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TRANSCRIPT OF DAY 6 – WURREK TYERRANG

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**PROFESSOR ELEANOR BOURKE, Chair**  
**MS SUE-ANNE HUNTER, Commissioner**  
**DISTINGUISHED PROFESSOR MAGGIE WALTER, Commissioner**  
**PROFESSOR THE HON KEVIN BELL AM KC, Commissioner**

**TUESDAY, 13 DECEMBER 2022 AT 10.01 AM (AEST)**

**DAY 6**

**MR TONY McAVOY SC, Senior Counsel Assisting**  
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Yoorrook Justice Commission

  
**LAW IN ORDER**  
Where work flows.

CHAIR: Good morning. Welcome. Today we continue the second of two weeks of public hearings in the priority areas of child protection and the criminal justice systems. Last week, we focused broadly on child protection. This week, we are focusing on criminal justice. There is significant overlap between these areas and a number of our witnesses can and will speak to both topics. Before we start today's proceedings, I invite Commissioner Hunter to give the Welcome to Country Acknowledgement.

COMMISSIONER HUNTER: I'd like to acknowledge that we are on the ancestral lands of the Wurundjeri and pay my respects to Elders, past, present, those here today as well. I acknowledge all those that come before us so we are able to have voice here today and may Bunjil watch over us as we conduct Aboriginal business. Thank you.

CHAIR: Thank you, Commissioner Hunter. Counsel.

MR McAVOY: Commissioners, my name is McAvoy. I appear as Counsel assisting the Commission.

Ms TIPLADY: Commissioners, my name is Helen Tiplady and I appear on behalf of the State.

MS NARAYAN: Maya Narayan and I appear for the First Peoples' Assembly of Victoria.

CHAIR: Thank you, Counsel.

MR McAVOY: Thank you, Chair. Chair, today, Counsel Assisting will be calling two witnesses. The first witness is Aunty Geraldine Atkinson, Co-Chair of the First Peoples' Assembly of Victoria, followed by Ms Antoinette Braybrook, on behalf of the Aboriginal organisation Djirra.

CHAIR: Thank you. Welcome very much, Geraldine. You're very welcome.

MR McAVOY: Commissioners, I call Aunty Geraldine Atkinson, who is in the witness box. Aunty Geraldine, could you tell the Commission your name, please?

AUNTY GERALDINE ATKINSON: My name's Geraldine Atkinson. I'm Co-Chair of First Peoples' Assembly of Victoria. I'm a proud Bangerang/Wiradjuri woman. I live in North East Victoria and I come from a very large family.

MR McAVOY: Thank you. Before we commence, I need to confirm that you undertake to tell the truth when giving evidence in this hearing.

**<AUNTY GERALDINE ATKINSON, AFFIRMED**

MR McAVOY: You have prepared an outline of your evidence?

AUNTY GERALDINE ATKINSON: Yes, I have.

MR McAVOY: That outline is dated 12 December 2022 and you've read the contents of that outline?

AUNTY GERALDINE ATKINSON: Yes, I have.

MR McAVOY: The contents of that outline are true and correct to the best of your knowledge?

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AUNTY GERALDINE ATKINSON: They are true and correct.

MR McAVOY: And you are appearing in this hearing as co-chair of the First Peoples' Assembly of Victoria?

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AUNTY GERALDINE ATKINSON: Yes, that's what I have been invited as.

MR McAVOY: And the First Peoples' Assembly of Victoria has made a written submission to these hearings in relation to child protection and the criminal justice system?

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AUNTY GERALDINE ATKINSON: Yes, they have.

MR McAVOY: And I can tell you that both your outline and the Assembly submissions have been provided to the Commissioners, and they have had an opportunity to look at those documents. Now, your current position is Co-Chair of the First Peoples' Assembly, you have also held a number of positions in community organisations and it's correct that you've been the president of the Victorian Aboriginal Education Association Incorporated since 1999?

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AUNTY GERALDINE ATKINSON: That's correct.

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MR McAVOY: So it's fair to say that you have a deep understanding of education, law enforcing, as it relates to Aboriginal people generally?

AUNTY GERALDINE ATKINSON: Yes. I think you could take that.

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MR McAVOY: And you were inducted into the Victorian Aboriginal Honour Roll in 2018?

AUNTY GERALDINE ATKINSON: Yes.

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MR McAVOY: And you've been Co-Chair of the First Peoples' Assembly of Victoria since 2019?

AUNTY GERALDINE ATKINSON: Correct.

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MR McAVOY: And you were awarded an honorary doctorate in Education at Deakin University in 2020?

AUNTY GERALDINE ATKINSON: Yes, I was.

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MR McAVOY: Thank you. So you bring a wealth of experience to your position as Co-Chair?

AUNTY GERALDINE ATKINSON: I believe I do so.

MR McAVOY: So, for the record, can you describe, in brief terms, what the First Peoples' Assembly is, and does?

5 AUNTY GERALDINE ATKINSON: Yes. The First Peoples' Assembly is a voice for the community of Victoria on the progress of Treaty.

MR McAVOY: Thank you. Its current membership?

10 AUNTY GERALDINE ATKINSON: We have 31 members that are all Traditional Owners of Victoria.

MR McAVOY: The First Peoples' Assembly was established in 2019?

15 AUNTY GERALDINE ATKINSON: Yes, it was. It was after we had our elections, all members, yes.

MR McAVOY: It's been a process that's been continuing in Victoria since some years before that, 2016/2017 the process commenced?

20 AUNTY GERALDINE ATKINSON: Yes, it did. It certainly did. I can remember the day we had a meeting with the then Premier Andrews in his office, and the roundtable, there were quite a huge number of organisations represented, and what they had said to the Premier was that they wanted self-determination and treaty.

25 MR McAVOY: I can tell you - and I know you are aware - that earlier this year, in hearings of the Commission, your Co-Chair, Marcus Stewart, gave evidence to the Yoorrook Justice Commission on behalf of the First Peoples' Assembly of Victoria and, in his evidence, he spoke about the coming development of the Treaty and negotiation framework and the Treaty Authority. I ask: those matters have been progressed since then?

30 AUNTY GERALDINE ATKINSON: Yes. We have been blessed to have had the *Treaty Authority Facilitation Act* passed through both houses of Parliament of Victoria. We have progressed with the Treaty Negotiation Framework and also the Self-Determination Fund has gone before Cabinet and Cabinet agreed to our submissions in relation to First Peoples' Assembly of Victoria.

35 MR McAVOY: I can indicate, Commissioners, that the Treaty Negotiation Framework and the Treaty negotiation - sorry, the Self-Determination Fund Agreement will be tendered in evidence at the completion of this witness' evidence. Is it fair to say that these most recent developments of the Treaty Authority and the Treaty and Negotiation Framework and Self-Determination Framework provide the foundations for the next stages of the Treaty process?

40 AUNTY GERALDINE ATKINSON: Yes, they do. They're what we call base elements. It is the architecture for Treaty in Victoria and they have been agreed to and they will progress that next phase.

45 MR McAVOY: And, as the process continues on, what role does the First Peoples' Assembly of Victoria have?

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AUNTY GERALDINE ATKINSON: The role that the First Peoples' Assembly of Victoria will be the Aboriginal representative body that will be following next year. We'll have the next phase, which will become the Aboriginal representative body. That will come after our elections in June when we have perhaps new members, yes.

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MR McAVOY: It's not the case that the First Peoples' Assembly's role is restricted to the Treaty process; it has a broader political role?

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AUNTY GERALDINE ATKINSON: It certainly has. We believe that it has. We have said that we want a Treaty but we want a voice. We want a truth-telling process and we want - so the voice, truth-telling and the Treaty, and they are all intrinsic to what we want to occur for the community of Victoria.

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MR McAVOY: And is it fair to describe the First Peoples' Assembly as a collectivised political voice for Victoria and Aboriginal people?

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AUNTY GERALDINE ATKINSON: We have become exactly that. I believe that what we have been able to achieve is that collective political voice through the work that we've been doing, the negotiations that we have been doing with government and the negotiations that we have been doing with all of Parliament.

