



TRANSCRIPT OF DAY 7 – WURREK TYERRANG

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DAY 7

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Yoorrook Justice Commission

CHAIR: Good morning. We welcome everybody here at Charcoal Lane and others watching on the live stream. Today we are concluding block one of Yoorrook's wurrek tyerrang, or public hearings, and with some contextual evidence from the Minister for Aboriginal Affairs, Women and Prevention of Family Violence, Ms Gabrielle Williams. We welcome you today,
5 Minister.

MS WILLIAMS: Thank you, Commissioner.

CHAIR: Before we get started, I would like to invite Commissioner Hunter to give a
10 Welcome to Country.

COMMISSIONER HUNTER: I would like to acknowledge we're on the ancestral lands of the Wurundjeri, pay my respects to Elders past and present, honour those that came before us and welcome you and may they watch over us today as we conduct Aboriginal business.
15 Thank you.

CHAIR: Thank you, Commissioner Hunter. Counsel, appearances please.

MS McLEOD: If the Commission pleases, I appear for today's session with Mr Goodwin.
20 We are joined today by Counsel for the Assembly and the Minister, and I would ask them to make their appearances.

MS NARAYAN: If it pleases the Commission, I appear for the First Peoples' Assembly of Victoria.
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MR KNOWLES: If it pleases the Commission, I appear with my learned friend Ms Helen Tiplady for the State of Victoria.

CHAIR: Thank you. Thank you, Ms McLeod.
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MS McLEOD: Thank you, Chair. Today's witness is the Honourable Gabrielle Williams MP, and I invite our ceremonial officer to administer the oath.

<GABRIELLE WILLIAMS, SWORN
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CHAIR: Thank you. Minister, we are very pleased to have you here with us. Counsel.

MS McLEOD: Thank you, Minister. Minister, before we turn to your witness statement, you would like to make some opening remarks, I understand?
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MS WILLIAMS: That would be great. Thank you. Of course I would like to begin by acknowledging the Traditional Owners of the lands on which the historic hearings are being held, the Wurundjeri people, and pay my respects to Elders past and present and give a special thank you to Commissioner Hunter for her Welcome to Country earlier. I
45 acknowledge this is and always will be Aboriginal land and that sovereignty has in never been ceded.

I acknowledge the Traditional Owners of Country across our entire State, those here and those watching via live stream. I would like to acknowledge the Elders who have already
50 appeared at the hearings to bravely tell their truths, Uncle Jack Charles, Uncle Johnny Lovett,

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Aunty Fay Carter and Aunty Alma Thorpe. Through their testimony we have heard extraordinary stories of strength and resilience in the face of unimaginable pain and trauma.

5 We have heard about forced removal from families, and the resulting loss of connection to language, culture, and Country. We have heard about institutionalisation, criminalization, and incarceration. We have heard about physical, emotional and sexual abuse. And that in spite of the gravity of these injustices, and they are grave, the strong cultural traditions of these Elders and First Peoples all across this State and nation endures.

10 I would also like to acknowledge and thank Commission Chair Aunty Eleanor Bourke and each Commissioner for this opportunity and Co-Chair of the First Peoples' Assembly, Marcus Stewart, and other members of the Assembly for their evidence yesterday or supporting Marcus' evidence yesterday in support of treaty. For the First Peoples who have lived on this land for more than 60,000 years, the arrival of Europeans in what is now known as the State
15 of Victoria, was profoundly destructive.

The colonisation and dispossession of First Peoples of their lands and waters involved massacres, wars and extrajudicial violence, theft, rape and environmental degradation and desecration of cultural sites and the deliberate exclusion of First Peoples from all areas of
20 Victorian economic, social and political life. I acknowledge the wrongs experienced by First Peoples have resulted in intergenerational trauma and ongoing inequality and disadvantage.

The systemic injustices that First Peoples have experienced are not confined to history. Injustices are ongoing, including the overrepresentation of First Peoples in the Justice and
25 Child Protection systems, lack of cultural safety within health and education settings, and continued economic, social and political exclusion. The patterns of power, paternalism and racism that created and entrenched systemic injustices against First People sadly endure.

To achieve true self-determination and justice for First Peoples, significant structural change
30 is required. I look forward to the Commission's recommendations for holistic reform and to the Commission providing us a road map for treaty. I acknowledge that my witness statement was made by me as Minister for Aboriginal Affairs and note that it reflects the Victorian Government's position.

35 I also acknowledge the elements of that statement and areas of policy, practice and law that you may wish to discuss today may go beyond my portfolio responsibilities as the Minister for Aboriginal Affairs and may pertain to the portfolio responsibilities of other Victorian Government Ministers. I will answer your questions today honestly and in good faith but note that I may need to seek further information on matters that rest outside of my direct portfolio
40 responsibilities.

I assure you that the Commission's goal of truth and justice are ones shared by the Victorian Government. We come to this process with open hearts and open minds. And we are committed to listening, to understanding, and to changing. The work that the Commission is
45 undertaking is truly historic and will no doubt lead to a profound reckoning with Victoria's past, and a pathway to a shared future. Only by acknowledging and wrestling with injustices, both historic and ongoing, can we begin to heal and move forward. Thank you.

50 MS McLEOD: Thank you very much, Minister, for that opening statement. As you've just noted, you hold different portfolio responsibilities, and they are not only Minister for

Aboriginal Affairs, but also Minister for Women and Minister for Prevention of Family Violence.

MS WILLIAMS: That's right.

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MS McLEOD: Could you briefly tell us what is involved in each of those portfolio responsibilities?

MS WILLIAMS: So all of those portfolio responsibilities have specific areas in and of themselves, but they are also advocacy portfolios in that each of them - you know, Women, Prevention of Family Violence and Aboriginal Affairs - have responsibilities to advocate across other portfolios as well, given that the issues and the three sets of communities, in some sense, that I represent are touched by a range of other portfolios.

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15 So in terms of the Prevention of Family Violence, the key part of my role there is the implementation of the recommendations from the Royal Commission into Family Violence that were held - was now held six years ago. That is, in some instances, quite closely connected to the Women's portfolio, which has not only gender equality, obviously, at its heart and the pursuit of gender equality - which we also know is a key - gender inequality
20 being a key driver of violence against women, so in that Prevention area you can see an overlap between those two portfolios.

In terms of my responsibilities in Aboriginal Affairs, there are areas around our cultural heritage, for example, but also, of course, the creation of the Yoorrook Justice Commission and the work that's in establishing that in partnership with the First Peoples' Assembly and also the State's responsibilities under our pathway to treaty that fall within my portfolio responsibilities. And, of course, working with my colleagues in other portfolios that also intersect with ensuring better outcomes for Aboriginal people, whether that be in Justice, Education, Health or any other number of portfolios - in fact, probably all of them.

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MS McLEOD: The government clearly sees an advantage in holding those portfolios together. What advantage, from your perspective, in terms of the intersectionality of those issues is there, having the executive power rest in one portfolio or one Minister, rather?

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MS WILLIAMS: Yes, I think Aboriginal Affairs, and the pursuit of better outcomes for Aboriginal people obviously has a direct relationship to those other portfolios in that, for example, in - if you look at family violence statistics, we know that Aboriginal women are 45 times more likely to experience family violence and, where violence does occur, 25 times more likely to be killed or to be seriously injured as a result of that violence.

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We also know, of course, that outcomes for Aboriginal women across a number of systems - you know, incarceration rates, for example, are - you know, there is also an overrepresentation. So there are many overlaps, and those are just a few examples of where there is intersection between those portfolios.

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MS McLEOD: You personally, Minister, also have an interest in incarceration issues?

MS WILLIAMS: I have an interest in any area that - where we see Aboriginal people overrepresented in a negative sense.

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MS McLEOD: Yes. Before I turn to your statement, I might offer you an opportunity to introduce yourself, as our leaders have, in terms of your background and your sense of connection to place and your sense of connection to Victoria, if you don't mind.

5 MS WILLIAMS: Sure. Well, I'm Gabrielle Williams. Hopefully our Commissioners know me well already. I've been a member of the Victorian Parliament since 2014, a Minister in the Andrews Government since 2018, and have been in the Aboriginal Affairs portfolio upon the retirement of my predecessor Mr Gavin Jennings since 2020. In terms of my connection to place, I reside on Bunurong Country, proudly, and have grown up, in my lifetime, in the
10 eastern suburbs of Melbourne, overwhelmingly, and spend most of my working life, given my ministerial responsibilities, on Wurundjeri Country here in Melbourne's CBD.

I am enormously humbled to be able to have the responsibilities in the Aboriginal Affairs portfolio, particularly at such a historic time as Victoria embarks upon truth and treaty, the
15 first jurisdiction in Australia to do so. And I take my responsibilities very seriously in that and hold the responsibility, in many respects, of government to be true to our commitments to come to those commitments in good faith, with open hearts and open minds and to take seriously the responsibility I feel I have as Minister for Aboriginal Affairs, to do those two
20 things.

And I have always seen the portfolio as having two parts. One, is to hand back control of Aboriginal affairs to Aboriginal people, and obviously treaty and truth is a big part of that; the second part, though, is the responsibility that I feel we have, as a Minister in the
25 Aboriginal Affairs portfolio, to bring the non-Aboriginal population in Victoria along with us on that journey and help explain why this journey is so important.

Because through doing that we will get the best possible outcomes, and I do think it's a responsibility that we have to be a part of that story and to be a part of that broader Victorian sense of responsibility be to do our part.

30 MS McLEOD: Can I remind you of some things you said in your first speech to Parliament.

MS WILLIAMS: Yes.

35 MS McLEOD: And what I'm going to ask you after I read you a passage from your first speech is about your commitment to addressing racism and anti-discrimination generally.

MS WILLIAMS: Yes.

40 MS McLEOD: In your first speech you said:

"Earlier this year the Federal Government sought to withdraw the protections afforded by the Racial Discrimination Act ..."

45 That's the Federal Act:

*"... 1975. It essentially sought to condone behaviour that humiliated, offended or insulted on the basis of race. In my community this was met with great fear. When governments seek to make changes like the ones proposed, they are sending a message to the Australian public
50 that it is okay to be a racist, and those who may have thought racist thoughts begin to*

articulate them, those who might have articulated them start acting on them and so we see an escalation of unacceptable behaviour and the degradation of respect within our community.

5 *I have never been spat on because of my race, nor have I been called names. My parents were not harassed when they dropped me off at school, and I have never been racially taunted or threatened. But when politicians start putting forward regressive measures like those recently pushed by the Abbott Government, and One Nation before that, many in Dandenong do experience these things. I have heard their stories, and I will stand up for them always.*

10 *It is a source of great pride to me that in Victoria both sides of politics stood in opposition to the Federal Government's proposed changes. Both major parties reiterated their support for diversity and social inclusion. I was extremely proud when, as then Opposition Leader, Daniel Andrews promised to reinstate the section 18C protections in the Racial*
15 *Discrimination Act 1975 at a State level should the Abbott Government be successful in abolishing them. Thankfully it did not come to that."*

So, Minister, can I invite to you comment on that, and what motivates you in terms of addressing racism and moving for anti-discrimination protections.

20 MS WILLIAMS: I represent, in Dandenong, the most multicultural region in the country, 158 different nationalities, over 200 languages and over 100 different faith groups in one community. And over my years representing that community, having the great privilege of representing that community, I've heard stories and shed tears with constituents who have
25 recounted to me the impacts on their lives at the grassroots level when leaders, particularly political leaders, make public statements or indeed embark upon policy that in some way endorses racism at a local level.

30 And as that - those words in my inaugural speech outline, I reference how that was - reference indirectly - also partly directly, I guess - how that was experienced by my community at the time of the rise of One Nation, you know, and public statements made by Pauline Hanson, when many in my community spoke about dropping their children off at the school gate and having other parents spit on them because all of a sudden they were empowered by public statements of a national leader at that time.

35 And that resonated with me because I think it reminded me - and still does to this day - how important it is that we be mindful that what we say can translate into some pretty nasty things on the ground. And I think the flip side of that is what we say, I think, can also inspire change on the ground and inspire a different way of thinking in a positive sense. And that is a
40 responsibility I see myself as having, and certainly I think my colleagues would share in that as well.

Obviously, you know, looking back to that eight years ago - or almost eight years ago and then relating that to where - to the positions I now occupy, it has another special significance,
45 which is looking at how systemic injustice continues to impact upon First Peoples in this country today and thinking about types of racism that are more subtle by nature that may not always be so easily recognised by those who don't experience it.

50 And I put myself, in a personal sense, as one of those, as I outlined in my inaugural speech, and the reality is that most that sit within government haven't experienced that by virtue of

the composition of Parliaments and bureaucracies, which is a reality. Which is why I think it's so important that we put the voices of First Peoples at the centre of the creation of those ideas about reform, actually talk directly to those who are impacted, who do know what this feels like, for whom racism isn't subtle but very much front of experience in their day-to-day lives so that we can better understand, be better informed and develop better policy.

MS McLEOD: Thank you, Minister, for those statements. You were invited to make a written statement by the Commission, and you've indicated that you have provided that statement acknowledging it as your position with your portfolio responsibility, but also the Victorian Government position.

MS WILLIAMS: Yes.

MS McLEOD: What I'm going to do is ask you to read various blocks of paragraphs, and then we will explore some of those issues as you read through.

MS WILLIAMS: Sure.

MS McLEOD: What I'm also going to do is invite Commissioners to let me know as you go if they have questions rather than the usual course, which is usually to refer those - to defer those to the end. So if Commissioners have questions please interrupt at an appropriate time. Minister, can I ask you - you have already acknowledged Country. Can I ask you to read paragraph 2 down to paragraph 6 of your statement?

MS WILLIAMS:

"From time immemorial, First Peoples in Victoria have practised their law and lore, customs and languages and nurtured Country through their spiritual, cultural, material and economic connections to land, water and resources.

Under international law, self-determination is an inalienable right of First Nations peoples. The Victorian Government is committed to self-determination as a foundational and guiding principle.

It must be acknowledged that the long-lasting, far-reaching and intergenerational consequences of the dispossession of First Peoples of their Country in this part of the continent are a direct result of colonisation and the establishment of the State of Victoria. The reality of colonisation involved establishing Victoria with a specific intent of excluding Aboriginal people and their laws, cultures, customs and traditions, including through horrific violence perpetuated and individual, societal and systemic levels. This history, and the systems it gave rise to, continue to harm First Peoples today.

I acknowledge the extraordinary strength and resilience of First Peoples in the face of historical and ongoing injustices, and the survival of their living cultures, knowledge, and traditions.

It is with humility that I make this statement to the Yoorrook Justice Commission as Victoria's Minister for Aboriginal Affairs, which reflects the Victorian Government's position. Thank you to the Commissioners for the opportunity to provide this statement. In preparing this statement, I consulted with subject matter experts within the Department of Premier and

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Cabinet and other relevant portfolios in the Victorian Government. I confirm the contents of this statement are true and correct to the best of my knowledge."

5 MS McLEOD: Thank you, Minister. As you indicated before, we might stray outside your portfolio expertise. Please tell us if we do that.

MS WILLIAMS: Sure.

10 MS McLEOD: We may need to get you back or one of your fellow Cabinet members.

MS WILLIAMS: No problem. Thank you.

15 MS McLEOD: The reference to - can I start with the statement that sovereignty has never been ceded that you make in paragraph 1. What do you mean by that? You do explore this later in your statement, in terms of the concept of terra nullius.

MS WILLIAMS: Yes.

20 MS McLEOD: But what do you mean "sovereignty has never been ceded"?

MS WILLIAMS: I like to think it's certainly legally a well understood fact now that - particularly through the decision in Mabo and, as you've just outlined, the rejection of terra nullius that goes to the manner of acquisition of sovereignty, that it was never ceded by First Peoples and that - I guess the fact we have pursued treaty in and of itself is a recognition that that formal discussion never took place, which is why we are embarking upon a treaty process and treaty agreement now.

30 MS McLEOD: No, no. I was going to say, I am not asking for an answer as a constitutional lawyer, of course.

MS WILLIAMS: Yes.

35 MS McLEOD: But what does it mean in terms of everyday Victorians who are living on freehold property going about their lives and conducting their businesses? What does that mean for each of us?

40 MS WILLIAMS: Yes. I think it's an acceptance that colonisation as it occurred and the dispossession that it involved disconnected, removed forcibly, First Peoples from their Country, from their culture, and their lands and waters in a way that was fundamental to their identity and belonging in this place. And that when we acknowledge the nature of the removal of that connection, we need to also understand that the damage didn't stop there.

45 That the harm continues to be caused and that that disconnection from Country, culture, traditions and the special place of land and waters and what that means for our First Peoples continues through the systems that were set in place at that time.

50 MS McLEOD: Just on that, I wanted to ask you about the next principle, which is self-determination. And the standards of self-determination begin with the articles of the International Covenant on Civil, Political, Economic, Social and Cultural Rights, now enshrined in the UNDRIP. Our Terms of Reference expressly acknowledge those documents

and the foundation for that. So can I ask you what you understand or what you mean by self-determination in paragraph 3 of your statement and then I will offer you a comment that Mr Stewart, Marcus Stewart, made yesterday about that?

5 MS WILLIAMS: Sure. I think there is broad recognition by the Victorian Government that best - the best outcomes for Aboriginal people are achieved when it's Aboriginal people leading policies and programs that affect their community, their lives. And self-determination, I think, is an important principle and one that is a guiding principle of our Victorian Aboriginal Affairs Framework, the VAAF, as we call it.

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It is an ambition and an objective and one that we continue to act on to ensure that we are putting at the centre First Peoples' voices and control of their affairs in the hands of those who are directly impacted by understanding, as we do - because the data bears it out over and over again - that the best outcomes are achieved through doing that. So that is what I mean when I refer to self-determination and the importance of it.

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MS McLEOD: Commissioner Walter.

20 COMMISSIONER WALTER: Can you explain to me, Minister, how you put the voices of Aboriginal people at the front?

MS WILLIAMS: Sure. There's more to do - - -

25 COMMISSIONER WALTER: Because my concern is about the 1990s model that is still operating around consultancy and advisory, where people get to speak but the actual accountability of how their voices are actually done and their access to the decision-making table still remains absent.

30 MS WILLIAMS: Thanks, Commissioner, and that's a good point to make, because by - I should emphasise that by no means are we there yet. And so there have been, within different portfolios - and I can speak to some initiatives in broad terms in mine - where there have been genuine attempts to give decision-making power to First Peoples as opposed to just, I think, what you're talking about, which is consultation, which obviously can be - can be a great many things and - - -

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COMMISSIONER WALTER: And meaningless.

40 MS WILLIAMS: And meaningless things, granted. So, for example, if we look at Victoria's Cultural Heritage Protection System - and I know that is, with certainty, an area that could do with improvement, but it also happens to be the strongest in Australia, our - Victoria's system is one of the strongest in the world. But we don't rest on our laurels on these things. We are in a process of continuous improvement always, and I know we will probably talk to that at some point today.

45 But the idea of putting - in control of the Heritage Council, the decisions around the appointment of RAPS and, therefore, those Registered Aboriginal Parties having control around decision-making of - of, you know, projects and cultural heritage protection and management on their lands. That's one example of a divesting, I suppose, of the government of its decision-making. Those are decisions that aren't made by me as Minister, and they are

not decisions I can intervene in. They are strictly decisions of the Heritage Council and then the RAPS.

5 You know, there are - you know, probably other examples of - you know, not always as direct as that. I know there is sort of work going on, for example, within Child Protection around handing over and divesting from non-Aboriginal bodies and agencies to Aboriginal bodies and agency case management, of Aboriginal children, and those Child Protection cases also preference Aboriginal children in Aboriginal care. Again, more to do, which is really, I think, why - or part of the reason why treaty is so important, why truth is so
10 important because it allows us to elevate that conversation further and to really look at how we address that need for greater self-determination and what that looks like in a meaningful way through that systemic reform that can come through truth and treaty.

15 And I think, you know, rather than government determining what that model best looks like and how that is best achieved, we need First - First Peoples to be telling us how that needs to work to quite legitimately put First Peoples at the centre and those voices at the centre in those matters that directly relate to their lives and outcomes.

20 COMMISSIONER WALTER: Thank you.

MS McLEOD: Minister, is another example of that devolving of power the Stolen Generations reparations decisions that were made recently and the framework that was set up for those payments?

25 MS WILLIAMS: Yes. That's right. So we set up a Stolen Generations Steering Committee to design the Stolen Generations Reparation Scheme. This was set up by Ian Hamm of Connecting Home, who I know will be known to the Commissioners. And a committee - steering committee made up of Stolen Generations members. So they were tasked with designing the Reparation Scheme, its parameters, which they did. Not an easy
30 task, I should say. And the government accepted their recommendations around how that scheme needed to operate.

