



TRANSCRIPT OF DAY 1 – WURREK TYERRANG

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MONDAY, 5 DECEMBER 2022 AT 10.06 AM (AEST)

DAY 1

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Transcript Produced by
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Yoorrook Justice Commission

... as a result of this legislation all people between the ages of 15 and 35 that would then, by the Act, to be half cast were expelled from the missions. It split families and expelled people from their communities, in a manner that continues to echo through both the child protection and the criminal justice systems.

In 1890, 1910, and 1915, successive legislation that specifically and intrusively regulated the lives of Aboriginal people was provided by the government to make regulations prescribing the place where any Aboriginal person could reside, and for the care, custody, education of the children of Aboriginal people, prescribing conditions for licensing half casts to reside with Aboriginal people and regulating the removal of such people, and also prescribing the care of any orphan half cast child to the State.

From the 1920s to the 1950s Aboriginal people from across the State were moved into Melbourne, away from the restrictions - that Aboriginal people were moving from Melbourne into Melbourne, away from the restrictions of the missions and reserves and they were looking for work and Fitzroy, where many Aboriginal people came to live, police imposed a black curfew, dragging them from pubs into paddy wagons once the curfew had passed. This is not the only time that police have invented unwritten laws that apply only to Aboriginal people and have treated them as criminals when no law has been broken. The exercise of police discretion in a racist way is a continuing concern.

By 1957 more than 10 per cent of Victorian Aboriginal children were living in State institutions. Most of them had been seized by police and charged in the Children's Court with being in need of care and protection. The historical records indicate that, just like now, many policemen acted from genuine concern for the best interests of the Aboriginal children. Few Aboriginal people were aware of their legal rights and accepted the police intrusion at any hour of the day or night without question. Even the legal procedure was - also prevented parents from reclaiming children committed as wards of the State. The evidence we will hear about the situation continues today, continues many similarities.

I now wish to speak a little about some of the issues identified at the roundtables. On September 12 this year Yoorrook held a roundtable was held with the key First Nations leaders and experts in criminal justice. They told Yoorrook there was systemic racism underpinning the western legal system. This included racial profiling by police and unequal treatment of First Nations people who come into contact with police. It was said that the current system of police investigating complaints about police is not working and there needs to be wholly independent oversight of the police. There was much said about the strong links between health, mental health, housing insecurity and crime.

Attendees said that money spent on building new prisons would be better spent addressing the causes of offending, better for both offenders and for the rest of the community. There was unanimous support - unanimous support - for raising the age of criminal responsibility from the current age of 10 up to 14 years of age and a call to spend more money for keeping vulnerable kids out of prison.

Attendees also spoke about the things that were working well including the Koori court and its work with Youth Justice and Families and (indistinct) mens healing centre and the way the Aboriginal justice agreement has been able to drive reform. However, they also felt that the Aboriginal community-controlled organisations working in this area were chronically

underfunded and unable to meet their demand for services. They felt that where services had been shown to work, they should be funded to expand their work.

5 On 13 September this year, Yoorrook held a roundtable with the key First Nations leaders and experts in child protection. They told Yoorrook that the child protection system is reactive and crisis-driven and that government funding is only available at the tertiary end by which time the removal of the child from their family is almost inevitable.

10 Yoorrook was told that lot of money goes towards removing children and very little goes towards building strong and safe families where children can thrive. Attendees told Yoorrook about the ongoing loss of culture that occurs when a child is removed from their family and about the failure of the policies that were meant to ensure culture is not lost when kids go into care. Child protection practitioners, it was said, do not know the value of culture to First Nations children. Its loss does not get proper consideration in decisions about child removal.

15 Yoorrook also heard about the child protection system and the way that the system views First Nations people through a lens of punitive and judgemental - through a punitive and judgemental lens, not as brothers and sisters who need a hand when things get hard. We heard that the primary drivers for child protection involvement are family violence, homelessness and housing insecurity, and also alcohol and other substance abuse.

20 Child protection does nothing to address these areas. The only tool they have is child removal. In contrast, we heard about Aboriginal services that provide wraparound supports to families to address the issues that lead to child protection involvement. Attendees at this roundtable spoke of the link between the child protection system and the criminal justice system. Yoorrook was told that there was a direct pipeline for Aboriginal young people between the home care - between out-of-home care and juvenile justice and then into adult prisons. Yoorrook heard that many Aboriginal people who have died in adult prisons were once child protection clients.

30 At this hearing, Commissioners, we will hear evidence about the issues raised at the roundtable and many more issues. Commissioners, there have, in relation to both the areas to be covered in this hearing block, been many inquiries and reports. What Yoorrook heard at the roundtable suggested things have still not changed since previous inquiries and reports into the impact of child protection and criminal justice systems on First Nations people, culture and communities. Commissioners, you know that both the State of First Peoples have already done much work in this area in the past and that many findings and recommendations have already been made.

40 With respect to the child protection area, the most recent of these are as follows: in 2016, the Commissioner for Children and Young People published *'Always Was, Always Will Be Koori Children'*, which looked at First Nations children in out-of-home care. It recorded the following data from Taskforce 1000: it recorded that, at the time, there were 980 children in out-of-home care, 88 per cent of them had experienced family violence; 87 per cent were exposed to parental alcohol substance abuse, or substance abuse; 42 per cent were placed away from their extended family; 25 per cent of children were on guardianship orders, had no culture support plan; 86 per cent of children were case-managed by a non-Aboriginal agency; over 40 per cent of children with siblings were separated from their brothers and sisters and over 60 per cent of children were placed with non-Aboriginal carers. Page 12 of that report notes the following conclusions:

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5 “This Inquiry found that DET and DHHS have failed to comply with existing protocols and agreements to safeguard the cultural rights of Aboriginal children in out-of-home care. These rights include the ability to access Koori-specific education services, to have individual learning plans and to access mainstream schooling. The Commission heard of many Aboriginal children who had been placed in alternate or special school arrangements by DET because the education system was unable to cater for their trauma-related behaviours. DHHS data for the 980 children reviewed during Taskforce 1000 has been analysed and presented in this inquiry report. In addition, 22 case studies illustrate the scant regard for the human rights of Aboriginal children to access and practise their culture. The data provides a strong and compelling evidence base for the findings and recommendations of this report. The Commission found that promising outcomes for Aboriginal children in out-of-home care were observed where there were inclusive approaches to collaboration between child protection, CSOs and ACCOs, particularly where the ACCOs are well resourced and well managed.”

10 In 2019, Commissioners, the Commission for Children and Young People published ‘In Our Own Words: A Report On Children In The Out-Of-Home Care System’, page 21 of that report records:

20 “Aboriginal children and young people often enter the out-of-care system at an earlier age and are more likely to spend more time in care than non-Aboriginal children and young people.”

25 The report also records that only one quarter of Aboriginal children and young people in care were recorded as being placed with an Aboriginal carer. Also, when surveyed by the department, only 54 per cent of the Aboriginal children and young people in Victoria said that they knew about their family background whilst 63 per cent said they could follow their culture where they lived. It also recorded that, as at 31 December 2018, 61 per cent of Aboriginal children and young people who should have had a cultural support plan did not.

30 It recorded that 47 per cent of Aboriginal children and young people, who had been in care for over 12 months, had not had an Aboriginal family-led decision-making conference. 29 per cent of Aboriginal children and young people in care who had one or more siblings in care were living separately from all of them. Finally, it recorded Aboriginal children and young people are more likely than non-Aboriginal young people to be on out-of home care orders which involve less court oversight of their right to connection with their culture and kin.

40 Just last year, Commissioners, the Commissioner for Children and Young People published a sobering report on Aboriginal children and youth justice. That report was called ‘Our Youth, Our Way.’ On page 21 of that report it is recorded that data indicates on an average day in the most recent full year of published data, which was 2019 to 2020, Aboriginal children and young people accounted for 15 per cent of the young people aged 10 to 17 years under the Youth Justice Supervision in Victoria, in the community and in custody, despite making up only 1.5 per cent Victorian children and young people aged 10 to 23 years.

45 It recorded that they were 10 times more likely than non-Aboriginal children and young people to be subject to community-based supervision and were nine times more likely than non-Aboriginal children and young people to be in youth justice custody. It recorded that a

very high proportion of Aboriginal children and young people involved in the youth justice system also have child protection involvement. Children involved in both the youth justice and child protection systems are sometimes referred to as crossover children. Many crossover children have experienced out of home care.

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On page 22 of the report it's recorded that Aboriginal children and young people and their communities have been targeted by the State in an unbroken chain of harmful interventions since early colonisation. For many Aboriginal people these State inflicted interventions have directly caused generations of trauma and broken connection to country and community.

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The devastating consequences of this have led to inequalities in life experience, including a higher prevalence of low education attainment and earning, housing insecurity, unequal health outcomes and early mortality. Many Aboriginal children and young people in the youth justice system have also experienced exposure to family violence and substance misuse, as well as the impact of being forcibly removed from their families.

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The harmful impacts of these interventions, it is recorded, are well-recognised in the literature and acknowledged in government policy frameworks and initiatives. However, despite this, a culture of over policing and surveillance, forced removal of children from their families, disproportionate youth justice system outcomes and adverse experiences persist.

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The weight of trauma associated with these actions was palpable in many of the children, and young people the Commission spoke with. For many, the State was not only the source of this trauma but also failed to provide adequate responses to address the ongoing devastation it produced. They were the findings in the report, *'Our Youth, Our Way'*, Commissioners.

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With respect to criminal justice there has also been much previous work. In 2005, the Aboriginal justice forum in the Victorian Government undertook a Review of the Victorian Government's Implementation of the Recommendations of the Royal Commission Into the Aboriginal Deaths in Custody. That report noted:

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"Whilst the community recognises the efforts of government to address indigenous disadvantage, the underlying issues of racism, education and employment and economic status, housing, families and children, health and wellbeing, alcohol and other substances, community capacity, land needs and cultural survival and reconciliation all continue to negatively contribute to indigenous contact with the juvenile and criminal justice systems."

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At page 15:

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"While much has been implemented and achieved, there is still a shortfall in the proper provision of basic human rights and social justice principles for its indigenous peoples."

In 2017, the Australian Law Reform Commission handed down a report entitled, *'Pathways To Justice - An Inquiry Into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples.'* The Commission made recommendations about justice reinvestment. At page 26 of that report, *'Pathways to Justice'*, it is recorded:

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"Justice reinvestment involves the redirection of resources from the criminal justice system into local communities that have a high concentration of incarceration and contact with the criminal justice system. A justice reinvestment approach suggests that resources are better

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directed—and indeed savings will be made—by reinvesting a portion of this expenditure to address the causes of offending in places where there is a high concentration of offenders. It uses place-based, community-led initiatives to address offending and incarceration, applying a distinct data-driven methodology to inform strategies for reform.”

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At page 27, in chapter 4, the Australian Law Reform Commission outlines two key reasons why justice reinvestments holds particular promise in addressing Aboriginal and Torres Strait Islander incarceration. First, it has long been recognised that the key drivers of incarceration for Aboriginal and Torres Strait Islander people are external to the justice system and the justice reinvestment involves a commitment to invest in front-end strategies to prevent criminalisation. Second, justice reinvestment, as a place-based approach, emphasises working in partnership with communities to develop and implement reforms and thus accords with evidence that effective policy change to address Aboriginal and Torres Strait Islander disadvantage requires partnership with Aboriginal and Torres Strait Islander peoples.

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That report also discusses the connection between child protection and criminal justice. Page 34 reads:

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“Research suggests that the relationship between the child protection system, juvenile justice and adult incarceration is so strong that child removal into out-of-home care and juvenile detention could be considered key drivers of adult incarceration.”

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This year, the Victorian Parliament Scrutiny of Acts and Regulations Committee put out a report, *‘Inquiry Into Victoria's Criminal Justice System.’* Two of its findings were particularly relevant to these hearings. Finding 10 reads:

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“Most Aboriginal Victorians do not encounter the criminal justice system. However, intergenerational trauma associated with ongoing colonisation, culturally unresponsive institutional structures, complex disadvantage and systemic racism, place Aboriginal people at greater risk of being victimised or criminalised than other populations in Victoria.”

Finding 11 reads:

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“Greater self-determination is the only approach which can overcome the entrenched disadvantage experienced by some Aboriginal Victorians and sustainably reduced their overrepresentation in the criminal justice system.”

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The parliamentary committee, which was bipartisan, found that in line with the Aboriginal communities, aspirations and principles for greater self-determination, as outlined in the Burra Lotjpa Dunguludja, the committee calls for the Victorian Government to support Aboriginal community-controlled organisations to expand their role within the criminal justice system.

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Turning now to Yoorrook's task, Commissioners, much has already been said about the First Peoples in Victoria, about what needs to change in the criminal justice system and the child protection systems. They have turned up again and again to speak their truths about their matters and, in the past, they have said clearly that the State needs to hand First Peoples the reins when it comes to keeping their communities away from the criminal justice system, keeping their kids at home. Only they know how to address the social drivers of offending and what needs to be done to support families to look after their kids. It is not something that can be decided from an office in the CBD. These are decisions that need to be made by First

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Nations organisations doing what they do best from within their communities in every part of the State.

5 In the first week, we'll be hearing about the child protection system. Next week, we'll be hearing about the criminal justice system. As you will see, Commissioners, there are many common themes between these two systems and the original colonial systems are evident in both. Breaking with those colonial systems, and handing back responsibility and power to the First Peoples in these areas, has been suggested as one means of addressing the systemic injustice that occurs in both and you will hear other suggestions.

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Commissioners, we are asking people to turn up again over this coming fortnight. We know that you'll be listening carefully and we hope that this time, with these findings and these recommendations, the government will listen. Commissioners, I will now ask Fiona McLeod, SC, senior counsel assisting, to continue with the opening remarks. Thank you.

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MS McLEOD: Chair Bourke and Commissioners, I acknowledge the Wurundjeri people of the Kulin nation, custodians of the land on which we are meeting and working for this Yoorrook Justice Commission, and all Elders and ancestors. We stand on these lands having dispossessed our First Peoples with the violence and control as we have heard. It's a testament to the ongoing strength of our First Nations people that our Elders continue to make us welcome on these traditional lands in spite of our history.

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I would also like to acknowledge our First Nations children of whom we ask so much and for whom we hold such hope. Commissioners, I would like to take a few moments this morning to describe the general framework for child protection in Victoria and provide a context for the evidence that you will hear this week. Child protection in this State is governed by a principal piece of legislation, The Children, Youth and Families Act 2005. Could I ask that the legislation be brought up on screen.

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30 The purposes of the Act, under section 1, include to provide for community services to support children and families and to provide for the protection of children. Under section 3, a child is principally defined as, first, in the case of a person alleged to have committed an offence, someone under the age of 18 but above the age of 10, and, second, a person under the age of 17, or if under a protection order, a child protection order or interim order is in place, a person under the age of 18.

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So the Act provides for the person between the ages of zero to under 18 can be subject to a child protection order. Section 344 is also relevant. Reflecting current government policy, a child can be subjected to certain criminal justice processes at age 10. That section provides that it is conclusively presumed that a child under the age of 10 cannot commit an offence.

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Commissioners, you will hear that there are two matters, at least, arising from these definitions. The first is that 10 is not an appropriate age to attribute criminal responsibility to a child and, for that matter, 14 is not an appropriate age for the imposition of a custodial sentence. Second, that unless Aboriginal children have the wherewithal and meet eligibility criteria for services on an ongoing basis, child protection supports cut off by the guillotine of the 18th birthday. These matters, in terms of the age of criminal responsibility, are, we understand, on the agenda of the meeting of Attorney-Generals reconvening later this week.

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While the work of this Commission proceeds, we urge that meeting to pay heed to the many reports and many voices of First Nations people and the evidence that is heard this week and next in their considerations in relation to the age of criminal responsibility.

5 The Act sets out mandatory guidance for decisions about protection in part 1.2 of the Act, by
reference to certain principles. Section 10(1) explicitly states the best interests of the child
must always be paramount. Section 10(2) provides what is in the best interests of the child
includes the need to protect the child from harm, to protect their rights, and to promote their
development, taking into account their age and stage of development, that a child is only to
10 be removed from the care of their parents if there is an unacceptable risk of harm.

The Act then prescribes a number of further factors to be taken into account under section
10(3) and these include the need to give protection and assistance to the parent, to strengthen
and preserve positive relationships with the child and the parent and family members and, in
15 the case of an Aboriginal child under section 10(3)(c), the need to protect and promote their
cultural and spiritual identity and development, wherever possible, maintaining and building
their connections to their Aboriginal family and community.

There are about 16 considerations that a protection worker must weigh up in deciding what is
20 in the best interests of the child. There are then some decision-making principles under
section 11, including some in section 12 that are specific to Aboriginal people. These include
the need to consult with an Aboriginal agency, section 12(1)(c), placement, wherever
possible, with an extended family or relative or other Aboriginal family, 12.(1)(b), and
further principles concerning placement of Aboriginal children in sections 13 and 14.

25 The Act expressly recognises the potential harm that is done to all children through removal
from parental care and, in the case of Aboriginal children, expressly requires placement as
close as possible, in terms of geography and family connections to the child, to the place
where the child has connection and belonging. “Harm” and “unacceptable risk of harm” are
30 not defined in the Act but chapter 4 of the Act describes when a child is in need of protection.

I next refer to section 162 of the Act. This section states that a child is in need of protection
when a child has been abandoned, their parents are dead or incapacitated, where no other
suitable person is willing or able to care for the child; where there is unmet risk of physical
35 harm, a risk of sexual abuse, a risk of emotional or psychological harm or harm to physical
developmental health that is not being attended to in side or outside Victoria.

We expect that the evidence will establish that most cases involving protection fall within the
40 categories C to E, that is physical injury, sexual abuse or emotional or psychological harm,
and the vast bulk of those fall within category E, which reads in full:

45 *“The child has suffered, or is likely to suffer, emotional or psychological harm of such a kind
that the child's emotional or intellectual development is, or is likely to be significantly
damaged and the child's parents have not protected, or are unlikely to protect, the child from
harm of that type.”*

Now, the harm may be a single act, omission or circumstance, or accumulated series of
events. The evidence that you will hear this week will show that Victoria is the worst State in
50 terms of interactions between children and child protection services. It is the worst performer
across all age categories. In 2020 to 2021 we will hear there were 7337 Aboriginal children

accessing child protection services. Something like 80 per cent of Aboriginal children in care are there following a report of family violence.

5 This legislation gives a protection worker, and those authorised and mandated to act on a notification of harm, enormous discretion to decide what act, omission or circumstances can separately or cumulatively constitute a risk of sufficient harm to emotional or intellectual development to warrant removal. An assessment of harm could, therefore, be based on a complaint of parental neglect, a self-presentation at a drug and alcohol service for treatment, a school absence, childhood interaction with police, undiagnosed mental incapacity of a parent or child or any combination of those things by way of example.

10 It is also worth noting, because this will be mentioned by several witnesses, section 18 of the Act. Under section 18, the secretary of the department can authorise an Aboriginal agency to perform specific functions and powers. Section 18 enables the secretary of the Department of Health and Human Services, or now the Department of Families, Fairness and Housing, to authorise the principal officer of an Aboriginal agency to undertake specific functions and powers in relation to a Children's Court protection order for an Aboriginal child or young person.

20 This means that once a protection order for an Aboriginal child or young person has been made by the Children's Court, and approved Aboriginal community controlled organisation known by the acronym of ACCO, may be authorised to take on responsibility for the child's case management and case plan. Under a program known as the Aboriginal Children in Aboriginal Care program, authorised ACCOs will have the opportunity to work with the family, community and other professionals, to implement and develop a child's case plan and achieve what is known as the child's permanency objective. Ideally, that should occur in a way that is culturally safe and in the best interests of the child.

30 We will also hear evidence through this week that there are organisations and individuals who are not authorised under section 18 but who also have an important role in the protection of Aboriginal children. These are organisations who are described as "as if organisations", who are working as if they have responsibility under section 18 and are working towards full authorisation.

35 Another matter to note is that, under the Act, each child within the care of the department must have a case plan which discusses their present and future care needs; that is, a responsibility of the secretary under part 4.3 of the Act, section 166, and must be reviewed at least every 12 months. Those case plans must have a permanency objective and, for a First Nations child in out-of-home care, a plan for cultural support.

40 A child in care must have a plan to transition out of care prepared at the age of 15 years and nine months. Commissioners, you will know, and you will hear, that this is a very vulnerable time for young people facing the sudden withdrawal at the 18th birthday of living, schooling, housing and other social supports. There are no automatic training or other further educational opportunities, little provided in terms of assistance with adult responsibilities, banking, tenancy, identification, employment, with those matters largely falling outside the responsibility of the department at age 18.

50 Anecdotally, many young people are abandoned at this age, forced to rely on charities and community services, if they can access them, with dire outcomes. Two relatively recent

Victorian Government programs established in 2021 aim to support this transition known as the Home Stretch program and Better Futures program. There is also a one-off Commonwealth payment available to cover an expense under a transition to independent living allowance.

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Other key pieces of legislation include the Child Wellbeing and Safety Act 2005 and the Commission for Children and Young People Act relevant to the operations and power of our witnesses this afternoon, Commissioner, Meena Singh and, at the Commonwealth level, the Family Law Act 2005.

