and children being taken as the highest rates and multiple other things - have also been  
 10 spoken to us - with us about - when we were on Country with the Elders which we did last month and the Elders that we've had in this week. They are all there in plain sight. And you have talked about exasperation, and we have heard that from people in our visits who have said, "We have told our stories so many times. It's all out there. It's been there forever, for a long, long time. There is books. There is recordings."

And yet if you talk to non-Indigenous Victorians - and this is sort of somebody coming new to Victoria - there's almost - it's a sort of stubborn ignorance. I kept - people ask me what I'm doing and I tell them I'm on the Yoorrook Justice Commission, the response is usually an awkward silence. They are just wanting to drop through the floor. They sort of - or they put it  
 20 in terms of, "That's good, because Aborigines need so much help. They are helpless, hopeless and hapless" narrative.

So that we know we have to turn the conversation and the narrative to make it different. And I'm just wondering, I guess - and I know that's a task that's been given to us - but where does the State come in and where does the obligation of non-Indigenous Victorians come in to start to know?

MR STEWART: I mean, I'm just trying to think how I answer that question sort of a couple of minutes.

COMMISSIONER WALTER: Sorry.

MR STEWART: It's - I mean, what we - throughout my evidence, what I've hoped to outlay and achieve is the systematic approach to colonisation and how it impacted through - whether  
 35 it be through law, laws passed, whether it be through policing practice, whether it be through political suppression. But really what I tried to articulate as well is that how these approaches have created this level of collective amnesia that we are very - and very much created that, you know, some Victorians look at Aboriginal people from a deficit model or a level of dysfunction.

And so that is where, you know, we hold hope that the uncovering - the unpicking, the dismantling of the mistruths of who we are, what we are, our resilience, our resistance, of how we survived and how we are still here and the work that the Commission will do will - will change the entire landscape of what people know and understand of Aboriginal  
 45 culture, Aboriginal people and the true history of Victoria to be. And that's - as you've described, is a - is a significant task.

But I think the way in which you approach it - and, you know, time is - if I was to think back of what people knew of treaty at December 2019, I remember fielding questions from  
 50 journalists asking if we were go in and sign the treaty and walk out on the day. I think it's the

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process and the journey, and I think we will see - from what we understand of Victoria's readiness and willingness to stand with us and walk with us at their own pace, we know - we know this State is ready to reconcile with its horrific injustices of the past, of what was the Colony of Victoria and now is the State of Victoria.

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So I think the enormous opportunity that this process will uncover and deliver will be something that we have never seen and it will be something that we will create a Victoria that's - we feel a sense of connection to, that our kids and our grandkids feel a sense of belonging to, whether they are Traditional Owners of Country or whether they are non-Indigenous Victorians living on Aboriginal land. And that's - that's the opportunity in front of the Commission.

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That's the opportunity ahead of the Assembly through truth - sorry, through treaty-making. So I don't envy the task ahead, but I have every confidence that the Commission, along with the work of the Assembly, will captivate and win the hearts and minds of our fellow Victorians who are ready to reconcile.

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COMMISSIONER WALTER: Thank you.

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CHAIR: I would just like to say a couple of words - not ask you a question, just to thank you for taking the whole day with us. And I would just like to reflect a little bit on what happened yesterday, when we had somebody come in who didn't really want to come and by the end of the day thanked us for being here and looking forward to how we would go forward. And I'm saying this because we are not good at trusting each other sometimes, and I would like the Assembly to think of us as a pathway to many things that you wish to do in the future, because that is in your hands.

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This Commission will come and go, but whatever is handed over to government and to the Assembly will be - rest with you and whoever comes forward. So I think it's really important for us to understand that we are not quite in the ideal situation that we could imagine, and we are looking and still grappling with independence and yet being beholden to government for our ability to do our job. And we are not quite there yet and we will be challenging the system in the best ways we possibly can within the regulations.

30

And I want to reassure you about that, both you and Co-Chair Geraldine, because I know not only are our people looking at us, but other mob in other places are watching us. And every now and again that is stated publicly. And the public to the whole of Australia, not just the in the Victorian context. So I want to reassure you that we are not only walking with you, but we are walking in such a way that we are creating a pathway that will lead to better things, that we all aspire to.

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So before we close, I would just like to thank you both and I would like to ask you, Geraldine, to come up beside Marcus because we just have a small gift before we close.

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MR McAVOY: Commissioner, before you give the final thanks, I might just, for the record, formally tender the witness statement of Marcus Stewart. That document will form tender - Exhibit 5.0. Thank you.

CHAIR: Thank you very much. And that document will be entered as you've described. Thank you.

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**<EXHIBIT 5.0 STATEMENT OF MARCUS STEWART DATED 29 APRIL 2022**

5 CHAIR: -- say Marcus did all the work, but I promised at the launch we would make a few remarks and give you something -- beginning of the story. So thank you very much for being here today and - - -

COMMISSIONER ATKINSON: Thank you Marcus.

10 MR STEWART: Thanks, Uncle, appreciate it.

COMMISSIONER ATKINSON: Well done.

MR STEWART: No, thank you.

15 COMMISSIONER ATKINSON: -- there -- thank you.

MS ATKINSON: I just want to say thank you very much and I think that's what came across clearly today, exactly that, I think is that we understand that what you are doing is - you are  
20 working with us, walking with us. And I think that, through Marcus' testimony today, I think that you realise just how important a part you're going to play. Thank you.

MR McAVOY: Thank you.

25 MS ATKINSON: Thank you.

**<ADJOURNED 4:46 PM UNTIL FRIDAY, 6 MAY 2022 AT 10 AM**