MS McLEOD: In his balert keetyarra witness statement, Marcus Stewart said this:

35 *"Victoria has in recent decades attempted to address the history of First Peoples' dispossession. Those attempts have failed to produce meaningful change because they have failed to shift political power to enable First Peoples to have true self-determination over issues which affect them."*

40 So I take it from what you've just said that you would agree with that?

MS WILLIAMS: I think we've got further - further work to do, certainly. We're not there yet.

45 MS McLEOD: And I also take it from what you've said that there is a willingness to do that?

MS WILLIAMS: Absolutely. I think it's a core guiding principle, as I said, in our Victorian Aboriginal Affairs Framework. It is also a feature of other policies across government in other areas. It is certainly a regular conversation and a point, I think, that is being more fully
50 understood across government as time goes on too.

MS McLEOD: Just taking the Stolen Generation reparations decisions as an example, what is the accountability mechanism for government for those decisions that are made by those independent committees?

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MS WILLIAMS: Sure. I think - or when the Steering Committee makes public its model and recommendations for - for design, I think there is an element of accountability in the government then responding accordingly. Obviously, where we deviate, we are - we then need to explain ourselves, and I think there is an accountability in that itself and an accountability in having to be answerable not only to the Steering Committee itself but to the community that committee represents.

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MS McLEOD: And more broadly, as Minister to the people of Victoria? The accountability rests with the Victorian Government?

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MS WILLIAMS: Yes.

MS McLEOD: Correct. Can I invite to you look at paragraph 4 in your statement acknowledging horrific violence over time and the systems that - the history and the systems it gave rise to continuing to harm First Peoples today. What we have - what the Commission has already heard, in its work on Country and in the evidence it's heard today, are multiple examples of massacre, vigilantism, poisoning, disease, the spread of disease, fouling of waters and lands through stock.

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MS WILLIAMS: Yes.

MS McLEOD: We've heard about disconnection of people and control of their movement, lack of freedom of liberty to move, needing permission to do even basic things, to leave missions. We've heard about rationing, the prohibition against using language and culture, removal of children, the civilising project and the assimilation projects. In terms of current challenges, can you offer any insight, from a government perspective, as to how those things are still persisting?

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MS WILLIAMS: I think that, broadly speaking, dispossession - and that seems such an inadequate word when you think about all of those things you've just described and the horror that sits behind them - but they led to an establishment of a number of systems - systems of government, systems of education, health, justice and the like which are - I think it's fair to say have not adequately respected the knowledge and expertise and ways of our First Peoples, have obviously, at points in time, sought to exclude them.

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But more broadly than that, I think the - you mentioned the disconnection from language and culture and community, and I think that then goes, you know, to my observation - and, you know, again from a non-Aboriginal perspective and an observer in many respects - you know, I'm conscious of telling First Peoples what the impact on you is as somebody who hasn't borne that impact. So forgive me if - I don't mean to be condescending in that.

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But there is a sense of identity that comes with all of those things and when you look at the outcomes for Aboriginal people across a whole range of our systems and structures, whether it be higher incarceration rates, lower retention rates or higher absentee rates in schools, whether it be lower life expectancies - I think there's a seven-year life expectancy gap

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currently - higher rates of family and domestic violence as I highlighted before and, it should be highlighted, often by non-Aboriginal perpetrators against Aboriginal women, I think we can see the damage done by that disconnection in terms of - I think the education system might be a good example there.

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And, you know, having recently watched *'In My Blood it Runs'*, I think, is the film, but around how a very westernised system cannot meet the needs of a different - of a different culture and way of doing things and also not respect the knowledge and the expertise that sits - that rests within that system. So I think the fact that we have inherited, to this day, systems that were established at the time amidst the events that you describe obviously creates within it great disparity of outcome.

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MS McLEOD: Commissioner Walter.

15 COMMISSIONER WALTER: Thank you, Minister, and thank you for Part B on the Dispossession of First Peoples of their Land and Waters. I obviously agree with what you've said here, but I want to issue a little bit of a challenge around the specificity of the language you use here. So for example in paragraph 49, you sort of say,

20 *"As First Peoples were not recognised as having pre-existing rights, they were not considered in land legislation or policy until very recently. Accordingly, early and successive land legislation was silent on First Peoples' rights and was often enacted as matters of expediency."*

25 I just - my challenge is, that sort of sounds a little bit like it's - it was sort of accidental absence or a thoughtless absence.

MS WILLIAMS: Yes.

30 COMMISSIONER WALTER: I would put it that it was actually quite deliberative erasure, that First Peoples were thought of and these Acts were further dispossessing, further erasing Indigenous peoples and their ownership of those lands.

35 MS WILLIAMS: Yes. Excluding. No, I take that point, Commissioner, and I wouldn't disagree with it.

COMMISSIONER WALTER: Thank you.

MS McLEOD: And, in fact - - -

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COMMISSIONER BELL: Can I ask a follow-up.

MS McLEOD: Yes, please, Commissioner Bell.

45 COMMISSIONER BELL: The point made by Commissioner Walter really refers to the systematic and deliberate way in which the laws and practices of the State were used to colonise the State and dispossess First Peoples with all of the consequences to which you've referred. And I ask - I asked the Co-Chair yesterday a question that I wanted to ask you, and I think I can ask it now.

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MS WILLIAMS: Sure.

COMMISSIONER BELL: And that is there is a question about the level of examination of that subject which we have to consider.

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MS WILLIAMS: Yes.

COMMISSIONER BELL: And we could - we could consider that subject at a high level of generality, as we now are, or we could - not law-by-law, but certainly examine the way in which particular laws, Lands Acts, laws for the creation of reserves for essential infrastructure - post offices, police stations, roads - the laws facilitating the dispossession brought about by the pastoral system, and that would refer to pastoral leases and all of the pertinent laws supporting the leasehold system, the creation of the private title system under the Torrens Acts, the way in which laws were passed by Parliament to create the whole concept of private title, which is really just a way of privatising to the coloniser's benefit that which belonged to First Peoples. And I'm interested in your thoughts about the level of detail at that which - at which that task is to be done.

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MS WILLIAMS: Yes, look, it's a good question and, ultimately, a difficult one for the Commission itself, I guess, to resolve. When I think about the Terms of Reference for the Commission that were arrived at in partnership, obviously, between the government and the First Peoples' Assembly and the sorts of discussions that took place around that, there were effectively two work streams established within it. And I'm giving you the way I conceive of it to hopefully give you some insight.

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One was to create that record from - in First Peoples' words, from First Peoples' perspectives about the history of this State and what had happened. So the sort of backward-looking piece, the historic-looking piece. And then the second part was the ongoing contemporary injustice, which, of course, the two are connected - accepting that. But to look at the contemporary injustice and the ongoing nature of that injustice and then make reforms for systemic change, which is that sort of forward-looking piece that - in our - and "ours" meaning the government's in partnership with the First Peoples' Assembly.

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The idea that could fold into setting a bit of a road map for substantive treaty negotiations and where that start and how that can play out. So I think the balancing act that the Commission essentially has to determine and find yourselves is how to divide your labour and your time between those two tasks and, I suppose, the level of detail and specificity you go into on that historic project, you know, is what you determine that it needs to be to get that public record in the shape that you think it needs to be to carry this State forward with a strong understanding of what exactly happened. I know that's probably not as prescriptive an answer as you like, but - - -

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COMMISSIONER BELL: No, that's very helpful, thank you.

MS WILLIAMS: But there are big tasks and big decisions, I think, in your work to be made. And the only other point I would make on that - and I know it's probably one, Ms McLeod, that we will talk about later, but also goes to recommendations that the Commission is obviously able to make about the need for ongoing or extended truth-telling processes. A Royal Commission might not be the model that you would choose for that sort of longer

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process, but what opportunities rest in those sorts of processes to continue that evidence-building, if you like, of that historical project.

5 Noting, you know, my observation is that often when people tell the stories, tell their truths, many of which might start to piece together those details - geographically-specific details too of what's happened when and where, that may happen incrementally over time. So that might be another sort of factor to your thinking about how much you can piece together on the historic project in the time you've got, and then how much - and then how that might fold into any - any future processes that you deem are necessary to do it justice.

10

MS McLEOD: Just following on from that, and picking up your comment that dispossession is an inadequate word to describe the horror and violence that we've been talking about, but if I can use that word as a summary to capture all those things, has the government acknowledged that it has been the beneficiary of that dispossession?

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MS WILLIAMS: I think it's a matter of fact that the State has been a beneficiary of it.

MS McLEOD: And that would include its continued assertion that it has lawfully acquired the rights to land and waters?

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MS WILLIAMS: Well, you know, that, I think, goes to the previous conversation we had around sovereignty and how it was - how it was declared and the grounds on which it was taken as we, I would hope, broadly recognise was a false - was a falsehood of terra nullius.

25 MS McLEOD: Yes. And that would include use of resources - land, waters, and sky - and also the power to compulsorily acquire lands and waters?

MS WILLIAMS: All the systems that stem from that, yes.

30 MS McLEOD: Thank you. Can I come back to your statement, then, and turn to another topic and ask you to read paragraphs 7 and 8, please.

MS WILLIAMS:

35 *"It is important to note this statement includes information, statistics and examples that were collected by the State and are not fully informed by First Peoples' voices and experiences. The Government acknowledges that research and data can be influenced by the systemic racism and bias that the Commission was established to address. First Peoples are often misrepresented through deficit framing that denies sovereignty, does not support agency and self-determination and enables disparate outcomes.*

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The Government acknowledges that it should consider integrating Indigenous Data Sovereignty (IDS) principles and practices into its data and privacy policies. Without adequate and appropriate data, it is difficult to identify and evaluate system improvements.

45 *The Government acknowledges the Commission will provide a more complete record of First Peoples' experiences of colonisation and dispossession through its inquiry, and that the Commission may make recommendations relating to IDS."*

50 MS McLEOD: Just to tease that out a little so that there is some broader understanding of what's meant by that.

MS WILLIAMS: Sure.

5 MS McLEOD: What is deficit framing that denies sovereignty in terms of the collection of data? What is it you are talking about here?

10 MS WILLIAMS: The deficit framing comment was in relation to the fact that the data that is often chosen to be collected and the way we choose to frame that is often problematising Aboriginal people, and that in itself obviously has - has a negative impact. Obviously, in terms of data sovereignty, that - you know, the importance of collection, ownership and application of First Peoples having - you know, governing those things, governing the collection and the ownership and the application of data about their communities, lands and resources is one way of changing that.

15 But - and an important - an important mechanism, I think, through which we can perhaps change that deficit framing. Not only change the way - the way data is handled but also perhaps change the questions that are asked and what knowledge is valued and what expertise is valued in the data that is collected.

20 MS McLEOD: Commissioner Walter?

25 COMMISSIONER WALTER: Thank you, Minister. So, as you probably know, data sovereignty has two arms. So there's government data, which is what we are just talking about here, the deficit data and who collects what for what purpose and how it is used and what is the purpose of data collection and use.

MS WILLIAMS: Yes.

30 COMMISSIONER WALTER: The other arm is data for governance. So it's about the data First Peoples need to allow nation rebuilding, self-determination – self-determination, any of the things of UNDRIP, are not possible without the data that's needed to do that. Also, pillar four of the Closing the Gap agreement explicitly talks about the need for data - that data for governance part of it. Can I ask you what steps have been taken at the State level to bring either governance of data or data for governance into reality for First Peoples?

35 MS WILLIAMS: Yes. Sure. Look, the Victorian Aboriginal Affairs Framework obviously commits us to exploring Indigenous Data Sovereignty and models of seeing that through. I know Mr Stewart yesterday referred to conversations that had happened between the government and the First Peoples' Assembly around pursuing that work. It was obviously also of interest to the First Peoples' Assembly. And so I think - and I think it's also - and I won't have the exact name of the Department of Environment, Land and Water Planning, they have got a self-determination strategy that relates to their area which also makes reference to the importance of - and a commitment to data sovereignty.

45 So I think it's very much a work in progress and also, obviously, one that we have identified that the Commission itself may want to make recommendations around to help guide our approach to get the best possible outcomes in Indigenous Data Sovereignty. So it's one that I really look forward to seeing the recommendations of the Commission on.

50 COMMISSIONER WALTER: Thank you.

MS McLEOD: I think you can assume there will be some enthusiasm for that. In terms of the examples you have given there in paragraph 7 in your footnote, there is a reference to a paper about Partnerships for Justice in Health. So would you acknowledge that this deficit framing impacts many areas of government policy response?

MS WILLIAMS: Certainly. And it's – it's been an interesting discussion in recent times – and I add this by way of observation – even in the way we talk about the disparity in outcomes, that – a shift I've noticed even in the short time I've been in this role from Aboriginal people here in Victoria and organisations that represent many of those different areas where those disparities exist, is around even the language we use in, for example, "closing the gap".

And it was put to me several times over the last couple of years why - "why is our ambition being restricted by only catching you up to you guys" and I thought that was a really poignant way of making the point that even our - even, on occasion, the language around how we achieve better outcomes is still setting as a benchmark non-Aboriginal measures and outcomes rather than empowering or seeing as potentially better or having greater scope for improvement First Peoples' ways and giving life to their ambition beyond where non-Aboriginal outcomes rest. And so, you know, I think there is some thinking for us all to do on that.

MS McLEOD: And no doubt the tendency - yes, Chair.

CHAIR: Yes, I would just like to see if I can get a question out.

MS WILLIAMS: Yes.

CHAIR: You touched on something that, for me, is of great concern and that is the use of language, the use of deficit language. And we've had much conversation about words that don't quite fit things that we intend to express. But I abhor the term "closing the gap." Absolutely it infuriates me.

MS WILLIAMS: Yes. Yes.

CHAIR: And I - for the reasons you've just expressed, about being like white people. We do not go before anybody naked or inarticulate. We bring with us a cultural framework. We think differently. And I find it hard to understand why we should be in a situation where we want to "close the gap" - gap against statistical data when, in terms of our cultural presence, we enrich this country.

MS WILLIAMS: Yes.

CHAIR: We enrich people because of the things we know that we haven't been able to share through no fault of our own. And I personally believe there should be some recognition of that in certain spaces. So I just put that to you, because it's a point that makes me quite angry. And I go back to things like my grandmother, for example, in the 1960s, being interviewed by many people, musicians, linguists, and taking her words and then publishing a book and they become the experts.

MS WILLIAMS: Yes.

CHAIR: Now, I've been the beneficiary of certain things from her, and I feel that - you know, I have some things that make me stronger as an Aboriginal person that somebody else
5 might be who hasn't had that experience. And I feel that we should be recognised in that way as not being deficit but being stronger culturally as Victorians, as Australians. I just wanted to say that, even though - in response to your recognising that point.

MS WILLIAMS: Yes. And look, you've explained more articulately than I ever could the
10 challenge and the difficulty in those sets of words, and the sentiment that you've just expressed to me is almost exactly what has been put to me by others as well, and concern in particularly around that term "closing the gap" and what it represents, I guess, more than anything. And, obviously, there are targets that sit beneath it and - as you've outlined, that the
15 data - the datasets and the ambition within it is a comparative tool between white Australia and Aboriginal Australia, which I accept is - - -

CHAIR: A pejorative comparison.

MS WILLIAMS: A pejorative comparison, that's right. So there is work to do there. And
20 sorry - if you don't mind me picking up one point that the Chair made around those - that sort of strengths-based approach and the - enrichment, I think, was the word that you used, which was beautiful, that Aboriginal people bring to this country. I think that one of the things that I've been really pleased to see and quite proud of are things like the Deadly and Proud
25 campaign, which takes a different approach to promoting that strength of Aboriginal culture and heritage, not just to Aboriginal people in Victoria, but to all of us, and encourages the broader Victorian community to share in the pride of that, of being - of living in a place that is home to the longest continuing culture in the world, to better understanding that culture.

Even if it's not something we're part of, it's, I think, the message that we can still be proud of
30 it because that shows a valuing of it, I think, is a nice shift in the way we're starting to talk about these issues as driven and led entirely by the Aboriginal community. And I think we need to - you know, personally speaking, that that is an area of elevation, I think, that's also an enormous opportunity out of truth-telling and treaty, I think, is the idea of bringing
35 broader population along the journey.

I know Marcus used the term - sorry, Mr Stewart, used the term yesterday around "walking
40 with us" I think is the term he kept using. And I think there is a huge opportunity in these processes to build that knowledge, to build that understanding in a strengths-based way as well that will truly enable non-Aboriginal Victorians to be a positive part of this process and to walk with.

MS McLEOD: Commissioner Hunter.

COMMISSIONER HUNTER: Yes, just back to the statistics. So who currently sets what
45 statistics are collected and then who writes that narrative for Aboriginal people?

MS WILLIAMS: Look, I think that might be a sort of portfolio by portfolio question in a sense, in terms of, obviously, departments within the government will have certain
50 responsibilities around the collection of data and what they are gathering and within certain systems too. So whether it be, you know, the Child Protection system or the Health system.

So, effectively, much of that responsibility would be sitting within government bureaucracies. I know that's a very vague answer, sorry. There - - -

5 COMMISSIONER HUNTER: So they will be the ones that will be writing that narrative about Aboriginal people, that deficit at this present time?

MS WILLIAMS: Look, you know, at a very high level, I think, yes, you know - yes.

10 COMMISSIONER HUNTER: Thank you.

MS McLEOD: Minister, you say in paragraph 9, the government is deeply committed:

15 *"The Victorian Government is deeply committed to the objectives of the Commission and to transforming current systems and building new ones - to creating a new relationship between First Peoples and the State of Victoria based on equality, truth and justice."*

And that leads me to ask you to read paragraph 11 and 14 and to have a discussion about how this Commission came about.

20 MS WILLIAMS: Sure. 11 to 14, did you say?

MS McLEOD: Yes, please.

25 MS WILLIAMS:

"For most of Victoria's history, First Peoples have been denied the opportunity to make decisions for themselves. First Peoples' fundamental right to self-determination - as enshrined in the United Nations Declarations of the Rights of Indigenous Peoples (UNDRIP) - should never have been violated."

30

Justice in Victoria must mean a commitment to self-determination - supporting the transfer of relevant decision-making power from the State to First Peoples. That is why, in 2016, the Victorian Government committed to pursuing treaty.

35 *Over the course of discussions with the State's treaty partner - the First Peoples' Assembly of Victoria - the Government came to understand that to achieve a new political and institutional agreement for First Peoples, we must first reach a definitive and shared understanding of our past, and how that past continues to impact the present. In June 2020, the Assembly passed a resolution to call on the Victorian Government to establish a formal truth-telling process, as a fundamental step in the process to treaty making.*

40

In establishing a truth and justice process in partnership with the Assembly, the Government acknowledged that inequalities between First Peoples and other Victorians are deeply ingrained in the architecture of our society and systems. To address these issues, the Commission needs to consider not just one system or structure, but what underpins and connects them."

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50 MS McLEOD: So we're talking here about the creation of the Commission, but also the intention of government and the Assembly in doing so. And we have heard from the Co-Chair yesterday.

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MS WILLIAMS: Yes.

5 MS McLEOD: So from government's point of view, what is the recognition in terms of - I will start here - what, from government's point of view, is the aspiration of this Commission?

10 MS WILLIAMS: It might help to answer that question to give a bit of context about how - how the request for a truth-telling process was arrived at, because I think through that narrative probably is the best way to answer that. So obviously treaty was committed to back in 2016, and when I came into this role in 2020 the Assembly had just been stood up and not long - and not all that long before. And I think from both the government side, you know - certainly from my side and I don't want to speak for the Assembly, but I know there seems to be similar sentiment recognised in those conversations, we were trying to make sense of how that would look, how that would work, how that would move forward; what treaty looked like. Being the first in the nation to do so obviously meant that there was not a clear blueprint necessarily to follow, being mindful that it had to be bespoke to the circumstances of our nation, of our State. Then what we saw happen was the murder of George Floyd in the US, and the rise of the Black Lives Matter movement. And what was interesting for me observing that was that we had First Nations people, you know, not for the first time, it's got to be made clear, again taking to the streets and raising awareness about the fact that it was not just an issue that affects the US, that we had our very own challenges and issues right here in Australia and trying to raise awareness about those issues as they existed in our own backyard. And I think through watching those protests unfold a couple of things happened. One, was that it was - I think shone a light pretty starkly on how thin the knowledge of white Victoria, white Australia was on the history of this State and of the connection of how that - how that history is intricately connected to the outcomes for Aboriginal people that we see experienced in - across a whole range of systems to this day; that ongoing impact of that history. And, so, you know, in recognising - and also I guess the second part of that was there was a level of empowerment in that process that I think gave strength to the arm of the First Peoples Assembly to then be able turn and ask us - make a request of government for a truth-telling process. And inherent in that request was an understanding that there was - and these are in my words, from the government position - that it was very hard to get a community to look to the future and to look at what that must look like, how that must be designed through treaty, without first having reconciled with the past, which is something we hadn't formally done, and built - and through that built a better understanding, particularly among non-Aboriginal Victorians, of how that history of dispossession continued to do harm today. Because that's a really important underpinning, if you like, of that future discussion of getting people to understand why treaty was so important. If they can understand why treaty is so important then they can then proactively be a part of that journey. They can then proactively walk with, as Mr Stewart put it yesterday, on that journey. And so the request was put.