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Significant regimes were proposed by the Children and Health Legislation Amendment Statement of Recognition and Other Matters Bill 2022. This Bill lapsed in the term of the last Parliament. We will seek clarity from the new government concerning its intentions with a representation of this bill. Reference may also be made throughout this week to the child protection manual, the Aboriginal child placement principles, and risk assessment tools.

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The child protection manual - if we could bring that up, please - describes the policies and procedures to be followed by child protection practitioners to guide the critical pathway. Steps are described in classic bureaucratic language as intake, investigation, intervention, order, placement and closure to describe the removal of a child from the custody of their parent.

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An overview of this process is found in some flow charts to the manual, if we could bring up the one entitled '*Overview of the Child Protection Process*', please. While that's being brought up, you will see from this flow chart, Commissioners, a number of diamond-shaped entries which involve a decision point. While that's being brought up, note that "out-of-home care" is a generic name for children living under the direction of the government after government intervention. The flow charts are down the back of the manual, thank you.

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Out-of-home care includes kinship care provided by relatives of a child, or CIFF, members of the broader social network, it includes home-based care, including foster care, temporary placement in a home by trained volunteers, who are third parties, community placement, shared family care and residential care. In residential care, the staff are paid staff, which is less frequently used or for older children independent living with a tenant.

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I'm not sure if that's large enough for you to see, Commissioners, but you will see a number of diamond entries on that chart and each of those diamond entries involves a decision by a child protection worker. Curiously, at the point of intervention by a court where an order is obtained, this is not described as a decision but, rather, a process box, but the involvement and operation of the courts is certainly a hotspot for your consideration.

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Commissioners, you will hear evidence this week - and when we return to this topic next year - concerning the weaknesses in the current system. These include issues with the current articulation of the overriding protective principles of First Nations children and young people, concerns regarding the application of these placement principles, via risk assessment processes and the use of risk assessment tools, the impact of bias, conscious or unconscious, to inform individual decisions to notify and intervene in a child's life; concerns with the emphasis on entry points to child protection rather than devising multiple exit points and opportunities for family and community support and reunification; concerns with the mandatory reporting requirements that expose victims seeking assistance from police and

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health workers through the penalty of child removal; concerns for the overwhelmed and under resourced Aboriginal organisations and service providers, and generalist children's courts; concerns with the siloing, and sometimes conflicting child protection response, and the youth justice response, meaning that the primary carer for child in detention is essentially
 5 a Corrections officer with limited ability to access services.

That limit to the ability to access services, you will hear, includes depriving children and young people of access to basic health and wellbeing services as part of a behavioural management strategy. You will hear concerns with the operational of heuristics or human
 10 biases that influence decisions. You will hear about the absence of any express requirement to consider positive factors, including exposure to language, culture and identity, and you will hear about the frank racism that persists as a relic of colonial disposition that feeds a belief that First Nations parents are incapable of caring for their children, and you will hear about
 15 issues with the collection, use and sharing of data from inconsistent and incomplete sources, data that is framed to focus on deficits rather than positives; data that would assist all those working in the field to identify where the pressure points are and where the decisions are going awry.

Commissioners, I remind you that target 12 of the *'National Agreement of Closing the Gap'*
 20 aims to reduce the overrepresentation of Aboriginal and Torres Strait Islander children in out of home care by 45 per cent by 2030. In her evidence this afternoon, Commissioner Singh will give a snapshot that indicates that Victoria is the worst State in Australia for Aboriginal children's interactions in child protection services.

In 2016, Aboriginal children and young persons, Commissioner, Uncle Andrew Jackomos launched the landmark report *'Always Was, Always Will Be Koori Children.'* We have issued
 25 notices to produce to the States seeking updated data to bring the Commission up to date from the 2016 data reproduced in that report. We expect that the processing of information will be completed shortly and the data will then be tendered and made publicly available, and
 30 expect it will be the subject of expert evidence in later rounds of these hearings.

Whatever you hear, Commissioner, one thing is clear: the numbers in Victoria's statistics are heading in the wrong direction. The rate of interactions and the rate of removals is increasing.
 35 Given those numbers, it appears the current system is failing in its fundamental object of child protection. It appears it is broken and it is fuelling a pipeline of shattered children straight to our health services and our criminal justice system.

Commissioners, your task this fortnight, and when we return to this topic early next year, is to consider the ways in which the failings that you identify can be urgently addressed. If the
 40 Commission pleases.

MR McAVOY: Commissioners, as you've heard, it's proposed that there be two witnesses today. The first is Aunty Eva Jo Edwards and the second is the Commissioner for Aboriginal
 45 Children and Young People, Meena Singh. Throughout the course of this hearing, the way in which witnesses will be examined will vary. Some will be examined from the lectern with counsel assisting standing but, in the case of Aunty Eva Jo, I propose to remain seated. Commissioners, I call today's first witness, Aunty Eva Jo Edwards.

CHAIR: Thank you, counsel. We welcome Aunty Eva Jo. Welcome, Eva Jo.
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MR McAVOY: Good morning. Aunty Eva Jo Edwards, I'm just going to ask you about your evidence that you are going to give to the Yoorrook Justice Commission today.

<AUNTY EVA JO EDWARDS AFFIRMED

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MR McAVOY: I will just ask you to keep your voice up. It is a big room. I know you've got it there and can use your voice when asked to. Now, you've, together with the Commission officers, prepared an outline of your evidence?

10 AUNTY EVA JO EDWARDS: (Indistinct).

MR McAVOY: Have you read that outline of evidence recently and is it true and correct to the best of your knowledge?

15 AUNTY EVA JO EDWARDS: It is true and correct to the best of my ability.

MR McAVOY: Commissioners, you should have a copy of the outline in your briefs. Now, Aunty Eva Jo, I understand you would like to read your outline of evidence.

20 AUNTY EVA JO EDWARDS: Yes.

MR McAVOY: I would invite you to do that now.

25 AUNTY EVA JO EDWARDS: Okay, thank you. My name is Eva Jo Edwards, I'm a proud Boon Wurrung, Mutti Mutti and Yorta Yorta woman and I am a survivor of the Stolen Generations. I too would like to acknowledge that we are on the lands of the Kulin nation and I pay respects to all Elders past, present and emerging. I also pay respects to all Stolen Generations. Yes, thank you.

30 I was born on 8 August 1963 in Hillston, New South Wales, but I have lived in Victoria since I was five years old and in Melbourne for 54 years. I am one of six children. At the age of five my five siblings and I were removed from our family and mother in Swan Hill. We were initially taken to Allambie Reception Centre, we were then split up. My two older brothers, 11 and eight, were taken to Burwood boys home, myself, and my sister, 10 and three, and our
35 baby brother, who was eight months old and we were taken to the Lutheran children's home in Kew. I knew I was different because of the colour of my skin but that was all I knew. There was no cultural activities to empower us. Being institutionalised was nothing but a roof over our head.

40 Life in the institutions was highly regimented: get up, make your beds, do your chores. I was never told that I was loved, hugged, kissed, needed, or ever recalling that I was encouraged to think about what it is that I might achieve in life. Overall, I was institutionalised for 13 years, including in family group homes. I can't remember my life before the institutions. My earliest
45 memory is a torch being shone in our faces whilst we were sleeping, and from discussions with my sister, over time, and that did occur, but they came back the next day and we were removed early the next day. So that, to me, has been a little bit traumatic.

I spent a large part of my childhood with my sisters closest in age in the institutions and we occasionally - we were occasionally separated as we were moved between facilities based on
50 our age. I was very protective of my baby brother. He, for a short time, was adopted to a

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non-Aboriginal family and his adopted mother was the matron of the institution in which we lived. She really loved him and I remember how she would ensure that we were part of his birthday every year and invited us.

5 Sadly, she had passed away at the age of 25 from cancer, and the adoptive father remarried, and they didn't want to raise a little black kid. So my brother was returned to the institution. He was approximately six years of age at the time. I know now that my mother wrote letters to the authorities trying to get permission for us to go and live with or near her, including
10 Coober Pedy. This permission was denied and my sister and I have spoken about these missed opportunities for not having had to be able to live with her and learn our culture and language.

15 My adult life: I was reunited with my mum when I was about 15 years of age. She cried and said that she was sorry and that it wasn't her fault that we were taken and, looking back, I can see that she was only trying to comfort me at that first meeting and I think I was a very condescending 15-year-old that would tap her on the back and say, "It's okay", but not really understanding what that meant at that time of meeting her.

20 I believe my mum may have been removed as a child or had some contact with that. We are pursuing that and still trying to piece those things together even though my Auntie Theresa and my Uncle Sam were taken to Cootamundra girls homes and Kinchela boys homes. My mum died in '85 and she was in her late 50s, having a difficult life, and I believe she died of a broken heart. It is a life-long regret of mine that I didn't have an opportunity to introduce my first child to my mum as she passed away in December '85, the year he was born, and, I
25 guess, with me, that triggers me, because when I --

MR McAVOY: Would you like a short break, Auntie?

30 AUNTY EVA JO EDWARDS: Thank you. It triggers me because when I became a grandmother for the first time, I was so overwhelmed, and I believe I denied my mother that feeling. Sorry. My children didn't have grandparents around them. So - yes. I've stayed connected with my living siblings and we know that we are there for each other. All of us siblings have had our challenges and it is hard to get past the abandonment, rejection and abuse experienced whilst institutionalised.

35 Following being returned to the institution, my baby brother suffered a sense of abandonment and rejection. He fell into addictions from the trauma of his early life, ultimately, and very sadly took his own life at the age of 25 on 30 July and, I guess, that still impacts on me and my family and it is still very hard to this day. Our early experiences have affected my
40 relationships, my intimate relationships, not having trust and faith and not - you know, I guess, as a child, never being told you are loved or wanted or needed or hugs, and what that, you know, does to you in relationships with, you know, as an adult.

45 Some of us have struggled with addictions on and off and I look like most of the time I'm pretty much together but, you know, when my children - I've got grown children and when they grew up, when they started leaving home, I think for me there was - I reverted back to all those abandonment and rejection, even though, you know, it's part of life and you look forward to the day your kids move out and grow up but, for me, it actually was opposite but, you know, I got through that and they finally did all leave but they are all back now.

50

I have six children of my own and I would help with the upbringing of other children, my nieces. I raised my children as a single mum in public housing where I'm still living today. The experience of raising my children has made me realise the effects of my removal.

5 CHAIR: Would you like a break?

MR McAVOY: If we could have perhaps 10 minutes.

CHAIR: When you are ready.

10

MR McAVOY: Thank you, Commissioners.

<ADJOURNED 11:15 AM

15

<RESUMED 11:28 AM

MR McAVOY: I note for the transcript that Commissioner Hunter is sitting with the witness in support and that they know each other and that's something that counsel assisting supports. Thanks, Commissioner Hunter, for taking on that role. Aunty Eva Jo, are you right to
20 continue?

AUNTY EVA JO EDWARDS: Yes. Yes, I am.

MR McAVOY: Do you know where you were up to?

25

AUNTY EVA JO EDWARDS: 26, approximately.

MR McAVOY: That's right.

30

AUNTY EVA JO EDWARDS: Yes. Okay. The experience of raising my children has made me realise the effects of my removal. I realise now that, unbeknownst for a time, I repeated with my children what I experienced in the institutions, tough rules and lack of affection. You don't set out to do that. It is intergenerational. Several of my children have been impacted by my trauma and are on their own journey of healing.

35

I have made a conscious effort to grow as a person and to create a very loving environment for my family, and we do say "I love you" whenever we speak and say goodbye. I raised my kids to be strong in who they are, with dance and culture, and a sense of belonging and knowing who they are. They have all these things that I had to find along the way.

40

I have also spent a lot of time with community. I enjoy finding out about my family connections but I still have a sense of feeling a bit different from other people in the community. I have a prominent voice in the Aboriginal community but I still feel that I am on the outer because I didn't grow up with that sense of culture in my community, with the
45 language, or dance or family, and I think this feeling can be put down to not growing up with my family, the disconnectedness of being removed.

50

I wasn't - I guess I wasn't around for the walk across Sydney Harbour in 2000 but watched it on TV, and it was pretty amazing from my perspective, but I was lucky enough to be in Canberra for the apology in 2008, to sit in the gallery. I was very overwhelmed, for my

parents had passed, my brother had passed, it was pretty hard, and it is still pretty emotional for me. Some of us didn't want the apology but I know for me it was one of the few things at the time that brought a nation together and I believe it was life-changing and it was empowering for me. To see a sea of people, as we walked out of Parliament house, I thought there was hopefully going to be a big change. I didn't see that amount of people come together before that. I do look forward to the apology from our premier in time to come to our Stolen Generation, survivors here in Victoria.

I want Traditional Owners to think about ways that Stolen Generation survivors should welcomed back to country. The welcome home is what we survivors need to be able to move forward in our healing and I would love to have an apology and welcome Home in the town that I was removed from in Swan Hill because that's where, you know, some of my siblings live and that's where my Aunties and Uncles lived. I guess in my life I have seen the best and the worst of child protection. Anyway - sorry.

15

MR McAVOY: There is no need to apologise, Auntie Eva Jo. When you are ready.

AUNTY EVA JO EDWARDS: Yes. When three of my children were very young I was offered occasional respite care through VACCA, Victorian Aboriginal Child Care Agency, and I guess that's not to do with child protection, that was because, at the time, I worked with VACCA and they could see that I was a pretty overwhelmed single mum with six kids, working full-time. At first I didn't think I needed it and I fought against them because I believed all they wanted was to steal my children from me.

As I said, I was working full-time and I had six kids under 10. They must have seen that I needed some help. So VACCA worked with me to choose a respite worker that I was comfortable with. This was a self-determined nation approach that they took and the respite worker was and still is family to us today. The work that VACCA case workers do is important, being supported by a VACCA case worker, having them know our culture and our ways and what the Stolen Generation is about has been so important. Those case workers, not all of them are Aboriginal, but they are there for the right reasons from my perspective and, you know, they are committed to helping our kids go home and ensure parents are supported. DFFH do nothing for us other than tell us what we need to do for ourselves. That cannot be self-determination if parents don't know what's out there to help support them.

35

I have done a lot of community advocacy over my time, you know, as an Aboriginal dance group with my children, public speaking. I started my public speaking in 1998 as an educator and advocate through my own business and I would speak to government, corporate and education sectors about the impacts and effects of Stolen Gen. I have been invited as a key note speaker and master of ceremonies on many events. Uncle Kutcha Edwards and I, along with Auntie Kathy Dean conducted workshops on Stolen Generations in schools. These workshops were titled "Banyip Kidjeka", meaning, brother, sister.

I've presented to kinders, festivals, primary schools by incorporating traditional contemporary stories, dance, face painting and Aboriginal history, into Aboriginal story time and cultural talks. Kutcha and I are related on both side to our Edwards Kirby line, so sometimes I call him Uncle Cuz. We have educated students as well as corporate and community organisations about the impacts of the assimilation policies that have created intergenerational traumas by denying Aboriginal children their cultural heritage.

50

I guess engaging with traditional dance has been an important part of recapturing the culture that was denied to me and making culture a part of my children's lives as well as enlightening audiences we performed for. I initially started at VACCA in the late 90s as an admin support person, and then, in 2017, I returned back to VACCA as a senior adviser for cultural support
5 planning and I went to cultural camps for young people in out of home care and, I guess, I went back to VACCA to do that job because I found that if I had have had that document of who I was, and where I was from, and who my parents were, and my connections, I don't believe that my journey back home would have been as difficult, knowing who my family connections were.

10 Ngarra Jarra Noun was a program within VACCA that assisted survivors through child sexual abuse and we put together applications for the national redress scheme. I would have to say it was one of the most honourable jobs to have been done for survivors who had held these dark secrets for decades, 50/60 years, of child abuse and, you know, some of people
15 being family members and to have trusted me with that, to them I thank them and I'm very honoured.

I wanted to, yes - huge advocate for Link Up Victoria, who assist Stolen Gen survivors to find out and be united with their families and culture and traditions. For me it was a 10-year
20 journey with the Koori Heritage Trust through the Koori Family History Service before I uncovered my family history in 2017. It has helped me feel more complete knowing who my family is and where I am connected.

25 In 2018 I was honoured with a local hero award through Westfield Doncaster and that was pretty overwhelming and, yes, I have also served as a member of the Victorian Government's Stolen Generations Reparations Steering Committee since 2020 and this year I was appointed as an independent assessment panel for Stolen Gen and I found that, over the last, you know, nearly two years, that that journey has been, you know, triggering at the best of times, you know, in finding justice and getting justice for us as survivors.

30 We haven't always got it right but we have tried and I think it's a start, you know, and it's a start for our healing to have that acknowledgement from our State Government. I think having continuing involvement with Stolen Gen Advisory is important advocacy for our people. I worked in 2008 with Deb Salvagno and the City of Darebin on the Koori night
35 markets which was an extraordinary event that occurred in Melbourne that gave Aboriginal people an opportunity, you know, in all aspects of the arts to show their - you know, what talents and that that they do have, and I think that's what brought a lot of us together, you know, Aboriginal and non-Aboriginal people. So that was a really great way to bridge and promote Aboriginal people but also a great step towards reconciliation.

40 Between 2014 and 2016 I worked at the Victorian Aboriginal Health Service as a program coordinator for family violence which was a really great experience to have been part of. We took about 10 young people, aged between 18 and 20, took them away and gave them an opportunity to learn about what actual family violence is and that, to them, they only ever
45 thought that family violence was being hurt physically and there were so many more aspects in which they learnt about family violence. So I thought that was a really great achievement with our young people of today.

50 In 2016 I became a Respected Person sitting on Koori Court through both Melbourne and Broadmeadows Magistrates in our Melbourne and Heidelberg Children's Court, and that's

been very empowering for, and great opportunities within the community. Early this year recognised inducted into the Victorian Honour Roll, which I was extremely honoured to be recognised as a survivor.

5 Emotional healer and inspirational storyteller. This bit's going to be a little bit difficult with my experience, with the department, so please bear with me. So over the same timeframe I was being recognised for my advocacy for Stolen Gen survivors, my family was battling child protection systems. Approximately 19 months ago, my son's partner - my son's partner's three
10 young children, from whom he had assumed a father role, were taken into out-of-home care due to the intervention of child protection system.

The children were taken from my son's partner while she was pregnant when she was an alleged victim of domestic violence. There was a police investigation. The allegations weren't
15 proven but even the child protection wouldn't let it go and they launched their own investigation, whatever that was to mean.

The children were placed approximately 350 kilometres away or a 700km round trip in an unsafe environment with an Aboriginal family that neither they nor I would have wanted the children to have been placed. There were real concerns regarding the possibility of influences
20 of drugs, alcohol, and the presence of a suspected sex offender in the environment. The children were in and out of home care for seven to eight months. My son and his partner jumped through every hoop required of them to reunite them, including drug screening, counselling.

25 Whilst the children are now back living with their mum in my home, the department's monitoring and requirements under orders continue. The stress of the allegations and the separation were extreme to the extent that I was very concerned that my son may take his own life and it was a testament to his strength that he didn't.

30 I'm not saying that my child's an angel. There were conflicts in the home environment, they would and since have benefited from some supports. The department should not have jumped straight to the removal of the children. I would have been very happy to have taken the children, had I had been consulted. As it happens, those children and my son's partner are now living - yes, my son's partner and the children are now living in my home together with
35 my new grandson. My life has been put on hold and I no longer live independently.

In the seven/eight-month period the children were in and out of home care, we did not believe the children saw the case worker in person even once, or received any trauma counselling. I spent a Christmas separated from my adult children, the first time in 36 years, as a result of
40 this situation. The situation really started to turn around for my family when we were referred to the - I don't know how to say it - M-NG program at Broadmeadows Children's Court and the - where they understand Aboriginal families and, as a family, we got to have a voice at the table and talk to a magistrate about what we think is best for the children and, as a family, it gives you an opportunity to make decisions and set goals. The court orders will be in place
45 until February and it is only at that time that my son will be allowed to live with his family again independently.

I guess, in all of this time, they have not even attempted to do supervised visits to be able to have this family put back together. We work more closely with VACCA, which they don't
50 even listen to, our case manager, and they are the ones that spend most of their time with us.

5 So I sent an official complaint letter to the department, with many other issues that had been raised with case workers, and there has never been a proper response from the department, and I did not receive one call confirming receipt of the letter, which I found to be quite - when I did receive the letter, sorry, they were very condescending to me as if to say I was a dumb black.

10 This has been supported by my son and his partner to share their story and this is the experience of so many other Aboriginal families in Victoria and it just goes on and on, that we are not heard, we are not listened to and, you know, they just are quick to take our kids, you know, without any real explanation, on the grounds of false allegations and not even investigating it in the first place. So that was really, really hard in sharing that bit. That is my evidence and my conclusion.

15 MR McAVOY: Thank you, Aunty. Now, I have some additional questions for you about some of the things that you've spoken about. I must say that it's an honour for this Commission to hear your evidence. You've spoken about it being an honour to receive some of the awards that you've received but it's a fantastic honour for this Commission to be able to hear your evidence first-hand, and I thank you for that.

20 In the early part of your statement you say that you now know that your mother sent letters requesting that you and your siblings live with her. When did you find out about those letters?

25 AUNTY EVA JO EDWARDS: Only when we received our files, and we were - I guess my sister and I were sharing comments and then she found a letter that was only in her file that she had written to the department.

MR McAVOY: When was that?