MR McAVOY: It's the case - and you've said a few moments ago - that there is an election coming for the First Peoples' Assembly; when is that due?

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AUNTY GERALDINE ATKINSON: That will be during - the election process itself will take place in June but there will be a process, of course, of nominations and then they'll take - that will take place in about April. They'll then proceed through that election process, continuing in June.

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MR McAVOY: I just want to take you to the Treaty Negotiation Framework and ask you a few questions about that. The Treaty Negotiation Framework, in broad terms, provides for State-wide Treaty and individual First Nations Treaties; is that correct?

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AUNTY GERALDINE ATKINSON: That's correct.

MR McAVOY: Part C of the Treaty Negotiation Framework provides for - sorry, identifies the parties to the State-wide Treaty process at paragraph 15. It's page 28. The parties to the State-wide Treaty process are the State of Victoria and the First Peoples' representative body, which --

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AUNTY GERALDINE ATKINSON: Yes. That certainly is the intent and that's certainly what will occur.

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MR McAVOY: Paragraph 25(2), which is on page 41, provides for the subject matter that can be the topics of negotiation. Now, I can say to you that the State-wide treaty negotiations at paragraph 25.2(e)(i) provides that State-wide and Traditional Owner Treaty negotiations will be informed by any relevant findings and recommendations of the Yoorrook Justice Commission in respect of matters affecting First Peoples across the State of Victoria. So is it correct to understand that the findings of these hearings are matters that can be taken into account in the negotiations of State-wide and individual First Nations Treaties?

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AUNTY GERALDINE ATKINSON: Yes. They most certainly will. Which was one of the reasons that, when the First Peoples' Assembly first met, what we wanted was a truth-telling Commission in Victoria. We wanted that truth-telling Commission to be able to make  
 5 recommendations that when you proceeded with Treaty, it would be - those recommendations - it would inform the change that we wanted to occur with the Aboriginal community in Victoria.

MR McAVOY: And included in the topics which might be discovered, which is not  
 10 exhaustive but, at (iii), of the same paragraph of the Treaty negotiation framework is a list of topics and at topic B is the criminal justice system issues as a topic?

AUNTY GERALDINE ATKINSON: Yes.

15 MR McAVOY: And at topic P is welfare including child and family services.

AUNTY GERALDINE ATKINSON: Yes.

MR McAVOY: That would include child protection services?

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AUNTY GERALDINE ATKINSON: It certainly does.

MR McAVOY: So these priority hearings that are being undertaken by the Yoorrook Justice Commission are matters that have already been identified in the Treaty Negotiation  
 25 Framework as matters of importance?

AUNTY GERALDINE ATKINSON: They certainly have. They are matters that we have also discussed with the Yoorrook Commission, they are important to be discussed and enacted.

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MR McAVOY: And at page 6 of the Treaty Negotiation framework there is an outline of the matters set out in that framework. At part E it says - so 1(b)(iv) in relation to Part E of the framework, it says:

35 *“Part E provides the process for conducting Treaty negotiations. This includes setting Negotiation Standards, providing that there are no matters that cannot or must not be agreed in the course of Treaty negotiations, and outlining subject matters that may be negotiated, how Interim Arrangements are made, and other process-related matters.”*

40 So that paragraph tells us that, essentially, there are no matters which are outside the limits of the negotiations?

AUNTY GERALDINE ATKINSON: That's exactly what we found from community during our consultations that what community wanted during this process for Treaty was nothing  
 45 was off the table and that all matters pertaining to Aboriginal affairs in this State would be discussed and interrogated.

MR McAVOY: And it also tells us that there has been included in the framework a process for interim agreements?

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AUNTY GERALDINE ATKINSON: That's correct.

MR McAVOY: Can we take it that there's an understanding that Treaties may take some time to negotiate and some matters are of particular urgency?

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AUNTY GERALDINE ATKINSON: Yes. We understand that that's the case and we know that there are matters that need to be addressed and they need to be addressed urgently, and that we see that a matter such as those you mentioned, child protection and the criminal justice system, Treaty - State-wide Treaty negotiations will take a period of time. What needs to happen with those interim measures, we need to be dealing with them now.

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MR McAVOY: So on that point, paragraph 26.5, which is page 43 of the Framework, sets out a process for making Interim Offers, and it provides that Interim Offers may be made by Primary Negotiating Parties in relation to any matter; that's correct?

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AUNTY GERALDINE ATKINSON: That's correct.

MR McAVOY: And because it refers to Primary Negotiating Parties - and this may be a matter that's more of a legal issue - but are we to understand that the Interim Offers process is available once a negotiation has commenced?

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AUNTY GERALDINE ATKINSON: Can you just repeat that for me, please?

MR McAVOY: So paragraph 26.5 provides for Interim Offers to be made. Because it's only between the Negotiating Parties, the Interim Offers, do we assume that Interim Offers can only be made once negotiations have started?

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AUNTY GERALDINE ATKINSON: I don't believe that that's the case. I believe that what we have said in relation to the work that we have been doing in relation to - you outlined that the First Peoples' Assembly have a political voice, I think that we have the opportunity to be able to enter into interim arrangements with both government and the Aboriginal community and, in particular, the Aboriginal community organisations who are specialists in those areas.

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MR McAVOY: And you are aware that the Premier, Daniel Andrews, made some comments last week about the need for an overhaul of the child protection system and your outline of evidence makes some observations about how that might be done; that's correct?

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AUNTY GERALDINE ATKINSON: That's correct.

MR McAVOY: Yes, thank you. We'll come to that in a moment. One of the matters which your outline of evidence has specifically commented upon is the need to shift decision-making power to First Peoples. How central is that to the Treaty processes that the First Peoples' Assembly are undertaking?

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AUNTY GERALDINE ATKINSON: It's very essential. Essential. What we need to do is that the power does shift, the power is given back to the community, the power is given to the actual community in relation to decisions that are made that impact their lives. So, you know, if you want to improve things, like health, education, housing, employment, and all those changes that need to take place, I believe that they're up to First Peoples to control. We know what needs to be done. We just need the power to do it.

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MR McAVOY: In referring to decisions that are made in relation to the various systems that impact upon Aboriginal people in Victoria, is it the case that when referring to involvement in the decision-making, you are referring to decisions at the end or decision-making and interaction?  
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AUNTY GERALDINE ATKINSON: It's decision-making through the whole process - at the very beginning, and during that process, and to the very end.

10 MR McAVOY: So at paragraph 27 of your outline, you say that:

*"And, as everyone knows, this means addressing the underlying cause of disadvantage, systemic discrimination and disempowerment experienced by us as First Peoples."*

15 AUNTY GERALDINE ATKINSON: That's correct, yes. That's what I believe and I think that's exactly what's occurred.

MR McAVOY: In the next paragraph you refer to improving outcomes in the other areas of disadvantage, which impact upon the child protection and criminal justice system; is that correct?  
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AUNTY GERALDINE ATKINSON: That's correct.

MR McAVOY: Those other areas are health, education, housing, employment, and is it the First Peoples' Assembly's view that there needs to be Aboriginal-led decision-making - First Peoples' led decision-making in respect of each of those areas?  
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AUNTY GERALDINE ATKINSON: Yes, we do. We believe that that's, I think, the whole intent of why we have said that we want self-determination. To get self-determination is why we need that Treaty process in place and, on that journey, we need to ensure that those services are still being provided and that they are being provided effectively for our Aboriginal community and families.  
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MR McAVOY: You make the observation in paragraph 29 that governments talk about the importance of self-determination, but you are concerned that they don't really understand what it is?  
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AUNTY GERALDINE ATKINSON: No, they don't.

40 MR McAVOY: Can you just expand upon that a little?

AUNTY GERALDINE ATKINSON: I just say that they don't understand what self-determination means. We have had so many systems in place. We have had, you know - we have always been advisers. Our organisations have been advisers to government.  
45 We have always had to advise government of what they should do. It's never been determined that what we do is we provide them with the solutions and they enact them. That's why we should - if it's - if we are empowered to do so, we would receive that.