45 Now, in terms of the design of the Terms of Reference and - which goes to the ambitions of the - of the truth-telling commission, it would have been easy and in many respects I think for a government less ambitious, perhaps, to make the system of the Commission's work historic only. To make - to solely keep to one line of that - of that sort of two-pronged work plan as I sort of put it earlier, which would have just been to look backwards. It was very deliberate not to do that, it was very deliberate to include that second part which was around looking at systemic injustice and making recommendations for how that should be dealt with both in

terms of the road map through treaty, what that starting point for treaty should be, but also widening that to be potentially ideas outside of treaty as well.

5 So the idea for that was, you know, in discussion with the First Peoples Assembly, it was around the need for this process to have that educative value, to bring the community with us on understanding why treaty was important, but also for the Commission to have a really important and practical and functional role to play in setting the agenda for the treaty negotiations which also played into considerations for things like interim reports. Noting, of course, that the substantive phase 3 treaty negotiations are due to commence at the start of
10 next year.

15 So it was a way of quite functionally putting on the table, "well here might be your priority things, priority issues, and here might be some ideas of reform you want to pursue through those negotiations". So that was really the ambition behind the establishment of truth-telling which effectively means it had multiple functions. It was that educative function, it was that part of bringing the community with us and explaining the why for treaty, why it was so important that we do this but also having that functional space in - in really setting the agenda for what treaty negotiations look like or at least at the very minimum how they commenced and what was prioritised.

20 MS McLEOD: Mr Stewart said yesterday the Yoorrook Justice Commission is an outcome of our community aspiration and drive for truth-telling from the Assembly's point of view. So government would be, I take it from what you've just said, very supportive of those aspirations?

25 MS WILLIAMS: Indeed, yes.

30 MS McLEOD: And he also said that he foresaw that it might have a five to 10-year timeline. And I think you signalled earlier that what that looked like with this Commission or beyond the life of this Commission was an open question.

35 MS WILLIAMS: Yes, that's right. I mean, the original timeframe, you know, reflecting on - on the discussions and the purpose of the truth-telling commission as it was envisaged at the time of its establishment and partnership with the Assembly was around a process that folded into a treaty process in many respects. But in devising the appropriate model for it - and that was obviously a very detailed conversation itself because it didn't necessarily have to be a Royal Commission, there were other options that were available, and in the end I know - again, not wanting to speak for the First Peoples Assembly, and it may be something you want to return to again, but when I suppose what was appealing about a Royal
40 Commission as a structure for this particular phase was around the ability to compel information and the like, which was particularly important given the overall objectives of the Commission in both establishing a record but also offering that vision for what reform should look like. However, it needs to be said it was always sort of open to the Commission itself to make recommendations around any need to have an ongoing or extended truth-telling
45 process. And obviously the scope of the Commission was kept deliberately quite broad to allow for those types of recommendations. And to in doing so turn your minds to or allow for - for a model of ongoing or extended truth-telling that might better meet the needs as you saw them, you know, which as I said earlier might - you might well deem a Royal Commission isn't the model for that, it's something else. But we wanted to ensure that that
50 was an option open to the Commission to consider and to make recommendations on.

MS McLEOD: Just to give you a break from reading your own statement, I might read paragraph 21 and 22 to you.

5 MS WILLIAMS: Sure.

MS McLEOD:

10 *“The Commission's mandate includes outcomes conducive to healing. Given the difficult subject matter of this Commission and the need to ask First Peoples to tell or retell their stories, there are serious risks of re-traumatisation for First Peoples already burdened with the intergenerational trauma of colonisation. The importance of truth-telling centred on healing and the prevention of further harm, therefore, was a key guiding principle agreed to by the Assembly and the Government.*

15 *The broad mandate of the Commission reflects the Victorian Government's commitment to truth telling, and to reform, reparation and the advancement of a treaty or treaties founded on a shared understanding of the truth. The Government must acknowledge and confront the grave wrongs that have been committed - and that may be ongoing.”*

20 Now, I just invite to you comment on a couple of reflections that we have heard already in the evidence and on Country. First is that there is a degree of fatigue already for those who have been asked to retell their stories again and again, and a sense government has not acted on their stories when they were first told, and so they are looking for encouragement to tell those stories again and a commitment to actually acting upon them.

25 The second reflection is one that has been said at least a couple of times, that is, "We have always been telling the truth, and we don't need a truth commission to tell the truth. You just need to listen." And, in a sense, the listening role of this Commission as opposed to the telling role of those appearing before it. So could I just invite your reflection on those two
30 matters that have been raised?

MS WILLIAMS: Yeah, sure.

35 COMMISSIONER BELL: Can I just add to that, because I think it's very much in context. Commissioners have heard from many people a sense of fatigue of participation and participating in processes like this. And this comes across not just as weariness, but as a lack of confidence in that outcome. And I'm speaking of people who have - who have lost children or themselves been taken away, of people who have suffered violence, people who are the parents or relatives of people who died in custody, and others in that category.

40 And I think we need to understand the gravity of the weight that they carry. And I need to ask you to consider in context of the question that is being asked, the question that's being asked of us by so many of these people, why should this make any difference and why should we participate in this process and why should we continue to give of ourselves when none of this
45 has resulted in significant change?

MS WILLIAMS: Yeah, sure. Firstly, I want to acknowledge that we fully appreciate - I certainly do, in my role - the trust deficit that exists - and not unreasonably. It is, I think, absolutely understandable that any Aboriginal person would come to this process and come

to any government - any process that government has a role in with a sense of suspicion, because government has not been a good partner to First Peoples since - since colonisation.

5 So certainly as a representative of the government, I don't have a right to expect that there should be automatically faith in us. That is something - like trust always is, something that needs to be built. I suppose that goes to the purpose of truth-telling and treaty in itself and is in itself, I think, a recognition that other ways of doing things up until now have not always borne the outcomes that were expected, and rightly so. And that in many respects, you know, speaking as a Minister for Aboriginal Affairs, I would like to see as well.

10 And truth and treaty was a way of changing it foundationally. It wasn't - if you look at the way reform was being pursued previously and the sorts of disappointments that I know exist about whether it be previous inquiries, previous reports, previous reviews, they have traditionally been done in ways that worked to the siloed nature of government, you know, specific issues that sit within specific portfolios. I think the different - the difference in this opportunity is the recognition that, actually, the same thing that underpins bad outcomes in Education or in Health is the same thing that leads to bad outcomes in Justice and Child Protection.

20 You know, there is something quite fundamental and foundationally wrong which is preventing us from being able to achieve better outcomes. And the commitment to truth-telling and to treaty, which have been both - given very broad scope - very broad scope with a holistic view, a look - and I read before from my statement around the Terms of Reference for the Commission not only being different systems but the interconnectedness of them, what underpins them, I think this is what makes this process quite different.

25 That we are looking across the board, that we're looking at the interconnection, we're looking at what underpins these things and, in doing so, asking quite earnestly of - of First Peoples too to tell us what's - what's not working. And I think the importance of asking First Peoples that is not to put the load yet again on First Peoples to have to tell their story, although I know this process is asking people to do that and it's at great personal cost.

30 So I understand that and it was a very deep part of the discussions in the establishment of the Commission to do no further harm, to make sure we could, you know, facilitate through the Terms of Reference something that was as culturally safe and supportive as we could possibly make it. Because it is a difficult thing to ask people to go back. But by putting First Peoples voices at the centre to tell us, it was really a recognition, I think, that - and it's harked back to something I said earlier, around the fact that, for most of us as individuals within government, we have not been on the receiving end of this discrimination, of these - of racism, of many of the underpinning issues that we know.

35 And I referred to them as subtle. They are subtle to us, to non-Aboriginal people. I know they are not subtle if you're on the other end of that, with your - if your lived experience is - you know, if you are living that and that discrimination, that racism, and that injustice in your day-to-day life, which is the very reason we are effectively, truth and treaty, calling on First Peoples to tell us, show us the way as best - you know, as best as you can so we can partner with you to get better outcomes.

40 That's a part of our job, I think, and a part of my job to try and build that trust and be - and communicate our genuine intention to deliver better outcomes through these processes. It's us

trying to demonstrate that we can do things differently and we are trying to do things differently. And this is part of that, the process of truth and treaty is a part of that doing things differently to see if we can get better - better results.

5 In terms of, you know, the statement around, you know, "We have always been telling the truth", I think that probably goes to almost a bit of a misnomer in the name of a truth commission. I suppose the emphasis should also be justice. It is truth and justice, isn't it. And the notion which was one that was sort of introduced to me through this process by First Peoples in the terminology was around truth listening. And I think actually that's probably
10 part of this process we don't talk about enough and is probably, I think, a bigger part of the process which is the truth listening.

You know, I would want to reassure any Aboriginal person tuning in or watching coverage of this or thinking about participating this process, that there has never been - and there isn't,
15 through announcing this process, any doubt that you have been telling the truth. We just want to be a part of a listening exercise and change.

MS McLEOD: Commissioner Atkinson.

20 COMMISSIONER ATKINSON: Yes, just to follow on from Commissioner Bell and the question he raised, I think at the outset we were anticipating - certainly as a senior Elder, experience - with experience of the amount of inquiries that have been held in the past - and we've done research and we've developed a whole chronology of past inquiries, select committee inquiries going back to the advent of colonisation and coming forward. And there
25 are over 100 or more.

MS WILLIAMS: Yeah.

30 COMMISSIONER ATKINSON: So we were aware of this before we even went out and commenced the community engagement process. And certainly, you know, that is a type of feedback that we are getting. And so, you know, we are then put in a position where we had to try and rationalise, you know, the whole process and at the end of the process, we sort of reassured the community that this is different. This is different. In others, recommendations have been made and they have gone to the government and where they have gone from there,
35 well, you know, that's another question.

But if you use the example of the Deaths in Custody, the Stolen Children generated over 50 recommendations, 339, I think, from the Deaths in Custody are good examples. However, in this instance, we then were able to look at the outcome of this in terms of our
40 recommendations don't go to government. They will go - they will inform the treaty process. So the treaty process is a mechanism.

MS WILLIAMS: Yes.

45 COMMISSIONER ATKINSON: It's a mechanism that is there that gives us more hope, of course. You know, that it's a different process and will feed into the treaty process and hopefully produce an outcome, you know, that will provide - look at the question of sovereignty and also self-determination and control and those sort of issues and address a lot of the other issues that are out there. So that's just a way that we have been dealing with it
50 from the Commission's point of view.

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MS WILLIAMS: That's - thank you for sharing that. I think that's a beautiful way of talking about it too, and I think you're right. I mean, the difference with this folding into a treaty process is that it's not as straightforward as handing a set of recommendations, necessarily, to a government and - for which it's up to them to - solely, unilaterally - to execute. A treaty process is, by its definition, a negotiation to reach agreement and which requires both sides to agree, obviously, which is a different process to what we have experienced before and an incredibly important - important one. So I think, as a distinction, that's right and thank you.

10 MS McLEOD: Minister, it's probably important to place on the record that the Commission has acknowledged in the public hearings, but also in the private hearings, its gratitude to people being prepared to take that leap of faith and to open their hearts and tell their stories. Could I invite you to take us into the break by reading paragraph 24 and then we will take a morning break?

15 MS WILLIAMS: Sure:

20 *"It is not the words of the Victorian Government or State institutions that matter in creating an official public record of the impacts of colonisation. It is the words of First Peoples who have been trying to be heard for so long. Those who have never spoken before. Those who have been silenced. Those who have been creative, angry, forceful and persistent - who have spoken in community, in language, in art, in protest and in story. Those who died before the establishment of this Commission and whose stories live on. These are the words Victorians need the Commission to bring together, to create a record like we have never seen, never heard, or seen before."*

MS McLEOD: Thank you, Chair. Is that a convenient time?

30 <ADJOURNED 11:12 AM

<RESUMED 11:32 AM

MS McLEOD: Before we move to the next section, can I ask Commissioner Walter to ask a follow-up question.

35 COMMISSIONER WALTER: Thank you, Counsel. Minister, a question that was bubbling away and came further during the break. We talked about the thinness of knowledge and the lack of knowledge from many non-Indigenous Victorians about Aboriginal truths, the truths of what happened and the history as well as the contemporary reality in this State, yet the public service where decisions are made, policies are enacted, front of service interactions with First Peoples, the vast majority of those people are non-Indigenous Victorians.

40 What is the obligation of the State to ensure that the people who are in the roles interacting, enacting policy, considering, are actually qualified to be in those roles and where thinness of knowledge is deemed incompetent rather than the norm?

MS WILLIAMS: So that's a really good question, Commissioner, thank you. And thank you. It might be something I have to go back and get some detail around as to what departmental policies are in place around those job descriptions. At a higher level, what I can say is there's obviously a greater focus within departments of having, you know, as part of their

recruitment a large number of Aboriginal Victorians or Aboriginal people working within the public service, which is - obviously helps in terms of policy development, having that perspective. But in terms of the data collection itself, happy to have a deeper look at what - - -

5 COMMISSIONER WALTER: And more the obligations of non-indigenous Victorians where they can't pass the responsibility of knowing to Aboriginal staff within the public service. Because Aboriginal staff are always going to be a tiny minority.

10 MS WILLIAMS: Yes. Yeah, no, a good question and one I'm happy to go and dig into within relevant departments and also, it should be said, one I'm happy to hear from the Commission in its recommendations in terms of that broader conversations around IDS and how some of those considerations may be taken into account in a data sovereignty model.

15 COMMISSIONER WALTER: And just as a final thing, is - should people, whether they are Aboriginal or non-Aboriginal, working in roles that have impact on Aboriginal people through policy, or whatever else actually have a qualification before they are deemed competent to take up those roles?

20 MS WILLIAMS: I will include that in my inquiry. Thank you.

MS McLEOD: Thanks, Minister. Just still on the topic of the objectives of the Commission, you've acknowledged the breadth of the terms of reference. Can I invite you to look at paragraph 27 of your statement, which is discussing the task of developing shared understanding amongst all Victorians of the impact of systemic injustice. And I will come in a minute to what we mean by systemic injustice. But just starting initially with that discussion around what it - what you mean by shared understanding, you used the language earlier on shared history and inequalities. So what is contemplated by a shared understanding to be developed?

30 MS WILLIAMS: I think by "shared understanding" what I'm really referring to is ensuring that our whole community has a solid understanding of - of, as we previously discussed, the history of this State and also better understanding of how it continues to play out and do harm to this day. I think Aboriginal Victorians are obviously well versed in the impacts of colonisation, and through lived experience and, you know, just as we were talking about how truth telling processes are as much, if not more, about truth listening, I think that process of building a shared understanding is about State and, of course, Victorians broadly appreciating not only the history but how it continues to do harm.

40 And that being a really important understanding for us to build in the broader community as we work towards treaty, which is obviously a key mechanism through which we hope to address some of this injustice. And I think it's very - it's arguably far more difficult to address injustice when you don't understand it, and so that shared understanding and building that shared knowledge of not only what has happened but how it continues to impact is a part of being able to drive better outcomes.

45 MS McLEOD: You say that you - you describe in paragraph 30 that role that the - the government role in what is a complex and challenging process. So how does the government view its own role to educate Victorians about the matters uncovered or shared with this Commission?

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MS WILLIAMS: I think that's (1) a very important role of government, as I was outlining before, and in terms of my own role within the government, as Minister for Aboriginal Affairs, one of the two halves as I see my portfolio, which is how we manage to create and build that sense of responsibility and understanding among the broader Victorian community about our history and the injustice that continues to impact. And in terms of how government does, obviously this is also a conversation for us in the treaty process as we partner with the First Peoples' Assembly.

And they have their own sort of communications arm, if you like, that communicates around the importance of treaty, and government similarly has responsibilities and - and communication strategies that we support in order to help bring the community with us in understanding, in that instance, treaty. I think it's open, of course, to the Commission, if there is particular ideas about what the government needs to be doing, to promote that shared understanding.

It's obviously not just comms though. It's in about - it's also about how we embark upon policy. Going back to an initial conversation that we had earlier today, too, around the messages that leaders themselves send in public conversation with the community. I talked earlier about the power of that and how - about how any leader standing on high, you know, saying certain things can absolutely trickle down to activity on the ground, positive and negative.

And so part of our responsibility as leaders is to be sending those messages and using the opportunities that we get to - to build the understanding that's generated out of the Commission. So I think there's potentially lots of different ways that we can do that, and, as always, open to ideas from the Commission about whether there are specific models or ideas that the Commission might have about how we can do that well.

MS McLEOD: So do I understand what you were describing there contemplates things that could be done by government as the Commission is proceeding, whether long-term - in the long-term?

MS WILLIAMS: I think it goes to long-term considerations as well. And I think that also folding into our responsibility through the treaty process, too, of ensuring that we sending messages through that process which not only sort of promote the process but also tell the stories that need to be told around it and build that what we are calling, obviously, a shared understanding about why this work is important and why it's needed and what the responsibility is of the whole community to be a part of that.

That this isn't about putting upon Aboriginal people the responsibility of addressing the circumstances that have been imposed on them; it is actually a responsibility of the whole community to work out what role we each play in improving outcomes and building - building a future where the mistakes of the past aren't being continually repeated.

MS McLEOD: In terms of government responsibility, that would necessarily extend to institutions that record history?

MS WILLIAMS: Yes.

MS McLEOD: And the institutions that teach.

MS WILLIAMS: Indeed. And I notice - I note that in the Terms of Reference for the Commission, there is a specific reference to education within - within the Terms of Reference, acknowledging the importance of that as a - as a forum for engagement and education more broadly, and intergenerational change in our understanding and our collective understanding of our history and the injustice that continues to be experienced.

MS McLEOD: And perhaps reflecting on Commissioner Walter's question about qualification to teach, or qualification to educate, if you were looking at a school curriculum, for example, should it be that anybody can teach Koorie heritage? Or is there government thinking around how that's to be undertaken within the school curriculum? Or is that future thinking?

MS WILLIAMS: I know there are programs currently - and I can't speak in detail for them, unfortunately; it's outside of my portfolio and sits within the Education portfolio - but around, for example, language in classrooms and in kindergartens. I think in terms of, you know, elevating that and moving that forward - and I know that is obviously something that the Commission is empowered to make findings on and make recommendations on - we would, of course, be open to recommendations or an opinion of the Commission about the best way to do that.

MS McLEOD: And just coming back to State institutions, thinking of those important institutions that record and archive our history - museums, libraries, public records and those that work with those materials - the government is committed to supporting the recording of that history through those institutions where necessary.

MS WILLIAMS: I think they are very important institutions in terms of that - that exercise in - in building greater understanding and - of history and contemporary injustice. So I would see any responsibility on government to build that understanding to extend to the institutions that obviously form - form part of that, you know, broader public service.

MS McLEOD: At a micro or a local level the Commission has heard evidence on Country about memorials, reflection of true history or complete history through things occurring at a local level - not necessarily plaques on buildings or stones, but local history projects as well. Is that within scope of government thinking in terms of supporting those projects?

MS WILLIAMS: These are projects that continue to come to us in various different ways already, to some extent. I think there is a - is the potential through the - through the Commission and through the work of treaty to perhaps come up with a more consistent or - yeah, more consistent approach or way of doing these things that best responds to the needs of community on the ground. But, for example, you know, in the Budget there was recently handed down - and I can speak to this because it was a part of a commitment made in my own constituency, in Dandenong, and one that I was responsible for bidding for. That was funding for upgrades to the Dandenong Police Paddocks, which was the initial site of the Native Police Corps and has, I think, a very sad colonial history attached to it.

MS McLEOD: Could you just tell us a little bit about that so those listening can understand what the significance of that site is?

MS WILLIAMS: Sure. So, effectively - and, you know, I won't do justice to this in articulating the significance of the site. I'm sure Uncle Wayne could go into it in greater detail, but - - -

5 COMMISSIONER ATKINSON: It was a form of protectorate for that region.

MS WILLIAMS: It was, yes. It was a form of protectorate and, essentially, what they did was bring down Aboriginal people from Queensland, trackers, to help track down Aboriginal people in Victoria. You know, that's probably not a practice that is well understood or
10 acknowledged among the broader Victorian community and for that reason, I think, makes that site and everything that happened there and what it represents in terms of what happened, and a dispossession that took place in Victoria, all the more important.