30 AUNTY EVA JO EDWARDS: That was something I didn't ask her when but I think it may have been about maybe five years in, maybe, yes, that she had moved up that way to Coober Pedy.

35 MR McAVOY: Do you remember around about how many years ago that you found out about those letters though?

AUNTY EVA JO EDWARDS: I think we got our files maybe 2018.

40 MR McAVOY: So it's only in 2018 that you found out that your mother had been writing letters asking for you to be - you and your siblings to be --

AUNTY EVA JO EDWARDS: With her or closer to her.

45 MR McAVOY: With her or closer to her. How did you feel about receiving that information all those years later?

AUNTY EVA JO EDWARDS: I guess I was a bit overwhelmed. Firstly, my sister - my younger sister, she, yes - yes, it was pretty heartbreaking for her especially. You know, like, what do you do? What can you do? What can you say in regards to, you know, knowing that

your mother wanted you all this time but not given that information. That's pretty heartbreaking.

5 MR McAVOY: Because you say in your statement that it's difficult for you, and for other Stolen Generation survivors, to get over feelings of abandonment and rejection, and that's - when you speak about abandonment and rejection, is it abandonment by your mother and family and rejection by your family?

10 AUNTY EVA JO EDWARDS: I think it was a belief at that time that, you know, you had that abandonment, their rejection, you know, thinking that they didn't want you, and then to find out that my mother did want us, you know, you are never told these things. We were never read a letter from our matter. That was just put in your files, you know. I mean, I think that's a little bit disturbing that when a letter is written to a child, why can't the child hear the letter, whether it may be upsetting or not? I think it needs to be - we are told and we were told
15 so many bad stories as children, you know, our parents had died, our parents didn't want us, you know, they threw us to the gutter. These are stories that you hear all over.

20 Then you find out and you go on that journey, you know, and you - a lot of people - only a couple of months short of their parents dying, that they didn't get to meet them, or ask them these questions, but family have shared some of the answers of the questions that us survivors have asked. When you were told lies as children, that you weren't wanted and you weren't needed and, you know, your parents have abandoned you, what are you meant to believe? That's what you do believe as children. Life goes on, as bad as it may be, you know, and it's like when you go into relationships, it might be family violence, and, you know, "Well,
25 no-one's going to love you more than I am", and you get a hiding and whatever else comes with that, but you don't know what love is until that is - you know.

30 So I didn't know that our mum wanted us, you know? When you are living in an environment that's all non-Aboriginal, you know, you are assimilated from all of your family and your culture and your identity, you know, those assimilation processes work within the system of why they wanted to remove Aboriginal children. That's how I see it. It's - yeah, I honestly believed that, you know, they wanted to clear us out. Eventually there would be none of us left. I'd marry a white man and my kids would marry white people and eventually there would be none of us left. What a way to do things.

35 Even though I did marry a non-Aboriginal man and have three beautiful boys, you know, it didn't mean that my Aboriginality was going to stop with that. There are things you learn along the way, being within your community and knowing, yeah, that you have an amazing family out there, a grandmother that was pretty amazing, you know, the stories I'm told. I had
40 lots of cousins tell me stories of my mother that she was an extraordinary woman and Aunties and Uncles telling me about my mother. But, like, something went wrong somewhere, I don't know what that was, you know?

45 MR McAVOY: It wasn't until you were 15 that you met your mum?

AUNTY EVA JO EDWARDS: I did meet her when I think we were four months, five months in, she came to visit, and then when I was 15, 10 years later.

50 MR McAVOY: Where was that meeting?

AUNTY EVA JO EDWARDS: In Gertrude Street, Fitzroy.

MR McAVOY: Was it arranged or did you just run into her?

5 AUNTY EVA JO EDWARDS: I went to see sister, my elder sister, and she was living there in the high rise there, and she told me she was pregnant and she goes, "By the way, this is our mum." I'm going, where? So it wasn't arranged, it was all pure accident just going in to visit my sister.

10 MR McAVOY: Did you have the opportunity to talk much with your mother?

AUNTY EVA JO EDWARDS: Only a little bit. You know, she - my thing is I believed she had such a broken heart, she had an addiction of alcohol, and I think, you know, if my six kids were removed from me, I'd have more than just an alcoholic addiction, you know? So there was no judgment on that. I think I was just more really condescending, because I didn't know how to react. I had no connection with my mum after 10 years.

MR McAVOY: Were you affected by that meeting?

20 AUNTY EVA JO EDWARDS: Absolutely. You know, in the sense of, wow, that's my mum, but what did that mean for her to be my mum? You know, where she had relationships with my older sister and my two older brothers, you know, they have memories of our childhood. I don't have memories of us pre-removal. That's my earliest memory. So, you know, I guess I loved her because she's my mum, she gave birth to me, and I know she fought for us, but, yeah, I don't know what it's like to lose a child and I hope I never do.

MR McAVOY: At that first meeting, in your statement, you said that your mother cried and said she was sorry and that it wasn't her fault that you were taken.

30 AUNTY EVA JO EDWARDS: Mmm.

MR McAVOY: But you add the comment that:

"Looking back, I can see she was trying to comfort me."

35 What do you mean by that?

AUNTY EVA JO EDWARDS: Maybe comfort might be the wrong word, but reassure maybe is probably - you know, knowing that it wasn't her choice. That's all I can sort of think about with that; it was more she probably tried the best she could. It's comforting in a way to know that she didn't give up on us, that it wasn't her choice. So that's probably a comfort within itself.

MR McAVOY: So there was some comfort for you from that?

45 AUNTY EVA JO EDWARDS: Yes. Yes. When I think now. Not then, but now. At 15, yeah, you don't know life all that much, do you? But now as an adult, yes, it is a comfort to know.

MR McAVOY: Well, in your statement you say that you have a belief that your mother was possibly removed from her family as a child and you point to the fact that her brother and her

sister were sent to children's homes in New South Wales at Cootamundra and Kinchila. When you found out that information about her possibly being removed as well, did it plan your thoughts at all about your removal then following that and how that might flow through to your kids and grandkids?

5

AUNTY EVA JO EDWARDS: Yes. Why that came about was maybe 2014, I think it might have been - no, 2018. I went to Sydney for an apology event, Sorry Day event, and there were elder speakers from Kinchila and Cootamundra and then after that I went up to the Aunties and Uncles and actually asked them if they remember my Auntie Theresa and my Uncle Sam and they did, and I actually got really, really overwhelmed and emotional, as I'm about to now, and then I mentioned my mum and the Auntie remembered my mum.

10

So I - and there were just certain things about my mother and what she had done in her young days prior to having children, having us kids, because she was very young and my dad was 20 years older than her, and a second marriage for my dad. So, anyway, just listening to the Aunties, and that Auntie was also a pen pal, would write to Auntie Theresa, they would exchange letters almost up to the time she passed, you know, so it's - and she remembered mum, so I just had - there's a connection there, you know? I haven't applied for any records to go and find out, but, yes.

20

MR McAVOY: By the time you confirmed this, your children had already grown?

AUNTY EVA JO EDWARDS: Yes, yes.

25

MR McAVOY: And were - did you have the sense that you might have broken that cycle?

AUNTY EVA JO EDWARDS: Absolutely. And I think that every day. It's an achievement in itself to, you know, raise your kids on your own and try to set good morals and values. You know, there were struggles, I'm not saying it was perfect, yes, but they didn't see a system that I did, you know, and then to --

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MR McAVOY: You've said in your evidence that some of the trauma that your kids have experienced is intergenerational and you said that you think you've repeated some of the things that you experienced but you also talk about being able to give them many aspects of life that you had to learn for yourself, and find your own way, so that they didn't have to go and find it themselves, including their cultural knowledge and sense of self and their knowledge of dance. How important do you think those cultural aspects are to their identity and sense of worth?

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AUNTY EVA JO EDWARDS: I think it's really important. I found it important for myself to be a 30-year-old woman who starts dancing and engaging in cultural activities for the sake of my children. You know, we've got to know where we come from, we've got to know our connections the best way we can. I'm still not sure on all of them. I learn every day, and I'm almost 60, but it's - yeah, that empowers a young child so much more. You know, I was ashamed as a kid. Racism as it was, you know, I didn't know what that meant to be Aboriginal. All I knew I was a little bit different, you know, there was so much more to just the colour of my skin.

45

So, you know, for my children to have more than that, even though they still were confronted with racism, even, you know, decades later, they are more proud, you know, they are proud to

50

say who they are and that they are Aboriginal or my children will say - my three eldest will go, "I'm Aboriginal and Dutch", you know, but, yes, it is important.

5 I don't know, I just - yeah, my daughter one day asked me, pretty emotional, you know, why didn't I ever hug her or kiss them goodnight or read them bedtime stories, things like that, when they were little, yet my sister could do that to them when she came over. I said, "Look, you know, they are the things that were never given to me. So how could I give that to you if I didn't have it?" You know, it's only - she's probably early 20s at this time when she asked this, late teens to early 20s, and it was heartbreaking because that's when I realised that I'd
10 done what I'd done to my kids, and it's pretty traumatic, you know, when your kids are asking you, "Well, why can't you do that?"

MR McAVOY: In response to the question from your daughter, have you started doing those things more now?
15

AUNTY EVA JO EDWARDS: We are really close, yes. Yes. She's my daughter, she relies on me, I rely on her because she's the only daughter of six kids, the only girl of six kids. So I think it's a little bit different and those in the room that have sons, they grow up, and they normally go to the daughter's side and, you know, it happens, it's life, it's reality, and that's
20 another one of those abandonment things that you get that you don't realise hits you, but that's life, you know. But they still love me, they still call me. It is what it is. That's all I'll say about that.

MR McAVOY: So one of the things that you mentioned a couple of times in your evidence is feeling a bit disconnected from the Aboriginal community, having not grown up in the community; is that something you still feel today?
25

AUNTY EVA JO EDWARDS: You know what? I still do have those feelings no matter what I do and what I do is not about accolades, it's about a survivor, and knowing that there are other survivors out there that feel the same as me. You know, it doesn't matter what
30 family - you know, I'm an Edwards, I'm a Kirby, I'm a Cooper, I'm a Briggs, I'm a Mitchell, I'm a Newchurch, you know, but those connections, because I didn't grow up in them, are still distant. I've even got family members - family who have married into really prominent Aboriginal people in our community, but it's - there's still for me a sense of still that
35 non-belonging. Maybe it's that welcome home that I need. I don't know. It's still on my journey of healing but I still feel that disconnectedness and, you know, as sad as it is.

MR McAVOY: This question might sound a little bit strange, but do you feel any connectedness to the non-Aboriginal community?
40

AUNTY EVA JO EDWARDS: I do at times, yes, and I think - can I say why?

MR McAVOY: Yes.

45 AUNTY EVA JO EDWARDS: I think that has been raised, you know? I'm happy to challenge. But also at the end of the day, I guess there are no abandonment issues or rejection from them. It's not going to impact on me whereas it will be impact from me if it's from my own; does that make sense?

50 MR McAVOY: A lot of sense.

AUNTY EVA JO EDWARDS: Okay. Thanks.

5 MR McAVOY: Just following on from that a little bit further, you've talked about having a welcome home at Swan Hill and that being something that would really mean a lot to you; why Swan Hill?

10 AUNTY EVA JO EDWARDS: Because that's where I was taken from and I have - I think that's where my mother spent most of her time at the end and I just think that - and a lot of my family live there but I also want a Boon Wurrung one and I also want a Wurundjeri one. I have lived on Boon Wurrung Wurundjeri land 55 years.

15 MR McAVOY: So you think that First Nations, Traditional Owners groups, should have ceremonies welcoming back the Stolen Generation survivors to give them that sense of being welcomed back at home?

20 AUNTY EVA JO EDWARDS: Absolutely. You know, there are many of us that have made homes outside our country, you know, because - moving to different parts of the country because a lot of the institutions were here in Melbourne. So they moved as far away as they can and that's what they have called home. That's where they have had their babies, their grandkids, great grandkids, and they still don't feel like they belong. I just think it's time.

25 You know, we talk about, you know, treaty and the rest of it, but where's our space in all of this? Where's our acknowledgement? We get our acknowledgement from the broader community, you know, but what about our own? Our traditional owners stepping up?

MR McAVOY: You think the treaty process needs to make sure that there's a place for Stolen Generations.

30 AUNTY EVA JO EDWARDS: For whoever - I don't know, but I had had a great conversation with Gary Murray, and that was by pure accident, when we went to a meeting at the League, and I let him know how I felt and he was all for it. He thought it was a great idea. I just think maybe we - the rollouts with the reparations, there can be a conversation when these apologies take place and how our welcome home can occur.

35 MR McAVOY: I just want to ask you a question now: you've said you've seen the best and the worst of the child protection system. It's clear to everybody that's heard your evidence today that you've experienced the worst of the child protection system. I just want to ask what would you say are the best parts of the child protection system that you've seen?

40 AUNTY EVA JO EDWARDS: At the time of being at VACCA, having to work with the department in the cultural support plans, children in and out of home care, I think when you're an Aboriginal person on a professional scale, they will use you up to the best of their ability and be really kind and sweet.

45 MR McAVOY: So you are saying that when you were in that program with VACCA you were working in the department?

50 AUNTY EVA JO EDWARDS: Mmm-hmm.

MR McAVOY: With non-Aboriginal workers?

AUNTY EVA JO EDWARDS: Mmm-hmm.

5 MR McAVOY: What was the working relationship like?

AUNTY EVA JO EDWARDS: I thought it was great and I thought, yeah, they - professionally, I thought they got it but then being on the other side, being now, you know, my children being a client of, there is no cultural sensitivities there whatsoever.

10

MR McAVOY: So the things that you were teaching the people that you were working with which you were there, are you saying you didn't see any of that when you had your recent interaction with the department?

15 AUNTY EVA JO EDWARDS: Absolutely.

MR McAVOY: I just want to ask you a couple of questions about that before we finish. You describe yourself as - and you've been recognised as an emotional healer and you've worked at VACCA, and Connecting Home and Link Up and the Stolen Generations Reparation Committee, and have given much help to other people, is the employment of people, such as yourself who have had the experiences you've had in those organisations, an important part of the support for Aboriginal community?

20

AUNTY EVA JO EDWARDS: I think it's really, really important, but not all of us can do that sort of stuff too because we are still on a journey. We know it's important for people to know about Stolen Gen, to know, you know, the impacts that this has had on us, and to be able to ensure that, you know, the service delivery is to the best of the ability in which they work, but, yes, it's always an advantage, and even having children of Stolen Gen working in those environments because they have a great understanding of - or they get a better understanding of their parents and survivors, you know, and I just remembered, like, touching on that, I did a talk at Melbourne University some time ago and, yeah, when I'd finished, had a - you know, as I do, I stick around and yarn, and a young girl - non-Aboriginal girl, though - came up to me and she goes, "You could have been telling my mum's story and she's a forgotten Australian", and she goes, "Everything that you spoke about is what my mum did to me", you know, as a survivor of institutionalised care.

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30

35

I guess that's where you get to share that understanding for our kids because sometimes our kids don't talk to anybody else until they hear somebody else's story and they go, "Oh my God, that's my mum", or, "That's my dad, I get it now." So it is important to try to have, you know, survivors, Aboriginal people, working in these spaces, but sometimes, yes, not all of us are ready to do that but I just want to share that. I do.

40

MR McAVOY: I think you may have said this already but has your work, over decades now for the community, has that been a part of your own journey of healing?

45

AUNTY EVA JO EDWARDS: Absolutely, you know, and as emotional as it gets, like it has today, there are days I can have the strength to get through it and there are days that I don't but the impact is what it is.

MR McAVOY: Well, that brings me to the most recent events. After having travelled so far on your own journey, it must have been a bit difficult to find yourself involved back in the child protection system with your grandchildren. Was that --

5 AUNTY EVA JO EDWARDS: Biggest trigger ever. I put my life on hold for 19 months and there would be nothing I wouldn't do for any of my children, you know, but I would never have thought that this would happen. But, you know, I guess my children complied, they did what was requested, and they just kept finding more and more and more things to add to the list. When you haven't seen my grandkids, you haven't attempted to do supervision to see
10 how they interact with each other, it's - I just don't get it. You know, it's - why are they in my life? Why are they in my children's lives? What are they in my grandchildren's lives?

MR McAVOY: Are you saying the case worker never saw your grandchildren?

15 AUNTY EVA JO EDWARDS: Not when they were at my daughter's, no.

MR McAVOY: They haven't arranged for any supervised access for your --

AUNTY EVA JO EDWARDS: No, the supervision has to come from me, but how did they
20 get to see the interaction when they are not there? You know, we tried to involve them with community activities, we want - you know, my kids want to go to community activities and they go, but then they go, "No, you can't go, because" - you know, "you can't go." It just does my head in.

25 MR McAVOY: So when the department first became involved with your family, your son and his partner, did you have some expectations of how the department might act and treat your son and his family?

AUNTY EVA JO EDWARDS: Of course I had an expectation. It's simple, you know?
30 Sorry. But I didn't think - I didn't think it was going to be this long. I thought they would have been gone out of my lives as soon as they had completed what they had to do and that, to me, yeah, I --

MR McAVOY: But you say you've been disappointed or shocked or how have you felt about
35 the way in which it's unravelled, I suppose?

AUNTY EVA JO EDWARDS: I am disappointed that they actually have only taken one side of the story and that is the allegations. Their investigations have never been appropriate, if that's the word I - because they always questioned me in regards to the safety of women and
40 children. I am someone that has 000 on speed dial. I believe I deserve to be safe. You know, I have been confronted with family violence and, you know what, that's okay, don't judge me on that.

It's like I was put on trial, I was questioned on the ability and the safety of my grandkids. I
45 would never put a kid in danger. It's just - when you are questioned on that, that hurts, but they have only ever lived on an allegation, or worked on an allegation, sorry, but they've never properly investigated for themselves. The police did all the investigating and there was nothing to be found. They never interviewed the children with these allegations. They never put them in counselling, you know? Like, come on, where is their responsibility and their
50 accountability to us to do their job and to do their job properly.

We have seen our case manager from VACCA more than we have seen the department yet they still don't even listen to VACCA case manager. We have to ask her, "Have the department contacted you about this?" They answer "No." And, "Have you received this from the department?" "No." You know? It's just not good enough. And VACCA is voluntary, most of the time. We are voluntary, volunteer to use them as a service. I know it's all about VACCA all of a sudden, I know, but this is just - yeah, I just don't understand the department.

We have even asked her if our case manager can help supervise an access but they won't have a communication with them. How do you walk out of our lives if you're not doing your job? If you're not looking to reunify the family, you know, and do the supervision with these, you know - the children missed their little brother's birthday because they couldn't be where the dad is and that was so sad and tragic and devastating for the children because we had our entire family together and the kids couldn't come. Like, you know, all they do is seem to separate and segregate. You know, that assimilation stuff, it just makes me wild. Anyway, I'm sorry.

MR McAVOY: I just want to ask you another question about this. You've had a lot of experience with the system, the child protection system; do you think your family was treated differently because you're Aboriginal people?

AUNTY EVA JO EDWARDS: Absolutely. Absolutely I do. You know, I know non-Aboriginal people who have gone through the same thing and they still kept their families together. You know, I've heard stories. I just think there is racism in that system that, you know - our numbers have blown out of the water since Taskforce 1000. I don't get it. Why are our numbers still so high with our children in out of home care, you know, and not being able to bring our families together.

I know there are reasons, sometimes children need to be removed, I get it, I understand it, but where is the work to be done to bring the family back together instead of leaving them isolated, you know, and the parents giving up at the end of the day. There's no help in their system, they just strike with a pen.

MR McAVOY: So I take it from what you have just said that there wasn't, in your view, enough attention or focus put on bringing the family back together?

AUNTY EVA JO EDWARDS: No, definitely not.

MR McAVOY: Was there any focus on reunifying the family?

AUNTY EVA JO EDWARDS: No. I don't believe there has been. All it has been is you have to do A, B, C and D. We have asked time and time again for supervised access, is that what you call it? Yes. And it still has not occurred. The kids have been home since January this year and there's been not one attempt for the department to do supervised access and yet I or my daughter or my family member who has been assessed, can be in the presence of, you know, my son and his children.

MR McAVOY: Aunty Eva Jo, they are the additional questions I have for you. I want to thank you very much for your answers. The Commissioners may have some additional questions for you.

5 CHAIR: I did have a question about the welcome to country which you alluded to. Did you want to say any more about that because I'd never heard it before until that day at the League when you spoke to that and it seemed to me to make a lot of sense given we have so many different ceremonies for different things.

10 AUNTY EVA JO EDWARDS: I guess, especially being on the Stolen Generation's reparations, you know, steering advisory, and now the IAP, the second part - the next rollout, I think it works - that we're looking at the healing stuff. So, you know, my conversation has always been wouldn't it be great to have a welcome home, you know, and when you're doing these applications, because I did a lot of the applications for this, I found a lot of kids were
15 removed from the same area and there's a huge amount of our numbers from Swan Hill, a lot of kids within that vicinity.

So I just thought, wow, it would be nice, when these apologies come out, because some of us want personal apologies and some of us don't, and we'll get our letter of apology, but I want
20 the personal one. I want it to be held with my five siblings that are living, you know, and we've all talked about it being in Swan Hill, you know, and what would that look like. It would be really great if it could be a whole lot of us. So not everybody doing their welcome of countries at the same time because we have all got connections all over.