MR McAVOY: And is the capacity to sit at the negotiation table with the government and negotiate outcomes rather than being consulted an aspect of self-determination?  
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AUNTY GERALDINE ATKINSON: Yes. That is most important that that occurs. As I said, we have been advisers, we have been consulted, all of those things have occurred over the very many years, you talk about how long I have been working in education, and I have been  
5 working in education for over 40 years, and I know what we need to do is we need to make decisions that are through negotiations, not through consultations, not through just advising ministers, not just co-designing with bureaucrats. It is about ensuring that we are in control and that the decisions that we are negotiating are for the betterment of our community, and that's all that we want.

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MR McAVOY: In paragraph 32 you give an example of a childcare centre in Shepparton. Can you just talk about that centre?

AUNTY GERALDINE ATKINSON: Yes. We opened that childcare centre over 40 years ago. I'll just give you a brief overview of why. We provided - we knew that the education system was failing our kids. Our kids were reaching year 9, they were falling out of school like falling off a cliff. They weren't continuing. We believe that the best way to start was through the childhood and early education processes and what we wanted better development  
15 out comes, better curriculum outcomes.

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We even wrote our own syllabus on Aboriginal culture, Aboriginal language, a whole range of other things that we provided to our children. We wanted them to ensure that they knew and were proud of their Aboriginal identity because that was not occurring when they entered school, and that was the reason why we started that childcare centre.

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We also started that childcare centre because at the same time we started an adult education program with TAFE. The reason why we did that was so that we could have the parents of those children that were coming to our centre, their parents were getting - were understanding the importance of education, but not only were they doing that, they were also learning about culture themselves. The other thing they were doing is they were beginning training for the day, they were no longer a part of the system, you know, they had to survive on Centrelink  
30 payments. They can gain employment and be able to ensure that families receive better lives, their families, and I still think they are going to receive those better lives.

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MR McAVOY: Being able to provide those sorts of programs at the local community level, is that - would that be described as an example of some self-determination and action?

AUNTY GERALDINE ATKINSON: Yes, it certainly has been. I just want to give you a small snippet, an example, of what we have achieved through that childcare centre. Last year - sorry, not last year, the year before, we had COVID last year, what happened within Victoria, in Shepparton, sorry, we had 80 of our children that attended our childcare centre, that we'd established, complete year 12.

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MR McAVOY: That's an astounding result, isn't it?

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AUNTY GERALDINE ATKINSON: Certainly is.

MR McAVOY: Is that an example of the success that can be had when Aboriginal-led solutions are in place?

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AUNTY GERALDINE ATKINSON: That is certainly what can be achieved. It can be achieved. If you have in place - if you have people that are determined, that self-determination is the thing that we want, that being self-determining is providing those services, that we know our children require, it is going to assist them to achieve better lives and that is, I believe, what's needed and what is successful.

MR McAVOY: At paragraph 37 of your outline of evidence, you say:

10 *“Treaty is about First Peoples saying that we should have the power and resources to enable us to reimagine and reshape the systems with which our people interact.”*

AUNTY GERALDINE ATKINSON: Most certainly. That is exactly what we are saying. Which is exactly why I believe that the Treaty will deliver that and, having worked over the last three years in ensuring that what we are able to achieve with government, I believe that that will empower both, you know, that it's going to empower, for us to get those resources to enable us to reimagine, to reshape, and ensure that those systems are working for our families.

MR McAVOY: As you said a few moments ago, you are of the view that, in relation to the child protection overhaul, that work can commence now?

AUNTY GERALDINE ATKINSON: Yes, I believe that it can. I believe that we have the ability to be able to do that. I believe that we have the ability within our First Peoples' Assembly of Victoria to work and negotiate with the Aboriginal controlled organisations that are experts in those fields to enable that to happen. If what we are able to do is sit down and look at how we believe solutions that are going to work for our communities are combined, that we can come up with, you know, with that - to enable that to happen.

MR McAVOY: In that paragraph 39 of your outline, you suggest that the work that needs to be done in system redesign in the child protection area could be done by resourcing the Assembly to work with Aboriginal controlled community organisations and the community to develop aspirations and priorities for a system redesign that shifts decision-making power to First Peoples. So are you saying that the First Peoples' Assembly can play a co-ordinating role or a leadership role in that space?

AUNTY GERALDINE ATKINSON: I think both. I think coordination and leadership role would be played by the Assembly.

MR McAVOY: And that work need not wait?

AUNTY GERALDINE ATKINSON: No. I don't believe that it should wait. I believe that what we are putting in place will enable us to work on that. We have said from the beginning we can't wait until 2024 for a State-wide Treaty and then begin negotiations on this work. This work needs to start now.

MR McAVOY: But it may be the case that the product of that work could become the subject of an Interim Offer or interim --

AUNTY GERALDINE ATKINSON: Yes. Certainly. And that's what we would negotiate with government for.

MR McAVOY: That would give it some force and some power?

5 AUNTY GERALDINE ATKINSON: Yes, it does. I believe that. I believe the process that we would be involved in has proven that, through those negotiations and through being able to ensure that what we put before government, is going to assist them in their solutions as well, that we are able to do that.

10 MR McAVOY: At paragraph 40 of your outline, you've identified some things that the Assembly says the government could do immediately.

AUNTY GERALDINE ATKINSON: Yes. Yes, I do.

15 MR McAVOY: Could you just speak to those?

AUNTY GERALDINE ATKINSON: I most certainly can. As I recommended, the government could start immediately and I urge - you know, urge investigating in early intervention programs about allocating family support services to Aboriginal families, they're there to ensure that it keeps families together and that we do avoid that escalation of our children moving into that tertiary system.

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The kinship care allowance - and I have witnessed this in the work that I have done and in the work that I have done in education and working with children and working with families - that allowance does not ensure that those kinship carers can care really at that same rate that foster carers are given. They need that allowance to be increased. We have grandparents, we have - and you've probably heard during all of your evidence the number of grandparents that are rearing grandchildren. They get - it's not an allowance that they get. There are Aunties and there are Uncles that are getting a kinship allowance but it doesn't provide for all that they want.

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30 We had - one of our Aunties was in charge of one of the children in our centre who was - she was the kinship carer. She couldn't afford to buy a larger car for her three children and the three children she had in care around. We went everywhere to try and ensure that we were able to get access for funding for her to do that. She wasn't able to do that on what she had received on her Centrelink payments and the kinship allowances because it was a pittance.

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40 MR McAVOY: And matching the kinship allowance to the foster care allowance, in your view, would that ensure that there are more places available for Aboriginal children within their own families?

AUNTY GERALDINE ATKINSON: It most certainly will. It most certainly will, it will assist. As I said, it certainly is needed because, you know, they do - I witnessed it and I have seen it not happen that carers - that they are - they do find it hard, especially when they have children of their own and then they have got their nieces, nephews, cousins' children. But, you know, there are times that they can't cope.

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MR McAVOY: Is it a fair observation to say that many of the families that are asked to take on care of kin are under financial hardship themselves?

AUNTY GERALDINE ATKINSON: They certainly are. They are. The Aboriginal community, that is usually the case. As I said about, you know, being grandparents, being Aunties, it's about those people, and usually the elderly that are being asked to take on that kinship care role.

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MR McAVOY: I might just move on to paragraph 40(c) where you've identified that urgent action that the government could immediately take is supporting First Peoples build an Aboriginal evidence base about what is needed to address vulnerabilities within First Peoples' families and evaluate the effectiveness of responses to make sure First Peoples own their own data?

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AUNTY GERALDINE ATKINSON: Yes. We need to have our own data. We need our sovereign data. We need for government to provide that data. We need for there to be that evidence so that we can work best for our children and our families. We need that data to tell us exactly where it needs - those resources need to be applied.

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MR McAVOY: And that data isn't readily available at present?

AUNTY GERALDINE ATKINSON: No.