15 So that was - so what we've effectively done through this Budget is commit funding to not only, you know, improve amenities in an area that is in its own right quite beautiful, but also, through a master planning process, to look at how we can embark upon a process where we clearly need to embark - to partner with the Traditional Owner group there to better signpost and express the history that is attached to that site so anybody visiting it can acquire that understanding as a part of their - their engagement with the site.

20 And so that is one way through, say, for example, a budget process where that work is - will be given life. But, of course, there are other opportunities. I think there are ways for us to do that at a more foundational level. And whether that also potentially be through local treaties, and I think Mr Stewart yesterday spoke about there being treaty or treaties, the notion of
25 perhaps a state-wide treaty, then perhaps local treaties sitting underneath it.

And given many of these stories, individuals, events, will have quite local significance, it might end up being a feature, for example, of a local treaty that - that these events or individuals be memorialised, commemorated or in another way recognised on Country in
30 some way. And I think that is open to that process to determine.

MS McLEOD: Given the inevitable competing priorities in the budget process, and the continued burden on local communities to make a pitch for their own preferred projects, is the government currently proactive about looking for those projects, either through the
35 budget funding or through grants?

MS WILLIAMS: Look, I can only speak to my own portfolios on that. I think - look, I mean, whether it's a proactive - obviously open to approaches, particularly from Traditional Owner groups and other Aboriginal organisations who from time to time bring these things to us. I
40 think the opportunity that you outline of a sort of more proactive approach is potentially something that could well come out of a truth commission or, indeed, treaty itself. So I think there is a greater opportunity that is one of many opportunities that has been identified as potentially being - having life breathed into it through this process.

45 MS McLEOD: Just to give you an example, Commissioners visited Portland and observed that there was no memorial for the Convincing Ground site of what's thought to be the first massacre of Victoria of Aboriginal people, the Gunditjmarra people. And yet there were highways and plaques aplenty lining the foreshore and around town with a single plaque
50 down low behind a monument to the Traditional Owners of the land. In terms of being proactive, is the current process that it depends on those Gunditjmarra people to advocate for

what they want or is there somebody within government who is looking to see what's needed without that initiative to be taken?

5 MS WILLIAMS: I think there is generally an approach of self-determination in the sense that - I can say this from my own ministerial position. I wouldn't want to be in the business of picking or choosing which sites should be significant according to my evaluation as a non-Aboriginal person, as a white person. So, in that respect, we do, I think it's fair to say, rely on Traditional Owner groups and Aboriginal organisations and individuals to put forward - particularly the Traditional Owner groups where they have gone through their own processes of determining what needs to be given particular attention or recognition, for us to then sort of meet - meet that request, if you like.

10 So I suppose, in that sense, it goes to pointing towards that challenge of institutionalising self-determination in a way that actually ensures that government is maintaining a discipline in not stepping in to determining for Aboriginal people what should be acknowledged and what shouldn't be and how and how not. I think those are conversations that rightly should - should rest primarily with Aboriginal people here in Victoria.

15 But equally - and I hope as a part of these processes - we can have greater structure that how government then responds to that. And I think that should be certainly an ambition out of these processes, truth and treaty.

20 MS McLEOD: It's very clear in your evidence that decision-making, that ultimate decision-making, in your view, should rest with those local communities. What about the resourcing of those communities so they can undertake that work?

25 MS WILLIAMS: No, and that's a very good point to make, because obviously as part of this conversation and particularly the phase of treaty negotiation we're in at the moment in phase 2 - I know Marcus probably referred yesterday to the Self-Determination Fund being a part of that and the two broad functions, purposes of that fund being both to level the playing field in negotiations but also that idea of sort of ongoing financial sustainability.

30 Now the First Peoples' Assembly will be coming back to the government later this year with their proposed model for how that needs to look. So I can't pre-empt that in any way. It's not in my knowledge at the moment. But that may well be one potential option for how - for funding resources that are controlled by Aboriginal people for Aboriginal projects. And we are open to obviously looking and working through that process with the First Peoples' Assembly.

35 So I think there is again a great opportunity through these processes to look at how they can be truly self-determined in terms of the decision-making resting with Aboriginal people for projects.

40 MS McLEOD: Can I ask you in terms of reparations through the treaty process, in terms of justice, including land justice, is everything on the table at the moment?

45 MS WILLIAMS: We've been very mindful, in embarking upon truth and treaty, to come to the process with open hearts and open minds. And that means not precluding any commitments, not pre-empting them, not taking anything off the table, because, in my view, that would be compromising that commitment to come in good faith and with open hearts and

open minds. And I think it's very important the government maintain that discipline and not be drawn into what we will do or won't do, because that undermines a negotiation. We need to be prepared to consider every option and to be a part of a genuine good faith discussion with First Peoples about how to move forward.

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MS McLEOD: You said before in your statement, and you've said before words to this effect, the government is open to transformational change.

MS WILLIAMS: Indeed, yes.

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MS McLEOD: Including the mechanisms for participation in our democracy.

MS WILLIAMS: Yes.

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MS McLEOD: Mr Stewart raised some fundamental reforms that he was interested in, including constitutional change, the representative decision-making processes that can hold government to account, including constitutional change, reserved seats; all of those things. Are they all on the table?

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MS WILLIAMS: They are all open for negotiation through the treaty process, yes.

MS McLEOD: Okay. Can we turn to paragraph 31, the discussion about systemic injustice and the definition in the Terms of Reference. Could I just ask you to read 31 and 32, please.

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MS WILLIAMS: Sure:

"Systemic injustice' is defined as harm or impacts on human dignity by reference to the application of current human rights instruments that are a part of a systemic or structural pattern. This means that all policies, practices, conduct or laws - involving State and non-State entities - which existed at the time since 1788 are within the scope of the Commission's investigations. As individual stories are heard and systems called into question, patterns of injustice will no doubt emerge.

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The Victorian Government openly accepts the inherent risks of undertake a truth-telling process. The Parliament of Victoria - of which I am a current representative - has historically participated in and witnessed violence, dispossession and the unfair treatment of First Peoples."

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MS McLEOD: So just pausing with that phrase "inherent risks" and what you are meaning by that, does the government accept that an open, honest account of our history will reveal that individuals and organisations participated in the horrors that you've described?

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MS WILLIAMS: I think that is included with inherent risks, yes.

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MS McLEOD: And that does that include in the inherent risk a real - an acceptance or acknowledgment that history may need to be rewritten in some places?

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MS WILLIAMS: I think the fact that the truth-telling process commits to creating a public record, I think, is an acknowledgment that, you know - and my comments to the effect that there is a thin understanding of our history go to recognising that there may well be, if not

changes to our understanding, then certainly work to done - work done to ensure that we understand what is already known by Aboriginal Victorians in our community.

5 MS McLEOD: Does it - the inherent risks - sorry, do the inherent risks also include the potential for there to be a consideration of the way that British colonisation occurred and the assertion of sovereignty over territories, including Victoria?

10 MS WILLIAMS: I think, you know, that is within the remit of the truth-telling commission to look at. Obviously, it is empowered to create that historic record and to examine that part of our history and to make findings and recommendations about how we rectify the impacts of that.

15 MS McLEOD: So by acknowledging those inherent risks and the Terms of Reference which government has committed to, the government has embraced that examination of those issues?

20 MS WILLIAMS: Yes. As I said earlier, just to expand upon that, the Terms of Reference for the Commission are deliberately broad to allow open the investigation of a great range of matters as determined by the Commission. And I'm very mindful that leaves before the Commission a range of difficult decisions, I guess, about what you choose to focus on or not, but it was important to leave those decisions to you.

25 COMMISSIONER BELL: Can I ask a follow-up question on the question of thinness of knowledge. The context of the discussions so far has been the thinness of knowledge within the Victorian community. But I think you are conceding in your statement that the thinness of knowledge extends to the government itself.

MS WILLIAMS: Yes.

30 COMMISSIONER BELL: Because paragraph 65 says the - understanding the full extent of impact of dispossession and colonisation is not fully within the grasp of the government, and one of the objectives of the Commission is to - is to enable the government in itself to understand the fullness of that impact. Is that correct?

35 MS WILLIAMS: I think that's right. Yes, that's correct. I've already acknowledged previously and we've discussed at different points the fact that the government - any government itself, whether that be elected representatives or public servants, are overwhelmingly non-Indigenous people and, therefore, we bring - I would think the logical conclusion for that is we bring to our roles and our leadership and our power that same
40 ignorance about many of these issues.

45 And so, you know, up - building that shared understanding across the community, I think, has the added benefit of ensuring that not just in government systems but in systems across our community, we are, over time, building a much better understanding of the types of discrimination that we have been talking about into those organisations. But obviously that's not to disregard the fact that there is, you know, clearly more concentrated work that needs to be done where there are particular concentrations of power and authority that have particularly large impacts on people's lives. There's certainly room for that.

MS McLEOD: In terms of State entities, you've indicated that you are here speaking on behalf of the whole of government. But the Commission is interested in the action of State actors, so police, prosecutors, criminal justice system generally and others - welfare officers, protectors and so on. The inquiry is deliberately broad to capture all those actors.

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MS WILLIAMS: Yes.

MS McLEOD: Could I invite to you look at paragraph 33 and the focus on non-State actors. Could you read that paragraph, please?

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MS WILLIAMS:

"The Commission's inquiry cannot, however, focus solely on State entities - to do so would narrow the scope of the inquiry and impede efforts to perform a holistic record of the impact of colonisation. This would also exclude complex relationships between State and non-State entities that are jointly responsible for injustices, such as those that occurred at the hands of church-based missions without official approval and in the absence of appropriate State oversight."

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MS McLEOD: That paragraph speaks for itself. But we have already heard many examples of non-State actors and the role they've played, both in offering protection or welfare support and committing acts of violence and other offences. So in terms of non-State actors, that paragraph really speaks for itself, but the Commission has already heard things that would suggest those non-State actors will be of further interest in the next phase.

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MS WILLIAMS: Okay.

MS McLEOD: Is there anything to add in relation to that paragraph?

MS WILLIAMS: No, I think that is fairly self-explanatory and, you know, I'm interested in the fact that the Commission has already heard significant evidence, by the sounds of it, around much of that injustice.

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MS McLEOD: Could I ask you to read paragraph 35, please, and 37.

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MS WILLIAMS: 35 and 37?

MS McLEOD: 35 through to 37.

MS WILLIAMS:

"The State's rhetoric regarding First Peoples in Victoria has for too long focused on disparities and disadvantages which has entrenched a deficit perspective of First Peoples into State policies, practices and systems. This approach, only now slowly shifting, reflects the colonial lens of viewing First Peoples as 'less than', of dehumanising and 'othering' communities and individuals."

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While the Victorian Government understands the Victorians must talk about injustices that have been ignored and hidden from our story, we must also talk about the strength, resilience and resistance of First Peoples. We must talk about Marngrook, Uncle William's petition to

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Yoorrook Justice Commission

the King, the Cummeragunja walk-off, the Aboriginal Advancement League and the tireless work of Aboriginal Community Controlled Organisations and The World Heritage status of Budj Bim.

5 *We need to acknowledge that Victoria's First Peoples communities continue to strengthen and grow with the ongoing practice of language, law and lore and cultural knowledge. We must embrace First Peoples' diverse knowledge and cultural practices and the potential they have to inform future innovation and policy development. This is our collective story and every Victorian has a responsibility to learn it, to understand it, heed its lessons and celebrate its achievements."*

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MS McLEOD: So you mentioned there some of the well-documented activism of First Nations people, including Uncle William Cooper and others. We heard some evidence from Uncle Johnny Lovett that you may be familiar with, and the issue has come up a number of times about the injustice in terms of returned soldiers' settlement. And Uncle Johnny Lovett gave evidence that he wrote and followed up with Ministers in relation to his father's service and his uncle's service not being recognised and, in fact, mission land at Lake Condah being carved up and given to other returned soldiers, not those who actually had a connection to that Country.

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He - when he wrote to the responsible Federal Minister, he was basically pushed back to the State and told it was an issue for the State. Is this an issue that has arisen in your portfolio and would you be interested in some systemic review and solutions for those families who missed out on their entitlement to soldier settlements?

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MS WILLIAMS: Thank you for that question and a particular acknowledgment to Uncle Johnny's advocacy on this issue, and the significance of the Lovett brothers' military service should not be underestimated. It's a story I'm familiar with. It is advocacy from Uncle Johnny that has been incredibly powerful. I think it is also the sort of systemic issue, given that there are other families also affected by the same injustice in terms of what was done through the soldier settlements scheme.

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The fact that - and it should be considered a great shame of this nation that we felt it appropriate and fit to have Aboriginal people fight and die for our nation, but we couldn't afford them the recognition when they got home and, more than that, carved up land that they were living on and gave it to others. It is an incredible injustice. And so in terms of the broad scope of the inquiry and - and, of course, the opportunity through treaty - you know, again, it's not for me to pre-empt or to take anything off the table. I think it is open to negotiation through those channels.

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MS McLEOD: Where does the responsibility lie, then? Is it with the Commonwealth Government and should we be speaking to Defence? Or should we be speaking to State Government given the response Uncle Johnny had?

MS WILLIAMS: Look, I think it's - without having seen the nature of correspondence that may have been sent to Uncle Johnny particularly through the Veterans Affairs portfolio, it sounds like, it may well be that it is a matter that requires consultation across jurisdictions.

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MS McLEOD: And just on that, that's just an example of where First Nations people get shunted between different jurisdictions and different responsibilities. How does this

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Commission address that question or how does it inform itself about that question about how to get long-lasting change when there is this push between portfolios and different levels of responsibility?

5 MS WILLIAMS: I think in that example it might also come down to - again, not pre-empting the discussions in the Commission or indeed in negotiation in treaty - but the sorts of model that might be put forward might actually answer the question about whose jurisdiction has to be engaged in order to realise that model. So that might actually end up being a part of the consideration of the Commission, if it was to put forward a specific model.

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And, indeed, a part of a negotiation through treaty, you know, I would expect that jurisdictional limitations would form a part of the discussions that would happen as a part of a treaty and understanding what can be done at a - at a state-wide level and what can't be done for jurisdictional reasons. So that, again, would be a very functional, practical discussion to have. In terms of a broader comment, can I take it, around long-lasting change and how to entrench - you know, ensure that change is not at the whim of governments and, you know, that that is - that is, of course, in our system as it is a challenge, I think, for all of us, to acknowledge.

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20 I think one of the greatest opportunities through this process in building what we've referred to as a shared understanding is ensuring that on these issues - and on issues as they relate to our understanding of Aboriginal people - that we close that gap between - pardon the pun on a term that we have expressed some challenges with - but we, you know, ensure that there is not a divide - a party political divide in our understanding of our history and the harm that continues to be done which ensures that we, on these matters, get as much bipartisan support as possible.

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I know that in my role as Minister for Aboriginal Affairs on key policy issues, particularly these foundational ones, I will always offer briefing to my shadow counterpart, and did so when it came to truth telling, and I know the First Peoples' Assembly are also engaging with the Opposition to try and build a bipartisan approach to these matters as well. But more broadly, as the impact of this work starts to filter down through the community, I think we have an opportunity to ensure that that then flows up to political representation outside of party-political lines.

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Of course, there is also, you know, sort of more functional mechanisms around how we - you know, how we enact change and legislative models and the like and treaty itself and the forms that it will take, in terms of that agreement. And, you know, again, those are functional questions to be determined through those processes.

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MS McLEOD: Commissioner Walter. Thank you.

COMMISSIONER WALTER: I'm a little bit concerned when we are talking about - so with the Uncle Johnny's thing - the very clear systemic injustice that has occurred around soldier settler blocks and the Lake Condah that treaty and the justice - these sort of actually work as blocks, is that we can't do anything until we have treaty or we have the - Yoorrook is completed. I'm wondering whether something like Uncle Johnny's situation or - and applies to - more commonly to Aboriginal soldiers in Victoria, that this could be pursued straightaway.

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It's not something that has to wait. It could be pursued through the State Government and actually sort out who was responsible, whether it was Commonwealth or the State, whether it's a combination, and actions start to be taken on how that injustice could be remedied and reparations made.

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MS WILLIAMS: Yes. And I guess that's what - exactly what I was getting to, Commissioner, with the point around what might be proposed by the Commission itself and to models of how to - how to address that. I suppose some of the practical considerations that - in devising a model that would need to be considered would be who, which family members. Obviously, Uncle Johnny is one of a much broader family unit that all have a connection to, in his case, the Lovett brothers.

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So in talking about how to resolve those issues, you were talking about how to resolve them for more than just - for more than just Uncle Johnny himself and, of course, how you determine that for other families as well. And so I think there's some practical questions there that obviously go to the design of the model and what's the most appropriate way of dealing with that. I think the jurisdictional responsibility can probably be resolved, in my feeling, through designation of the model.

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You know, so - you know, I think it's absolutely open to the Commission to make findings or recommendations about that or to give a view of what an appropriate way of reconciling that might be.

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COMMISSIONER WALTER: But it's up to the Commission to recommend that the State takes action?

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MS WILLIAMS: I think it could be a - you know, potentially - and, again, it's not for me to say what the Commission look at or don't look at, open to the Commission to have ideas about what the most appropriate way of reconciling that is.

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COMMISSIONER WALTER: I just - just to finish, I do still feel uncomfortable with the idea that somehow if the Commission doesn't raise this systemic injustice, it means that the State is not obliged to do anything about it. I don't think that that's a fair burden, and the State should be open to remedying systemic injustices regardless and when and not waiting until the end of the Commission or the treaty process before --

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MS WILLIAMS: Look, I think - yes, certainly - to clarify, it's certainly not about sort of handballing it down to another process, more thinking about what - what some of these processes, whether it be truth telling or treaty, might be able us to do in terms of looking at these issues systemically rather than case by case. And, you know, and ensuring that any model is equitable across the board for those who have experienced that sort of similar discrimination.

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That doesn't mean that there's no appetite to look at these matters but, obviously, that has to be done in partnership, I think, with community. And, in my mind, treaty is an opportunity to look more holistically and systemically at how we might handle and deal with equitably those sorts of challenges, that systemic injustice and others like it. Because I'm sure there will be others that are raised and that we know of in this collective, that we are sitting in now.

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5 So, you know, I think - I'm giving that as an example of an opportunity that may help us resolve that in a way that is equitable. I certainly wouldn't want it to be interpreted as a lack of commitment. I think it's just one of these issues that brings with it some complexities that would need to be worked through. But, without doubt, the injustice that is experienced through the soldier settlement scheme cannot be denied.

MS McLEOD: Commissioner Atkinson.

10 COMMISSIONER ATKINSON: Thank you, Counsel. I just want to go back to 36, where we highlight some of the achievements about - great leaders in the past, events that take place, and particularly Uncle William Cooper. So you mentioned the petition to the King there. That was one of the first great moments, Uncle William's struggle in history. So that happened while he was here in Melbourne of course. He lived in Footscray. He barracked for the Doggies and that.

15 But he collected over 2,000 signatures for that petition, which he then forwarded to the Federal Parliament in the period of Jack Lyons - Jack Lyons in the Australian Government. Jack Lyons was the Minister, followed by Mark McEwen, who the National Party leader that was there. And, of course, he didn't accept a petition because he felt that they were internal
20 matters dealt with by the Federal Government. So that was a big setback for Uncle William, of course.

25 However, with the strength and resilience, he bounced back and he organised the Day of Mourning which coincided with the 150th sesquicentenary. A major event in the Aboriginal calendar. And then the third and very important thing that he did, he organised the petition to the German consulate here and he walked from Footscray to the German consulate to present that petition in protest of the Nazi treatment of the Jewish people.

30 It was Kristallnacht, the night of the broken glass. So that forged a very important relationship between Aboriginal people and the Jewish community that's continued until this day. So I thought I would highlight those.

MS WILLIAMS: Thank you, Commissioner. I appreciate your knowledge on that.

35 COMMISSIONER BELL: As a Jewish person, I want to acknowledge the significance of what Uncle - of what was done and I want to thank Uncle for mentioning this important matter.

MS WILLIAMS: Thank you, Commissioner.

40 MS McLEOD: Just coming back to that question of Commissioner Walter's and what comes first, is it the statement of commitment from government to address a particular issue, does the design of something have to - have to wait for the Commission to act, or can there be a statement of commitment ahead of time? We are obviously in a caretaker period for the
45 Federal Government, but is - are you prepared to commit to raise the issue of soldier settlements with your Federal counterparts after the election?

50 MS WILLIAMS: Yeah, look, and I think it's open to - you know, apart from - accepting the challenges that I've outlined around the logistics, you know - and I certainly don't want to put the pressure on the Commission to have to, you know, wrap that up and solve that - to solve

those functional issues for us. It was more as a way of demonstrating that there are some, you know, systemic issues that would need to be resolved around the how.