25 That's what I was saying earlier, you know, I would love a Boon Wurrung and a Wurundjeri one because I've lived here my entire childhood since I was five years of age, you know, so 54 years on this country, but also not realising (indistinct) Boon Wurrung country and I was actually raised on that site. But, yeah I think it is really important. I think that healing would be great, another step to our healing as survivors, you know, and I have talked a bit about it to
30 survivors and they think that's a really great idea. What that looks like, I don't know really, but I just know that it needs to happen so that, you know, it's another step forwards healing for us as survivors.

CHAIR: Thank you. I can just imagine the reunion between the Kirby and the Edwards
35 clans.

AUNTY EVA JO EDWARDS: Absolutely. I know.

COMMISSIONER WALTER: I've got a question. Thank you so much for your evidence.
40 I'm just struck by the contradiction on the one hand the State has have recognised the wonderful work you've been doing, you've got awards, you've been Stolen Generations Advisory Committee, you've been inducted into the Victorian Aboriginal honour roll, and yet, at exactly the same time, when you are being recognised for this, you don't seem to have any of that at play when you are trying to bring reconciliation and your children and family
45 back together. Can you help me make sense of that?

AUNTY EVA JO EDWARDS: It doesn't make sense to me, your Honour, or what you would like me to call you. I don't know. But it doesn't make sense. But, I guess, at the end of the day, you've got to look at, you know, it's not about me, though, it's about my children. I

don't share all of that stuff with them fellows, that's none of their business, you know what I mean?

5 I'll be honest with you: my first point of call, my very first phone call when they walked into my lives was Muriel. I didn't know what to do. I only call upon the government unless I'm back against the wall and that's where my supports came in place. As far as - I don't know. I really don't know, you know, but I'm not going to go to them and say, "Wow, you know what, this is what I do." It's not about that. It's about ensuring what we do in making it a safe environment for my grandkids, you know, but I don't understand it and I don't
10 comprehend it, and that's, you know - when I do my Koori Court stuff, and I do - you know, I stood down during a period of time to not work in Koori Court because it was impacting on me - you know, I can't go out and help others when I'm struggling to help myself. So that was a hard decision to do, because I absolutely love Koori Court but, yeah, to me it doesn't make sense.

15 COMMISSIONER WALTER: It doesn't make any sense to me either.

AUNTY EVA JO EDWARDS: You know, it is what it is, isn't it? And maybe that's why when we got to MNG, they knew who I was, so I got to have a voice at the table, whereas
20 down in Gippsland, they don't know who I am in that system, you know? That's all I can think of.

COMMISSIONER BELL: Thank you, I have two questions and I want to begin by thanking you for the evidence which you have given which I found very moving and it's been an
25 honour to listen to it. Thank you.

AUNTY EVA JO EDWARDS: Thank you.

COMMISSIONER BELL: My first question is to ask you to speak more about your feeling
30 that Aboriginal families are treated differently by child welfare and I wonder whether you have reflected on why that is. Are they holding you to a different standard, a higher standard, or are they not understanding the importance of children to Aboriginal families or is it all of the above?

35 AUNTY EVA JO EDWARDS: It's probably all the above, but - I don't know. I don't know why it is that we are treated differently to non-Aboriginal families. You know, it just, to me, didn't make sense how they came into our life in the first place, based on untruthful allegations, and they wanted to uphold those allegations, and they still choose to uphold those allegations with no investigation of their own, and that's why I said earlier, you know, they
40 wanted to do their own investigation, but what is that? So, you know, I don't know if I can really answer you in that sense. I just feel there is, you know - we are treated differently.

COMMISSIONER BELL: Thank you. The second question relates to Koori Court and you obviously light up when you talk about Koori Court. You feel that you've made a
45 contribution and I think you feel that it makes a contribution. I wonder whether you can talk about the contribution that you've made, why it's been positive, and your reflections on Koori Court?

AUNTY EVA JO EDWARDS: Look, I think because of all of the injustices that have
50 occurred in the past, I think Koori Court gives us a voice, you know, and I have found that

when you read people's things, you get a good understanding of why they have fallen into that, you know, life, but I guess it's also we get to hear you. We get to hear about your journey and I think that's really, really important. You know, you may have been a child from out of home care and you're still on that journey.

5

I don't know. I just think it's - if we were to look at the statistics, you know, to see - I don't know the statistics. So that's something that maybe we need to look at in how we are keeping our people out of jail that little bit longer to be able to do the therapeutic healing, you know? Because my belief is why do we keep continuing to build prisons? Where are our rehab centres and our therapeutic healing centres? I should call them healing, not rehabs. You know, if we had those, I just think we'd be able to deal with the court issues within ourselves on why we are on that criminal journey.

10

But I would like to think - I think in my - 2016 I said I was - or 2014 I was - 2016 I went into Koori Court. Only one person in that time with me had gone into custody. So I consider that pretty good but - and I think it's trying to reassure - I have a soft spot for kids that have come from out-of-home care and adults that have come from out-of-home care. I have a soft spot and remind them that this life doesn't have to define who we are just because we were raised in care, you know, that we have a choice that we can do better for ourselves.

20

So, yeah, I try, you know, and when we had the Koori night markets, which was really great because there was people that remembered me either from Koori Court or working - from my time at corrections when I used to be the AWO working around the State in the prisons, and they'd come up and share their journey with me and say, "Look, I'm doing really good, aunt", or "sis", or whatever, you know, and I just think Koori Court is the best thing we have done here in Victoria in regards to trying to keep - you know, giving us equal justice. I think the magistrates and the prosecutors tend to get it.

25

I have seen some of those magistrates work in a mainstream and I see how they - they work with us in the mainstream also when we choose to not do Koori Court, you know, and they have that little bit more, I don't know, sympathy or empathy or whatever that is that you want to call it, but they get it and they know that we have had a hard time and let's try to work out how we can stop you from doing what you're doing. Addiction has been the biggest killer for all of us. Most of us it's under the influence of ice. Ice is such a destructive drug and most of the people we see have been on that journey.

35

COMMISSIONER BELL: Thank you. Thank you very much.

COMMISSIONER HUNTER: Sorry, I do have questions. I don't know whether to ask them here. But, firstly, thank you, Aunty Eva Jo, for letting me hold your hand through this. So that's a real honour. I just wanted to - you spoke to Commissioner - well, just prior you said Gippsland was different to how you are being treated and people knowing you. Do you see a difference from the people from that region to this region as the case moved or not?

40

AUNTY EVA JO EDWARDS: Yes. It moved from Gippsland to Melbourne.

45

COMMISSIONER HUNTER: Did you see a difference in the system, as such, or how you feel you were treated?

AUNTY EVA JO EDWARDS: I don't think I have been treated any differently. I just know they were more ignorant down there and more racist down there.

5 COMMISSIONER HUNTER: The other thing I wanted to ask you is you've got your grandchildren and their mother living you; is that correct? So your son has to have supervised access?

10 AUNTY EVA JO EDWARDS: He became homeless during all this process. So, yes, he has to have supervised access by the department to ensure that it's okay for him to be - for the children, for them to live back as a family.

COMMISSIONER HUNTER: You, as a mother, you've sort of had to make a choice because of this supervision?

15 AUNTY EVA JO EDWARDS: Absolutely I had to make a choice, yes, and the choice was the grandchildren. I know that sounds really bad, you know, I love my son.

COMMISSIONER HUNTER: But what a decision to make.

20 AUNTY EVA JO EDWARDS: You shouldn't have to make that decision between your child and your grandchild?

COMMISSIONER HUNTER: Yes. Thank you. They were my two.

25 MR McAVOY: I have no questions arising, Chair, and, if there are no other questions from the Commissioners, that would conclude this witness's evidence and she can be released.

CHAIR: Thank you very much.

30 MR McAVOY: Before rising, your Honour, I will tender the statement of Eva Jo Edwards together with the attachments to that statement or outline, and just, for the record, attachment 1 is the First Nations State Relations Biography for Eva Jo Edwards, attachment 2 is, '*Aunty Eva Jo Edwards: Story of a Stolen Generation Survivor by SBS*', and attachment 3 is, '*Stolen Generations Reparations Steering Committee Final Report.*'

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<EXHIBIT 1.1 STATEMENT OF EVA JO EDWARDS

CHAIR: Thank you.

40 MR McAVOY: Chair, we are scheduled to take lunch at 1 pm. The next witness will be taken by Ms McLeod and that's the Commissioner for Aboriginal Children and Young People, Meena Singh, who is here. Might we have a five-minute adjournment simply to allow the change of witnesses?

45 CHAIR: Yes.

COMMISSIONER BELL: Just break for lunch?

50 CHAIR: Is the catering taken care of for lunch?

MS McLEOD: Our preference is to get the Commissioner started.

MR McAVOY: That was my understanding. If we might just adjourn for five minutes, Commissioners.

5

<ADJOURNED 12:39 PM

<RESUMED 12:50 PM

10 MS McLEOD: We call Commissioner Singh. Ms Singh, would you please introduce yourself and you have indicated you would like to take the affirmation.

COMMISSIONER SINGH: Yes. My name is Meena Singh, I'm a Yorta Yorta and India woman. I am currently the Commissioner for Aboriginal Children and Young People.

15

<COMMISSIONER MEENA SINGH, AFFIRMED

MS McLEOD: Thanks very much, Ms Singh. Now, you have prepared, with the assistance of Commission staff, a statement to the Yoorrook Justice Commission, which is dated 20 December 2022.

COMMISSIONER SINGH: Yes.

MS McLEOD: The Commissioners have access to Ms Singh's statement. Thank you. You are the Victorian Commissioner for Aboriginal Children and Young People appointed on 26 April this year; is that correct?

25

COMMISSIONER SINGH: Yes.

MS McLEOD: After obtaining your legal qualifications, you've worked at Victoria Legal Aid including as associate director of Aboriginal Services?

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COMMISSIONER SINGH: Yes.

MS McLEOD: A director of legal practice and strategy at the Victorian Aboriginal Legal Service, as director of Aboriginal and Torres Strait Islander Rights at the Human Rights Law Centre?

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COMMISSIONER SINGH: Yes.

40

MS McLEOD: And as family violence support worker with the service, JURA. Your work has involved representing clients and practising in Children's Court, criminal, civil and family law?

COMMISSIONER SINGH: Yes.

45

MS McLEOD: And your own experience in connections inform your work in these roles as Commissioner?

COMMISSIONER SINGH: Yes.

50

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MS McLEOD: I invite you to turn to your statement in paragraph 10. In those paragraphs that follow you describe the role of the Commissioner for Children and Young People and you note that the Commission for Children and Young People is an independent statutory
5 body that promotes improvement in policies and practices affecting the safety, wellbeing and rights of Victorian children and young people, including - so that would include the most vulnerable children?

10 COMMISSIONER SINGH: Yes.

MS McLEOD: The Commission's work is governed by a number of pieces of legislation including the Commission for Children and Young People Act 2012?

15 COMMISSIONER SINGH: Yes.

MS McLEOD: Is it correct that the primary role of the Commission is to ensure and improve accountability of government to children and young people in Victoria?

20 COMMISSIONER SINGH: Yes.

MS McLEOD: I think you were present during the openings this morning; that is, children aged 0 to 17 years of age?

25 COMMISSIONER SINGH: Yes.

MS McLEOD: Does your work capture or consider the work of children pre-birth?

30 COMMISSIONER SINGH: When we see things such as notifications, unborn notifications, through child protection system, yes.

MS McLEOD: So yes is the answer?

COMMISSIONER SINGH: Yes.

35 MS McLEOD: And does it involve children exiting care on their 18th birthday and beyond?

COMMISSIONER SINGH: We have done inquiries into their experiences leading up to and after exiting care, yes.

40 MS McLEOD: Just in terms of who is defined as a child by the Children Youth and Families Act, this morning I informed the Commissioners that, in the case of a person alleged to have committed an offence, this is someone under 18 but above the age of 10?

45 COMMISSIONER SINGH: Yes, that's correct.

MS McLEOD: And in terms of a protection order or other order relevant to child protection; that is, a person aged 17 or under?

50 COMMISSIONER SINGH: Yes.

MS McLEOD: Thus a person aged 0 to 18 or just under 18, can be the subject of a child protection order?

COMMISSIONER SINGH: Yes.

5

MS McLEOD: And just pausing with that consideration of the age of the Commission's interest, a child can be subjected to certain criminal justice processes at aged 10 in Victoria?

10

COMMISSIONER SINGH: Yes. Well, they may have contact - children younger than 10 may have contact with the police but that wouldn't be a formal, obviously, criminal proceedings because the age of criminal responsibility is 10 years old.

MS McLEOD: For those listening, what is the distinction that kicks in at age 10 in terms of what is known as criminal responsibility?

15

COMMISSIONER SINGH: So it's the understanding that children can be held responsible for criminal acts, that they can be treated, effectively, as an adult when it comes to being - going through the criminal justice system. So they can have interaction with police, they can have interactions with the court, they could go into custody, whether that's at police stations or in the youth justice detention centre from the age of 10.

20

MS McLEOD: Just teasing that out in lay terms, at age 10, a court could consider that a child could form the necessary intention to commit a criminal act?

25

COMMISSIONER SINGH: Yes. So there is - excuse me, I'm getting over a bout of tonsillitis. There is the rule known as *doli incapax*, which you can say a child under 14 is not capable of understanding criminal responsibility, understanding that what they have done is a criminal act, but that requires a lot of work and a lot of discretion, and involves a prosecutorial discretion and judicial discretion around how that plays out. So often the delays in that mean that children might not have access to that in a timely manner and whilst that is happening, they can still be exposed to the impact of the criminal justice system around them.

30

MS McLEOD: Just leaning on your legal expertise as well, if I may for a moment, what considerations come into that judgment, in a very broad sense, as to whether a child is developmentally able to form a criminal intention?

35

COMMISSIONER SINGH: I would have to refer to the legislation specifically, which I don't have in front of me, but looking at the child's circumstances, their development, any issues that they have around them. I imagine things such as, you know, disability or other issues that are going on, but I would have to look specifically at legislation to be certain.

40

MS McLEOD: In general terms, is there a recognition in the law, and the criminal justice system, that children's development reaches a point at some stage for the individual and generally where they are capable of forming a criminal intention?

45

COMMISSIONER SINGH: I'm sorry, could you say that again?

MS McLEOD: Yes, I will rephrase it. Does the law recognise, in terms of criminal justice processes, that children are not necessarily developmentally able to form the intention to commit a crime?

50

COMMISSIONER SINGH: Well, *doli incapax* covers that a child under 14 may not know that, but the age of criminal responsibility is 10 years old. So that's, effectively, when the court systems, the legal system, is saying children can be responsible for criminal behaviour.

5

MS McLEOD: Okay. And another aspect of which the age of a child can be taken into account, you've mentioned some there, is in sentencing?

COMMISSIONER SINGH: Yes.

10

MS McLEOD: And how is age, in the broad sense, taken into account in sentencing in our criminal courts?

COMMISSIONER SINGH: Again, I'd have to look specifically at the legislation, but what we have seen from what children have told us, through our successive - different inquiries, such as '*Our Youth, Our Way*', which is our inquiry into Aboriginal children's experiences of the youth justice system, sometimes we see age not having much of an impact in terms of, from their experiences, in terms of what sort of sentencing they might receive.

15

MS McLEOD: Okay. I mentioned this morning, in opening, section 344 of the relevant Act, which provides it's conclusively presumed that a child under the age of 10 cannot commit an offence; above that age, that's a matter for the court, until what age where there a presumption of an intention?

20

COMMISSIONER SINGH: So are you referring to *Doli incapax*, the age of 14? That's my understanding. Again, I'd have to look at the legislation specifically to look at that.

25

MS McLEOD: There are two key government agencies that you and the Commission deal with in the context of child protection, principally, the Victorian Department of Families, Fairness and Housing.

30

COMMISSIONER SINGH: Yes.

MS McLEOD: Or DFFH, formerly Department of Health and Human Services.

35

COMMISSIONER SINGH: Yes.

MS McLEOD: They are responsible for child protection and the government response to family violence, family support services, foster care and adoption, amongst other things?

40

COMMISSIONER SINGH: Yes.

MS McLEOD: And the Department of Justice and Community Safety who are responsible for the courts, including children's courts, youth justice, including the Koori youth justice programs?

45

COMMISSIONER SINGH: Yes, that's correct.

MS McLEOD: Are there other key departments of government that are relevant to the child protection space?

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COMMISSIONER SINGH: In terms of other departments that impact on the lives of children, the department of education has significant impact on children's day-to-day lives, and also Victoria Police.

5

MS McLEOD: As children are exiting care, is the training portfolio relevant as well in terms of training and qualification of children exiting care or not so much?

COMMISSIONER SINGH: I don't I think I could answer that specifically as to the involvement, no.

10

MS McLEOD: Just so we understand the context for the work of the Commission, can I just ask you to confirm some aspects of the framework under the Children Youth and Families Act. We can ask those working directly in the space for the detail of this. So please tell me if we are outside the area that you're comfortable with. The Act sets out some mandatory guidance for decisions about protection, by reference to certain principles, including the paramount principle that the best interests of the child must always be paramount. Sorry, this is not a test, this is just to check that we're in the same framework of your work.

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COMMISSIONER SINGH: Yes.

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MS McLEOD: What is in the best interests of the child includes the need to protect the child from harm, to protect their rights, and promote their development so that the child is only to be removed from the care of the parents if there is what's called an unacceptable risk of harm; is that correct?

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COMMISSIONER SINGH: Yes.

MS McLEOD: Right. And when you, as a Commissioner and your fellow Commissioner, are looking for improvements in the policies and practices affecting the safety, wellbeing and rights of Victorian Aboriginal children and young people, are you guided by those principles and the legislative framework set out in the Children Youth and Families Act?

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COMMISSIONER SINGH: Yes. So we would look at these principles, but when it comes to the actual decisions being made about a child being removed from the system, we don't have day-to-day insights into how those decisions are being made. It would not be until we, for example, conducted a systemic inquiry where we could use our powers to access certain information that might be on a child's file and have that insight into how decisions are made and how those principles are playing out or, if we were to, as we are required under our Act, conduct what's known as a child death inquiry, which is where a child who has been known to child protection in the last 12 months of their life has passed away, in which case, we would get access to that sort of information as well.

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MS McLEOD: Are the Commissioners content for me to go into the lunchtime for a couple of minutes to finish this introductory material?

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CHAIR: Yes.

MS McLEOD: Thank you. Just to polish that off, are you also considering, as well as the legislative framework, the policies and processes of government, including their guidance manuals, risk assessment tools, things of that nature?

5 COMMISSIONER SINGH: Yes. We'd be looking at, I guess, whatever we could access in terms of how decisions are made and policies and practices are being implemented.

MS McLEOD: Now, just coming back to the Commission Act, the powers of the Commission are vested in the principal Commissioner; correct?

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COMMISSIONER SINGH: Yes.

MS McLEOD: I'm about to take you to paragraph 10 of your statement. You are the third person to hold the office of Aboriginal Children and Young Person's Commissioner now?

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COMMISSIONER SINGH: Yes.

MS McLEOD: And your submission is that a clear legislative mandate should be provided for that Aboriginal Children and Young Person's Commissioner?

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COMMISSIONER SINGH: Yes, that's correct.

MS McLEOD: Would you explain to the Commissioners what is the benefit of having the legislation refer expressly to your role and what the powers would be?

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COMMISSIONER SINGH: So just to provide some background information, currently, the Commissioner for Young - sorry, Commissioner for Children and Young People Act, under section 12 the government and - sorry, cabinet and council can appoint other commissioners. There is no specific reference to a Commissioner for Aboriginal children and young people in the legislation.

30

So what having a specifically referenced legally mandated role would mean that there would be powers that I could exercise directly. Just a really simple example is that I have here all of our inquiries over the past six years and, if you have a look at them, even the ones that have been led by my predecessors, Uncle Andrew Jackomos and Justin Mohamed, the official letter that goes with their submission is only signed off by Liana Buchanan. So there is only specific powers that she can - that she has.

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So a lot of my work depends on that collaborative relationship with the principal Commissioner, Liana Buchanan, but obviously to have a specifically mandated in legislation role would obviously add to self-determination of the role and self-determination of Aboriginal community.

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MS McLEOD: In paragraph 10 of your statement - your submission, you note that the function of the Commission include independent oversight of Victoria's child protection, out-of-home care and youth justice systems, the monitoring of out-of-home care and youth detention, including preventive detention, serious incidents and conducting regular inspections, conducting inquiries into the standard of services provided and omissions of care to young people in care who have died.

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COMMISSIONER SINGH: Yes.

MS McLEOD: And, in that respect, is there an overlap with the powers of the coroner to investigate the death of a person in the care of the State?

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COMMISSIONER SINGH: So I am not one hundred per cent au fait with all of the powers of the Coroner but - and it would be the Coroner determining the cause of deaths. So they would be looking into these deaths as well.

10 MS McLEOD: If there is a systemic investigation into circumstances surrounding the death of a child in care, would there be an overlap with your powers there?

COMMISSIONER SINGH: I would have to check with what their powers are but there could be, yes.

15

MS McLEOD: You also have a power, as you just mentioned, to conduct systemic inquiries and produce the reports, the prodigious number of reports, as you have got stacked next to you there, into services provided to children and young people. Is that a convenient time to take a break for lunch, chair?