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MR McAVOY: Thank you. So after the elections that are coming for the Assembly, the Assembly will be in a position to commence negotiation of the State-wide Treaty?

AUNTY GERALDINE ATKINSON: Yes.

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MR McAVOY: And the findings from this Commission will be able to inform that work?

AUNTY GERALDINE ATKINSON: I believe so, yes.

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MR McAVOY: At paragraph 42(c) your outline makes the observation that the main thrust of your recommendations must therefore be that the Treaty process is the strongest way to shift decision-making power for First Peoples:

*"So that First Peoples can self-determine and redesign what child protection and criminal justice systems should look like for our people."*

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AUNTY GERALDINE ATKINSON: That's correct. That's what I believe, that the main thrust of Yoorrook's recommendations can do, and that will enable us to do.

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MR McAVOY: At paragraph 42(d) it is then suggested that Victoria's First Peoples can then choose their own priorities and pathways through the reform process using the Treaty framework?

AUNTY GERALDINE ATKINSON: That's exactly right. It's what I said, you know, it can ensure that First Peoples can self-determine what that re-design is, particularly, you know, within the two systems that we are discussing at these hearings.

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MR McAVOY: I just want to ask you now, we have been talking largely about child protection, the First Peoples' Assembly submission addresses the issue of the criminal justice system and its failings but I just want to ask you now about some observations you make

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from paragraph 51 about the urgent criminal system, criminal justice system reforms that are needed. You make the observation about First Peoples in Victoria still dying in custody. Obviously, that's a matter of great concern for the Assembly.

5 AUNTY GERALDINE ATKINSON: It is of great concern to the Assembly and it was - really the last year has been so very distressing for me. I've seen and visited our correctional centres, juvenile centres, and I have seen our youth in there and I have seen our males in those services. And I believe that what we need to do is ensure that while our people are in custody they should have services that are going to ensure that they have good health in  
10 those services so that we don't have those deaths in custody.

I talk about how the health service to our prisoners that are in custody is outsourced to non-Indigenous agencies who have no understanding of the issues that our Aboriginal prisoners are facing or go into those prisons with. You know, there are chronic diseases, there  
15 are things because of their lifestyles, they are things that they've - you know, that they haven't been able to achieve growing up. When we talk about good nutrition and a whole range of other things that make people whole and healthy. Our prisoners have not - a lot of our prisoners have not been able to have that, and they have gone into those prisons with chronic health issues.

20 I have recommended there that those services that are outsourced to non-Indigenous health professionals need to know exactly about what is happening about the health conditions of our Aboriginal prisoners.

25 MR McAVOY: You say in your outline that Aboriginal controlled health services could provide those services on an outsourced basis to the Aboriginal prison population?

AUNTY GERALDINE ATKINSON: They could. And I would suggest, if they were used, and if government would look at using those services, especially when we have our people  
30 going into prison, and having those health checks, and a whole range of other things that those health services do to those prisoners, and I don't think we would get the number of our prisoners dying in custody because their health conditions will then be - will be looked at.

MR McAVOY: Do you say that because it's widely reported that Aboriginal people don't  
35 make use of mainstream health services in the same way as they do Aboriginal controlled health services? They are much more likely to attend an Aboriginal medical service. Is that part of the reason you make this observation?

AUNTY GERALDINE ATKINSON: Yes. And that's why I do make that observation  
40 because that is exactly what happens. They are - they do, they know, as I said before. Our services provide really good intense services within those medical services, intense service to our families and I think if that was the case with our prisoners that are suffering those conditions, or whatever they are, that that would help the situation, particularly stop, I believe - and it's my personal opinion - is stop those deaths in custody.

45 MR McAVOY: Now, I'm just going to move on for a moment because there's another matter which your outline of evidence identifies as a basis for a matter needing urgent action and that is at paragraph 55(a). You say that the age of criminal responsibility must be raised from 10 to at least 14 years of age. Do you just want to speak to that suggestion?  
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AUNTY GERALDINE ATKINSON: Yes, I do. I do want to talk to that. I think it's urgent. I think that when you look at our 10-year-olds, we've got 10-year-olds there, what are they, grade 5, grade 6 in primary school, you know, they are young, they are still babies, they are young kids, they're high-risk takers, and what happens is usually things will happen, you  
5 know, sort of what they need is being well directed and really being kept home with families.

I want to tell you a story - and it's not in my submission - but I want to tell you a personal story: when I was in grade 6, my brother, which was really my nephew, but we were reared as brother and sister, he was under 10. He was probably 10. He would steal from his teacher  
10 20 bob, it was then - it wasn't 20 cents, it was 20 bob. One day - so this was happening. So what she did, was she marked the 20 bob in her purse, and then she knew who took it, because he had it, he had that 20 bob.

What happened with him he was removed from our family. He was put into Baltara Boys  
15 Home. You know what happened from Baltara Boys Home, he progressed to Turana, which is now Parkville Juvenile Centre. Turana to Malmsbury Juvenile Justice Centre. Left Malmsbury, went to Sydney, when he went to Sydney, he ended up in Long Bay gaol he ended up in Goulburn gaol. He came home, some family members died, his brothers actually died, he came home to Victoria. He lived here in Victoria, he lived in Fitzroy, he was a parky,  
20 he lived with the parkies at the Atherton Gardens, the high rise flats there in Fitzroy, that's where he lived, that's who his mates were, were the parkies, ended up in Pentridge. Do you know what? He also then went back to those high rise flats. He got sick. You now how old he was when he died? 36. 36. Now that's a story of a child being removed at about 10 years of age and then what their life trajectory is, and that's what we want to stop.

25 MR McAVOY: That's in your family. Can you make any observation about how that might occur or does occur in other families?

AUNTY GERALDINE ATKINSON: It has. I've seen it occur in other families. I talked to  
30 you about my brother who lived in those flats, who was a part of that parky conglomerate, or cohort, or whatever you want to call them, all of those and his mates, they are all dead too now about around the same age. They were removed. They have lost mothers. They were removed from families. Those are the sorts of things that happened then.

35 Now, do we still want that to occur? Do we still want to see our young people locked up at 10 years of age, still being babies, not having a chance to improve their lives, to end up - their trajectory will be that that's where they will go and that's what will happen. They will go from one juvenile justice system to the adult prison system and then into - it could be deaths in custody and into elsewhere.

40 MR McAVOY: Should supports be available to those young people when they come into contact with the law?

AUNTY GERALDINE ATKINSON: Yes. It needs to be done. It needs to be done at that  
45 age to ensure that they aren't locked up. There's a million I can tell you, but I'm not going to tell you any more stories but they do - it needs to happen. We need, and we have been saying - and I am sick to death of saying it - we need from government - we need from government to listen to the Aboriginal community in relation to really good, well-resourced intervention and prevention programs to ensure that doesn't happen.

50

MR McAVOY: I take it from that evidence that those early intervention programs aren't currently supported?

5 AUNTY GERALDINE ATKINSON: There are some - there are some good programs out there. I'm not saying that there aren't, but I'm saying that what needs to happen is now. We do get - there is government funding for particular programs but they are in isolation. They are in silos, they are not in - they are not complete across regions, the whole State. Who knows. Sometimes they are only band-aid solutions. They don't get really to what the problem, the real problem is, and how we can fix those problems that start from that very beginning, and that's working - and that needs to ensure that we are working with families. That needs to happen so that we are keeping families and those children together and working intensely with them.

15 MR McAVOY: I just want to ask you now about the next item for urgent action which is at paragraph 55(b) of your outline of evidence which is the establishment of an independent and effective police accountability system.

AUNTY GERALDINE ATKINSON: Well overdue.

20 MR McAVOY: From the Assembly's submission, it's clear that that accountability system ought to be independent and external to police?

AUNTY GERALDINE ATKINSON: Most certainly it does.

25 MR McAVOY: Can you just perhaps explain why having an accountable police service is important to the First Peoples of Victoria?