5 But it is also an opportunity, clearly, for the Commission to identify that as a priority piece too, noting, of course, in the Terms of Reference that while some pieces of your work could potentially find themselves negotiated through treaty, other parts may not, and this might be - well be one part where you say this should sit outside of treaty as a priority, and that is open to the Commission.

10 But from a personal perspective as the Minister for Aboriginal Affairs, I'm comfortable with both talking to my colleague at a State level, Minister -- who I know aware of this matter and is a man who is, at a personal level, very committed to improving outcomes for Aboriginal people within his portfolio. It is something he talks to me about regularly and he's very engaged on. But, yes, if there are appropriate forums between myself and the Federal
15 Government to raise these matters as well.

MS McLEOD: Thank you. Coming to paragraph 38 and the inspiration of the Uluru Statement from the heart, would you read those two paragraphs, please? 38 and 39.

20 MS WILLIAMS: Sure.

"In establishing the Commission, Victoria became the first jurisdiction to act on treaty and truth elements of the Uluru Statement from the Heart, which aspires to 'a fair and truthful relationship with the people of Australia and a better future for our children based on justice and self-determination.
25

By placing First Peoples' history and experience at the centre of who we are as Victorians, we can build a very different shared future and new relationship between the State of Victoria and First Peoples founded on justice and openness, a relationship that is committed to equity, unafraid to talk honestly about our colonial past and the long-lasting, far-reaching, ongoing and intergenerational consequences of Colonisation. The Victorian Government is committed to this new relationship."
30

MS McLEOD: So how important in the design of the process and, in fact, the motivation for
35 Commission was the work for the Uluru - the people's convention and the work that came before?

MS WILLIAMS: I would say very important, and there is probably a significance to that that is even, to some extent, not as visible to me as it would have been, say, to the First Peoples' Assembly who requested this of government. And so it might, I suggest also, be a question to
40 put to their representatives about how much that work and the advocacy of generations of Aboriginal people was built into their request of government in 2020.

45 And I understand from bits I heard of Mr Stewart's hearing yesterday that he referred to the long - the long advocacy. And so that, to me, would reflect the fact that that advocacy from the Uluru Statement and prior was highly significant.

MS McLEOD: Would you please read paragraphs 41 and 42.

50 MS WILLIAMS:

Yoorrook Justice Commission

"Truth-telling and reckoning with past injustices are integral elements of Victoria's treaty process. The Victorian Government understands that treaty and truth-telling are intrinsically linked - that without truth, there can be no treaty, and without treaty, there can be no justice.

5

Establishing a truth and justice process now at this stage of the treaty process provides an independent, evidentiary basis for systemic reform and redress that may be considered through the treaty process. The Victorian Government acknowledges that the Commission may also make recommendations that require actions separate to the treaty process."

10

MS McLEOD: Those paragraphs speak for themselves and they reflect the comments of Mr Stewart yesterday.

MS WILLIAMS: Yes.

15

MS McLEOD: Is there anything you want to add to those?

MS WILLIAMS: No, I think they - they neatly describe the opportunity that's before us through this process.

20

MS McLEOD: Would you please read paragraphs 43 to 45?

MS WILLIAMS:

"The Victorian Government has already set an ambitious self-determination reform agenda, but we know that we can and must do more. While self-determination is driven by First Peoples, the Victorian Government is responsible for transforming its systems, structures, and service delivery to better reflect and enable the aspirations of First Peoples communities.

30

The Government is committed to the transition of relevant decision-making control, to First Peoples. The Government recognises that we have only begun this transition of power in some areas and there is a long way to go before self-determination has been genuinely achieved. We look forward to the recommendations of the Commission - and the progression of treaty negotiations - to advance this process."

35

Did you also want me to read 45?

MS McLEOD: Yes, thank you.

40 MS WILLIAMS:

"The Victorian Government looks to the Commission to help with understanding the connection between historical and contemporary injustices, in order to establish, for all Victorians and future governments, the consequences of denying First Peoples control over their own affairs. This is essential to ensure gross injustices are never again repeated or permitted to continue and to ensure a future for First Peoples in Victoria that is truly community-led. The current Victorian Government assures the Commission we are here, ready to listen, to act, and to be held to full account."

45

COMMISSIONER HUNTER: Can I just ask on that how do you assure our community that we want to come forward and tell the truth again - how do you assure them that this isn't going to end up with another lot of recommendations sitting on the shelf collecting dust?

5 MS WILLIAMS: Look, I think that goes, Commissioner, to some of the discussion we had previously and actually a point made by Commissioner Atkinson around the relationship of this process to the treaty negotiation process itself, and the fact that that is a negotiation - and legislated process, it should be said - with a negotiation attached and that agreement requires agreement by First Nations people as a part of that. That's quite different to what we've seen
10 in previous inquiries.

It's a different structure. This is far more, I would argue, sort of wide-reaching and foundational to our way of doing things, and broader in scope, quite deliberately, in order to be able to demonstrate that we can do things differently. I'm not sure that anything I can say
15 today or at any other point in time can fully allay the suspicions or fears or concerns of community and - because they are reasonably held. And, as I was outlining before, you know, there is a lot of trust to make up.

There is, you know, 200 years of - of betrayal, and that is a lot of hurt and pain for us to - to
20 now be trying to - you know, that is the foundation on which we are now trying to build trust, and that is going to take time. I suppose the difference in the nature of this process is one aspect that I hope will help encourage that trust, but I think as we move through these processes, I'm hoping that we can, with that, demonstrate our commitment to this process and to the desire for better outcomes.

25 And as I said - was saying earlier, we could have taken the easy route on truth-telling and made it purely backward-looking, and we didn't. And that wasn't just symbolic. That was trying to drive a meaningful reform. But it I hope it's - I hope viewed it's in the good faith it was intended to be.

30 MS McLEOD: For this next section, part B, and the detail of the historical record that the State, through you, is acknowledging, I'm going to ask that your statement be brought up on the screen so it is easier for us to follow. That might just take a moment. So if we can just pause for a moment while we can load that on the screen, Chair. Chair, it's going to take a
35 moment. So should we take a short break? Just perhaps five minutes.

CHAIR: Yes, that's fine, if that suits you.

<ADJOURNED 12:22 PM

40

<RESUMED 1:45 PM

CHAIR: Yes, please, Counsel.

45

MS McLEOD: Thank you, Minister. Minister, I have on the screen now and publicly available to view your statement at paragraph 46. Please, would you mind reading paragraph 46 through to 49.

50 MS WILLIAMS: Sure.

Yoorrook Justice Commission

5 *"In 1834, when European settlers arrived in the lands that later became the State of Victoria, they undertook a process of dispossessing First Peoples of their land and waters. First Peoples were evicted from their homelands by squatters and others seeking wealth. This took place over the entirety of Victoria and in a heartbeat attempted to destroy the more than 60,000-year rich cultural life of Australia's First Peoples.*

10 *Dispossession occurred through a range of means, often violent. The Victorian Government acknowledges the State's active and tacit involvement in violence - including massacres, killings, rape and pillaging - are part of Victoria's history. For generations, First Peoples have been sharing these stories - and calling for justice - and the State has not wanted to listen.*

15 *The reality of vesting of sovereignty in the British Crown, on the basis of the now rejected application of the doctrine of terra nullius, was the State-sanctioned dispossession of First Peoples' land and waters on a devastating scale.*

20 *As First Peoples were not recognised as having pre-existing rights, they were not considered in land legislation or policy until very recently. Accordingly, early and successive land legislation was silent on First Peoples' rights and was often enacted as matters of expediency in recognition of otherwise illegal settlements, to cater for the gold rush, or opening Victoria for grazing."*

25 MS McLEOD: Thank you. Dispossession, as we are discussing in this part of your statement and in the broad sense that we've been discussing it, would you agree that the eviction of peoples - First Peoples from their lands underpin the systemic injustices the Commission is looking at, historically and today?

30 MS WILLIAMS: Yes, I think it's one of the things that certainly underpins the historic injustice and contemporary injustice.

MS McLEOD: Would you agree that it's apt to use a term in respect of what happened in Victoria, the term being genocide?

35 MS WILLIAMS: I think there was certainly - certainly an attempt - and I think Mr Stewart spoke of this yesterday in part, or alluded to it, through the creation of missions and the line that I know was used in the video that - the First Peoples' Assembly video around being too white for the mission and too black for the town, which I think, you know, was a very short way of encapsulating what was happening, which we know also ties into Stolen Generations and a range of other stories, designed to certainly disconnect people from culture and destroy culture and Aboriginality.

45 MS McLEOD: And this - these actions of disconnection were not random or uncoordinated. This was part of a deliberate model to deprive people of their lands?

MS WILLIAMS: My understanding is it was - it was a deliberate - it was a deliberate act.

MS McLEOD: And these deliberate acts were replicated around the world in other colonies?

50 MS WILLIAMS: Yes.

MS McLEOD: Moving on to paragraph 51 - 50 and 51, you talk there about water rights and, in 52, about acts of environmental degradation. These are spoken of perhaps less commonly in public domain, but how important are water rights and the impact on the environment?

5

MS WILLIAMS: I think - you know, not to speak for First Peoples, but I know it's been certainly put to me in my time in this role, the significance of water and land, and it's certainly - in terms of water rights - recognised through our Closing the Gap obligations as something, you know, core to the broader wellbeing of First Peoples.

10

MS McLEOD: In paragraph 53, you discuss economic loss. Would you mind reading that paragraph, please?

MS WILLIAMS:

15

"The economic loss for First Peoples from dispossession has been enormous, including the loss of economies that existed prior to colonisation. First Peoples continue to face economic disadvantage as a result of the State's denial of pre-existing rights to and traditional ownership of land and waters."

20

MS McLEOD: And I just want to reflect back on a question I asked you before lunch about expecting First Nations people to take the initiative to restore their own economic rights and having insufficient resources to do that. Does the government recognise that there is a need to provide those supports to empower communities, local communities, to raise the issues as they wish?

25

MS WILLIAMS: I think in the statement itself, in an earlier section I read, it acknowledges that the State has a significant part to play in rectifying - not only rectifying wrongs, but also helping to breathe life into self-determination because, ultimately, as it stands, obviously the State operates many of the systems and structures that we are talking to, particularly in these paragraphs.

30

MS McLEOD: Just touching on mission, would you please read 54 and 55?

35

MS WILLIAMS:

"Over time, the State's dispossession of First Peoples from their land and water has involved alternative and no less insidious processes, including forcing First Peoples onto missions and reserves. The State forcibly removed First Peoples from their traditional lands and placed them on missions and reserves run by State or non-State entities, including religious organisations. This process was justified by the State on the basis of protection, control, and paternalism."

40

By the late 1800s, many First Peoples were restricted to living on missions and reserves, where managers enforced tight restraints on movement, employment and cultural practices. First Peoples tell of their family members being punished for the use of traditional language and customs."

45

MS McLEOD: Just leaving the next paragraph on child protection for a moment - I do want to come back to that - in 57, you acknowledge the closure of those missions and lands?

50

MS WILLIAMS: Yes, would you like me to read that paragraph?

MS McLEOD: Yes, please.

5

MS WILLIAMS:

10 *"In many instances where land was merely temporarily reserved and missions were closed, the land was reallocated and not returned to First Peoples. For example, following its closure in 1918, the majority of the Lake Condah mission reserve land was, in the 1940s, handed over to the Soldier Settlement Scheme, a scheme from which First Peoples soldiers were excluded."*

15 MS McLEOD: So the acknowledgment is that having forced people on to those missions and those lands, those properties - those lands were then taken away again, and people told to leave.

MS WILLIAMS: Yes.

20 MS McLEOD: And the government - does the government acknowledge that people were then basically, having left the missions, were at large unless they were supported, in many instances, by non-government institutions?

MS WILLIAMS: That is my understanding.

25

MS McLEOD: Coming back to child protection practices, would you read that paragraph 56, please?

MS WILLIAMS:

30

35 *"Dispossession was also achieved under adoption practices, 'child protection' practices, and the dispersal of families. For example, the Aborigines Act 1957, the Aborigines Protection Act 1886 and the Aborigines Protection Act 1869 facilitated, in differing ways, the forced removal of First Peoples children from their families and communities. In many circumstances, this caused children to lose connection with their Country, history, community and culture."*

40 MS McLEOD: I'm sure you would acknowledge prior to these Acts that you list specifically there, there were a number of Acts that forced children to leave missions as children?

MS WILLIAMS: That is my understanding. Yes.

MS McLEOD: In many cases, to be employed by landowners as child workers?

45 MS WILLIAMS: That's my understanding.

MS McLEOD: We come to paragraph 58. And would you read that paragraph, please?

MS WILLIAMS:

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5 *"Up until the 1960s, the policies of successive governments dictated where First Peoples could live, work, and marry, whether on or off missions and reserves. Government policies sought to either exclude First Peoples from the population or to assimilate them within it, which threatened to, or in many instances did, sever ties to Country. This history has made it difficult to meet the legal test for establishing connection to Country under Commonwealth native title legislation."*

10 MS McLEOD: I just want to tease that out a little, and the significance of that. The moving of people from their traditional lands or their family-based groups upon colonisation to missions and then moving them away, plus child removal policies, have created - incredibly difficult for people to trace their lineage and their connection to Country?

MS WILLIAMS: Yes.

15 MS McLEOD: And what significance does that have in terms of the way government delivers policy today?

20 MS WILLIAMS: Well, in terms of individuals losing their connection to culture and Country, it's obviously hugely disruptive for individuals. I'm sure there's also broader - I mean, there's significant policy implications of that whole period of time - and the deliberate exclusion of Aboriginal people and how that did not - or how systems were formed to their exclusion, which continue, effectively, to operate today. But, of course, when I think about removal of children and the breakdown of families and of disconnection to culture, of course, we are also talking about things that effectively go to loss of language, loss of culture and so many other things that I know community now are working really hard to try and regain.

25 Knowing that that is also core to the health and wellbeing of community and how disruptive that disconnection from culture and Country has been and how that also feeds into the poor health and wellbeing outcomes that we see borne out in contemporary data to this day. Of course, for individuals, it also resulted in what we now sort of refer to as the Stolen Generations and have recently announced a redress scheme for Stolen Generations people, acknowledging the disruption and disconnection caused to those people, those families, as well.

30 Not just those who were taken but the families that had their children taken from them, which has taken, I think, by anyone's measure, a long time to address through a formal reparations package.

35 MS McLEOD: Moving on to the notion of terra nullius, would you please read paragraph 59 through to 62.

MS WILLIAMS: Sure.

45 *"It was not until 1992 in the landmark Mabo judgment that the High Court of Australia rejected the notion that, at colonisation, Australia was terra nullius. For many First Peoples in Victoria, the hope provided by the Mabo decision has not translated into either true self-determination or formal recognition by the State as Traditional Owners through native title or other means, nor has it prevented ongoing systemic injustice that is linked to dispossession."*

50

5 *Although overturned by the High Court, the Government acknowledges that the injustices that the application of the doctrine of terra nullius enabled are on such a scale that they cannot be readily disentangled. The reality is that terra nullius and the acquisition of sovereignty enabled the State to effectively and legally take control of land – an injustice that continues to have consequences today.*

10 *Until native title was recognised by the Mabo decision, the reservation and development of land and water for the purposes of roads, railway, fisheries, ports, and transportation infrastructure proceeded largely without any consideration of First Peoples. As part of colonial practice, large tracts of Crown land were also divided up for lease and subsequent sale as freehold land, which had the effect, over time, of extinguishing native title without compensation to a large proportion of land in Victoria.*

15 *While First Peoples have a long history of seeking both recognition of both their distinctive spiritual, cultural, historical, and material relationships to Country and acknowledgement of the grave injustices they have suffered as a result of their violent dispossession, the State has traditionally preferred silence over justice in developing legislation policy to address past wrongs."*

20 MS McLEOD: Just pausing there, a few things arise from that. The first is, of course, the recognition that there was very early advocacy around recognition of Aboriginal connection to land in Victoria with the *Onus v Alcoa* decision relating to standing for Traditional Owners to challenge Alcoa's expansion down in the Portland region. And second, to recognise, of course, that Victoria has not always been a champion for the reversal of the terra nullius
25 doctrine and Mabo decision - giving effect to Mabo decision.

30 We have Commissioner Atkinson, of course, who was one of the applicants in the Yorta Yorta decision, who may, of course, wish to comment further. But can I ask you, has the government reflected on the government of the day's position it took in Yorta Yorta and reflected - wish to say anything about the decision that was taken to oppose that application at the time?

35 MS WILLIAMS: Look, I'm not in a position to be able to really comment on the position as it was taken at the time. It obviously pre-dates my role, and, as such, I would be speculating, which probably wouldn't be overly helpful.

40 COMMISSIONER ATKINSON: Yes, thank you, Counsel. Yes, well, this certainly brings back memories, of course. But when we look at terra nullius, of course, we know that, yes, the High Court did get rid of it only to find it was replaced by the tide of history in the Yorta Yorta case. This is what we call a sequential barriers process. Sequential barriers process is when no sooner you remove a barrier, in terms of achieving justice outcomes, another one is quickly constructed.

45 And who knows what the other barriers that might be, that will turn up in this process in terms of achieving fair and just outcomes. So, that is the nature of the *Native Title Act* in terms of how it was interpreted and administered in the Yorta Yorta case.

MS WILLIAMS: Yes.

COMMISSIONER ATKINSON: So, what that meant - means it implicated that - it created a huge barrier flowing from the Yorta Yorta case in terms of the construction of the tide of history in terms of claiming what - not native title but claiming rights on the basis of the oldest and original title that your ancestors held, which is an absolute title. It was an absolute title to land resources, which is a much older title than the common law import of native title.

But in achieving - there's a huge barrier in regard to achieving, well, the reinstatement of that original title, which was an absolute title of ownership of land and resources. So what you're seeing being delivered is a very watered-down version and - which also implies a huge compromise on the part of the Traditional Owners on the inherent right that flows to them from the Aboriginal ancestors.

So that's what - what you got is what you got. But they are the barriers, the sequential barriers, that we still have to contend with in light of the abolition of terra nullius and this construct – construing of this idea from the Mabo decision back on the tide of history. It's not a legal principle; it's just a metaphor. It's a trope for a dispossession. You know, it was mentioned by the Block decision, by Gaudron, McHugh and Brennan in the Mabo case. That was the Block decision.

So that's where the tide of history was mentioned. So when you search the "tide of history", you will find it there and that's what it is. It's just – it's an idea. It's not a legal principle. A metaphor. A euphemism that was used by Justices on the Yorta Yorta case and was applied in the absolute sense. Meaning that the tide washed away the title. So that became the barrier, then, to achieving land justice in Victoria.

I think it was got rid of by Justice Merkel in the Wotjobaluk case. He turfed it out. He said it doesn't apply. So - but, you know, I think it still - there is still barriers there in terms of achieving fair and just rights to land in Victoria. And so there's not many cases, you know, that people have been able to - in which people have been able to achieve, you know, that fundamental right, inherent rights, in terms of freehold title - inalienable freehold title. And I don't think that the land rights process delivers inalienable freehold title. So it's just a matter of communities choosing to try and negotiate what they can get.

MS WILLIAMS: Work through the structures.

COMMISSIONER ATKINSON: Which is mostly use rights - use rights or anything else they can negotiate directly with the State. You know. But it's a far cry - it's a far cry, if we source that back in the original and oldest title that exists pre-colonisation.

MS WILLIAMS: Yes. Thank you, Uncle Wayne, and I think one thing I probably can reflect on just to my knowledge - and admittedly not being, you know, an expert in this or to have your historical knowledge of exactly how this has played out at different points and the legal challenges that have played out - but it would be following the Yorta Yorta decision and the native title decision was the introduction here in Victoria of the TOS Act, which I know Mr Stewart spoke to yesterday.

But a recognition that the thresholds put in place by native title legislation were very difficult, very hard to be met here in Victoria, given the extent of colonisation and development and the broken connection to Country for all the reasons Ms McLeod outlined and as was

outlined in the statement as well. Now that was one attempt to create, you know, a different threshold with perhaps greater potential to be met.

5 I think it's fair to say that there's - this hasn't been perfect either, and I think you've spoken to that in terms of the barriers that continue to exist.

COMMISSIONER ATKINSON: Yes.

10 MS WILLIAMS: Yes.

MS McLEOD: And as you acknowledge in paragraph 64, you say this work has just begun.

MS WILLIAMS: Yes, indeed.

15 MS McLEOD: When you were mentioning the TOS Act. Mr Stewart did discuss the paucity of land justice outcomes in Victoria, and I think I'm right in saying there have been three successful determinations under the *Native Title Act* in Victoria and only two successful settlements under the TOS Act.

20 MS WILLIAMS: I thought it was three under TOS Act and maybe slightly more under native title, but - - -

CHAIR: Four.