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COMMISSIONER WALTER: Can I just ask one question. Why don't you have legislative powers? Do you have an explanation for why the Commissioner for Aboriginal Children and Young People does not have?

25 COMMISSIONER SINGH: I don't have a personal explanation as to why that is. That would be a matter for government and for the Minister that we report to.

COMMISSIONER WALTER: It's very odd.

30 COMMISSIONER HUNTER: Can I just ask: in other States is there an Aboriginal and Young Person's Commissioner?

COMMISSIONER SINGH: Not in every state, but in some. They also have powers of guardians and advocates as well.

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COMMISSIONER HUNTER: Yes. But they don't have a principal role?

COMMISSIONER SINGH: Each jurisdiction is set up differently, and each Commissioner or advocate or guardian has different powers that look at child protection and youth justice. So it is difficult to say how it all plays out because it's quite, yes, different.

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COMMISSIONER HUNTER: Yes.

MS McLEOD: Commissioners, could I suggest until 2 o'clock?

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CHAIR: Yes. We will adjourn this session. Thank you.

<ADJOURNED 1:07 PM

50 **<RESUMED 2:04 PM**

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MS McLEOD: Could I invite Mr Buchhom to announce his appearance.

MR BUCHHOM: May it please the Commission, my name is Buchhom.

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MS McLEOD: Thank you, Chair and Ms Singh. So coming back to your statement, we have just - before lunch we were talking about the powers of the Commission and your role specifically as Commissioner. I want to take you to paragraph 13 of your statement.

10 COMMISSIONER SINGH: Yes.

MS McLEOD: Could you just describe to the commissioners the role of the child protection standards and the introduction of those standards in 2016?

15 COMMISSIONER SINGH: Yes. So the child safe standard were introduced in 2016. They came in after the Victorian Parliament's Betrayal of Trust Inquiry into the handling of child abuse by religious and other non-government organisations and obviously those - the hearing - that inquiry showed the extent of child abuse in a range of settings where we want children to be safe.

20

So the child safe standards are about keeping children safe and they apply to organisations that have responsibilities to look after children. So it could be - I think if you look over at paragraph 15 of my statement there's an obligation on more than 50,000 organisations in Victoria as part of the child safe standards. So there's a lot of organisations that it covers.

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It could be anything from a small football, netball, calisthenics club through to a big organisation like AFL Victoria. All of these organisations providing services, having care and responsibility for children, and young people need to comply by these standards.

30 MS McLEOD: In your statement - and we'll come to the details in a moment - you mention a number of important systemic reviews undertaken by the Commissioners - the Commission and your predecessors in the role. The most recent of those were two reports, one, *'Our Youth, Our Way'*, in June 2021 into Aboriginal children and young people in youth justice, and also June, *'Out of Sight'*, the report into children and young people missing from residential care. I will come back to those reports in due course. What work is currently under way by way of systemic reviews by the Commission?

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COMMISSIONER SINGH: Okay. So we're currently conducting a systemic inquiry into the experiences of children in it out-of-home care of the education system. so in 2019 we tabled the systemic inquiry in our own words and that was an inquiry into the lived experiences of children of the out-of-home care system. So what that inquiry found and told to the Commission was that a lot more work was needed to specifically look at education. Education has a huge impact on children's lives. It's a space where children learn so many different things in terms of socialisation, interactions with others, and as well as an education to keep them going forward, and, *'In Our Own Words'* showed that there were educational experiences for children in out-of-home care that simply weren't positive and we wanted to look further and further into that.

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MS McLEOD: We expect to hear evidence this week, Commissioner, about negative outcomes, if I can use that broad phrase, of children in and exiting child protection services,

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negative outcomes might include negative mental health impacts, it might include suicide, homelessness, exposure to the criminal justice system. Is there any current or recent longitudinal study into the exposure of children in the child protection system or accessing services to those negative outcomes?

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COMMISSIONER SINGH: When you mean “longitudinal study”, do you mean following children over a number of years and seeing how their experience has been?

MS McLEOD: Point of entry right through to adulthood.

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COMMISSIONER SINGH: To my knowledge, I don't know that that work has been done or is being done. There might be work happening but I'm not, to my knowledge, aware of it.

MS McLEOD: Would that work be useful to inform the work of the Commission?

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COMMISSIONER SINGH: Absolutely. I think it would give incredible insights about how young people experience the child protection system and their out-of-home care, what sort of supports they are getting, and something that we raise a lot in our inquiries is that experience and exposure to the cumulative impact of harm and abuse and the trauma, that kind of builds up for children over a period of time.

20

MS McLEOD: Are you aware of any systemic examination in connection with children and young people's deaths in care or proximate to care being conducted by yourself or the coroner?

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COMMISSIONER SINGH: So under our piece of legislation we are required to conduct inquiries into the - so we conduct inquiries into the services provided or omitted to be provided to children and young people who have died and, in the last 12 months of their life, were involved in child protection. So those - the specific details of those what we call child death inquiries are not available to the public. We refer to them - the outcomes and we find generally in our annual reports and we also did a systemic inquiry into - I just want to get the exact year of it, *'Lost Not Forgotten'* was the inquiry into children who died by suicide and were known to Child Protection and that was tabled in 2019.

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MS McLEOD: Does that report reveal that, of the Aboriginal children who die in care or what's known as approximate to care, or shortly after exiting care or leaving care, that the rate of those children who have exposure to child protection services is relatively high?

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COMMISSIONER SINGH: I'd need to look specifically at my notes to see.

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MS McLEOD: We can get those figures.

COMMISSIONER SINGH: Okay.

MS McLEOD: Can I invite you to look at paragraph 20, please, of your statement. You describe there your work alongside the principal Commissioner for Children and Young People and, as you said before lunch, you made the point that it would be useful to have the role of the Aboriginal Commissioner entrenched in the legislation.

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COMMISSIONER SINGH: Yes.

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MS McLEOD: In paragraph 21 you note your participation in various key forum partnership. Your work is obviously informed by the prior reports of the Commission and your participation in these fora and also listening to the experiences of children directly?

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COMMISSIONER SINGH: Yes.

MS McLEOD: So of those fora that you have listed there, do you meet regularly, or what is the program?

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COMMISSIONER SINGH: So the Adult Partnership Forum, the Aboriginal justice forum and the Aboriginal children's forum meets three times a year. They are posted in different metropolitan or regional areas and at each of those forums it is - it is a partnership of Aboriginal Community Controlled Organisations, in some cases, such as the Aboriginal justice forum, and the Dhelk Dja Partnership Forum, on the ground, the Aboriginal network, such as the regional Aboriginal Justice Advisory Committees, which is part of the Aboriginal justice forum, and then the indigenous family violence regional action groups, which is part of the Dhelk Dja Partnership Forum. But also key people from government who are involved in implementing the relevant strategic plans, the relevant frameworks are also at those forums. There's a whole host of other work that happens between each of the forum dates that goes into implementing the relevant frameworks and strategies that each forum represents.

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With regards to Morang Governance Committee, I would have to check how often that sits. I think it's four times - I want to say four times a year but I'd have to check.

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MS McLEOD: Do children and their families make direct complaints or notifications to the Commission if they have instances of care or lack of care that they want to complain about?

COMMISSIONER SINGH: So within the Commission we refer to them as approaches. So it's basically when a member of the public or, it could be, for example, a lawyer who might be representing a child or a family, anyone who has a concern, they can ring up the Commission and explain what those concerns are and we can look at what we can do in response to it. It might be that we don't necessarily have powers to respond or to take action but it might also be a referral profession of getting that person to the appropriate supports that they need.

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MS McLEOD: One advantage, if I might suggest this, of coming to you with those approaches is that you have not only the benefit of the individual circumstances but a systemic overview of the nature of these approaches and whether there are systemic issues arising?

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COMMISSIONER SINGH: Yes. I think also just a general comment about my role, say, for example, compared to the principal Commissioner's role, is that I have much more - much closer proximity to the Aboriginal community by way of these forums, by way of connection, and having worked in some Aboriginal organisations before, and being known in community. So because I'm out and about, and I get to see and speak to people, I'm hoping, and I have seen some of this already, that people can see me as someone that they can get in touch with and get some - explain what's happening in their circumstances.

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MS McLEOD: Do you have the power to request or compel information from government departments relating to those individual complaints?

COMMISSIONER SINGH: So it depends what the inquiry - what the complaints are about.
5 So, for example, with our monitoring powers, under section 60A, we can inquire of Department of Families, Fairness and Housing information about how they might have responded to a serious incident, but it absolutely depends on the specifics of each type of complaint, each issue that comes to us.

10 MS McLEOD: I might ask for your statement, if it's available - yes, sorry, we have it on the screen there - to go to paragraph 24. I'm going to invite you to read that whole paragraph, please.

COMMISSIONER SINGH: Certainly:

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“Aboriginal children have unique rights and needs that require additional protections and government accountability. Dedicated Aboriginal and Torres Strait Islander children's Commissioners play a vital role in providing a voice for Aboriginal and Torres Strait Islander children and ensuring dedicated focus to advancing their rights. Aboriginal children and young people are overrepresented in adverse outcomes and continue to experience disproportionately high levels of disadvantage and discrimination. This is a result of historical and ongoing impacts of colonisation, dispossession, institutional racism and punitive policies. A dedicated focus on advancing the rights and well-being of this generation of Aboriginal children is essential to break the cycle and improve outcomes for future generations. Aboriginal children's Commissioners make recommendations that address the unique challenges faced by Aboriginal children and help hold government accountable to implementing these solutions.”

30 MS McLEOD: Two questions arising from that paragraph. The first is in terms of your reference to adverse outcomes. These are the sort of outcomes that we were discussing before, or is that a broader defined category of outcomes?

COMMISSIONER SINGH: So there's - I'm thinking - so with our work at the Commission, there's kind of two understandings of adverse outcomes with our processes, say, for example,
35 of child death inquiries, where we have adverse findings, we might - we need to explore what those - we might have made an adverse finding about what's happened with a child and that is put to the department but adverse outcomes I'm taking to mean those general negative outcomes that we see happening to children in the out-of-home care system and in child protection.

40 MS McLEOD: What feedback do you get from the department when you give them this report about adverse outcomes?

COMMISSIONER SINGH: It depends entirely on the circumstances of - the context of what
45 we have - we might be asking, for example. So, again, specifically, with child death inquiries, we look at the provision of services or the omission of services. So we might be inquiring as to why potentially some services weren't provided or types of services.

MS McLEOD: In response to those sort of responses you get from the department, are they a justification, are they an explanation, are they an apology, what sort of responses are you getting in general?

5 COMMISSIONER SINGH: It depends entirely on what we are requesting information about but it's helping us to understand what things have happened for that particular child.

MS McLEOD: Does that feedback from the department then factor into your systemic inquiries?

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COMMISSIONER SINGH: Well, with regards to child death inquiries, those are individual inquiries for each child. If we were then to do, say, a systemic inquiry about child death inquiries, such as with, *'Lost, Not Forgotten'*, it would be an analysis of those outcomes.

15 MS McLEOD: You also touch on the historical and ongoing impacts of colonisation and we heard my fellow senior counsel, Mr McAvoy, step through a brief history of the impacts of colonisation. These matters have been raised in numerous reports before, including the Commission reports, including the *'Always Was, Always Will Be Koori'* children report and the Commonwealth's landmark report, *'Bringing them Home'*, back in 1997, which traced that
20 history against violence against First Nations people including forced removals and exploitation of children.

So just for the benefit of those following this justice Commission, how do you make the link between those historical events and the impacts felt today on First Nations children and their
25 families?

COMMISSIONER SINGH: It's such a big question. It's such a big scope but, I guess, the first thing to understand is that, for Aboriginal people, for our children and young people for our communities, we feel the ongoing impact of colonisation, and Auntie Eva Jo's evidence
30 this morning spoke particularly directly about how the trauma of being removed as a child can play out as you get older and have your own children and how that impacts on you. But when I think about - I think about the sort of - the legacy of harmful intervention that has happened to Aboriginal people and our communities and families, it's a breaking down of the supports that have kept us strong for tens of thousands of years.

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It's interesting because sometimes people will say to me, "Why are there so many Aboriginal children in out-of-home care", or, "Why are there so many Aboriginal children in youth justice", and I think you really need to think about what are the things that keep Aboriginal children and young people strong. If I can use myself as an example, why haven't I gone into
40 child protection, why haven't I gone into youth justice? Remember, it's - the majority of us aren't going into child protection. The majority of us aren't going into youth justice but our numbers are disproportionately high.

If I use myself as an example, and I think about my own upbringing, you know, in my first 18
45 years of life I moved twice, once I can't remember because I was 12 months old, the second when I was 13. So very stable home life. Both of my parents worked for most of my early - most of my life. My mother was a nurse for 30 years and my father worked in factories in dispatch and such. So I also - always had modelled for me positive behaviours around me, of positive experiences, of understanding work, and that this is what you do when you grow
50 up.

I had the benefit of being the youngest of three girls and got to grow up with my two older sisters modelling positive behaviours for me as well. I didn't have then, and don't have now, any disabilities or illnesses or health concerns that have interrupted how I've engaged with things like education. I was bright at school. I did really well at school. I had the benefit of participating in activities and hobbies outside of school which gave me additional supports and additional access to role models and such.

So when we look at - you know, I got to finish my formal education uninterrupted. I got to go on to university and I'm now sitting in this seat now. But if we look at the lives of Aboriginal children and young people that we see in our work at the Commission, the children who are in the child protection system, are in out-of-home care, in youth justice, we see a complete - well, not a complete, we see a huge absence of these protective factors that are in their lives and when we talk about the impact of colonisation, we talk about the way colonisation and successive interventionist policies and intervention in Aboriginal people's lives have eroded away those very protective things.

At the same time we cannot underestimate the impact of culture and how much of a positive influence it has on our lives. I grew up strong in my identity and I grew up with culture. I grew up knowing exactly who I am. If you have had your culture surrounded around you or you've had access to it and seen it in positive ways, it's a huge support system. It's a huge network. But if you don't have it, if it's an absence in your life, it's really difficult to understand. It's really difficult to explain the gaping hole that it leaves for people, especially for children and young people.

So when we talk about the impact of colonisation, when we talk about those policies that saw children removed from their families, the trauma it caused on children and young people, the very active removal, and the trauma it caused for their families to be removed, it's immeasurable. I think we don't properly understand that trauma, in terms of physical, emotional, mental anguish that comes out of it, but we also don't fully value the absence of culture and how important culture is to our lives.

So a lot of people think colonisation happened a long time ago but for Aboriginal community we see that continuing - that continuing connection. We have talked about it in our reports. I'm right now looking at the chapter, 'My Culture', chapter 4 of 'In Our Own Words', which talks about forceable separation, how this plays out, but I just want to read to you a part of that chapter that is the relationship between the past and the present, so this is at page 80 of the 'In Our Own Words' inquiry. So this inquiry was submitted in 2019:

"The recent joint Australian Institute of Health and Wellbeing and Aboriginal Torres Strait Islander Healing Foundation report of 2018 on members of the Stolen Generations and their descent ants illustrates that trauma and structural disadvantage associated with child removal is intergenerational. The report found that descendants of the Stolen Generations who made up one third of the Aboriginal and Torres Strait Islander adult population in 2014/2015" --

This is the quote:

"... experience a range of adverse health, culture and socioeconomic outcomes at a rate higher than the Indigenous population that had not been removed."

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5 So a third of the population is experiencing this intergenerational trauma. If you're not - to great grandmothers who were removed, I have an aunt who was stolen, and even if I directly haven't - I'm not descendant of someone who was removed, our proximity to the pain and our connection with the pain is so close. We are a small community in Victoria and so we feel and understand each other's pain and we experience pain and trauma to a level that is very different to the broader Victorian society.

10 MS McLEOD: Just a reminder that that report '*In Our Words*' is a systemic inquiry into the lived experience of children and young people in Victoria out-of-home care system delivered in November 2019. So coming back to your statement at paragraph - can I jump down to paragraph 27 and invite you to read that paragraph.

15 COMMISSIONER SINGH: This is under the heading of '*Resilience*' in the statement:

20 *"The challenges facing Aboriginal children in our community can seem overwhelming. There are so many targets, indicators and recommendations that we must work towards and respond to. Our children and community are often spoken about in numbers and statistics and often in deficit. When we go behind these numbers and statistics we see the strength and resilience of our people. The prevailing notion that to be an Aboriginal person is to be disadvantaged is untrue. We are rich in culture, connection and knowledge. It is when these things are taken away from us that we suffer."*

25 MS McLEOD: So I'm going to ask you in a minute about that concept of deficit thinking or framing. Could I ask those assisting to bring up the report '*Our Youth, Our Way*' at page 63. While that's being done, could I just ask you to expand on that notion of data and deficit framing. I'll wait for you to bring that up. If we could zoom in the left-hand column, '*How We Speak About Aboriginal Children and Young People*'. You see the reference to the way we speak to about Aboriginal and young people matters.

30 COMMISSIONER SINGH: So when we we're talking about Aboriginal community, or any community in deficit, it means we are focusing on the negatives of that community. We're focusing on the problems. What Aboriginal community and advocates, what we advocate for at the Commission, is a strength-based approach that understands what the strengths are of community and how do we build on those strengths in order to answer any of the concerns that might be happening for a family.

40 I think Aunty Eva Jo mentioned about, you know, they focused on all the negative things when she was interacting with the department. It's this experience that you're being looked at as a problem and, you know, Aboriginal people, as I said, in the statement were often talked about in statistics. We can talk about these rates of overrepresentation and they are horrific, they are absolutely horrific, but they are not the majority of - they are not the majority of the population.

45 So if we say statistics, you know, say a certain number of children are in out-of-home care, what are the things that are working for other families? What are the positives? How do we put protective factors back into people's lives? How do we get that stability that I was lucky enough to have going through primary school and high school and, you know, how do we support families to have that - have the tools they need to be able to raise their children as well.

MS McLEOD: Do you know whether that deficit thinking - and tell me if you don't know - finds its way into the risk assessment tool used by the department, Child Protection Services?

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COMMISSIONER SINGH: I haven't had a chance to look recently at the risk assessment tools. So I honestly couldn't answer that. But, you know, from some of the things we hear in inquiries, and we have reported on, Aboriginal people often don't experience engaging with the department in a positive way but I'd have to look at the risk assessment.

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MS McLEOD: It might be the same answer but are you aware of whether the positive attributes are factored into the risk assessment tool?

COMMISSIONER SINGH: I couldn't answer that. I don't know.

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MS McLEOD: If we could just go back to your statement, paragraph 28, you offer an acknowledgement to Aboriginal controlled organisations and carers and children, and if you wouldn't mind reading that paragraph, please, and paragraph 29 that follows.

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COMMISSIONER SINGH: Certainly:

"In this role, I have had many privileges. I have seen the strength of Aboriginal Community Controlled Organisations who, when given appropriate resources and autonomy to determine their own futures, create spaces and opportunities to nurture Aboriginal children and young people to have remarkable lives. I have met and spoken with kinship and foster carers who go to extraordinary lengths to ensure the children and young people in their care are given stability, safety, care and respect, but who struggle with the systems they engage with. I have been privileged to hear the passion in the voices of people in organisations who worked to support Aboriginal children and young people but the greatest privilege and possibly saddest of all has been to sit and hear the stories of Aboriginal children and young people who share their stories demonstrating a resilience in response to trauma that most of us will never experience in a whole lifetime, yet they still retain hope, humour, and the capacity to care about those around them."

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MS McLEOD: So how important is it to hear directly from children themselves? You mentioned the requirements of the Convention of the Rights of the Child that children participate in decisions affecting their lives, how important is it to your work and the standing of the Commission that you do hear those voices directly?

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COMMISSIONER SINGH: It's fundamental to the work that we do. We are a Commission for children and young people and my role is about Aboriginal children and young people and - sorry, I'm just going to quickly look at a specific part of my --

MS McLEOD: In paragraph 30 you talk about the various steps.

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COMMISSIONER SINGH: Yes, thank you. Yes. So Article 12 of the Convention of the Rights of the Child states that:

"All children and young people have a right to participate in decisions affecting their lives."

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So the way we embody that at the Commission is we have all children, including Aboriginal children and young people, informing the work and the inquiries that we do. So our staff regularly visit residential care facilities and meet with children and young people to hear how they are experiencing those residential care facilities, what their lives are like in those spaces.

5 Our independent visitor program, now in its 10th year, goes into youth justice centres to hear the experiences of children and, again, reminding everyone that these children could be as young as 10 years old.

10 The independent visitor program is run with volunteers. So it's a program that we couldn't run without the support of volunteers. Then possibly one of the drivers of me wanting to be in this role was the Commission's Youth Advisory Council, the Commission's Youth Council, rather, which brings together young people who have direct experiences of child protection, out-of-home care and youth justice, and we work with them to inform our work.

15 We consult with them in a range of ways. For example, the inquiries that we have done in later years have really worked closely with children - young people who are on that council. As I mentioned before, we are doing an inquiry into educational experiences of children in out-of-home care. That has been developed with very close consultation of children as part of the youth council and, you know, for specifically Aboriginal children and young people,
20 there's a double layer of exclusion, you know, there's that attitude of, you know, that we have all heard before, of children should be seen, not heard. That, you know, we don't want to actually hear from children about what they need or what they experience. But then for Aboriginal people we have that added exclusion that our voices aren't important, that they shouldn't be listened to, that we don't need to be part of the narrative.