30 AUNTY GERALDINE ATKINSON: I think that it's really important that we do have it and we do have something that is independent from the police and it is something that does - something that is empowered to be able to control what happens when we have our youth and our families under police intervention. When they are asked on the street what they are doing there, how old are they, what's their mother's name, and where should you be, you know, as I said, there are programs but what we need to ensure that we have are a police force that understands that exactly what it's doing is the wrong thing and that how they should be interacting with our Aboriginal youth and our Aboriginal children should be taken into account.

40 I think that if we had an independent body that was able to say who are, you know, the police force, those in charge of those policemen, that these are the cultural protocols, these are the - this is the cultural understanding that you need when you are approaching and working with Aboriginal people.

45 MR McAVOY: Does the Assembly say that Aboriginal people in Victoria get different treatment from the police?

AUNTY GERALDINE ATKINSON: Yes, they most certainly do. I can tell you other stories too but I won't.

50 MR McAVOY: So the types of different treatment we hear about are: one of the types is racial profiling; are you familiar with that term?

AUNTY GERALDINE ATKINSON: Yes. Yes, I am. I was with - driving with my nephews - sorry about this story - I was driving with my nephews, we were taking a fridge and dropping it off to one of the Aunties. We were pulled up by the police. My nephews, you know, dark skin, and the first thing the policeman said to me, "Oh, I haven't met you yet."

MR McAVOY: Yes. So the clear inference from that comment was that that police officer thought he was going to know all the Aboriginal people in the neighbourhood?

AUNTY GERALDINE ATKINSON: Because they obviously are within - are involved in the justice system.

MR McAVOY: And so racial profiling is an expression of racial discrimination, a form of racial discrimination, is it the Assembly's view that there is racial discrimination which occurs in the policing of Aboriginal people in Victoria?

AUNTY GERALDINE ATKINSON: Yes.

MR McAVOY: It is thought that a - it is proposed that an independent accountability system would help make that clear and identify where it occurs?

AUNTY GERALDINE ATKINSON: Yes, I do.

MR McAVOY: But you've also mentioned some, I think, training for police so that they understand how to better communicate with Aboriginal people.

AUNTY GERALDINE ATKINSON: And I think that needs to be done by that independent process, not within the police force itself.

MR McAVOY: Would that independent body also have the responsibility for ensuring the police service is aware of its own discriminatory practices?

AUNTY GERALDINE ATKINSON: You would hope so. That would be the intention, that they would understand, that they would understand about the reasons why Aboriginal people end up within the justice system. They would understand about intergenerational trauma. They would understand about how colonisation contributes towards that. They would understand over the years all the stories that they have heard about their parents, grandparents, and everyone else's contact with the police. Sorry, our families, not theirs.

MR McAVOY: Do we take it from the responses that you've just given that it is your view, or the Assembly's view, that the terrible over-incarceration rate of First Peoples in Victoria is, in part, a result of police interaction, the way police carry out their services with Aboriginal people?

AUNTY GERALDINE ATKINSON: Yes, I do. I do.

MR McAVOY: I just want to take you now to paragraph 55(c) of your outline in which you recommend that urgent action is needed to implement reforms for public health response to public drunkenness. Can you just explain that recommendation?



AUNTY GERALDINE ATKINSON: I just think that there does need to be those reforms within the police - within the police in relation to public drunkenness. I mean, they stereotype us. Really they do. They stereotype us. An Aboriginal person drunk on the street. But it's understanding there could be reforms where those people could be removed somewhere safe, not into custody, but there are services that do operate in some parts that enables that to happen and they should be investigated and implemented more.

MR McAVOY: You are aware that the inquest into the death of Aunty Tanya Day recommended that reform?

AUNTY GERALDINE ATKINSON: Yes.

MR McAVOY: Are you aware of any reason as to why that reform hasn't taken place yet?

AUNTY GERALDINE ATKINSON: Okay. I believe that there are - I just believe that government is just slow to react to those reforms. When you think about what public opinion is in relation to offences, you know, unlawful matters, and everything else, that they believe that - it's always been my belief that they should be hard on crime and - I forgot the other part of your question, sorry.

MR McAVOY: The recommendations from the inquest into Aunty Tanya Day's death have recommended that there be reform to abolish the public drunkenness laws.

AUNTY GERALDINE ATKINSON: It should be abolished.

MR McAVOY: That was some years ago.

AUNTY GERALDINE ATKINSON: Yes, that's right.

MR McAVOY: I was asking for your reasons for the delay and I think you have answered the question.

AUNTY GERALDINE ATKINSON: Thank you. Yes. They are just dragging their feet.

MR McAVOY: The Assembly's submissions in relation to the bail law and policy in Victoria sets out the Assembly's position. Is there anything you want to add in addition to that which is in the written submissions?

AUNTY GERALDINE ATKINSON: I just wanted to say, personally, that if we had - if there were, you know, reforms for those punitive bail rule and policy, then I don't believe that Veronica Nelson would have died in custody. It is because of those bail conditions. It is because of what happened. It was because, you know - because she was shoplifting, she broke an order. So she was incarcerated and then she wasn't looked after while she was in jail and there she died. So I really believe that they need to be reformed. There really needs to be things that are seriously looked at.

If something as simple as shoplifting, probably to feed herself, by the way, Veronica lived off the streets, and everything else. So, you know, I just believe that there needs to be reform and I'm just saying that I think that that was really unnecessary. That's one of the bail conditions. She was on bail.

MR McAVOY: I wanted to ask you: you've told some stories of your own family's interaction with the criminal justice and the child protection system and from paragraph 45 of your outline onwards you talk about some of your own experiences. At paragraph 46 you talk about your experience as a child moving around. Can you just explain that to the Commissioners?

AUNTY GERALDINE ATKINSON: Okay. When I was five years old my father was murdered. We lived in Leeton. He was murdered. He hadn't been found. It took weeks, months - probably months to identify him. Prior to that we were always being visited by the welfare at our home, our little humpty outside of Leeton, we were fringe dwellers. My father built that shack from the tip, we had dirt floors, that was the condition we lived in and it was - you know, we were always under scrutiny for neglect.

But what happened was that, as soon as there was the news that my father had passed, that welfare officer wanted to remove me and my siblings from my mother. So she packed us up the night after and we left. So we left Leeton, New South Wales, and came back home to Victoria. Same thing happened. Wherever we lived, we were under scrutiny. She was under scrutiny. Now, what she received - and she was really one of the fortunate ones, she received a widow's pension. A lot of Aboriginal people, you know, had had that happen, but at that stage - but that's what she reared us on, was her widow's pension, and that's what she fed us on.

We were always under scrutiny about how we were living, where we lived and the conditions that we lived in. So she was always warned, "If you don't take your children and go and live somewhere else, they are going to be removed." That's what happened during those periods and that's why we moved so many times because she did not want her children, that she'd witnessed, from where she'd lived, in Leeton, her children being removed.

MR McAVOY: Did you have experience of seeing other children removed?

AUNTY GERALDINE ATKINSON: Yes, I most certainly did. I lived on Rumbalara. I had friends, we were in the same grade, we played together. Rumbalara was, you know, an Aboriginal community, everyone grew up together, we all played together, and then what you would notice, there would be children missing. You'd say, "Where have they gone? Aunty Maggie's still in the house, where are her daughters?" They were removed. But that was - that's one instance. There were several and that's what was happening. Children were being removed all the time.

My friends - I didn't get to see them, you know, until they came back as adults, and they'd grown up, and could - and you witnessed their lives and their lifestyles when they came back into community and they weren't good.

MR McAVOY: It must have had an effect on the people that were left behind as well to see children taken.

AUNTY GERALDINE ATKINSON: It was traumatising. It was traumatising. You would think that you would be next. That's what you would believe.

MR McAVOY: Now, that was your experience as a child growing up. That's led you to have some views, in part, and formed your views about where the community needs to head?

5 AUNTY GERALDINE ATKINSON: It most certainly has. From my teenage years, I was an activist, I believed in Aboriginal rights, I believed that things needed to change, and when I grew up and moved on and I wanted to work with Aboriginal communities and Aboriginal services to make sure that what we had in place would improve the lives of our children and our families.