25 MS WILLIAMS: Four under native title, yeah.

MS McLEOD: So still a paucity.

30 MS WILLIAMS: Yes.

MS McLEOD: And, as you say, this work has just begun. In terms of the impact of that, the extent and impact of that, you mentioned that in paragraph 65. Would you read that out?

35 MS WILLIAMS:

40 *"The Government acknowledges the full extent and impact of the dispossession of First Peoples is not within the State's knowledge, and the purpose of this Commission is to establish an accurate record of that dispossession. The events of the past resonate in the present, and this Commission represents an opportunity to hear the voices of the dispossessed and oppressed and of their descendants and go some way to establishing a new truthful record."*

45 MS McLEOD: Commissioner Bell asked you a question about that earlier this morning. And you noticed - you note in paragraph 65 that you've only touched on that lightly, if you like, and can provide more comprehensive information in relation to land and water dispossession, and no doubt we will be taking up the opportunity to follow up with you on those issues.

MS WILLIAMS: Yes, certainly.

MS McLEOD: Can I come, then, to Systemic Injustice, Part C. And invite to you read paragraph 67 through to the bottom of that page.

MS WILLIAMS: Sure:

5

"The Victorian Government acknowledges the historical wrongs against First Peoples committed by both State and non-State actors have resulted in intergenerational trauma and ongoing inequality.

10 *The dispossession of First Peoples involved violence systemically perpetrated against First Peoples. At times, this violence was sanctioned or perpetrated by government forces. Victorian laws and the criminal justice system regularly failed to deliver justice for First Peoples' victims.*

15 *The Government acknowledges First Peoples were deliberately killed on their Country. This occurred in isolated instances of extrajudicial killing, as well as en masse as part of the Frontier Wars, with many massacres. It is estimated there were 49 massacres of First Peoples in Victoria between the 1830s and the 1850s.*

20 *The first record recorded instance ..."*

Hopefully we have got the same page. I'm just thinking my text might be slightly larger than yours but tell me to stop at the end of paragraph 70, I think, is probably where we are going; is that right?

25

MS McLEOD: We can pause there and then we will pick it up again.

MS WILLIAMS: Sure.

30 MS McLEOD: So, just on that estimate of 49 massacres of First Peoples, you have referenced Professor Ryan's work there.

MS WILLIAMS: Yes.

35 MS McLEOD: I understand her research is based on an assessment of what constitutes a massacre, which is six members or more, and that might discount some massacres of family groups who were less than six.

MS WILLIAMS: Yes.

40

MS McLEOD: Is there a - is there a willingness or enthusiasm to support that ongoing documentation of the massacres of the research of the type of Professor Ryan's?

45 MS WILLIAMS: I think that goes to that question that we raised earlier around what ongoing truth-telling may well look like and that forming of the public record that I know Commissioner Bell raised. So, I think there is certainly an opportunity through this process to contribute to a building of that knowledge and a more accurate record certainly, yes.

MS McLEOD: Yes. Paragraph 70 concerning - - -

50

COMMISSIONER BELL: Can I just come in there?

MS McLEOD: Yes, please.

5 COMMISSIONER BELL: Without in any way wishing to undercut the significance of the term "massacre" and the historical fact of it, I wonder whether you would comment on the significance of the individual and other multiple but less than six killings that occurred. Remembering the opportunity that was probably taken to isolate individuals and small groups in faraway places in order to carry out killings that could not be investigated or uncovered.

10

MS WILLIAMS: Yes.

COMMISSIONER BELL: In addition to massacres as a phenomenon that deserves consideration.

15

MS WILLIAMS: Look, I think any killing deserves consideration, effectively, if we are building a public record. You know, admittedly I don't profess to be an expert in how the - how the definition of massacre arrived at, you know, a number of six people. I think if we are building a record of the State, it's within the purview of this Commission or any truth-telling process to look more thoroughly at whether it be groups of six people or more, or less than that. It is - it all constitutes a part of Victorian history.

20

MS McLEOD: In paragraph 70 and 71, you discuss the Convincing Ground Massacre and the Eumaralla Wars. Would you just read those paragraphs, please?

25

MS WILLIAMS:

"The first recorded instance of a massacre of First Peoples in Victoria was the Convincing Ground Massacre. Through the Gunditjmara people, we understand that there was a massacre of Traditional Owners during a dispute over a beached whale on a beach at Allestree, near Portland, in 1833 or 1834. Gunditjmara descendants lived with this trauma and continue to defend this location from land development.

30

This event preceded the Eumeralla Wars, a more than 20-year period of violent encounters between colonists and the Gunditjmara people throughout south-west Victoria. The Wars were defined by strong resistance of the Gunditjmara people and violence by colonists."

35

MS McLEOD: So, one example that you've given there of the first and a significant massacre occurring down in Gunditjmara territories, but obviously spread throughout Victoria.

40

MS WILLIAMS: Yes.

MS McLEOD: Yes, Uncle? Sorry, I thought you had your hand up. So, that academic work or the rigorous documentation of what occurred is obviously important to the work of this Commission. I just want to ask you a question about historical methodology and just - I know you are not offering an expert view, but just a view as the Minister. It's sometimes assumed by people that an oral record is not as valuable as a written record that might appear in a newspaper or a diary or something else, which is, of course, a firsthand account, just as an

45

oral account might be. Do you have any view about how we record our history and the value of the oral account?

5 MS WILLIAMS: Look, beyond agreeing that oral history is obviously hugely important in how we record history and hugely important within certain traditions and cultures as well, you know, which - many of which predate, you know, written accounts as we know them now. I think it's open to the Commission to - if there are particular thoughts on how we document those, how we make sure that those are recorded for posterity, and we are open to hearing those recommendations.

10 MS McLEOD: In paragraph 73, you talk about the protectionist and assimilation policies that we've touched on being a key tool in the oppression of First Peoples, and the State assuming to itself power over the lives of First Peoples under successive Acts of Parliament. You have touched on some of those, but you acknowledge in that paragraph how particularly insidious and harmful it is that these laws, policies, and practices were often couched in terms of charity, protection, and I might also say welfare.

MS WILLIAMS: Yes.

20 MS McLEOD: Those records - the records of what occurred in the name of charity and protection reveal the intimate degree of control over people's lives at the time, from seeking leave to take a family member to hospital, leaving a mission to visit another family member, to whether somebody could pass on a shirt that they owned, to having extra rations for some reason. The level of control revealed by the written records is quite extraordinary and we would expect that to be revealed in the oral account as well.

MS WILLIAMS: Yes.

30 MS McLEOD: So, is that encapsulated by your acknowledgment there about how insidious and harmful those practices were?

MS WILLIAMS: Yes.

35 MS McLEOD: Would you read paragraph 74, please?

MS WILLIAMS:

40 *"As a result of the Aboriginal Protection Act, colonially imposed divisions were created within families through offensive distinctions based on degrees of Aboriginal ancestry and a view that where a person had both non-Aboriginal and First Peoples ancestry, they would be considered to have greater social acceptance in non-Aboriginal society. Those considered to be Aboriginal could receive support and remain on reserves, while those with mixed ancestry were forced to leave reserves and denied government assistance, which often led to loss of connection to family and culture, and severe disadvantage and hardship."*

45 MS McLEOD: Just pausing there. This would encapsulate the effects of the *Half-Caste Act*?

MS WILLIAMS: Yes.

MS McLEOD: Under 75, you talk about forced removal of children. Would you please read 75 through to 78?

MS WILLIAMS: Sure.

5

"Under these policies, the State perpetrated the horrific practice of forced removal of children, in what became known as the Stolen Generations. From 1869 on, the State passed laws and implemented policies, underpinned by racism and assimilation, of stealing Aboriginal children with mixed ancestry from their families and merging them into the settler population, while those considered to be Aboriginal were expected to die out.

10

For many years, successive government institutions maintained assimilationist policies and continued the separation of children and families. First Peoples children were often placed in institutions, where they were subject to abuse and neglect, or with non-Aboriginal families.

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Children who were separated from their families were also separated from their Country, community, culture and language. They often lost core connections to their identity, and were forcibly and violently prevented from speaking their language or using their names. These laws and policies tore families and community apart, resulting in unimaginable pain, sorrow and trauma.

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The Victorian Government acknowledges the hurt and suffering that resulted from these forced removals and recognises the resilience of First Peoples children, families and communities. It was through First Peoples' tireless advocacy and dedication to the truth that the injustice of these policies came to light."

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MS McLEOD: You've spoken about the arm's length process that was created to design the Stolen Generations Reparations Process. What is your understanding of why beneficiaries were excluded from those reparations?

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MS WILLIAMS: Given I wasn't subject to the deliberations made by the Steering Committee, it may actually be best to draw that from the Chair of that Steering Committee, Ian Hamm, or indeed other members of the Steering Committee. It was, as I understand it, a very difficult task to design that scheme and work out its parameters and I believe many of their deliberations were logistical and functional as to how best to make the scheme operational.

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However, despite the fact that descendants weren't captured in the reparations payment part of their Steering Committee's design, they did include within the report that they handed to government a Part 2, which included recommendations around, effectively, service delivery and other sorts of support for descendants which is currently sitting with government for review now.

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MS McLEOD: Yes, sorry, Commissioner.

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COMMISSIONER WALTER: I wanted to say when we were on Country we did hear from quite a number of people who had missed out for various technicalities or other reasons. So, there is still ongoing hurt and trauma, we know, within Victorian First Peoples. Despite the obvious benefit of these reparations, there is still a lot of hurt and pain emanating from and existing in the community.

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MS WILLIAMS: I appreciate that. Thank you, Commissioner.

5 COMMISSIONER ATKINSON: Just to add to that, if we look at the impact of colonisation, of course, and how it manifests itself in the Stolen Generation, that is still the strong narrative that comes through. It's still there and, you know, it goes back to the 1869 Act. That's where it was legitimised. See, this is the big thing with these policies. Once they are legitimised through statutory law, through law, you know, they become forced changes that people don't have any choice about.

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And so all of those underpin the chronology of statutory laws that were passed to remove children and then followed through to the 1886 Act, where the classification of Aboriginality began. So, the trauma of this event alone - and I followed this through for many years, even when I was back recording my oral history myself, with the Koorie Oral History program.

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Out of all the interviews we did, the Stolen Generations sat at the top, the memory that's passed on through the impact of that.

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And I think that is consistently coming through now after a month community engagement and, you know, that's just in the community engagement process. But in the general - in the community itself. It's just still firmly planted there in the oral memory and that, of course, is some repatriation that's been achieved recently. And that's been a good outcome. But it still stays and still comes through. Yes.

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MS WILLIAMS: Yes.

MS McLEOD: And we've heard on Country many stories of the lateral effect of - to extended family who were or were not removed. So, not just the immediate child removed and their mother or father, but aunties, cousins, remaining siblings and generations of descendants.

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MS WILLIAMS: And I think that precisely is what the Commissioner, both Commissioners articulated there, that intergenerational trauma and the hurt that still exists is palpable on the surface to this day - I think goes to the very heart of that Part 2 set of recommendations from the Stolen Generations Steering Committee and what they were trying to address through those recommendations.

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MS McLEOD: And for those younger persons affected by that, that sense of disconnection and not having identity, not knowing who they are.

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MS WILLIAMS: That's right. Yes.

MS McLEOD: Are you concerned about Aboriginal women describing their experience of the current Child Protection system as creating another Stolen Generation?

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MS WILLIAMS: Of course.

MS McLEOD: And this is maybe outside your portfolio, but what is the government approach to addressing those concerns presently?

MS WILLIAMS: So within - I understand - and you're right to identify Child Protection as being outside of my portfolio responsibilities, but, in saying that, I know that there has been - in recognition of the overrepresentation, clear overrepresentation of Aboriginal children in the Child Protection system, some work led by a number of Child Protection Ministers now to try and prioritise Aboriginal children in Aboriginal care, as well as other forms of - I'm trying to think of the right term for it - I suppose, support programs to - that, in particular, are designed to promote greater connection to culture and Country and familial support with that as a guiding principal, which is obviously an attempt to try to keep families together.

And that's, I think, through the - I forget the actual - I will get the name of the actual agreement, but I think it's the Children and Families Agreement or something to that effect that exists within that portfolio. In saying all that, despite good intentions and prioritisation of Aboriginal children in Aboriginal care and work done with Aboriginal child protection organisations to take over case management of Aboriginal children and a more self-determined approach in that system, there is clearly still more to do, and I think that is borne out in the data itself in that overrepresentation.

So, by no means, despite the efforts that are underway, would we claim that we are where we need to be. There clearly is more that needs to be done.

COMMISSIONER HUNTER: Sorry, can I just ask, do you feel like giving that power back to the Aboriginal community about making decisions, it's handing the problem back to us that was already created before us?

MS WILLIAMS: Look, I think that's a legitimate view for you and others - and others to have, and I think this is where the conversation, both through this process and through treaty, is really important. And, obviously, we are working pretty closely with those Aboriginal organisations and, indeed, community through that Child Protection portfolio to have those discussions, to work out what our role obviously continues to be in supporting those organisations to support community and in the function of those other initiatives under the agreement to try and strengthen families, particularly with a focus on connection to culture and Country, understanding how core that is to family wellbeing as well.

Which is obviously a slight shift, I think, in the way government, western-style systems, would understand child protection, so I think there are steps in the right direction to try and be receptive to what we hear from Aboriginal organisations and the Aboriginal community about not only the deep-seated causes of many of these issues - and we've just spoken about them and it goes back hundreds of years, and I think Uncle Wayne spoke about, you know, successive pieces of legislation and those policies having a very long tail that we are seeing in systems like the Child Protection system.

But certainly I think there is work for us to do and if the feeling was as you've articulated, Commissioner Hunter, then I think that just demonstrates the scale of the work to be done to make sure that those support structures are in place and that government has not vacated the space but continues to be a facilitator in the way that community tells us they need to be in line with principles of self-determination.

COMMISSIONER HUNTER: I think Mr Stewart yesterday talked about how - if you're institutionalised, how to learn to parent and with no parent then how you pass those things on.

And so, if we think about that in ways of culture, and you've just said that it was removed, so culture is our identity of who we are, and if we keep removing that, how do our - you know, you are putting these programs in place. There is already disconnects and some parents aren't connected to - I'm privileged that I am - you know, that I know who I am.

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I'm very privileged to know who I am and where I come from. But that's not afforded to every Aboriginal person. And so how do we create these programs when half the community may be disconnected? So, I'm trying to understand how we recreate that as well. Like, it's not just throwing - this isn't just about throwing money at programs, for me.

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MS WILLIAMS: No, that's right. It's more than that.

COMMISSIONER HUNTER: And so with that disconnection, how do you reconnect that? How could you possibly? So, that was more of a comment rather than a question.

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MS WILLIAMS: Yes, no, and I think it's a good point to make, and it's part of, I think, what is, you know - of what the motivation is behind things like kinship care and ensuring that Aboriginal children are kept in close proximity to that culture and connectedness as much as they can be and recognition of the fact that, clearly, going back hundreds of years, removal of children and placing them in institutions or with non-Aboriginal families was just embedding that disconnection in a way that just did harm for generations.

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So I think that - through some of these policies, there is an attempt to try and keep Aboriginal kids within community and supported by community so that that - at the very least, that connection isn't being lost. But when you're talking more broadly about that loss of connection across the broader community, so, you know, that's very much, I suppose, also at the heart of what a treaty process can be about too, and all the components of it and areas of interest that are outlined in the Commission's own Terms of Reference.

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Whether that be rebuilding - you know, language capacity and connection to language, to rebuilding that - all the components that go to connection and culture and Country, to try and reinstate that as much as can be. Which obviously has benefits across the whole community, you know, to meet the exact challenge I think that you're identifying. It's kind of a step earlier in the process, so we hope it is, you know, a downstream preventer, if you like.

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But there is a lot of work to be done on that and I think the work the community is leading itself in trying to revive language, to revive culture - you know, we term all of that as "resilience". You know, we put it under this banner of resilience, but that's what we are talking about. This is hard work for - I have got to say, for Commissioners sitting here, you know, who have dedicated your lives, many of you to this, to being a part of that regeneration of culture and connection. You know, it's very easy to call it resilience, but it comes on the back of a lot of hard work by community to build that. And we've got to be supportive of that.

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COMMISSIONER WALTER: I think also we have to be very careful that resilience doesn't become another burden for Aboriginal people to be bear. That our resilience is deemed something that can be deployed by government, that we are expected to be resilient, that resilience is something Aboriginal people do. And I think the word resilience coming up so often, it really worries me that this is now - has become an expected trait of Aboriginal people and if somehow we are not resilient, we are therefore even more deficient.

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MS WILLIAMS: Yes, which is precisely, I guess, what I was trying to talk to, Commissioner, and you have articulated it better than I could, that it's an easy -- to come with undertones of expectation but it needs to be supported and it comes at great cost and with a lot of hard work. And I want to appreciate that.

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MS McLEOD: That side of resilience being the deficit language we were discussing before.

MS WILLIAMS: That's right.

10 MS McLEOD: In paragraph 80 and 81, you talk about racism and make some, if I may say so, some fairly powerful statements there. So, I might ask you to read 80 and 81.

MS WILLIAMS: Sure.

15 *"Although governments began to move away from overtly assimilation policies in the 1970s, beginning with the introduction of the Aboriginal Lands Act, assimilationist practices remain. Likewise, the racism that marked invasion and dispossession continues within State structures and systems today.*

20 *The legacy of Colonisation is perhaps no more evident than in the fact that First Peoples are one of the most imprisoned groups of people in the world. Systemic racism, unconscious bias in the application of the law, and the criminalisation of social and economic disadvantage all contribute to the over-representation of First Peoples in the criminal justice system."*

25 MS McLEOD: Can I suggest to you that this concept of racism, systemic racism, unconscious bias, and criminalisation of disadvantage - crimes of poverty, effectively, acting on crimes of poverty - are not broadly understood within the criminal justice system and invite you just to explain how you say racism exists and how it has an effect?

30 MS WILLIAMS: I think we can - we can say it exists because it's borne out in the data on just - on so many different measures, and I've touched on them so far. But to recap on those, if we look at life expectancy, to rates of certain types of chronic illness within the Aboriginal community, incarceration rates - as was addressed in that part of my witness statement - child removal, high school attendance, etcetera, etcetera. The list goes on and on.

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And the Commissioners will be better placed to continue that list than I would be. I think it's evident that it can be no coincidence that the outcomes borne across those - so many systems are consistent in the negative outcomes that are displayed there. So, I think, you know, recognition of that, I think, is also a key motivator, from a government perspective, of our commitment to treaty and truth, which is around better understanding that, but also better understanding the interconnectedness between those systems, that the solution doesn't necessarily rest in one system alone or on one particular initiative or policy or program.

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The breadth of poor, you know, the poor outcomes that are demonstrated across a breadth of areas, I think, demonstrates that there is something deeply systemic happening there that is in need of unpacking and better understanding. To go to your point about how well understood is it - I think there is an inherent acknowledgment in the commitment to truth-telling and treaty that the understanding needs to be better than what it is.

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MS McLEOD: It's likely that the Commission will have a thematic focus on some of the impacts of the criminal justice system. Is the government - and tell me if we need to ask another Minister about this, but is the government open to alternatives to incarceration, including decarceration and alternative pathways through the criminal justice system?

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MS WILLIAMS: I think I can safely say, in line with previous ideas that have been put to me in the course of today's hearing, that we haven't taken anything off the table in terms of our treaty negotiation, and the Terms of Reference for the Commission itself are deliberately broad. So, I think those suggestions, ideas and recommendations are - you know, the Commission is empowered to make those observations and recommendations, and, of course, through the treaty process, there is an opportunity for negotiation on many of those issues as well.

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MS McLEOD: Can I just jump to a couple of specific issues that are raised in your witness statement. The first of those is raising the age of criminal responsibility and the link back to the incarceration data and the underlying racism, just to link this all together. The age of criminal responsibility in Victoria is what age?

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MS WILLIAMS: 10.

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MS McLEOD: And at 10 years old, I think most people would understand that people are still children with their cognitive faculties still developing and, in some cases, dealing with other cognitive disabilities or inhibitions. So, in terms of raising the age of criminal responsibility, this is something that, if I may say so, seems to get tossed around in law-and-order debates and is sitting currently with the Committee of Attorney-Generals, State and Federal. So, is Victoria a supporter of lowering the age - sorry, raising the age of criminal responsibility and keeping people - keeping children in a justice support - in a health or justice support system rather than a detention model?

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MS WILLIAMS: I - you know, I understand, or I draw to your attention that I'm largely talking outside of my portfolio area here, so I'm limited as to the detail I can go into. This discussion around raising the age, as you've identified, is happening at a national level at the Committee of Attorneys General led by my colleague, Minister and Attorney Jaclyn Symes, for our part. And I understand that, as a part of those decisions - obviously nationally - around this very issue, the agreement that was come to at that forum was to raise the age to 12.