25 So my work is very much about how do we bring their voices into spaces where they normally don't get access to. I'm a huge advocate for understanding lived experience and how lived experience builds knowledge and, in my personal view, and what I want to do more in this role, is see the elevation of these lived experiences of children and young people be
30 understood and given as much value as, say, knowledge that's gained in, you know, at arm's-length, you know, academic knowledge or other types of knowledge.

So it's very important to us at the Commission, to the principal Commissioner, to myself, to ensure that those children's voices are heard at every possible stage.

35 MS McLEOD: Again, this might be a question for government as opposed to yourself, but are you aware whether children's wishes, including remaining unified with their siblings, are matters that are taken into account by child protection workers when they are making their risk assessment?

40 COMMISSIONER SINGH: I don't think I can answer that. That would need to be looked at probably by the people making those assessments but what we hear in our inquiries is that often children aren't spoken to and aren't consulted about decisions that are being made around them and decisions being made without their input into it.

45 MS McLEOD: And should they be?

COMMISSIONER SINGH: Absolutely. Absolutely they should be.

MS McLEOD: I'm aware that, in some cases in Family Court proceedings and Children's Court proceedings, there's a role for an independent child advocate or representative, do you have any view about the efficacy of those roles?

5 COMMISSIONER SINGH: I couldn't comment on that. Family Court is a Commonwealth jurisdiction and we don't have any insight into that side of Family Court proceedings.

MS McLEOD: Is that the same for the Children's Court?

10 COMMISSIONER SINGH: Any knowledge I have directly of children's court practice would be very old knowledge. But obviously all families - sorry, all parties in child protection hearings are represented. So children are represented in those proceedings with advocates - legal advocates.

15 MS McLEOD: I'm going to come to statistics in a minute. I might pause to see if the Commissioners have any questions so far.

COMMISSIONER WALTER: I would just like us to actually have a copy of the assessment tool, if we can, as commissioners, to have a look at that, the risk assessment tool. Obviously
20 not right now, but at some stage to inform our thinking.

MS McLEOD: Thank you, Commissioner Walter. So coming now back to --

COMMISSIONER HUNTER: Can I just ask: just to understand, you talk about all those
25 reports and about the child death inquiries as well, do they come out - do they all have recommendations, or --

COMMISSIONER SINGH: So our systemic inquiries all have recommendations, yes.

30 COMMISSIONER HUNTER: What happens to those?

COMMISSIONER SINGH: They are put to government and it's for government to decide how they will respond to each individual recommendation.

35 COMMISSIONER HUNTER: Thank you.

MS McLEOD: At some appropriate point, Commissioner Hunter, we will be asking the government to inform us and inform the work of the Commission with their response to those reports and what status implementation of any recommendations is up to. Coming to key
40 statistics and trends, would you please read paragraph 33.

COMMISSIONER SINGH: Thirty-three:

45 *"In 2020/2021 there were 7337 Aboriginal children receiving child protection services in Victoria. A substantial and alarming increase since 2014/2015. Children receiving child protection services is defined as one or more of the following: an investigation of a notification; being on a care and protection order; or being in out-of-home care."*

MS McLEOD: So if we went back to - I don't ask those assisting to bring up the flow chart,
50 but investigation of an investigation is a very early point in the interaction with child

protection, being on an order is sort of the middle point, and being in out-of-home care is one of the options available after an investigation is substantiated?

COMMISSIONER SINGH: Yes.

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MS McLEOD: Or a notification is substantiated. That number, 7337 Aboriginal children receiving child protection services, has been increasing sometimes at a greater rate than others but steadily increasing from 2014/15 through to last year, the last - 2020/20201?

10 COMMISSIONER SINGH: Yes. That's the latest data that's available that we have referred to.

MS McLEOD: Do you have any figures for 21/22?

15 COMMISSIONER SINGH: Not to hand, no.

MS McLEOD: Do you have any expectation about the trajectory, whether it continues on that similar increase?

20 COMMISSIONER SINGH: I would expect it to be going up, yes.

MS McLEOD: If we extrapolate from that last year, which was, I think, on my maths, an increase of around four, 4.3 per cent, that we'd expect there to be, for the 21/22 year, around 7650 children receiving child protection services?

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COMMISSIONER SINGH: Potentially. My maths is terrible.

MS McLEOD: That's a calculation, not an actual number.

30 COMMISSIONER SINGH: Yes.

MS McLEOD: Just to be clear. What do you say about that overall number?

35 COMMISSIONER SINGH: It's devastating. We'll talk more specifically, I'm sure, in a bit about the actual numbers of children in out-of-home care. But, as I noted, you know, as we have in the statement, children receiving child protection services could be anything from an investigation of a notification, being on a care protection order or being in out-of-home care. So it captures a broad range of activity. But it nonetheless represents intervention from the State into the lives of children and young people and their families.

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MS McLEOD: If we could bring figure 1 to your statement up again, which follows paragraph 33, you'll see there that there is quite an increase between 17/18 and 18/19; do we know why there was such a jump in services in that period?

45 COMMISSIONER SINGH: I honestly could not comment specifically as to that, no, sorry.

MS McLEOD: That period, just looking at a comparison, the jump in 17/18 to '18 and '19 is around 800 children, with the most recent increase of 19/20 to 20/21 to 317 by comparison.

50 COMMISSIONER SINGH: Yes.

MS McLEOD: But you don't have any sense of what caused that big increase in that year?

5 COMMISSIONER SINGH: No, I'd be hazarding to guess. There are a few things whirling around in my mind, but no.

MS McLEOD: Not holding you to anything, particularly in terms of it being accurate, but what are the things rolling in your mind as being possible contributors to the increase in notifications and services?

10 COMMISSIONER SINGH: Earlier we heard from counsel assisting McAvoy about the drivers of children going into or having connection with child protection services and drivers of that being family violence, homelessness, housing and security, exposure to drug and alcohol and other types of neglect and such. Family violence is a huge issue,
15 particularly - Aboriginal women and children are grossly overrepresented when it comes to being victims of family violence and we know that in the last few years, since the Royal Commission into family violence in Victoria, there's obviously been a lot of work around responding to family violence. So whether that has had some sort of impact on numbers, I'm not sure.

20 MS McLEOD: We expect to hear evidence this week that the mandatory reporting system under the Act itself provides a risk point for women seeking access to health services, for example, or reporting to police a risk that their children will then be removed by reason of that report. Are you hearing things of that nature?

25 COMMISSIONER SINGH: Sorry, I just stuck myself to the Velcro here. I'm sorry, can you explain that again?

MS McLEOD: We expect to hear some evidence this week that the mandatory reporting regime under the Act that requires certain - of professionals, for example, or police, to pass on and make notifications of potential harm to children when those reports - when those matters come to their attention. So a school teacher, health care worker, who is told about an incident of family violence is obligated to pass on that information to child protection authorities. Have you yourself come across reports that this is a disincentive for those people
35 raising concerns about family violence or other potential triggers for child protection intervention?

40 COMMISSIONER SINGH: So with my specific role with the Commission right now, I haven't seen that, but I could talk to some experiences in previous roles. For example, working with Djirra, the Aboriginal family violence service, the --

MS McLEOD: Yes. If you are comfortable doing that.

45 COMMISSIONER SINGH: Just a huge concern of any woman who is experiencing family violence to be speaking about that to any professional about getting help, any sort of assistance, that it triggers that mandatory notification, and there's a real concern that is absolutely entrenched in the psyche of Aboriginal community and Aboriginal women about the threat of removal of their children. So it makes it very difficult to seek assistance and help when that is a big threat that's hanging over you and, you know, an organisation like Djirra
50 obviously will be able to better talk in a more timely sense about those experiences.

MS McLEOD: Is it also the case for Aboriginal men seeking assistance?

COMMISSIONER SINGH: I couldn't comment specifically to that.

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MS McLEOD: Given the delivery of Uncle Andrew Jackomos' report in October 2016 with its 11 clear findings concerning the causes of contact with child protection services, resourcing of the sector, important culture safety and wrap around services, issues of government non-compliance with policy requirements, and lack of First Nations input, and his detailed recommendations for input, do you have any answer for how these numbers continue to get worse?

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COMMISSIONER SINGH: I think there's no one single answer. Uncle Andrew's work focused specifically on the experiences of Aboriginal children and young people in out-of-home care and since his vitally important work we've seen a range of activity and responses in response to the recommendations that he raised. We see a lot of - for example, I'll just raise the work - sorry, section 18 of the Children Youth and Families Act that allows certain Aboriginal Community Controlled Organisations to be able to take on - be delegated certain powers of the secretary in regards to once a child is in out-of-home care and take on the case management of that child. So that is at a point where the child has been removed. So that's at what we call the tertiary end, so at the much later stages.

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You know, there are some Aboriginal Community Controlled Organisations doing some fantastic work and, you know, working so closely and collaboratively with families and getting some really great outcomes but, for many of us, we feel that is far too late in the system, and that child protection requires a much more collaborative and intensive focus of services to address what the needs are of families and children and young people.

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MS McLEOD: Where would you be targeting those services - if tertiary is in out-of-home care, where would you be targeting those services?

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COMMISSIONER SINGH: So we need to look - every time child protection has an interaction with any family, but particularly for an Aboriginal family, Aboriginal child and young person, you want that interaction to leave that family better off than had they not had that interaction, you know, to see there is some sort of positive impact in that.

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Sadly, what we have seen - and I refer to it later in the statement around child death inquiries - some of the issues that we have been concerned about is notifications being made and then investigations, potentially, being done and then cases closed without any what I would call positive interaction, without any services being put in around the needs of the family and, you know, we sometimes see in those inquiries that there could have been several notifications about a particular child because of the situation they are in, whether they are exposed to family violence, or whether they are exposed to neglect or whatever it is, and when those children are left in those environments, they are having that cumulative impact of harm.

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Then, at some point, a child will be removed and so the child's going into out-of-home care with very complex needs, very complex experiences that often don't get addressed, whereas if we could get that support, that really in-depth collaborative working with families in that culturally safe way, in that trauma informed way, that really focuses on what is the positives

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that can be achieved for a family, that's where we need to put that investment. But, again, in the statement I talk about close the gap target 12, about reducing the number of Aboriginal children in out-of-home care by 45 per cent. That target currently sits with the Minister for Child Protection.

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So, in my view, that's far too late. We need a whole of government approach that sees collaborative efforts from spaces like health, from education, from a whole range of spaces, that prevent - that really wrap around families as soon as they are struggling, as soon as they are finding that they have need. We also need to support families to seek help without that threat of child removal which is so entrenched into our beings because it's what, you know, so many of our ancestors went through.

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MS McLEOD: Is it the case of either or in terms of government investment, either investing in the front end, wrap around services, or the tertiary end out-of-home care, or should they be doing both at least for a transition?

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COMMISSIONER SINGH: Absolutely. Both need vital attention and, you know, ideally, if you put in - I sort of imagine it as an inverted triangle, I guess, that at the top, if we have so much resources that wrap around families into that prevention side of things, that really said, "This is what families need to keep them safe, they need access to housing, they need stability in life", when there's are problems with drug and alcohol abuse, or with family violence, they need to have services that respond to what's driving those things and help protect children.

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Ideally, if we put enough resources and investment into that early intervention, hopefully, at that stage, we are capturing most families and it's only the incredibly vulnerable families when we absolutely need to remove children that is becoming a much smaller number.

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MS McLEOD: I take it that would have an impact not only on those children's and families lives and their positive outcomes but on the bottom line budgeting spend on child protective services at the tertiary end?

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COMMISSIONER SINGH: Absolutely. We talk about justice reinvestment, in terms of investing in the - and addressing the factors that lead to criminal behaviour and offending, you know, understanding the context of those things. So, similarly, if we are investing in families to support themselves, investing in parents to parent in positive ways and build on strengths, and such, connection with culture, all of those things, means that there is less need down the track to resort to foster carers, kinship carers, residential care services.

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MS McLEOD: So what we really need is prevention reinvestment?

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COMMISSIONER SINGH: Absolutely. Yes.

MS McLEOD: Can I now move to paragraph 34 of your statement and I want to come to figure 2 in a moment. I'm jumping you around the place. You've noted in 33 that, in Victoria, there's a substantial and alarming increase in the number of children receiving child protection services and, in 34, if you would just read that first line for us there.

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COMMISSIONER SINGH: Yes:

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“Victorian Aboriginal children come into contact with the child protection system at the highest rate in Australia.”

MS McLEOD: Why is Victoria so bad?

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COMMISSIONER SINGH: That is an excellent question and I don't think it's an easy question to understand. I don't have the insights into other jurisdictions and what happens there to, I guess, provide an answer that's comparative to Victoria with those other states.

10 MS McLEOD: In terms of socioeconomic standing of First Nations people in Victoria, is it comparative with other States and territories?

COMMISSIONER SINGH: I honestly need to look that up and find out that information but I know that, for example, Aboriginal people in Victoria are the highest sort of
15 group - type - group of people that are seeking housing, that need housing and that something like only a third of the housing need is met. So, you know, housing is so vitally important to so many other things, it's where you rest, it's where hopefully you're safe, it's from where you can go to education, to work. A whole range of things. It's where you connect with many family and community. So, you know,

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If we are not addressing those really vital baseline needs of shelter, of connection with community, we have got no hope in addressing the other more complex issues that come into people's lives.

25 MS McLEOD: I take it from what you are saying there it's not just any house, it's a house connected to family and community and culture?

COMMISSIONER SINGH: Well, it's - absolutely. And vitally a house that's safe, you know, that where you are not experiencing violence or harm or anything like that. But, you know,
30 I'm sure from anyone that have experiences here in the room, the wonderful thing about having your own space to live is that you invite people into it. That's where you connect with family and community. That's where you feel safe and these are so many things - these are the things that are missing from these children's lives that see them become entrenched in the child protection systems.

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MS McLEOD: Can we just bring up figure 2. You note in your statement at paragraph 34:

“In 2020 to 2021 for every 1,000 Aboriginal children in Victoria, 296.3” --

40 That's close to a third:

“... were receiving child protection services.”

COMMISSIONER SINGH: Yes.

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MS McLEOD: So a third of all Aboriginal children in Victoria.

COMMISSIONER SINGH: Yes.

MS McLEOD: Figure 2 shows the number of Aboriginal children receiving services in Victoria has continued to grow steadily, whilst the remaining States and territories (indistinct) declined, the rate in Victoria remains the highest and continues to grow each year. We have just talked about that. There is nothing, to your knowledge, that really explains that growth and comparison with other States?

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COMMISSIONER SINGH: I'd have to look at what other States are experiencing and potentially what measures have been put in in other States that, you know, have addressed - that have kept the trajectory lower than ours.

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MS McLEOD: In paragraph 35 you note that, essentially, Victoria is the worst performer at every stage. So, in terms of notifications, investigations, substantiations, care and protection orders and care, it's the worst at every stage.

15 COMMISSIONER SINGH: Figure 3 is probably the best representation of that.

MR McLEOD: If we could just bring that up, please. So we see there 5.6 times more likely to be the subject of a notification?

20 COMMISSIONER SINGH: Yes. So Aboriginal children are 5.6 times more likely to be the subject of notifications compared to non-Aboriginal children, then finalised investigations, 8.2 times more likely, substantiations, 8.9 times more likely, care and protection orders, 16.9 times more likely, and then to go into out-of-home care, 21.9 times more likely.

25 MS McLEOD: Just to capture that final bar: First Nations children are 22 times more likely to be in care than a non-First Nations child?

COMMISSIONER SINGH: That's correct.

30 MS McLEOD: In Victoria. As you note in paragraph 36, this suggests that the department's efforts to support families earlier prior to removal are not working for Aboriginal children and continues to be a lack of trust between Aboriginal families and the department. Could I just ask you to expand on that? From what you have, sitting on your desk, you say the government has responded to those or is in the process of responding to those and you also mention the lack of trust between families and the department and we heard Aunty Eva Jo's evidence this morning. Could I just ask you to expand on your explanation about what those figures are showing?

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40 COMMISSIONER SINGH: To me, my understanding of those figures is that when child protection interacts with an Aboriginal family, it's more likely that they are going to be - that that child's going to be put into out-of-home care, that they'll be removed from their family, and that, as you go further into the system, you're becoming further and more entrenched in the system. Again, you know, as matters go over time, I raised before that's something that we see in some of our child death inquiries is that there will be a number of notifications that don't see any actual work happening with families. So you've got children who enter the child protection system, sometimes coming in with much more complex traumas because they have been exposed to the effects of cumulative harm.

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50 MS McLEOD: The recent SNAICC Family Matters report notes that in Victoria the proportion of First Nations children were placed with relatives or kin was only 39.6 per cent

in 2020/2021 and the Commission, itself, has expressed concern about adherence to the Aboriginal child placement principle and cultural plans for children. I will invite you to look at paragraph 36, again, and your conclusions there. Just picking up what you said before, does that tell the Commission there needs to be a major and sustained investment in these pre-emptive services, assisting families, addressing family violence, substance abuse, other health needs, as early as possible?

COMMISSIONER SINGH: Absolutely.

MS McLEOD: With the aim of supporting families?

COMMISSIONER SINGH: Absolutely. And whether that's actually part of the child protection system or earlier, whether there's some sort of other way to work with families that doesn't require that specific State intervention, that encourages people to reach out and get help and feel that they can do that safely without judgment, that's the sorts of services that we need to see greater investment in.

MS McLEOD: What else could we consider there beyond State intervention or State delivered services?

COMMISSIONER SINGH: Well, you know, some of the most amazing things that I get to see in my job are the work of Aboriginal Community Controlled Organisations, being able to be resourced in ways that they can be self-determining and that they can actively work with community and, you know, out of positive relationships with community, support families to be able to engage with them in a range of other services, and really have that - that positive approach of, you know, this is what's good for your family, this is what will help them and, you know, this will help keep your kids strong, this is what will help you, you know, potentially even deal with some of the trauma you might have had as a younger person or a child.

There is so much evidence of children and young people who have been through the system, who grow up, have babies of their own, who then get removed themselves. So, you know, really breaking that cycle of child removal and addressing what the needs are in culturally sensitive, culturally appropriate ways, about collaborating closely with families, about positively supporting them.

MS McLEOD: We are going to hear from Commissioners, Aunty Muriel Bamblett tomorrow morning, and the need to echo this work on an ongoing basis. Just coming to paragraph 37, would you read that paragraph too, please.

COMMISSIONER SINGH: Yes:

“Victoria continues to admit Aboriginal children into care at a higher rate than any other State or territory by far.”

Then I refer to figure 4:

“The 2020/20 21 rate remains more than double but of the second highest rate, which is South Australia. Further, the rate has reduced slightly since 2019/2020. The ratio of

representation of Aboriginal children being admitted into out-of-home care when compared to non-Aboriginal children increased.”

5 So in 2019/2020, Aboriginal children were 16.4 times more likely to be admitted into out-of-home care than non-indigenous children and then in 2020/2021 the number went up to 17.6 times more likely.

10 MS McLEOD: If we bring up figures 5 and 6. You see for figure 5, Victoria is the outlier, way up the top of the chart there, peaking at 39.8 in the 2019/20 period, and falling back slightly to 36.5, that is the rate of Aboriginal children admitted to out-of-home care per thousand, with the best performer, is that Tasmania down the bottom or --

COMMISSIONER SINGH: The colours are tricky. Tasmania, yes.

15 MS McLEOD: So perhaps if we compare to New South Wales, which is the third from the bottom, their rate of removed is around 10 per thousand, and Victoria's is 36.5. Coming to figure 6, this represents the rate of overrepresentation of Aboriginal children admitted to out-of-home care by indigenous status and State or territory, the rate there for Victoria is 17.6.

20 COMMISSIONER SINGH: Just to look at those - sorry, I have just noticed that there's a typo in the - where you've got 2016/17 to 2020/21, that should be 2014/15. I apologise for that.

25 MS McLEOD: That's all right. We can make that change.

30 COMMISSIONER SINGH: When you look at figure 5, the preceding figure, there is that drop between 2019/20 and 2020/21, the drop from 39.8 to 36.5 Aboriginal children admitted to out-of-home care per 1000 children, but if you look at figure 6, you'll see that the overrepresentation rate continues to raise and that's because when we look at actual numbers, we don't have them in here, but actual numbers of non-Aboriginal children going into out-of-home care also dropped in that time period. So it creates that bigger gap between - in terms of overrepresentation of non-Aboriginal children and Aboriginal children.

35 MS McLEOD: And as we see from fig 6, there is a slight drop in 17/18 to 18/19?

COMMISSIONER SINGH: Yes.

40 MS McLEOD: And then, again, the escalation through to the current day statistics?

COMMISSIONER SINGH: Yes.

MS McLEOD: Could I invite you to read paragraph 38 in relation to the Commission report.

45 COMMISSIONER SINGH: Yes:

50 *“In 2016 the Commission published Always Was, Always Will Be Koori Children: Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria. The landmark report incorporating findings from Taskforce 1000, an 18-month project which critically reviewed the case plans and circumstances of 980 Aboriginal*

5 *children in out-of-home care. This inquiry found that the child protection system was inherently culturally unsafe for Aboriginal children and their families and that many children in out-of-home care had experienced continuing harm while in care. While there have been some significant reforms since its inquiry, including the transition of Aboriginal children to Aboriginal care program” --*

That's the section 18 of the Children Youth and Family Act work:

10 *“... since the reports were published the number of Aboriginal children in out-of-home care in Victoria has risen from 1759, as at 30 June 2017, to 2572, at 30 June 2021. The Commission continues to hear stories and see examples of racism within the child protection system and that Aboriginal families are not provided with the support they need at the time they need it to care for their child/children at home.”*

15 MS McLEOD: But just in relation to the stories that the Commission continues to hear since the publication of that report, can we invite you to consider returning to the Commission next year to address those stories in a way that protects the privacy and confidentiality of those stories?