10 MR McAVOY: And one of the observations you make at paragraph 48 of your outline is that issue-specific reform is not enough to address the injustices faced by First Peoples.

15 AUNTY GERALDINE ATKINSON: No. It needs to be holistic. We need to be looking holistic at all of those impacts. All of those social issues that impact our families. They all need to be looked at and they all need to be addressed because we talk about health, I have talked to you about health, we've talked about housing, about overcrowding, about a whole range of other things. So it is holistic and what needs to happen is there needs to be reform holistically to ensure that what we get is those children and those generations that are coming behind us that when we have got Treaty in place is going to work better for them.

20 MR McAVOY: Is that holistic view something that you've seen government demonstrate?

25 AUNTY GERALDINE ATKINSON: No. No, they have never. As far as I'm concerned they have never looked holistically at anything. We have always - we are in silos. We operate in silos. We are operating over here in education, we are operating over there in health, we are operating over there in housing. There's no coordination. There is no coordination. If there was that sort of holistic process, and working together, I believe that we would be able to improve - drastically improve the lives of our families and children.

30 MR McAVOY: I take it the Assembly's view, or can I take it that the Assembly's view, is that the Treaty process is a process to bring a holistic view to the issues that are impacting upon First Peoples in Victoria?

35 AUNTY GERALDINE ATKINSON: Yes, I believe it is. I really believe that there is no way that I would have joined or enrolled to be a part of the implementation of the Treaty process if I didn't believe that that was what was going to enable real systemic change that would empower the Aboriginal community to achieve and change the systems so that we get better life styles for our families and children.

40 MR McAVOY: At page 3 of the submission - this is not your statement, but the Assembly's submission - in the text box, Commissioners - the submission is made that the Assembly asked Yoorrook to find, the first dot point:

45 *"Issue-specific law reform in the criminal justice and child protection systems alone is not enough to address the systemic injustices faced by First Peoples. A 'whole of system' approach that gives effect to genuine self-determination is required."*

AUNTY GERALDINE ATKINSON: That's exactly correct. That's what I said.

MR McAVOY: And I take it that the Assembly's position, as I have just said, suggested to you is that the Treaty process can help deliver that self-determination.

AUNTY GERALDINE ATKINSON: I believe it can.

5

MR McAVOY: And the second dot point is that:

*“Mechanisms to shift decision-making power to First Peoples to give effect for self-determination in the criminal justice and child protection systems should be entrenched by Treaty and interim agreements reached in the Treaty process, empowering First Peoples to decide our own aspirations, priorities and paths to reform and to hold government accountable.”*

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AUNTY GERALDINE ATKINSON: Yes. I am very strong in ensuring that was what we were about doing.

15

MR McAVOY: At part 6 of the Assembly's submissions, there have been identified some areas for further investigation. It's identified on page 22 of the submission that:

*“Systemic injustices experienced by First Peoples in the criminal justice and child protection systems have historic origins.”*

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AUNTY GERALDINE ATKINSON: They do. They do.

MR McAVOY: And a section of the - I quote from VALS, the Victorian Aboriginal Legal Service, has been cited, and if I read that to you, you might want to comment, the quote is:

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*“Acknowledging how this country's colonial history has created and shaped structures and institutions characterised by racism, which so often fail to deliver true justice for Aboriginal people, is crucial. The legal system is built on a foundation of violence and dispossession, denial of sovereignty (and, of course, humanity), with the colonial project continuing through policies of protection and assimilation. Today's injustices are inextricably linked to the injustices of the past and achieving a collective understanding of Victoria's colonial legacy can help guide the reforms necessary for realising a truly equitable legal system.”*

30

35

Including that passage from VALS in the Assembly's written submissions, of course, we understand that this the Assembly accepts and supports those observations?

AUNTY GERALDINE ATKINSON: Yes. They are exactly what our observations are.

40

MR McAVOY: In light of that, the Assembly suggests investigation by Yoorrook on certain topics. So there's a suggestion for investigation of policing, including an analysis of colonial policing, imprisonment and Aboriginal Protectorate policies and practices from the onset of British occupation, the establishment of the Port Phillip District and throughout the Colony of Victoria. How important is it for the government and Victorians generally to understand the background to the policing practices?

45

AUNTY GERALDINE ATKINSON: I think that it's very important that the public know. I think it's very important that the police know. I think it's very, very important that those stories be told. Those stories, they are true. They are so very true. Those things that occurred,

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you know, during that colonial system, those are the things that happened. I mean, you've probably heard, you know, lots of stories but I think that what needs to happen is those stories that have happened in relation to incarceration of Aboriginal people since then up until now - and particularly that past, that past history - it needs to be told. What we need to be able to do is educate the entire broader community about those past injustices in the legal system.

MR McAVOY: The second item which is articulated as a topic for further investigation is the role of Victoria Police and its pre-1853 antecedents in historical and contemporary colonial violence. So that suggests that there is some link between what happened in the past and the present day practices?

AUNTY GERALDINE ATKINSON: Yes, there is. There is. You know, all of those things happened and why we, as children, living in a place like Rumbalara, that would steal pears from the packing shed over, run into the bush every time the police came? Because we were petrified of the police. They were the things passed down because of those injustices that had occurred.

MR McAVOY: The third item which is set out for investigation is the role of the Victoria Police in enforcing racially discriminatory legislation, such as the *Aborigines Protection Act 1869*, the *Aborigines Act 1910*, and the *Aborigines Act 1957*, related - and subsequent policies as well as the discriminatory or racialised enforcement of other Victorian legislation. So the Assembly sees that the police then had a role in that legislation which segregated Aboriginal people?

AUNTY GERALDINE ATKINSON: They most certainly do. And that's what occurred. They - it was the police that were sent to remove children from their families. It still is. Police are still sent to remove. When I was a child that happened. And I'm 70. It's still happening today. Police are being used to collect children and place them in out-of-home care - into the out-of-home system.

MR McAVOY: The fourth area for investigation, suggested by the submission, is any culture of impunity for Victoria Police members. It suggests that the Assembly --

AUNTY GERALDINE ATKINSON: Police being responsible?

MR McAVOY: Well, it suggests the Assembly has a view that members of the Victorian Police Service have had some level of impunity in the past.

AUNTY GERALDINE ATKINSON: They have always had impunity. They have. Everything that they have done has always been condoned. Very rarely has it been seen that, you know, the police are - that, you know, any complaints that you have against them are listened to or if there's any enforcement of punishment. There's none.

MR McAVOY: Finally, the Assembly suggests that Yoorrook call upon current and former Victorian Police Commissioners, Victorian police ministers, the Police Association of Victoria, Secretaries, historians, criminologists and other expert witnesses to give evidence regarding the above matters?

AUNTY GERALDINE ATKINSON: They should. They should, because they were the people that were responsible for those actions. They should give the evidence. They have it, and what should happen is Yoorrook should hear and see that evidence.

5 MR McAVOY: So obviously the Assembly sees evidence by government appointees, Police Commissioners, Ministers, as a very important part of the truth-telling process.

AUNTY GERALDINE ATKINSON: It's an essential part of the truth-telling process. It is what we wanted for Yoorrook to have the power to be able to do.

10

MR McAVOY: And Yoorrook has the power to do that.

AUNTY GERALDINE ATKINSON: Good. I'm glad.

15 MR McAVOY: Similarly, with respect to youth justice, there are suggestions by the Assembly that the Yoorrook Justice Commission investigate the historical colonial origins of the youth justice system in Victoria, including the impacts of State-inflicted interventions such as generations of trauma, broken connection to Country and community, inequalities in life experience, educational attainment, earning, housing security, health outcomes and  
20 mortality. This is a request, that the Yoorrook Justice Commission look at the background to the youth justice system and analyse the effects of that system upon First Peoples of Victoria?

AUNTY GERALDINE ATKINSON: Yes. They do need to look at it. They need - and what you just outlined are the reasons why they need to be investigated and why people need to be  
25 interrogated, why we need to know why, in particular, certain things occurred.