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But I understand it that, through that process, jurisdictions were then sent away and asked to return with an implementation plan of sorts, and that's where that process rests at the moment. Obviously though, here in Victoria, you know, we have this process happening through the Yoorrook Justice Commission, and, of course, a commitment to treaty and understanding. So, while that process, as I've described it, is currently playing out through that national process, it does of course remain open to the Commission to make its own observations and recommendations.

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MS McLEOD: Just on that, the Commission wouldn't be the first body to make recommendations around this. Of course, we have the ALRC report, we have national inquiries into the age of responsibility, we have the Don Dale Commission and many other commissions of inquiry that have made responsible - made recommendations around these issues. Is it that a choice that has been made by the Attorneys General and others that

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Yoorrook Justice Commission

suggests that a criminal justice pathway is still the preferred pathway in the absence of other health or related supports?

5 MS WILLIAMS: Look, I think there's a significant body of work going on separately to the raising the age discussion, that I've just outlined which points to more supportive models, particularly for young offenders. You know, we've had - you know, significant reports like Our Youth Our Way and others that sort of see the intersection between the Child Protection system and the Justice system, but we have also a range of initiatives, particularly in Minister Hutchins' portfolios, around crime prevention that go to diversionary programs for young people and how to prevent their intersection with the justice system to begin with.

10 So I think it's a - this policy area has been an exercise in walking and chewing gum, to try and make sure that it's not all - the entire response isn't put down to the age of criminal responsibility, that there's also a significant body of work going on to try and divert young people from the criminal justice system, through various different support programs that I'm sure my colleagues could speak to much more fluently than I could - and obviously information available to the Commission to compel, if you'd like, around those programs and the details of them.

20 But, you know, as we well know, and as has been acknowledged, certainly in this statement and by my colleagues at various forums as well, there is a significant amount of work to do. I know if my Justice colleagues were here, they would talk to the fact that one of the slight improvements in our data that we have seen in recent times has been the reduction of the number of Aboriginal children in custody. But you know - and they may speak to whether that's a product of the diversionary products I've just referred to or other initiatives. They would be better placed to give that information.

25 But I think there is a broad recognition that there is a suite of different supports and approaches that are needed to ensure that we are driving better outcomes than clearly what we have been seeing.

30 MS McLEOD: Just on that, many public statements have been made - not necessarily by Victorian Ministers, but other Ministers around the country - about the need to wait for those social programs, health programs to be in place before they take action to raise the age. And you may wish to defer this, or you might express a view as the Minister for Aboriginal Affairs. Do you think it's appropriate that Aboriginal children continue to come before the criminal justice system when their needs are so clearly health and social?

40 MS WILLIAMS: Look, I don't. I'm not sure it will be a fair assessment of the position of our government or, indeed, my colleagues in the Justice portfolios, to say that they were happy to wait. I think the work being spearheaded and those diversionary programs would indicate that that work is happening as these broader discussions are taking place. So, I think they would be keen to articulate that waiting was not an acceptable position for them, that their work very much still continues on trying to work with community in partnership, whether that be through, you know, forums like the Aboriginal Justice Caucus and other kind of community-led mechanisms that we have within government and other initiatives and agreements that we have got in place that that work happens under the umbrella of. You know, so it might be best placed to get my colleagues to speak more fulsomely, I suppose, about that prioritisation.

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COMMISSIONER BELL: Can I say something about this? I think out of respect for the strength of feeling that has been expressed to the Commission during our consultations, I should record how strongly is the opposition among First Peoples communities to the current age.

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MS WILLIAMS: Yes.

COMMISSIONER BELL: And I think the word that was frequently used, that brought home to me how difficult this policy is, it was described as "inhumane". It is inhumane to have children treated as criminals at under age 14. The other point I would make is that this is a hurt and a distraction and a preoccupation within First Peoples families that, if removed, would be empowering. It is a disempowering thing that they are concerned with children of that age being the subject of criminal processes when they ought not be.

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15 The other disturbing thing, which is equally distracting and hurtful and preoccupying, is that so many of the current children in custody under age 14 are disproportionately First Peoples. It's a very, very serious issue in community.

MS WILLIAMS: Absolutely and fully appreciate that. It is - I think it's fair to say that there would be nobody in government comfortable with the idea of children incarcerated, and so much of the policy thinking within the Justice portfolios is about - you know, how to prevent that and how to manage it. So, raising the age is one part of that discussion, which we know is ongoing, and, as I said, being led by my colleague the Attorney-General in those national discussions. And that work is underway, just to highlight that - that is work that is on foot.

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I suppose, the other part I was just trying to emphasise was, I guess, the recognition that it on its own is not the only answer either, that there needs to be a body of other work done to make sure - which goes all the way back to discussions we were having about how to support families, you know, how to bring back connection and build connection to culture and Country, which we know is a health and wellbeing issue, which folds into - into the trajectory that young people's lives take and where they end up.

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So there is a stream, I think, or a series of downstream points from where we are talking about from the point where they're actually already in custody or already having contact with the Justice system that is a part of that we've got to be looking at too. Obviously, the Justice Ministers are looking at their frame of that in that sort of crime prevention lens and how you get support for children and what support is given to them and where they do intersect with the justice system.

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40 But I think it's important to, in my thinking, for us to make sure that we are doing all of those things, effectively, and not relying just on one measure. But the depth of feeling in community I can - I can appreciate, and I have no doubt it will come out, you know, very potently in what you're hearing and, again, may well come out in the recommendations that you make.

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COMMISSIONER WALTER: I just have a small comment, Minister. I was a bit concerned when we were talking about community being involved in resolving this. I would see very clearly that that this is a law that is totally a government responsibility and a government choice, that it is there, and it is imposed. And we have to be very, very clear that it's not the

Aboriginal community's responsibility to try and remedy this. This is - this clearly sits firmly and solely with government.

5 MS WILLIAMS: Yes, to clarify when I was talking about the community being involved, it was in some of those programs that were sitting in and around building greater connections between young people and culture and some of those sort of - that diversionary work which is also obviously inherent on working with community and Aboriginal community organisations to find the best paths forward, rather than - that wasn't a reference to the law itself. That was sort of two separate conversations. But I appreciate your point. Thank you.

10 MS McLEOD: I will come back to a couple of other instances of the criminal justice program and system in a moment. But just to stay with this concept of systemic racism and injustice, in your statement, you mention the impact of racism and injustice on language, culture, histories and perspectives from classrooms, the impact of the introduction of disease and, at paragraph 90, Victoria's political structures and institutions. Can I ask you to please read paragraph 90 through to 92.

MS WILLIAMS: Sure.

20 *“Victoria's political structures and institutions - founded on British conventions of representative democracy have overwhelmingly excluded First Peoples. In it's history the Victorian Parliament has had only four First Peoples as parliamentarians. The first election of an Aboriginal Member of Parliament - Cyril Kennedy - did not occur until 1979. Victoria's political institutions do not sufficiently include and respond to the legitimacy of First Peoples community-based institutions.*

What connects all of these injustices is systemic racism, a pervasive inequality and structural disadvantage.

30 *A 2012 survey of 755 First Peoples in Victoria by the Victorian Health Promotion Foundation found that more than 97 per cent of participants had experienced at least one instance of racism in the previous 12 months. Research has found that people who frequently experience racism also report high psychological distress and poor health outcomes.*

35 *The Victorian Government acknowledges the patterns of power, paternalism and racism are enduring. To truly address Systemic Injustice across disparate settings, the Government must consider that injustice in a holistic way not in silos. Structural changes and culturally safe environments are required to address these disparities. Racism and denial of features of contemporary Victoria, but they need not be a feature of our future.*

40 *The discrimination that First Peoples continue to endure must be remedied. The Commission has a key role in drawing together these threads of injustice and demonstrating what underpins them. This work will be foundational in creating a blueprint for a new Victoria.”*

45 MS McLEOD: The awareness of racism and the significance of that for the government in its own work is acknowledged by you. We are aware also of course of racism in the community and organisations, corporate, individuals, and they might be micro-racisms or microevents that continually build up and deprive people of a sense of value themselves. They might be majorly outspoken, joking comments made in the context of a sporting game, for example.

What role does the government have in leading the conversation around racism and stamping out racism for individuals and organisations in the community?

5 MS WILLIAMS: I think we have a strong leadership role to play in this, and more recently we've seen that acknowledged through the creation of an anti-racism task force, which is something that I was involved in in partnership with my colleague, the Minister for Multicultural Affairs. And through that a commitment to the creation of an anti-racism task force. Sorry, an anti-racism strategy which is currently in draft form and out for consultation.

10 Of course, that is one way of really head-on tackling the issue of racism that we know exists in our community, but there is also a bigger journey, I think, and one that goes to the heart of our very own institutions which I think is acknowledged within this statement and very deliberately so. So in a short answer to your question, in terms of the significance of our role, I think it is deeply significant and our commitment to truth and treaty is also a part of that. It's
15 a part of resetting that story, of reestablishing a public record of our history so that we can move forward. And all of this involves really difficult conversations, and we accept that from the outset. There will be lots of people in the community I'm sure, and maybe even people across our own government institutions who will be quite uncomfortable with aspects of this conversation that are being started through those processes that we are acknowledging need
20 to happen, to be able to effect the systemic change that we know needs to happen.

MS McLEOD: Chair, is that a convenient time for a break? We have just the reform priorities still to go but that will take a little while. So, if it's convenient to take a short break
25 now?

CHAIR: Minister?

MS WILLIAMS: I'm happy if you are, yes.

30 <ADJOURNED 2:50 PM

<RESUMED 3:02 PM

CHAIR: Commissioner Hunter.

35 COMMISSIONER HUNTER: Minister, just back on to number 92, in there it says, "Racism and denial are features of contemporary Victoria". And then have you also said that you set up an anti-racism task force.

40 MS WILLIAMS: Yes.

COMMISSIONER HUNTER: Are not the systems that are currently set up that we have been discussing today, do they - are they - do they deny us as Aboriginal people and are they racist? Should they be part of looking at or is that for us to do as Aboriginal people?
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MS WILLIAMS: No, I think it's - you know, well, firstly as a statement, if you go to the first part of your comment, I think there is strong recognition in the statement and - I want to make it clear - strong recognition by me today as well that that systemic racism is a feature of our systems today, and it's, from my perspective, an undeniable truth when you see the

outcomes and data. That racism, I think, is borne out and very visible when you see what the outcomes are for Aboriginal people.

5 In terms of whether it is the responsibility of Aboriginal people to address that, no, it's - that is one of the areas that I think quite squarely falls within the responsibility of all Victorians and, for our part, the State to address those issues within our systems and structures, which is the very reason we are here today and the Commission has been charged with doing the work that it is and the very reason that we have committed to treaty.

10 The significance of having First Peoples' voices as - as demonstrated through the Commission and, indeed, through a treaty process is to have that direction of what the State and broader community need to do set by those who are directly impacted by this racism, which is our First Peoples. And to hark back to something I said earlier in the day around why that voice is so important and why it's so valuable and critical to our success on this
15 journey in terms of helping us to identify what needs to be changed is because, you know, most decision-makers across government and the public service are not necessarily - or overwhelmingly are not recipients of that racism we know is impacting on First Peoples.

20 So perhaps not the best placed to be knowing exactly what we are looking at and how to fix it, which is what we are trying to, I suppose, move towards a better understanding of through these processes so that we can, in a well-informed way, move forward and make the changes that need to be made. But those changes are not changes that Aboriginal people have to make. They are changes, overwhelmingly, from my part and what I represent, the State will need to make, and many others as we've discussed throughout the course of today, non-State entities
25 and the like, may need to make and individuals – individual Victorians will need to make.

30 But I think the point you make is – is a very valid one, and I know similar has been made by Commissioner Walter too around the responsibility not being put on Aboriginal people to address the racism that's been directed at you. That that sits elsewhere, and by no means should these processes ever be regarded as an abrogation of that responsibility by the State. It's quite the opposite. This is intended to be and is in good faith an exercise in holding us to the account.

35 COMMISSIONER HUNTER: I'm just wondering also, you mentioned earlier about the different portfolios. Obviously, you can't answer for other people's portfolios. But I wonder when it comes to the recommendations and - will that be an obstacle for implementing recommendations, that it's someone else's portfolio? It's someone else needs to do it. That someone else is looking at it. That's a concern.

40 MS WILLIAMS: Yeah, look, in terms of - well, depending on how the recommendations and the Commission are structured, whether they are put through a treaty negotiation process, which is obviously, you know, a negotiation process with the State as an entity. You know, that is different. That is sort of things that might be able to be dealt with out of - you know,
45 out of a treaty process. But, irrespective, the commitment is that you have - from the State - in truth-telling and in treaty is by the State as a whole.

50 Not by me as Aboriginal Affairs Minister, not by any other portfolio. It is a State commitment. And, as such, you know, the decisions that are made about reform are by the State, and that will bind all Cabinet Ministers.

COMMISSIONER HUNTER: Yes, and probably the last - just one more thing, if that's alright. You mentioned self-determination is really the outcome that we want for Aboriginal people. And will we be supplied with tools to be able to - whatever that means, be done by, because without - I mean all of that stuff that has been taken away. It needs to be sort of given back, in a sense. Not – not literally, just – and it's always not about money.

MS WILLIAMS: Yeah.

COMMISSIONER HUNTER: But how – we need to be – or our people – and this gets asked a lot, and particularly out on Country, it's been asked, well, how are they – are they really going to give us self-determination? Is it really going to happen? Because it's drip-fed, is what the feel is.

MS WILLIAMS: Yes. I think that's the opportunity in treaty and a lot – and that sort of conversation is exactly the conversations that are happening between the State and the First Peoples' Assembly at the moment. They're negotiating an architecture for treaty right now, which is around how that's established, how negotiations are established, what sits around them to support it and then, you know, obviously when we get to stage 3, it's what comes – phase 3, what comes out of it.

So I think, in part, around the tools, I mean, you're right. It's not just money. But, obviously, as Mr Stewart would have talked to, the significance of things like the Self-Determination Fund and the sustainability of that, that second purpose of it in terms of providing a sustainable resource pool for First Peoples to draw from as determined – you know, to meet the needs as determined by them, for them, not the State, I think is a really important part of that toolkit as to how we move forward and have those – that decision-making be truly self-determined, backed by the resources too, that allow those decisions to be made, you know, with the support that we know needs to be there to support decision-making.

So you know, I've no doubt that those conversations will be progressed into more sort of tangible kind of outcomes as we move through phase 3 of the treaty process, as to how that - how that translates into - and, no doubt, that will probably, you know, involve discussion around a great many issues and what that has to look like to resolve certain issues, I imagine. But it is a very live part of the discussion, particularly as we are setting up this architecture to make sure that, as best we can, the treaty process is set up to do what it's intended to.

And from my point of view, I have always been really - as a Minister for Aboriginal Affairs, really clear on what the purpose of any treaty is, which is to give back control of Aboriginal affairs to Aboriginal people. That's why we strike treaty agreements. That has to be the objective of it and it's the absolute centrepiece of self-determination. And I think the conversations that you are alluding to are absolutely central to government's understanding of what that requires to work.

And so I look forward to - to seeing those conversations unfold and, of course, as I've outlined, they are already a very live part of phase 2.

COMMISSIONER HUNTER: Thank you.

MS McLEOD: Thanks, Minister. The questions that the Commissioners have raised today in conversation have raised issues of process, issues of substance, and another issue is on the table in terms of having reforms endure. And I might, with that introduction, invite you to read paragraph 93 and then turn to those specific reforms.

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MS WILLIAMS:

"The Government acknowledges that to achieve true self-determination and justice, reform and structural change is needed, and indeed, is overdue. Systemic Injustice is ongoing. Through this historic Commission the State will be held accountable. The Government is committed to action, not only rhetoric, as demonstrated by the commitment to treaty and the establishment of Australia's first truth-telling commission. The importance of this truth-telling process in parallel with treaty cannot be understated - future Government policy and institutional structural reforms will be guided, and will continue to evolve, based on outcomes from these processes."

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MS McLEOD: So then the statement goes on to discuss a number of reforms, but I just wanted to ask you in the broad, that question about how reforms can endure from one government to the next. So with the best will in the world, a government can have a reform agenda which serves people and sets the process in path, and then there's a change of political will. So can I invite your comment on how we embed structural changes, both in the way of doing things, the processes, and in the detail of things, the actual substance of reforms, so that we can create the best chance for these reforms to endure.

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MS WILLIAMS: Yes, thank you. It's a very good question and obviously a very - it's a great challenge and not one I want to gloss over or downplay in any way. And obviously with political cycles and our political system being what it is, I can completely empathise with concerns about gains being lost at the whim of a different political ideology coming to power. So I think in terms of sustainability, the process of treaty making is one such way to try to embed that, embed through agreement something that binds the State, irrespective of who is governing the State, to the terms of that agreement.

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So that is, in terms of the tools that are available to us, a pretty significant - a pretty significant tool. In terms of the ways and the detail, I think whenever we are looking at any significant reform agenda, whether it be, you know - and the government that I belong to has embarked upon a few significant ones in our seven and a bit years in office so far. I think community - community buy-in is obviously deeply important and I think this whole journey of truth-telling is a part of generating that community buy-in.

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And I don't mean that sound like a fluffy response. I think it is absolutely critical to colouring the expectations of an electorate to make it very clear that - for any government coming in that this is a priority for the community, and that education process is going to be really important for that. But also in bringing the political spectrum along with us. And I talked earlier about the work that is done, you know, across reform agendas to make sure that we are engaging.

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And when I say "we are", both from my point of view as a Minister and the government, engaging with our counterparts on - in the Opposition but also I know, for example, as Mr Stewart would have outlined, the work that's been done by the Assembly to also engage with all sides of the political spectrum to make the case and make sure that as we work

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through our ideas and models, that we are creating at a political level that level of understanding about the why as well as the - as the how and why certain models are preferable.

5 So I think there is a lot of process in that. It's a very - it sounds like a very bureaucratic response, I'm very conscious of that, but I think a lot of the solution, as best as we can get it, understanding of the challenge of the problem, is in how we embark upon these discussions from the ground up, from community, through political processes and of course greatly aided, I think, by the tool of treaty making itself.

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MS McLEOD: That work, I suggest, if undertaken with vigour, would reduce the inherent risks that you have described in embarking on the project in the first place?

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MS WILLIAMS: Of course. And as I outlined, you know, it's effectively been a risk we have undertaken even embarking upon a process of truth-telling and of a commitment to treaty. And I know Mr Stewart spoke yesterday about the work that had been done to try and bring the Opposition on board to committing also to treaty as a part of that work, particularly given the significance of that as a foundational, you know, a stepping stone from which so much good work can - can be born of.

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And while he might have a slightly more optimistic interpretation of the wording of the Opposition than I might have, I very much hope that the discussions that he alluded to and the sort of wording we saw come through from the Opposition is a sign of that increased level of buy-in, because whether the - whether it amounts to a wholesale commitment to treaty as it's outlined under the Act and this process is currently - that is currently underway or not, what it does amount to, I think, is a step in the right direction to acknowledging that treaty is important and that it is a discussion that they must be a part of.

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30 And so I do think that broader piece of work and making sure that we are engaging with the broader Victorian community, all the way up to - you know, all levels and political shades is really crucial to make sure we get the best possible outcomes of these processes. And it is work, and it's work that needs to be done by whoever holds office in government and, you know, because this is - and I think Mr Stewart said yesterday this is bigger than politics.

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It is. He is dead right on that. And it is for us to take on that responsibility to do that work in partnership with community and in partnership with the First Peoples' Assembly and other people and organisations who have skin in this game and want to see the work progressed.

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MS McLEOD: Can I just touch on, with you, some of the reforms you set out in your statement. The first relates to constitutional and structural reforms, and you note the amendment of the Constitution in 2004. That work - I understood you to be saying everything is on the table in terms of the treaty negotiations.

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MS WILLIAMS: Yes.

MS McLEOD: So that reform work of the Constitution may be work that's unfinished.

MS WILLIAMS: What was that, sorry?

MS McLEOD: The Constitutional reform, that is, the reform of amendment or potential amendment of the Victorian Constitution, may be unfinished business under the treaty negotiations?

5 MS WILLIAMS: Yeah, as I outlined, you know, we've been - and probably too it might help to labour this point as to why I'm trying to be so disciplined in maintaining our commitment to taking nothing off the table and to ensure that negotiation goes forward in good faith, is about, in itself, us trying to demonstrate and not repeat - or really demonstrate that we will not repeat the mistakes of the past by seeking to step into a space that needs to be kept open
10 for community to define and bring to us.