20 COMMISSIONER SINGH: Yes.

MS McLEOD: Thank you. In terms of the findings of the 2016 report that many children in out-of-home care had experience continuing harm while in care, isn't the point of removal to provide safety to a child?

25 COMMISSIONER SINGH: Absolutely. I think that's the absolute expectation of families when their children are removed and of children and young people who are removed, that they are going to potentially be in a better set of circumstances.

30 MS McLEOD: This, again, it might be a question for government, but do you know whether that risk of being harmed while in care is factored into the risk assessment matrix?

COMMISSIONER SINGH: I couldn't answer that. I would have to look at the risk assessment matrix.

35 MS McLEOD: Should it be?

40 COMMISSIONER SINGH: I think - I don't think enough is done to actually understand the impact of removal and how - that the fact of removal in and of itself often is a traumatic experience. So, you know, from some of the children we have oh spoken to, you know, about police, child protection workers, coming into their house, telling them they have to pack and go, you know, the experience of this is huge and, you know, we haven't fully understood the trauma of the Stolen Generations, of being removed from families. So, you know, we need much more to understand what that removal means for a child.

45 COMMISSIONER BELL: Can I ask a question.

MS McLEOD: Yes, Commissioner.

COMMISSIONER BELL: This interaction raises in my mind whether the proportionality of the intervention is a subject of consideration. In other words, taking into account the consequences of the intervention versus the need to undertake any intervention. The way that the analysis has been opened in the addresses this morning, and in discussion, has been in terms of assessment of risk, which is very much harm-focused rather than consequence-focused. In other words, it's not exactly a proportionality assessment, it just looks at risk of harm in a rather discrete and narrow way.

I have other questions for you relating to human rights, to which I will come, but the question I have for you now is: does a risk assessment at the point of the taking of the action involve proportionality considerations requiring a wide assessment of the consequences of the action rather than just the question of risk?

COMMISSIONER SINGH: I'm not able to answer that without looking at the actual risk assessment matrix and the actual questions and things that are determined - sorry, that are used to make those decisions, and then, you know, potentially it would require looking also at files of children and seeing what those decisions were, how they were framed.

COMMISSIONER BELL: Thank you.

MS McLEOD: We can obviously delve into this in more detail. There is, for the Commissioner's benefit, some online tools that point to the steps and questions that child protection workers are asked to consider at each point of - each decision point, and we will need to look at their training and guidance as to how they make those decisions as well.

COMMISSIONER HUNTER: You just spoke before about we don't understand the impacts of child removal and we still don't take into consideration Stolen Generations, and we spoke earlier about the age of criminal responsibility. So my thoughts for Aboriginal children is that if we don't understand the impact fully, which is also developmental, as we know, that has an impact on - or does that have an impact on a 10-year-old's ability to make clear and safe decisions of themselves or understand the consequences?

COMMISSIONER SINGH: So in *'Our Youth, Our Way'*, we talk about the impact of trauma on children's development. There's so much research and evidence about the impact of trauma on how children develop and the way it shapes their behaviours, and how they relate to people around them and how they understand other people's traumas and such.

That's, you know, for a child that's experienced trauma. But what lots of medical evidence tells us also that even a child who hasn't experienced any sort of trauma, a child just in their normal development, it takes until they are 14 years of age for that development mentally and intellectually to be fully there around, for example, making decisions and understanding consequences of those - sorry, making decisions to act in a certain way and then understanding the consequences of those actions.

So you've already got children who, you know, in the best case scenario, don't have the capacity to often understand right and wrong, from the way doing this over here plays out now, but then so many children who are what we call crossover kids, children who have been in out-of-home care and then become part of the youth justice system, we see them coming with huge unaddressed trauma, trauma that hasn't been dealt with as part of their care and, you know, just talking to some - especially in regional areas, you know, getting access to the

services that are needed to respond to the needs of children with different types of trauma. There are such limited resources from professionals, from paediatricians, from whoever is needed.

5 So, you know, we are - in lots of ways, we are setting up these children to fail.

MS McLEOD: Just so we understand it, when you talk about trauma, you're not just talking about direct trauma that a child may personally have experienced in their living environment but their parents and families trauma that might have an indirect or lateral impact on them as well?
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COMMISSIONER SINGH: Absolutely. Again, to draw on Auntie Eva Jo's amazing brave evidence this morning of how, you know, her child removal impacted on her as a parent, and you hear so many stories of Stolen Generations, survivors, who never had that modelling of what a good, loving parent is - sorry, not "never", but after their removal, didn't get access to that, and so, you know, how do you grow up and parent when you've not had those things modelled for you. Again, you know, looking at our various inquiries, you know, children will often talk about that they have just not had someone show them how to do things when they are in out-of-home care, had just not had that, you know, that key person who understands who they are and what they need.
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MS McLEOD: Is the problem even worse for kids in the youth detention system? So that access to those health and other wellbeing services are harder to access?

COMMISSIONER SINGH: Absolutely. You know, it's - and also, the - so, you think of, you know, engagement with the youth justice system as a - journey, every interaction is frightening and there's gross power imbalance between a child as young as 10 years old engaging with police, engaging with courts, engaging with a whole range of adult systems. So, you know, there's often trauma of just going through that system, let alone to when they get to - sorry - and, you know, children might be remanded, they might not be bailed for a whole host of reasons. So they are getting exposure to the youth justice system at earlier stages.
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'Our Youth, Our Way' talks about Aboriginal children having exposure to the youth justice system at much younger ages than non-Aboriginal children. So all of these things are traumatic experiences and it all adds up for children and how they deal with - how their emotions, you know, play out, how their behaviours play out.
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MS McLEOD: If evidence is led before this Commission that suggests children, as part of behaviour management in youth detention, are being denied access to health services, what would you say to that?
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COMMISSIONER SINGH: So we have our independent visitor program that goes in and talks to children and young people who are in youth detention, whether they are on remand or serving a sentence, and sometimes they will talk about not being able to access certain needs and, you know, will advocate with youth detention services to make sure those needs are met. But there can often be delays and, you know, if you think about - there are certain services are only available to children once they're sentenced compared to being on remand.
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So being on remand is an opportunity that you could - I don't believe in remanding children at all but, you know, if you think - if you've got a child on remand, that's an opportunity to work with that child so that when they ultimately come out of the system, they are in a better place than when they came into it.

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COMMISSIONER WALTER: Can I just ask a question here, it might be a question for the department: but given the huge disproportionate number of children being removed in Victoria, and we have sort of said that Tasmania's good, well, five times the rate is a fact that we are considering that's good, is despairing, but has the department - I see all the reports you've done and other people have done, has the department actually looked into itself to actually say why on earth are things so terrible in Victoria?

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COMMISSIONER SINGH: We, in some of our reports, refer to some of the inquiries - I couldn't tell you what actual work the department might have specifically done but, you know, we're, I guess, in a way, limited because our legislation specifically talks about monitoring of children in out-of-home care and youth justice spaces where children are most vulnerable in those spaces. There is a whole range of other parts of child protection that we don't get to see unless we do these systemic inquiries and, you know, they take a lot of resources, a lot of time to come out with findings.

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COMMISSIONER WALTER: It just seems crazy that it's left up to you when the problem is so large. This huge bushfire that people are not noticing.

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COMMISSIONER SINGH: I think there is work done within the department - I can't - I just can't speak to it. But also there are other places that also do inquiries such as the Australian Law Reform Commission or, you know, a whole lot of other spaces.

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CHAIR: Do we speak about this accurately at all when we talk about child protection? We have had a lot of difficulty with language and about child removal. We have had protection as a word for Aboriginal people across three centuries. Are we kidding ourselves? Are we being kidded or are they kidding us? Seriously, why, hearing the things that we are hearing about children, are we still using those words when they are sort of duplicitous?

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I mean, I just find it quite distressing to hear some of the things that we have heard and still use that word, "child protection." It's in the system, it's embedded in the system. The beginning of the Protection Act we know was to separate Aboriginal people from their land and from family because they looked different. I just find this like doublespeak, quite frankly. I'm sorry, I don't expect you to answer that but I have to just raise it because we keep saying "protection" and it is not. It is not.

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We had welfare in Victoria that followed protection but the behaviour never changed. What we are seeing here is the way the system treats people, using that terminology, is still similar kinds of behaviour and especially from Eva Jo this morning, especially from her.

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COMMISSIONER SINGH: And I think in community lots of people don't refer to it as a child protection system; they refer to it as a child removal system because that's what their experiences tell them is happening.

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CHAIR: Yes.

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MS McLEOD: Would the Commissioners like to take a mid-afternoon break, and Ms Singh as well, whether you would like to keep going or take a short break?

COMMISSIONER SINGH: Maybe a short break will be lovely.

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MS McLEOD: We'll just have 10 minutes.

CHAIR: 10 minutes.

10 <ADJOURNED 3:19 PM

<RESUMED 3:30 PM

CHAIR: Counsel, are you ready to resume?

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MS McLEOD: Thank you, chair. Ms Singh, I might just get you to explain what's being shown in figures 7, 8, 9 and 10.

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COMMISSIONER SINGH: Certainly. So figure 7 is the number of Aboriginal children in out-of-home care in Victoria from the period 2017 to 2021. And so in 2017 we have 1759 Aboriginal children in out-of-home care and in - by 2021 we have 2572 children in out-of-home care - Aboriginal children in out-of-home care.

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COMMISSIONER BELL: Counsel, I wanted to say before, this is an observation, not a question, that Victoria has the lowest portion of Aboriginal people, one per cent of the population, 60,006 million, the national average is about three per cent, about 900,026 million, yet we have the highest rate of child removal. I don't know whether there is any association in those figures but it does, on the surface, suggest that welfare authorities, to call them that, probably have more to do with Aboriginal families here than anywhere else.

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COMMISSIONER SINGH: I think based on the numbers that would be a fair assessment, yes.

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MS McLEOD: Do we know from the latest census data how many Aboriginal children there are living in Victoria as a total, although, of course, that number would move.

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COMMISSIONER SINGH: We did look that up and I will find my notes. From our calculations from the 2021 census data we had 25,388 Aboriginal children in Victoria, according to 2021 data. As you said, Commissioner Bell, we are a very small proportion of the community and I believe our - from that 2021 census data, our median age, if I have got that right, is 25 years, so our community is a young community, and so the impact of child protection of out-of-home care, of the youth justice system, upon our community is huge, and it means it is an impact that stays with those children and young people as they grow older.

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COMMISSIONER BELL: Exactly. But it suggests that the absolute or qualitative impact is even greater than the proportionate numbers would suggest.

COMMISSIONER SINGH: Yes.

COMMISSIONER BELL: And that says something about the relation of (indistinct) interference between the State in Victoria and Aboriginal families.

5 COMMISSIONER SINGH: Yes. As I said before, you want every interaction with the systems, child protection, out-of-home care, youth justice system, you want every interaction to leave a child better off than when they came to it, to leave families better off than when they came to it, and where they interacted in the first place and, sadly, that's not what Aboriginal, young children and their families are telling us.

10 MS McLEOD: So figure 8.

COMMISSIONER SINGH: Figure 8 is, again, a comparative table between Victoria and other jurisdictions and States and territories in Australia. It's the rate per 1000 Aboriginal children in out-of-home care for Victoria and other jurisdictions - sorry, 2017 to 2021 and, as
15 you can see, again the top line is Victoria and our rate per 1000 Aboriginal children is obviously higher and has had that steady increase as well.

MS McLEOD: Figure 9.

20 COMMISSIONER SINGH: So figure 9 is a representative of the same data as figure 8 just represented in a different way but it also compares the rate of non-Aboriginal children - we have got there non-indigenous children - in each of the jurisdictions. So, you know, for non-Aboriginal children in Victoria, it's 4.7 out of 1000 that are removed, or Aboriginal children in Victoria, it's 103 out of 1000. So roughly one in 10.

25 COMMISSIONER WALTER: If you look across at the non-Indigenous children, you can see that's pretty much similar across the different states, there's a huge disparity for the Aboriginal children which suggests that there's something particular about the State of Victoria, because non-Indigenous children are being removed roughly at the same rate as all
30 the other States. Aboriginal children are being removed at this huge multiplier. I mean, obviously there's something wrong with all of the States, but it suggests it's policy, not population.

COMMISSIONER SINGH: The number, if we just looked at Victoria as the gap between
35 Aboriginal children's removal rates and non-Aboriginal children's removal rates, that's huge, and appalling simply looking at Victoria. But looking comparatively at other States, you know, I don't have the insight into what specifically is happening in those states and so, you know, the fact that there is all of those variations across different jurisdictions suggests that there are different things happening across the different States and territories.

40 COMMISSIONER HUNTER: Can I ask: is the system broken?

COMMISSIONER SINGH: There's two ways to look at that, and I'll just pick up on
45 Commissioner Bourke, your comment before, about how we talk about the system and if we talk about it as a child protection system, what Aboriginal children and young people and their families are telling us, is that it doesn't work for them. If we talk about the system as a system of removing Aboriginal children, then you might say that it's doing exactly what it was meant to do. As you said, Commissioner Hunter, before, you know, these are policies that have come out of a legacy of child removal in the context of colonisation, of break-up of
50 families, it's a challenging question.

COMMISSIONER HUNTER: It's just that it hasn't changed and it's getting worse, and although - and rightly so, you know, there are some good things in there that you talk about, you know, section 18, but there's still no change. It's getting worse.

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COMMISSIONER SINGH: The reason I don't want to come out and say one hundred per cent that the system is broken because there are those aspects where the system works and largely where Aboriginal Community Controlled Organisations can do amazing things with the children and young people that are in their care and the families that they work with. But that's - they have had to be brought into a system that overall doesn't seem to provide that care and protection for our children.

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COMMISSIONER HUNTER: But it's still the numbers.

15 COMMISSIONER SINGH: Still the numbers.

COMMISSIONER HUNTER: Heartbreaking, as you know.

COMMISSIONER SINGH: They are. You know, it's - it should be a State shame, it should be a national shame, the rate of removal of Aboriginal children and young people, and - yes, it's heartbreaking.

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COMMISSIONER HUNTER: I'm just picking up on Chair Bourke's comments earlier, that it's shameful, and we can all sit here and talk about numbers and interventions, but nothing's working. I just wanted to make that comment, sorry.

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MS McLEOD: So coming to figure 10, and the comparison between Aboriginal children entering and discharged from care, 2016/2017 to 2020/2021, we see there the increase in the numbers of entry peaking in 1920 but also the increase in number of children discharged from care. Now, is this just a reflection of the age of children in the system, that more are coming through, or is something else happening here?

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COMMISSIONER SINGH: So when we talk about Aboriginal children being discharged from care it could be that they are ageing out of the child protection system, it could be that they are moving to permanent care arrangements, it could be that they are being reunified with their families. It could cover a host of things that have the children out of that child protection system.

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MS McLEOD: So the net result of this is that every year more children are entering than are discharged?

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COMMISSIONER SINGH: Absolutely.

MS McLEOD: That is a cumulative impact over a number of years?

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COMMISSIONER SINGH: Well, it says that the system is unsustainable as it is because we are not doing enough to protect children and keep them safe with their families and therefore preventing them from going into out-of-home care but we are not seeing them reunify, potentially, or doing that work whilst the child is in out-of-home care, doing that work with the families that supports them to have reunification.

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MS McLEOD: I assume it follows that we would expect the negative outcomes that you've talked about in your submission, would be accumulating too for those children, their families and the general community?

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COMMISSIONER SINGH: Well, they are engaging longer with a system that isn't, from what they tell us, giving them the supports that they need.

MS McLEOD: Not just what they are telling us but we see in the statistics of youth flowing through to the criminal justice system, mental health services, the impact on the ACCOs and other organisations providing services?

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COMMISSIONER SINGH: Yes.

MS McLEOD: I just want to float a couple of things with you to ask whether you're aware of whether there has been any impact on these numbers caused by these three things. The first is the increased incidence of reporting following the Royal Commission Into Family Violence report of 2016; the second is a bail law reform following the Coglein review in 2018; and the third is the inclusion in the numbers of young people accessing programs at the age of 18 to 21?

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COMMISSIONER SINGH: Do any of those things anecdotally or, according to your research, have an impact on these numbers?

COMMISSIONER SINGH: On the numbers of children entering and being discharged from out-of-home care?

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MS McLEOD: And the numbers generally of children exposed to child protection services.

COMMISSIONER SINGH: I mean, I can speak generally about their impact of bail reform, say, on Aboriginal families, because the bail reform that came through in 2018 has had a disproportionate impact on Aboriginal women and the majority of Aboriginal women who are on remand and being sentenced are mums and they are also experiencing high levels of family violence. So knowing the way - you take an Aboriginal mum away from family, there's going to be a huge flow-on effect for that family. So potentially that's leaving children vulnerable, leaving them exposed with no other family supports. I mean, so, potentially, that's leading to them going into out-of-home care. But I couldn't say definitively what impact these three factors have had on these numbers. That would require greater analysis.

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MS McLEOD: The increased rate in the incarceration of women on remand or custodial sentences do you say is having a direct impact on their children and their exposure to child protection services?

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COMMISSIONER SINGH: I don't have any research or inquiries that directly can support that for me. There might be other places but I would imagine you take a mother out of her home and out of the lives of her children, that's going to have a flow-on effect.

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MS McLEOD: Can I just summarise where we have been in the discussion so far. The rate of removal for First Nations children in Victoria is the highest in the nation, and it's almost double the nation-wide rate, and around 22 times the rate of removal for non-First Nations

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children in Victoria. Those numbers are increasing every year, despite the national closing the gap commitment 2019 target that you mentioned and despite the work that's been undertaken so far to transfer child protection functions to ACCOs. In simple terms, we have more children being placed away from their families and immediate family and more children who are going to have to deal with the trauma that they are being removed from and that intergenerational trauma that you touched on in a family of strangers, and often absent from their siblings; is that correct?

COMMISSIONER SINGH: Yes.

MS McLEOD: More children living with strangers, strangers generally, what is that doing to First Nations children in this State, in terms of their well-being, their need for love, their need for physical contact and affection, their need for culture and a sense of belonging? What do you see is the impact of that in your work?

COMMISSIONER SINGH: So I'll start with the impact on culture. In *'Our Youth, Our Way'* and *'In Our Own Words'*, chapter 4, that specifically talks about Aboriginal children, young people in care, we see a very tenuous link with culture, if at all. We see children who are not having connection - so when we look at out-of-home care we refer to three main areas, so kinship care, foster care and residential care and, you know, kinship care where the child might be placed with a family member, a relative, often for Aboriginal children they are not being placed with Aboriginal families, either in kinship care or in foster care, they are going often into residential care spaces where they don't have Aboriginal workers who can look after them, who are working in those spaces and helping those children connect with culture. Uncle Andrew's work talked about - both the rates of completion of culture support plans and also the quality of cultural support plans. We still see --

MS McLEOD: Which are very low and inadequate.

COMMISSIONER SINGH: Yes. We still see, you know, in my short time, some of the cultural care support plans that I have seen don't provide a lot for the child.

MS McLEOD: Tick a box sort of exercise.

COMMISSIONER SINGH: I think a lot of people see it as that but they're lacking in information and lacking in knowledge, in connection. One of the - in *'Our Youth, Our Way'*, there's a quote that talks about how Aboriginal and non-Aboriginal people were referred to in the cultural safety plan, you know, in derogatory ways, in ways that aren't helpful, you know, children talk about connection with culture just not being obvious or, as they are getting older, it's the child, the young person, who is trying to drive that connection, going to workers saying, "I want to know about this, can I connect with that? Can you take me to a NAIDOC march or help me participate in NAIDOC week events?"

At the same time, you know, these children are dealing with the trauma that might have bought them - might have led to them being removed, the trauma of actual removal, and then, you know, trauma that might happen in whatever placement they are in. So if that's not being addressed - and, you know, we hear stories about some children who are literally just surviving, they are just trying to get through the day to day, you know, and then, you know, culture kind of gets presented to them as not in a positive way, kind of like, "It's this thing we have to do because you're an Aboriginal child, you know, we've got a culture care plan."

But for all of us who have grown up with culture and connection, we know how positive it is, but for so many of the children that we see in out-of-home care they don't see that positivity of it, they don't get that access. If they do, they speak glowingly about connection with
 5 Elders, with Aboriginal community services, they speak amazingly of that feeling of knowing who they are and how they are connected and how that's a --

MS McLEOD: Just to drill into that a little bit: if a child is placed with a non-Aboriginal family or a family that doesn't practice or observe culture, how is that child's needs to have
 10 exposure to and learning about culture dealt with through these plans?

COMMISSIONER SINGH: Each plan is different and, you know, whilst there might be a plan that sets out certain things, how well that is adhered to, how well that's put into action as a live document and regularly, you know - children regularly being engaged with culture, that
 15 could be a completely different thing. So, you know, lots of us don't live on the country that we're connected to. So I'm Yorta Yorta, I've never lived or was raised on Yorta Yorta country. So many of our children are not on the country that they are connected to.