MR McAVOY: The next item invites the Commission to investigate the links between colonial violence and the prevailing culture of over-policing and surveillance, criminalisation, and forced removal of children from their families. The request largely speaks for itself but,  
30 again, it is making the connection between what happened at the earlier years of the colony and what's continuing to happen?

AUNTY GERALDINE ATKINSON: Yes.

35 MR McAVOY: Particularly with respect to young people?

AUNTY GERALDINE ATKINSON: Yes.

MR McAVOY: At point 7, the Yoorrook Justice Commission is invited to consider the  
40 failures of the youth justice system and child protection system to support Aboriginal children and young people in areas such as housing, family violence, health, trauma, and their continued involvement in the youth justice system and, at item 8, the level and extent of institutional racism within each element of the youth justice system, including by analysis of police, stop, search and cautioning data, youth justice court orders, bail decisions and  
45 outcomes, court sentencing and decisions around child protection involvement.

Whilst the request is put in terms of investigating the level and extent of institutional racism within each of those aspects, can the Commission take it that it is the Assembly's view that there is institutional racism within those aspects of the youth justice system?

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AUNTY GERALDINE ATKINSON: Yes.

MR McAVOY: And it's a matter of determining the level and extent which exists to facilitate making recommendations and findings about how to deal with that institutionalised racism, and similar to the policing recommendations, the Assembly suggests that Yoorrook call upon current and former Ministers of Youth Justice, Attorney-Generals, Department of Justice and Community Safety Secretaries, Commissioners for Aboriginal Children and Young People and other witnesses to give evidence on the above - on the youth justice system.

10 AUNTY GERALDINE ATKINSON: Yes, they should. They should.

MR McAVOY: I will take you to the other recommendations from the Assembly because they are important and it's important that the Commissioners hear them. The Assembly also suggests that there be investigation by Yoorrook of bail and the use of protective custody laws to retain Aboriginal people in Victoria, that the Victorian Government decision-making processes, that led to the *Bail Act* reforms of 2017, be investigated, including to what extent expert advice regarding the potential impact on Aboriginal and Torres Strait Islanders was considered or rejected, and the total budgetary cost of increased imprisonment and expansion required as a result of the reforms to the *Bail Act*. You are nodding your head. I take that to mean that you agree?

AUNTY GERALDINE ATKINSON: I agree.

25 MR McAVOY: You are confirming that the Commission should investigate those matters?

AUNTY GERALDINE ATKINSON: Yes. I most certainly do. I most certainly do agree. I gave an account before about what I thought about the bail conditions, and I think they do need to be investigated and they - and the impacts and the trauma that's caused our families and our young people should be investigated.

MR McAVOY: At point 11 the recommendation to the Yoorrook Justice Commission is that Yoorrook compelled testimony from former and current government ministers, senior Department of Justice bureaucrats and executives and government and private prison operators to the level of knowledge of the harmful impact of punitive bail laws upon the First Peoples.

AUNTY GERALDINE ATKINSON: Yes, they should.

40 MR McAVOY: The suggestion from that request is that those people involved in the system understood that the bail reforms would have the impacts that it has had; is that correct?

AUNTY GERALDINE ATKINSON: Correct.

45 MR McAVOY: Finally, in relation to this portion of the Assembly's submission, there is a request that Yoorrook investigate the decriminalisation of public drunkenness and, at point 12, it is set out the causes of Victorian government delays in implementing a public health model to support decriminalisation of public drunkenness. I have already asked you a question about that and it's a matter that the Commission will no doubt hear some evidence

about this week. But it certainly remains a matter of importance from the Assembly's point of view and something that should be acted upon urgently?

5 AUNTY GERALDINE ATKINSON: Yes. It's one of those matters that we call government to interrogate and to investigate and look at about changing it urgently.

MR McAVOY: Thank you. Commissioners, Chair, if it's convenient to take a break now for a short period?

10 CHAIR: Yes. 10 minutes, 15 minutes?

MR McAVOY: The morning tea break, Commissioner.

CHAIR: 15. Okay. 11.50.

15 MR McAVOY: Thank you, Chair.

CHAIR: 11.50.

20 <ADJOURNED 11:27 AM

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25 MR McAVOY: Thank you, Chair. Aunty, I have a few more questions for you and then the Commissioners may have some questions. If you can just turn to paragraph 43 of your outline of evidence. You make the observation there that:

*"The criminal justice system is another priority area for Treaty negotiations, just like the child protection system."*

30 Do you see that?

AUNTY GERALDINE ATKINSON: Yes.

35 MR McAVOY: Now, last week, we heard the Victorian Premier, Daniel Andrews, commit to an overhaul of the child protection system to address the gross over-removal rate of First children. Do you have any view as to whether there ought to be a similar overhaul of the criminal justice system as it affects Victorian Aboriginal people?

40 AUNTY GERALDINE ATKINSON: I most certainly do. I think that they're both - I think they go hand in hand. I think that both need overhauling. I think the criminal justice system and what we have seen, what we have heard and, in particular, this year, has been really distressing and I think it does need to be overhauled.

45 MR McAVOY: We have heard some evidence from you this morning about the way in which the State-wide Treaty negotiation process and the interim arrangements or Interim Offers might help in forming the basis for some negotiations around that type of serious reform. In terms of the child protection area, what role would the community organisations in that space have in the negotiations of those types of agreements?

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AUNTY GERALDINE ATKINSON: With child protection, I think that they - they are the experts, they are the people there that work in that area, you know, those areas, they have that experience, those organisations that work in - within - I'm talking about Aboriginal organisations that work within the child protection system and I believe that, you know, sort of what we would do, and we would work in partnership with those Aboriginal controlled organisations in looking at our overhaul of that system and how best we can implement some really good strategies and policies that are going to make sure they are working for our community and families and children.

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10 MR McAVOY: So the evidence earlier was that the Assembly could have a role in coordinating and leading the negotiations with those agencies?

AUNTY GERALDINE ATKINSON: Yes. I believe we could. Yes, I believe that that's possible, Tony, that we'll be able to do that. I think we said that about having, you know, sort of - within those interim measures, to enable that to happen.

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MR McAVOY: So the Assembly would engage in that, in partnership, or - in partnership with the Aboriginal community organisations that are experts in that space?

20 AUNTY GERALDINE ATKINSON: Yes.

MR McAVOY: That would include the Victorian Aboriginal Childcare Agency and other ACCOs.

25 AUNTY GERALDINE ATKINSON: Others.

MR McAVOY: Is that the same in the criminal justice space if that was to be subject to an overhaul as you've just suggested?

30 AUNTY GERALDINE ATKINSON: Yes. I believe the same process can take place. You know, within the Treaty Negotiation Framework, what we have said is we would work with the Aboriginal organisations. That's sort of one of the minimum standards that would occur and that's ensuring that what we do is get that inclusivity of community's views and community's views of those Aboriginal organisations because we are community, go to the community, interact with community views.

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MR McAVOY: But within those negotiations, it's possible to provide the umbrella of a Treaty to give it some added strength?

40 AUNTY GERALDINE ATKINSON: Yes, I believe so.

MR McAVOY: So at paragraph 44 of your outline you make the observation that Treaty can hold governments to account. It means that recommendations won't just be left on the shelf to gather dust.

45  
AUNTY GERALDINE ATKINSON: That's exactly our intent. That we will hold government to account. That we will ensure that the recommendations that we receive from Yoorrook are going to be implemented, that they won't gather dust, that they won't be like those other Royal Commissions. They do - you know, they are recommended, they're cherry-picked, but the recommendations we want from Yoorrook we want to make sure they

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are implemented, that what we get from those recommendations is, I think, a bit more cohesive, a program delivery that's really going to make systemic change and enable our families to live better lives.

5 MR McAVOY: With that in mind, the divide between child protection and the criminal justice system is probably not a strong one. I mean, there's a good argument for those to be dealt with together --

AUNTY GERALDINE ATKINSON: Yes.

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MR McAVOY: -- at the same time.