So we certainly - and I'm conscious, sitting here with the Commissioners, for that commitment not to be interpreted as anything mealy-mouthed or, indeed, a bat-away, but indeed to try as best as I can as a representative of the government to hold that space open for
15 community to bring to us what it needs. And I think that is the sort of discipline that we are going to need to see of governments in order to make sure that these processes are truly self-determined.

So in terms of the reform you are talking to, you know, as far as we know - and we are not in
20 phase 3 of treaty negotiations yet. We are not in substantive treaty negotiations, but they may well form part of that.

MS McLEOD: Paragraph 95, you mentioned the Victorian Aboriginal Affairs Framework. Can I just ask you how that works?
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MS WILLIAMS: So the VAAF, as we know it, essentially sets a series of pillars or objectives with targets and is basically designed to be able to improve outcomes for Aboriginal people across a whole range of areas, whether it be, you know - I think there is for children and family and home, there is learning and skills, opportunity and prosperity, health
30 and wellbeing, justice and safety, and for the first time, in the last iteration of it, culture and Country as well as a part of that.

It - you see this sort of as a way of Victoria setting our jurisdiction's targets on how we are to progress better outcomes for Aboriginal people across government, similarly to what happens
35 in a national level in Closing the Gap, although what I can say is that our targets as a State level tend to be more ambitious than our targets set at a national level under Closing the Gap, and we hold ourselves to our State targets as identified in the VAAF.

MS McLEOD: Under the heading of Justice Reforms, could I invite to you read paragraph
40 101?

MS WILLIAMS:

"The Victorian Government recognises the gross over-representation of First Peoples in the criminal justice system is inextricably linked to systemic racism, colonisation and policies of exclusion. The Government also acknowledges that justice reforms currently underway are the direct result of strong First Peoples' and ACCO advocacy over many decades. The Government accepts that it must continue to change the way the justice system operates to ensure that long-standing injustices are properly addressed."
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MS McLEOD: You then mention the Aboriginal Justice Agreement and the new commitments, or new-ish commitments, the justice targets that are included in the Closing the Gap work. Could you just explain how the Aboriginal Justice Agreement is shaping justice reform?

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MS WILLIAMS: Sure. In as high level as I can - again, it could be spoken to with - in - far more fluently by my Justice colleagues, but the Justice Agreement has sitting beneath it a range of initiatives and commitments to try to reduce things like incarceration rates through a range of sort of early intervention measures and initiatives. I hope I'm - you know, everything from - and I hope I'm remembering this correctly, from sitting within - under the Justice Agreement, but things like diversionary programs specifically for Koorie women, and I think there is also some there for Koorie men.

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There's a healing centre within Dame Phyllis Frost that is also one of the sort of initiatives laid out in here and a range of others that go specifically to trying to drive better outcomes for Aboriginal people in the justice system. And in keeping with the targets that we set ourselves in the VAAF, of course, which is a whole of government document, you know, doing that work to reduce incarceration rates and so many of those other measures that we know see an overrepresentation of Aboriginal people.

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MS McLEOD: Can I move to the specific topic of the repeal of public drunkenness. The advocacy around this, of course, is founded in the recommendations of the Royal Commission into Aboriginal Deaths in custody.

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MS WILLIAMS: Yes.

MS McLEOD: More than 30 years ago. And the Law Reform Commission report which was commissioned shortly after that. After a period of some 30 years, the Day family, supported by their advocates, including the Aboriginal Legal Service and the Human Rights Law Centre, brought that matter to the Coroner's attention. Initially there wasn't going to be an inquiry into those aspects of Auntie Tanya's death in custody. And, of course, there's a family history there back to Harrison Day, of course, in his death in custody.

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Those public reforms, the reforms to decriminalise public drunkenness and related offences, were committed to in February 2021, so I just wanted to ask you what was the hold-up with those reforms commencing.

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MS WILLIAMS: Sure. In line with the recommendations of the expert reference group around - who made the recommendations around public drunkenness decriminalisation and the public health model that needed to be stood up to - alongside that decriminalisation to ensure, effectively - the purpose of that - that recommendation was to ensure that there was a health response to what was clearly identified as a health issue. Not a justice issue, which obviously goes to the two parts of - of that commitment: (1) to decriminalise public drunkenness, but the other to set up an adequate health response to ensure that people were getting that assistance - that health assistance they needed at that time.

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The commitment remains and we remain - and it remains a priority. In terms of the deferral by 12 months that's recently been announced by the Attorney-General, my understanding is that because of the pressures on the health system during the pandemic, particularly throughout last year, there was a delay of them being able to set up the four trial sites that

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were a part of that recommendation from the ERG, the expert reference group, which was allowing them to design the health model that was to effectively offer the health response to what had previously been identified clearly as a justice problem but what we are now saying is not a justice issue.

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So to allow time for those trial sites to be established as a - as we hoped they would be last year, they've deferred that for another 12 months and will do that work that we had hoped would be able to be done last year. So, sadly, it is a delay that is due to the circumstances around COVID. And I think to express that - the decision to defer was made also in

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consultation, of course, with the expert reference group, explaining those challenges. Again, being mindful that I'm - I'm effectively speaking on behalf of another portfolio, because these were decisions and conversations that were being had by the Attorney's office, but I understand the discussion with the expert reference group saw them supporting the deferral on the basis that the health model hadn't yet been stood up, and that consultation was

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also had with the Victorian Aboriginal Legal Service who - while disappointed, no doubt, with the deferral, as we all are - also emphasised the importance of having the public health model stood up. And the benefits of that model.

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So that is, in effect, the explanation as to why we find ourselves in - in a disappointing situation of having to defer that by 12 months.

MS McLEOD: You said there were two aspects to it. One aspect was the decriminalisation of those offences.

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MS WILLIAMS: Yes.

MS McLEOD: And the second was the health response. It sounds like both aspects have been delayed by the COVID, and I just wonder if there's - to explore the reasoning behind that - and I guess we are in a similar situation with the raising the age of responsibility, that it's seen that the criminal justice response and the criminal offences stay on the books while there's a delay waiting for social and health supports, and to ask whether that's really justifiable.

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MS WILLIAMS: Look, my understanding is - and, again, I haven't been subject to those discussions with ERG. But a core part of their recommendation was around the significance of having that health model in place and, therefore, the coupling of those two things was done in order to ensure that, where people did need assistance - that is, people who couldn't be collected, for example, by a family member or contact or organisation who - on the current

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scheme, have sadly and often tragically found themselves in prison cells, who - you know, I think the strong - the strong recognition is that that shouldn't be the case, was a question around what would happen if one was done without the other?

Where do people end up? Are there other risks created in other parts of the system that might also lead to - to poor outcomes? And so that sort of explains why the two were coupled and why the public health model itself was - was seen to be a very important measure to have established to go alongside so that there was an alternative that was very health focused to go alongside the decriminalisation. I will say, it's my understanding that there is being canvassed some interim models of care, so during that delay, to engage with some Aboriginal-led

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approaches to work with - and ensure that we are not just simply seeing a continuation of the

old scheme for the next 12 months, but we are seeing interim models be put in place that lean into that health response while we get the proper and more holistic health model that was envisaged by the ERG stood up over the next 12 months.

5 MS McLEOD: And just to follow up, might that interim response include addressing the police discretion to arrest in the first place?

10 MS WILLIAMS: Look, I would have to defer that one to my colleagues in Police, but, you know, I imagine all of those things are being discussed at present while those interim models are being devised.

15 COMMISSIONER WALTER: My question is, what if there is a change of government? Does this linking of both the raising the age and the public drunkenness to be now deferred again in -- it's become yet - like Uncle Wayne was talking about - yet another barrier, you remove one barrier and then you add another. So is there anything to say that in 12 years' time we won't be still seeing deferrals? Is there an end date? If we have a change of government, do the health referrals become an avenue for not implementing these at all?

20 MS WILLIAMS: Look, I think - look, any legislation, it should be pointed out, can be changed by any government coming in, you know, in it at any time. That is obviously the realities of our model of government and legislative change. The date commencement for the decriminalisation is also set in legislation, so that will be legislated to commence November next year, I think it is, on the deferred date. So for a government to come in and change that - and, effectively, if it was a new government saying, "Well, no, we don't want to do that", they would have to pass legislation through both Houses of Parliament that effectively
25 reneged on that commitment.

30 And, you know, not to get into the details of parliamentary systems but, you know, if any government has a majority government in the Lower House, that's not usually an issue for them there. In recent times, we haven't often seen governments have control of the Upper House, so it may be a significant issue for them there, depending on the composition of an Upper House after the election.

35 So it may not necessarily be an easy thing for a new government to do, but I think - I suppose an important point to make in this is that the work of the Commission itself, and, of course, the opportunities that exist within an interim report and what it might have to say about these matters, you know, may be, you know, an important layer of consideration to any government coming in if they were minded to try and change this. So that idea of community pressure and making clear the importance of this going forward. So that is the opportunity that exists for
40 the Commission.

45 COMMISSIONER HUNTER: Can I just make comment to that, that particularly with raising the age and particularly with the drunkenness, that whilst we are waiting and whilst we continue to wait, kids still get locked up and people still die in custody. And I just want that commented, that we've been waiting a long time as Aboriginal people. And people still die, and kids are still being removed, and that affects our community. So I just wanted to say that.

50 MS WILLIAMS: I appreciate that, Commissioner. Thank you.

MS McLEOD: And the Commissioners are hearing in their consultations evidence relating to the impact of crimes of poverty, the historical crimes of vagrancy, consorting, things of that nature and the impact they had. And reflecting the continuation of that treatment by the laws - criminal laws and by police through to today.

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MS WILLIAMS: Yes.

MS McLEOD: In paragraph 113, you mention the history of First Peoples being discriminated against by police, creating deep distrust, and concern about abuse of power that's been reflected by the Commissioners' comments, compounded by deaths in custody, high imprisonment rates and the detrimental role of Victorian justice agencies to the lives of First Nations. Then you mention the Review into Police Oversight and the Parliamentary IBAC inquiry at paragraph 115. Could I just ask you to read paragraph 116?

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15 MS WILLIAMS:

"Understanding the lived experiences of First Peoples' interactions with Victoria's police oversight system is vital, and therefore First Peoples stakeholders have been actively engaged in the IBAC review. The Government acknowledges there have been strong calls from First Peoples and ACCOs for a fully independent body outside of IBAC to provide oversight of police, akin to the model used in Northern Ireland, to address the loss of faith between First Peoples, police and existing oversight bodies. The Government is considering feedback received during consultations."

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25 MS McLEOD: The next topic is Indigenous Data Sovereignty. And we have discussed that briefly. Commissioner Walter may have some questions about the paragraph which commences at 117.

COMMISSIONER WALTER: I think we did mostly discuss that this morning, but I did want to - in paragraph 120, we talk about - the Commission has already requested that the government amend the *Inquiries Act* and also the *Freedom of Information Act*, and I just wanted, really, an update on where that request has gone?

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MS WILLIAMS: Sure, that was a letter, I believe, that has come to me and that I have seen. There are some logistical challenges in potentially being able to action that in the time scale that might have been envisaged when that request has been put to us. Just to put that into perspective, I think there's only some five or six more sitting weeks until we go into caretaker. Any legislative change as has been proposed would require a period of consultation, a Cabinet process, drafting and then pass through Parliament, which just would not be possible in that timeframe.

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So, look, it still sits with us for consideration and obviously sits against that backdrop too of those discussions that we previously had around data sovereignty and what else might need to be done there.

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COMMISSIONER WALTER: And, look, and I understand all that, but it does pose a problem for the Commission, because when we are out on Country and we are talking with people, we are able to promise people that their data is their own and their wishes around their data will be fully respected and embedded in our processes in the Commission, but we

cannot yet give guarantees about what happens post the Commission. And that is a concern for us, because we can only say we are trying.

MS WILLIAMS: Yes.

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COMMISSIONER WALTER: So this is something that hopefully we can resolve sooner rather than later, so that people coming forward can be assured that their data will not be - and their information will not be misused or in another way taken from them post-Yoorrook.

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MS WILLIAMS: No, thank you, Commissioner. And I'm keen to work with you on that, you know, irrespective of the logistical challenges of timelines over the next few months. Keen to work with you on that. And also appreciate it - it may well feature in any interim reports as well in terms of particularly what happens at the end of the Commission's time of operation. So we will treat that as a discussion that is ongoing, and thank you for your advocacy.

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MS McLEOD: Under the heading of Language and Culture, we have touched on this in your evidence already. You recognise in paragraph 123 "culture as a protective factor critical to countering poorer outcomes statistically experienced by First Peoples." "Emphasised in the Royal Commission into Victoria's Mental Health System final report." And "efforts to preserve and promote First Peoples' language and culture." Can I invite to you read at paragraph 127.

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MS WILLIAMS:

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"But the Government can and must do more. It is shameful that First Peoples have been denied connection to their language by policies of the State. It is a sad reality that most non-Aboriginal Victorians know little First Peoples' language and history."

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MS McLEOD: The Commission has adopted the practice of using language, from a number of different languages, in its processes. Has the government given any thought to adopting that practice as well, of adopting Aboriginal language phrases in its own practice?

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MS WILLIAMS: It's a good question, and I think one that is well within – within the remit of the Commission to make recommendations on. I know it's been observed in my time in the role that that is a point of difference between - and I don't speak as an expert on New Zealand, I should make it clear, but between us and New Zealand. You know, we do an Acknowledgment of Country, but they have a much greater component of in-language contribution.

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And, obviously, the history of their country has probably allowed that language to perhaps not have been lost to the extent that, sadly, our languages have. But, you know, I think it's a really - well, I know how I react on a personal level and as a Minister for Aboriginal Affairs when I hear acknowledgments done in language and when language is interspersed in the traditions and customs that I have the great fortune to be able to witness and be part of. So I think it's certainly a suggestion that should be taken on board.

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MS McLEOD: And the same comment could be made, perhaps, in relation to renaming of monuments, places. The government has obviously started on that path. Is there a proactive program to look at renaming of important public places - private places?

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MS WILLIAMS: I think, again, that's one of many ideas that have been put to me today that fall - that the Commission is well empowered to make findings on and that I know well may also, irrespective of what the Commission decides to recommend or otherwise, is likely to be of interest in potential treaty negotiations, whether that be State-wide treaty or local treaty.

MS McLEOD: Could I invite you now to read paragraph 128?

MS WILLIAMS:

"The Victorian Government acknowledges that in the history of the State, the human rights of First Peoples have rarely been specifically considered, protected or upheld. Some protections have been provided in more recent times, including through the Equal Opportunity Act 2010 and the Charter, but much more needs to be done."

MS McLEOD: You noted in paragraph 129 the protection for cultural rights in the Charter and the preamble also mentioning human rights, but no more substantive rights in the Charter in relation to the rights of First Peoples. The UNDRIP, being the most comprehensive international instrument on the rights of Indigenous people, is noted in paragraph 130. Is there an openness in government, either as a part of the treaty process or as a stand-alone project, to implementing UNDRIP in law, if requested, as part of the treaty process or requested by this Commission?

MS WILLIAMS: Look, as I've outlined, you know, we've been very mindful not to take things off the table in terms of those forthcoming negotiation and - negotiations. And, like all ideas, I think that is one that will be subject to those negotiations. I know the reference to the Charter in relation to UNDRIP often comes up, and obviously the Charter pre-dated the Federal Government's endorsement of UNDRIP, which is - might explain some of the distinctions in the way it is cast.

It is also worth acknowledging, I think, that one of the ways in which we can sort of better give voice to the principles outlined in UNDRIP is through the treaty process itself, and, of course, there's sort of a bit more explicit mention of self-determination in the preamble in the *Treaty Act*, and I think there is an opportunity, through that process and the very significant process of agreement making, to look at that in the contemporary context that we are in.

MS McLEOD: I might ask that these - yes. Certainly. I will. Just for the written statement be taken down while you are asking your question, thank you.

COMMISSIONER BELL: Sure. I wonder if you would like to comment upon the significance of clear and certain human rights protections in the context of this transitional justice situation in which we are involved. And I have particularly in mind those places where, as part of related state-building, clear, certain, enforceable, precise and well understood human rights protections have been part of the solution. I could give many examples, but I think Northern Ireland would be the best one.

And there we had two communities who had experienced historical Troubles with respect to their place in a colonial setting that was not of their making. The analogies seem rather obvious. And peace, not yet permanent, but ongoing was obtained through an agreement which contains certain components, one of which was clear, coherent, precise, enforceable

human rights protections. Now, without going into the detail, I'm not sure that we can say that of the Charter at the moment.

5 And my question really is directed at the significance of having those kinds of human rights protections in the context of the kind of belated state-building in which Victoria is currently engaged.

10 MS WILLIAMS: Yes, I think that probably draws out some of the reference I just made to the opportunity that exists within the treaty-making process, similarly to the Good Friday agreement that was - that was struck in very different circumstances, but, yes, there are certainly colonial analogies there in terms of the cause of that conflict. But, in short, to answer your question, I think, through treaty-making, those are certainly opportunities.

15 I know that there is - they have more than likely been discussed at the First Peoples' Assembly level as well, and I didn't catch Mr Stewart's comments or reflections on that yesterday. But I think this is likely to be a shared interest between the Truth-Telling Commission and the First Peoples' Assembly in preparing for treaty. Also worth noting, in terms of making analogies, that one thing Northern Ireland didn't do was have a truth-telling commission which has been a long outstanding and ongoing issue there. So I suppose we
20 have something additional to - to our bow in how we prepare for those treaty negotiations by having a process like this one.

COMMISSIONER BELL: Thank you.

25 MS McLEOD: Just to conclude, you have in paragraph 132 and 133 some concluding remarks. You may wish to read those or you may wish to make another statement.

MS WILLIAMS: I may start by reading these.

30 MS McLEOD: Yes.

MS WILLIAMS:

35 *"I am grateful for the opportunity to make this statement. First Peoples have my deepest respect, and the Commissioners, my sincere appreciation. The work the Commission is undertaking is truly historic. The Government cannot do what you are doing. It cannot bring the important and necessary First Peoples' voices together, it cannot create this unprecedented record of truth. You are tasked with this great responsibility, and all Victorians need you to succeed.*

40 *The Commission's work will no doubt lead to a profound reckoning with Victoria's past and a pathway to a shared future. The Victorian Government passes this great challenge to you, Commissioners - not to avoid our responsibility, but to do this right. Only by acknowledging and wrestling with injustices - both historic and ongoing - can we begin to heal and to move
45 forward."*

And just, an ad libbed note of thanks for today's discussion, and I know it may well not be the last time that I appear before the Commission. But to acknowledge the task ahead of you, and it is - and never to seem like we are being flippant or downplaying that, but also which is just

to echo something which was in those final paragraphs, was to make clear that we have a very strong sense on behalf of the government of our responsibility in this process too.

5 And that while this phase of work and of bringing Aboriginal voices to us sees, I think, the disproportionate load on you, there is a time when - and some of that may be through treaty, and it is open to the Commission, obviously, through its recommendations to set things outside of that process, but we enter this knowing full well that there is an expectation of accountability from us, from the State, and that will bring with it its work for us.

10 And we stand open to doing that work and committed to this process. So thank you for all of the hours that you are pouring in, but we know it's so much more than time. It's the emotional energy you bring. It's the trauma that you are also asked to live through this process and that others are bringing to you and that others are reliving through this process and the trust that is being, I think, put in you and also to the State as well, by those who are coming forward and sharing those stories, despite their scepticism, despite their distrust.

15 And that is an enormous and very generous contribution that people are making, to share themselves as part of this journey. But I think it's such an important one, and I think this is once-in-a-generation opportunity for us to change the game entirely, to actually reset, to genuinely reset and move forward and build a much stronger foundation and a future that we can all be genuinely proud of. Thank you.

20 MS McLEOD: Chair, I tender the balert keetyarra of Gabrielle Williams, Minister for Aboriginal Affairs, which will be Exhibit 6.0, and the Annexure, 6.1.

25 CHAIR: Thank you. Documents will be identified as you've described. Thank you.

<EXHIBIT 6.0 BALERT KEETYARRA OF GABRIELLE WILLIAMS DATED 3 MAY 2022

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<EXHIBIT 6.1 ANNEXURE TO THE BALERT KEETYARRA OF GABRIELLE WILLIAMS DATED 11 MARCH 2022

35 MS McLEOD: That's the evidence of the Minister.

CHAIR: Thank you. We just have one more thing to do, I believe.

40 COMMISSIONER HUNTER: Yes, Minister, as is our cultural tradition, is a gift exchange. We want everybody to be treated equally within this Commission. So we would like you to thank and for coming here, which is hard for yourself, and I think you are our first non-Indigenous person to give evidence. So thank you - and speaking so freely. And so on behalf of the Commission, we have a gift.

45 MS WILLIAMS: Thank you.

<ADJOURNED 3:48 PM