So, you know, you've got physical distance from connection to culture but you've
 20 also - connection to country specifically but then you might also have physical distance in terms of how a child gets to different Aboriginal Community Controlled Organisations or supports. A whole range of factors can go into a child not getting connection to culture.

MS McLEOD: I take it from what you have just said that there is a need for regional services to be well supported so that children can be placed as close as possible to family and
 25 community?

COMMISSIONER SINGH: Yes. Absolutely. Absolutely.

MS McLEOD: I just want to, in the time remaining, deal with the issue of youth justice and then any recommendations you might have for urgent reform for consideration of this
 30 Commission. Can we deal - can I invite you to look at paragraph 42 and onwards in terms of youth justice.

COMMISSIONER SINGH: Yes.

MS McLEOD: You note the age of criminal responsibility is 10, then, at paragraph 43, you note the overrepresentation of Aboriginal children and young people in the youth justice
 40 system, with a breakdown there, accounting for 15 per cent of children and young people aged 10 to 17 years under youth justice supervision. So that is some sort of form of supervision of courts, is it?

COMMISSIONER SINGH: So that might be a court order that has the child in the community but some sort of supervision over them through some type of order.
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MS McLEOD: Yes. More than 10 times likely than non-Aboriginal children and young people to be subject to community-based supervision. Is that a subset of youth justice supervision?

COMMISSIONER SINGH: Sorry?

MS McLEOD: You have written “might include custody”, for example.

COMMISSIONER SINGH: Yes, my apologies.

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MS McLEOD: And more than nine times more likely than non-Aboriginal children and young people to be in justice custody and those include detention facilities?

COMMISSIONER SINGH: Yes.

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MS McLEOD: Are there any children under the age of 14, do you know, in Victoria at the moment who are in youth detention facilities?

COMMISSIONER SINGH: Under the age of 14?

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MS McLEOD: Yes.

COMMISSIONER SINGH: I wouldn't be able to answer that off the top of my head. I'd have to get access to data.

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MS McLEOD: That's all right. We'll track those numbers down for you, Commissioner do you know if there are any children currently under the age of 18 who are currently in adult gaols?

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COMMISSIONER SINGH: Yes.

MS McLEOD: Yes, there are?

COMMISSIONER SINGH: Yes.

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MS McLEOD: Is it a large number; more than 10?

COMMISSIONER SINGH: I'd have to check but I know there is.

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MS McLEOD: In terms of exposure to the youth justice system, looking at paragraph 33 and 44, you refer to the report, ‘*Our Youth, Our Way*’, which was a major report into the overrepresentation of Aboriginal children and young people in Victoria in youth justice system and the things the data confirms there in that report. I just want to bring up that report. Page 21 of that report under the heading of ‘*Systemic Inequality in the Victorian youth justice System*’, I assume this is where this section of your submission comes from, you note about eight lines down:

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“It’s important to acknowledge some gains have been achieved with reductions in the number of Aboriginal children and young people under youth justice community and custodial supervision over the past five years. Youth justice is ahead of its target to reduce the average daily number of Aboriginal children and young people aged 10 to 17 years under its supervision by at least 43 children by 2023. Nevertheless, overall inequality in youth justice system outcomes remains and further investment and work are required. There continues to be an everyday reality that Aboriginal children and young people in Victoria are disproportionately targeted by the police, sentenced by the court and removed from their

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families and communities, while the rural numbers are small the overrepresentation remains stark.”

5 Do you see that passage? You go on - the report goes on over the page, at 23, to describe the need to improve data collection and reporting in the youth justice system; do you see that heading?

COMMISSIONER SINGH: Yes.

10 MS McLEOD: And, essentially, the report is concerned with gaps and incapability of data, which is further explored later in the report, but this is a prevailing issue, isn't it, this fact that different entities, including police, which informs court numbers, including child protection, including other aspects of government, have different ways of collecting the same data so it's
15 difficult to compile and make meaning of that data and the way that children are working through the system?

COMMISSIONER SINGH: Yes.

20 MS McLEOD: We may go into this in more detail next week, Commissioners, in relation to youth justice. Are there similar gaps in the data regarding child protection context of Aboriginal children compared to the child population as a whole, or other data that would assist you in your work?

25 COMMISSIONER SINGH: That's a really good question. Data that would assist us in our work. So we are limited in our powers as to what data we can see. So with our monitoring and oversight powers we can see, for example, the serious incidents that have happened in out-of-home - sorry, in residential care and in youth justice detention but there could be a whole range of other data that would be useful to us in terms of, you know, the numbers of
30 Aboriginal children going into care each week, the areas of work that's being done or - there's a whole - I could go on forever and make a list of what sort of data would be really useful but there would be a lot.

MS McLEOD: It might be something we might follow up with you, if you don't mind.

35 COMMISSIONER SINGH: Yes.

MR McLEOD: If you look at paragraph 46 of your statement, you note that:

40 *“Aboriginal children and young people continue to be 6.4 times more likely to be in detention than non-indigenous young people.”*

Just anecdotally - and there's figure 12 there that sets out that comparison - anecdotally are they similar offences that are leading to people's detention, do you know, or are they similar
45 patterns of behaviour?

COMMISSIONER SINGH: I couldn't answer with regards to the - I'd have to come back to you on the specific types of offending.

MS McLEOD: The sort of question I'm asking is following on from the way Commissioner Bell framed his question about child protection interventions, whether interventions by police, with respect to First Nations youth, are proportionate and necessary also?

5 COMMISSIONER SINGH: Well, we know that Aboriginal children are more likely to be arrested and detained by Victoria Police, that they are less likely to be cautioned than non-Aboriginal people and young people, and so what that means is that what we saw in *'Our Youth, Our Way'* was that Aboriginal children are coming into contact at a much earlier age with the youth justice system. So research has shown that the earlier someone comes into
10 contact with the youth justice system, the more likely they are to stay engaged with the research that's referred to in *'Our Youth, Our Way.'*

MS McLEOD: That being the adult justice system?

15 COMMISSIONER SINGH: Yes. Further along in the youth system and then the adult justice system.

MS McLEOD: So when people talk about, including when counsel assisting, about the pipeline, that's confirmed by the statistical analysis that you've undertaken?

20 COMMISSIONER SINGH: Yes. That the Commission's undertaken.

MS McLEOD: Can I invite you to turn to page 169 of this report. Under the heading of *'The Overrepresentation of Aboriginal Children Aged 10 to 15 Years in Custody'*, so this
25 obviously captures that critical group of children for whom the campaign raise the age is targeting from 10 to 14. We see there under table 5.5, that in 2019, 39 Aboriginal children aged 10 to 15 received a custodial order, remand or sentence, or 15 per cent of the total, and to make sense of that, we have to consider the percentage of Aboriginal children of the total Victorian population aged 10 to 15. The number is around 1.25 per cent in 2016 for children
30 10 to 23. Even if the numbers are in that broad range, that's a staggering comparison between Aboriginal and non-Aboriginal children; do you agree?

COMMISSIONER SINGH: Absolutely.

35 MS McLEOD: Do we know how many children aged 13, 12, 11, 10, are currently in some form of custody in Victoria, Aboriginal children?

COMMISSIONER SINGH: I don't have that data to hand. I would have to come back to you.

40 MS McLEOD: If you look at the previous page, 168, under the heading *'Custody is Costly'*, this report considers the ineffectiveness of custody and the great social cultural health and economic costs for children, young people, communities in the State. In 2019/2020, Victoria spent \$2450 per day per child or young person in custody; do you see that figure?

45 COMMISSIONER SINGH: Yes.

MS McLEOD: Is that roughly equivalent to today's terms? I assume there's been some increase on that number.

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COMMISSIONER SINGH: There may have been. I couldn't answer in regards to today's terms.

5 MS McLEOD: In terms of custody, many of those custodial facilities are outsourced to private operations; is that correct?

COMMISSIONER SINGH: Yes.

10 MS McLEOD: In terms of the cost per day per child for or young person in custody, that 2450, or today's equivalent, could be redirected to child services, direct services to be delivered by communities and their families; do you agree?

COMMISSIONER SINGH: Yes.

15 MS McLEOD: And would those services be better placed being delivered by those wraparound services to families in Victoria?

20 COMMISSIONER SINGH: Aboriginal Community Controlled Organisations are more trusted by Aboriginal people. They work within their communities, they understand the regional issues that are going on with each community. So they are better placed to be able to respond to what needs are emerging in a community. The whole reason Aboriginal Community Controlled Organisations - we have so many of them is because, you know, people - Aboriginal people felt they couldn't get the services they need from mainstream organisations.

25 There's a whole history and legacy of Aboriginal Community Controlled Organisations being created and operating to service its own community because the people who work in those organisations understand what it means to be Aboriginal, what it means to be someone in our community, in our society, what experiences we have. So Aboriginal people generally feel safer going to those organisations. So we want - you know, a greater investment into those services is necessary.

30 MS McLEOD: The report continues on page 168 by referencing a 2017 study that measured the ongoing costs of incarceration of Aboriginal people by considering the range of economic and fiscal costs, including the cost of crime, loss of productive output, excess burden of tax, cost of justice, welfare and foregone taxation. The estimates were conservatively predicted to be around \$9.7 billion in 2020 and \$19.8 billion in 2040 as the projection.

40 So we are talking about huge sums of money here in terms of the cost to the community of not having alternate solutions to youth custody, would you agree, and, as the report notes, the immense social and economic cost of placing Aboriginal children and young people in custody can be avoided by replacing custody with effective community solutions. The estimate given there in 2019/20, Victoria spent \$295 compared to \$2450, \$295 per day per child subject to community-based supervision on an average day. Now, without saying anything about whether that's an adequate spend on community supervision, the immediate savings are obvious from these studies; would you agree?

COMMISSIONER SINGH: Yes.

MS McLEOD: A communique was issued by the meeting of Attorneys-General on 12 August this year, which said this regarding the minimum age of criminal responsibility:

5 *“Participants agreed that the age of criminal responsibility working group will continue to develop a proposal to increase the minimum age of criminal responsibility paying particular attention to eliminating the overrepresentation of First Nations children in the criminal justice system.”*

10 So, as we understand it, the meeting of Attorneys-General is currently examining the national approach, or a national approach, to raising the age of criminal responsibility and that States, including Victoria, said et a nationally consistent approach was the preference back at the August meeting, they set up a working group to work on the issue. I take it that the position that the age of criminal responsibility should be increased to 14 is a position that you yourself support?

15 COMMISSIONER SINGH: Yes.

MS McLEOD: If you had a direct voice to that meeting of Attorneys-General, which we understand is meeting later this week, what would you say to them?

20 COMMISSIONER SINGH: That we simply must, with urgency, raise the age of criminal responsibility to 14 years of age without any exceptions. There is so much evidence to support that. I talked a bit about it before, about medical evidence that says children under 14 have not developed intellectually, mentally, cognitively, in ways that allow them to
25 understand the full impact of what their behaviours are. We know that children offend in very different ways to the way that adults offend. Some of the children we see in youth justice systems and in youth justice detention, in some ways they are treated worse than adults.

30 With such a low age of criminal responsibility, which is out of line - we have been called out by the United Nations. It's out of line, you know, with international median ages of criminal responsibility. All it does is bring children into contact with the criminal justice system at far earlier ages which we know means that they remain entrenched in the criminal justice system and also they go on to the adult justice system.

35 We need to think very differently about how we respond to children who do the wrong thing, who act out in ways that currently is described as criminal behaviour. We need to respond in age appropriate ways. We need to respond in positive ways. We need to respond in ways that support their families and address the context of their offending. Removing children from
40 society, whether that's through remand or custody, simply sets them up further for failure and exposes them to a whole other layer of trauma that most of us in this room have no concept of understanding, what it would be to be as young as 10 years old to be removed from your family, to be put into a police cell, into a prison cell.

45 The majority of society has no understanding of that. We need to deeply understand what impact incarceration has on children and think vitally differently about how we respond to their needs because so much of their offending is coming out of specific needs. Offending doesn't occur in a vacuum. Offending comes out of a context, especially for children and young people, of instability in their lives, of need. The amount of times - you know, you read in *'Our Youth, Our Way'*, children who have been charged with offences because they have
50 stolen a drink because they were thirsty. Children who are committing offences out of

wanting to meet their basic needs and yet we are criminalising these children rather than - and the investment that goes into criminalising children, of taking children through a whole prosecution process, through the courts, into sentencing, you know, there is so much of that that can be redirected into positive measures that address why a child is offending and it needs to start with raising the age of criminal responsibility to 14, no exceptions.

MS McLEOD: Last Tuesday the Northern Territory passed legislation to lift the age to 12, children aged 11 years or older will be referred to intervention and family support programs instead of being criminally prosecuted, and the ACT has signalled it will move to raise the age in two steps, first to 12 and then to 14, within two years.

In June this year, Tasmania indicated it would move to raise the minimum age of detention, so that is the custodial option, from 10 to 14, but not change the age of criminal responsibility. Now, you'd be aware that voices, including Change the Record, Amnesty International, the Human Rights Law Centre, the Law Council, and DOCS groups all support raising the age of criminal responsibility. In addition to your statement there, can I just read to you from page 24 of the *'Our Youth, Our Way'* report:

"Victoria's current minimum age of responsibility has devastating consequences for Aboriginal children and their families."

Do you see that this is an urgent reform that is required?

COMMISSIONER SINGH: Absolutely. It's a long overdue reform. Again, there is so much evidence to support raising the age to 14. There is so much we can learn from overseas jurisdictions, from measures that are preventative rather than punitive. It all comes back to responding in an age appropriate way to children but also working with their families to understand what it is and what the circumstances are of their offending.

The other aspect of this - and we've only lightly touched on this - is the experience of children who are in out-of-home care or engaged with the child protection system who then - sorry, I will focus specifically on children in out-of-home care. Children in out-of-home care who first offend once they go into out-of-home care, so by having an age of criminal responsibility at the age of 10, we are not giving children any hope to deal with what trauma they have experienced in child removal, what trauma led to the fact of their removal in the first place. We are not at all setting up these children to succeed.

I haven't got it specifically mentioned in my statement but there's a framework to reduce the criminalisation of children in out-of-home care. We specifically acknowledge that children in out-of-home care are becoming criminalised. They have not got - often they have not got things in place that model those positive behaviours or they are having access to services, you know, they are not getting access to services that are so desperately required.

I mean, these children behave in ways that workers aren't equipped to deal with, particularly in residential care. We hear about police being called in to respond to those behaviours. It's just trauma upon trauma upon trauma for these children and such a low age of criminal responsibility just means that our children are set up to be criminals earlier and earlier.

MS McLEOD: One of the pieces of work that the Commission is currently undertaking is considering the importance of quality education for young people in out-of-home care. What is the timeline that you expect to have that report delivered to government?

5 COMMISSIONER SINGH: I believe it's going to be delivered to government before the end of the financial year. So early in the first part of next year.

MS McLEOD: We look forward to hearing an update about that. Then you usefully, in your statement, canvass a number of the other inquiries, including some of those we have touched
10 on today. In terms of whether the current child protection measures are actually working to ensure the safety of Victorian First Nations children, in your view, are there any other matters beyond lifting the age of criminal responsibility that need to be implemented as a matter of urgency?

15 COMMISSIONER SINGH: So another recommendation of *'Our Youth, Our Way'* was obviously with regards to bail laws that disproportionately impact on Aboriginal women and impact on Aboriginal children and young people. We have need those to be changed. We need - you know, just overall we need greater investment and resources for Aboriginal
20 Community Controlled Organisations, to work with families in every possible way - every possible stage.

So as soon as, you know, mum finds out she's pregnant, you know, what supports are being put around that young mum? What supports are going into families? What collaborations
25 are happening for these families? We need to approach these things not punitively, which is the experience that Aboriginal children and their parents tell us about, and their families tell us about, but we need to approach them from a strength space that we want to work and that we actually want to see children reunified, we want to see children safe and thriving in their
30 own homes, because the impact of that flows on, just as we know that the negative impact comes out of, you know, what we have seen with Stolen Generation and how that has flowed on to generations, equally positive impacts flow on.

If you are brought up with strength and culture you're more likely to pass that on to your children as well, if you are brought up with good behaviours in your life, you are more likely
35 to demonstrate that to your children. So we really need to see this work as an investment in our families and not see it as a way of punishing our families or for living with trauma that they never asked to live with. That is often through no fault of their own but the systems and interventions that have been imposed on them.

MS McLEOD: Commissioners, do you have any further questions?
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COMMISSIONER WALTER: No. But I do think it is - being punished, traumatised, it's heartbreaking and so destructive.

CHAIR: Thank you very much, Commissioner.
45

COMMISSIONER BELL: Sorry, I did have a question. Will I go?

CHAIR: Yes, go on.

COMMISSIONER BELL: Sorry to change the tone a little bit. I agree with what Commissioner Walter has just said. Each of other areas involving significant interference with people's lives under Victorian law have received significant human rights analysis in Supreme Court decisions by several judges in several cases. The Mental Health Act, The

5 Guardianship Act, the Working With Children's Act, several other Acts, and those judgments have worked their way into policy discourse, which has tended to become more rights framed, and the Royal Commission into Mental Health reform is a really good example of that, and there is an ongoing process of consideration in a rights direction of the Mental Health Act.

10

I'm not aware of any decision in which the Children and Young Persons Act, and related legislation, has received significant human rights analysis by the Supreme Court. Has there been any?

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COMMISSIONER SINGH: I can't think of any off the top of my head. I mean, the Victorian Charter of Rights and Responsibilities is a piece of legislation that can be used alongside other courses of action to look at how rights are being impacted but I haven't seen that happen. But, again, to do that sort of action requires someone to make a - to bring an action about, an individual, an Aboriginal person to bring an action about.

20

The experiences of Aboriginal people in child protection and in youth justice is of being forced to interact with systems, with the law, that doesn't understand their needs. So the idea of - you know, referring - I'll refer just briefly back to my experiences at Victorian Aboriginal Legal Service and - when you're seeing the legal system as something that is used against

25 you, to see something - to see it in a way that can actually help you, it doesn't - it often isn't all that appealing. So to bring those sorts of actions can be quite difficult. There were lots of decisions and things that could be analysed and looked at but I don't know of any of those particular ones. I'm happy to look into it and come back and let you know.

30

COMMISSIONER BELL: That's okay. You can send us a note if you find one. Of the five or 10 cases, to which I will refer concerning other legislation, each of them were test cases run by individuals challenging decisions made against them, usually supported by NGOs, law centres and organisations like that. Again, I'm not aware of any decision in which that's happened, and I think your answer to that is you're not aware of that either because there's no

35 decision of which you are aware?

COMMISSIONER SINGH: Not that I'm aware of.

40

COMMISSIONER BELL: Okay. When I see decisions of the kind you've talked about today having consequences of the kind you've talked about today, when I see them analysed and discussed, particularly from a government side - and I'm not including you in this question because I've read your reports - they are not discussed or framed in human rights terms; they are discussed or framed more in policy terms.

45

In other words, a debate is not conducted as a question of justice, and I find that really surprising because that's very different to other areas where government interfere with people's lives. I've got to say, when I see many decisions having really serious implications for human beings of the kind that you've described, discussed in these neutral terms, it's almost as if they are seen as a human rights free zone and that really concerns me.

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Can you comment upon the way in which rights are included in the frame of reference when the system is being analysed and discussed? Is that coming through or is it seen to be an add-on that's not relevant?

5 COMMISSIONER SINGH: Are you meaning, Commissioner Bell, in regards to the work that we do and the analysis that we do, or --

COMMISSIONER BELL: No. Because I see that you include that. But in your interaction with government, is it coming through that what you're really describing are gross human rights violations on a systemic scale and not just consequences having individual or family impacts?
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COMMISSIONER SINGH: I don't see enough spoken about children's rights in these systems. I think that's probably just a general statement that I can make about how human rights for children are discussed.
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COMMISSIONER HUNTER: One more before you disappear: so you've recently implemented the 11 child safe standards. So the first one is organisations establish a culturally safe environment in which the diverse and unique identities and experiences of Aboriginal children and young are respected and valued. Are these 11 standards, particularly number 1, do they apply to DFFH?
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COMMISSIONER SINGH: That's an excellent question. And, yes, they do. Yes.

25 COMMISSIONER HUNTER: Do you think they uphold that?

COMMISSIONER SINGH: To say an organisation is child safe is a big statement that requires analysis and investigation into it. So I couldn't comment on to DFFH as a whole.

30 COMMISSIONER HUNTER: They are held to be standards; is that correct?

COMMISSIONER SINGH: Yes.

MS McLEOD: No further questions, Commissioners, that is the evidence of Commissioner Singh. I seek to tender her statement and attachments, which will be exhibits 1.2 and following. The attachments are the reports referred to in Ms Singh's statement.
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<EXHIBIT 1.2 STATEMENT OF COMMISSIONER SINGH

40 CHAIR: Thank you, counsel.

MS McLEOD: That concludes the evidence for today. Tomorrow - we will resume tomorrow morning with a witness at 10 am.

45 CHAIR: Thank you, counsel. Thank you, Commissioner Singh.

<THE WITNESS WITHDREW

<ADJOURNED AT 4.22 PM UNTIL TUESDAY, 6 DECEMBER 2022 AT 10 AM

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