AUNTY GERALDINE ATKINSON: In my evidence, that's what I have said. What happens in child protection eventually leads to what happens in the criminal justice system. That's not just for our children, that's for their parents and their families as well.

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MR McAVOY: Thank you. Those are my questions of this witness, Chair.

AUNTY GERALDINE ATKINSON: Okay. I better have a drink of water before the questions.

20

COMMISSIONER HUNTER: In relation to the question Counsel was just talking about, which is line 44, that Treaty can hold governments to account, and it means recommendations won't be just left on the shelf to gather dust. Would you unpack that a bit for me, about what that would require?

25

AUNTY GERALDINE ATKINSON: Okay. When it comes to - well, the work that we've been doing, and the work that we have been - and how we have been working with government, and what we have been saying about how change needs to occur and this is why we want Treaty, which is why we wanted a State-wide Treaty, is to ensure that what we get is systemic change. So unpacking that is making sure what we do is - the recommendations that Yoorrook, the recommendations that you give, from the hearings, from your hearings, what you are hearing from community, what we hear from community, are being able to achieve better systems, better structural change for the Aboriginal community; does that answer your question?

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COMMISSIONER HUNTER: Yes --

MR McAVOY: If I might interrupt for a second, Commissioner Hunter, I'm informed by our tech assistants that your microphone is turned off.

40

COMMISSIONER HUNTER: I thought I was loud enough but thank you, Counsel. I guess I want to understand what mechanisms you - you have a relationship with the government to negotiate, because you are already negotiating where you have got to and so you will have, as you progress - and this is my understanding, so please feel free to correct me - as you go along this Treaty process you are going to negotiate different ways we move forward and so incorporated into part of that negotiation is that would they be the recommendations - possibly the recommendations that we make as Yoorrook?

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AUNTY GERALDINE ATKINSON: Yes. Yes, they will be. I mean, you know, we have high expectations of Yoorrook, that we will get, because you are listening to our peoples' stories, you are looking at the evidence, you're going to be looking at not just contemporary evidence, but you are going to be looking at historical evidence. So what we are hoping is that what we will get, we will get the recommendations that will enable us, as Treaty, in the negotiations for a State-wide Treaty, in negotiations for systemic change, will get the correct recommendations and that they will be implemented.

COMMISSIONER HUNTER: Thank you, Aunty Geraldine.

COMMISSIONER WALTER: Thank you, Aunty Geraldine. I was struck by your statement that the State does not understand what self-determination means, that it's still caught in the consultation/advice loop. So my question is a two-parter: is the State's failure to grasp the concept of self-determination a barrier to negotiating Treaty based on the evidence from Yoorrook and, if so, how might the State be able to make that necessary paradigm shift from advice to negotiation?

AUNTY GERALDINE ATKINSON: I think it's about listening to community. I think it's about really putting their money where their mouth is. If they say that what they want is self-determination for the Aboriginal people of Victoria, then they need to understand exactly what it is that we mean, what we mean when we say self-determination is needed and that's about realising that, you know, we have lived experiences. We know what works within community. We know how we will get better solutions and we know that by allowing the Aboriginal controlled organisations, the State-wide Treaty process and information from community, to ensure that what we are doing is we are making, I guess, those resolutions to those solutions work and operate effectively for us.

COMMISSIONER BELL: Aunty Geraldine, thank you for your evidence. I have been moved by your evidence. I want to say it's been delivered, from my point of view, with power and great dignity and it's affecting me and it's affecting my thinking. I only want to ask you questions, however, in relation to one aspect, but it is an important aspect and it's the aspect of police oversight, you've expressed a number of observations about the failures of the system, and you've called for completely independent oversight of the police. I want to ask you, in that context, do you have confidence in the current system of police oversight and dealing with police complaints?

AUNTY GERALDINE ATKINSON: No, I don't. I don't have confidence. I have - and I have seen and I have family and I have had community members that have complaints that are not dealt with I have seen instances where they have been degraded through processes that the police employ.

COMMISSIONER BELL: Now, you're a Co-Chair of the First Peoples' Assembly of Victoria and the First Peoples' Assembly of Victoria has called for the same thing: independent police oversight, a new complaint system external to the police, and so on. Are you in a position to comment on whether the First Peoples' Assembly of Victoria has confidence in the current system for police oversight and police complaints?

AUNTY GERALDINE ATKINSON: No.

COMMISSIONER BELL: Are the reasons essentially the same?

AUNTY GERALDINE ATKINSON: They are exactly the same. They are exactly the same. You know, I am Co-Chair, you know, we have been - as Co-Chairs, and our members, have been involved in the policies and the strategies and the recommendations that have been written and made. Nothing goes past our members without agreement.

COMMISSIONER BELL: Now, in addition to your present official positions, which I have just described, you're a senior Elder in your own community and it is obvious to us all that you possess unquestionable cultural authority and you've been in contact with Victorian communities, plural, for a very long time, are you able to comment upon the level of confidence of the Victorian First Peoples generally in the current system for police oversight and police complaints?

AUNTY GERALDINE ATKINSON: I would say, because of that, because I have been involved within this Aboriginal community, working in this Aboriginal community for over 50/60 years nearly, I do know and have met people right throughout, I have had conversations with, Aboriginal community in Victoria, and I know that one story that happens in one particular region is not an isolated case, that it happens in other regions, and that you hear the same stories. So I believe that it does happen to all First Peoples in Victoria.

COMMISSIONER BELL: Yes.

AUNTY GERALDINE ATKINSON: There may be - you know, I'm not saying that all families are involved in the justice system, but I'm saying that those that are have those similar stories.

COMMISSIONER BELL: What about the want of confidence, or otherwise, among Victorian Aboriginal community generally in the current system; is that confidence present or is it lacking?

AUNTY GERALDINE ATKINSON: Which system? The police system?

COMMISSIONER BELL: Yes.

AUNTY GERALDINE ATKINSON: I'd say the confidence is lacking.

COMMISSIONER BELL: Thank you. The last question I want to ask you is: could your confidence, the confidence of the First Peoples' Assembly and perhaps the broader confidence of the community in police oversight complaints, could that be restored or obtained with just reform of the present system or have things gone too far?

AUNTY GERALDINE ATKINSON: I think that what we need to do is we need to really look at reform and, really, reform is about changing things. That's what we want to do. We want to make exchange. We want to create change so that what occurs, and what has been occurring, doesn't continue. So that's about reform. That's what we want and that's exactly - you know, through the process that we have been talking about today, and about overhauling systems, I think that that needs to occur and I need - really when we talked about some independent body that's, you know, that's Aboriginal controlled, that can look at and - look at what is occurring and what the police system is actually - how it's impacting our

communities. It does need to be overhauled and it needs to be really interrogated. It really needs to be interrogated.

5 COMMISSIONER BELL: Yes. Just for my own mind, so I can be absolutely clear, by “reform”, you’re meaning reform in the direction of an independent oversight system?

AUNTY GERALDINE ATKINSON: Exactly.

10 COMMISSIONER BELL: Thank you, Co-Chair.

COMMISSIONER HUNTER: Can I just ask Aunty Geri one more question: you mentioned earlier the prison system and health. We did hear some evidence last week that people can’t go to bars for drug screens. So we heard that evidence last week. What is your faith in the corrections implementing a health system for Aboriginal and Torres Strait Islander people within the detention centres?

15 AUNTY GERALDINE ATKINSON: What I had said in my evidence was that what we need to do - and I’m not saying, you know - I know people don’t go to particular organisations, I know that there are particular things that they don’t want to have to go through. I don’t believe that the corrections systems can really do their job professionally and do it well that suits our community that go into those prisons. There needs to be really good screening. That screening needs to be done by Aboriginal people and by experts in the field of health.

20 COMMISSIONER HUNTER: If those screenings were culturally appropriate and correct, do you think we’d have less deaths in custody?

25 AUNTY GERALDINE ATKINSON: I think absolutely that’s my belief.

MR McAVOY: I have one question arising from some questions by Commissioner Bell, if I may. Geri, you were asked questions about the need for independent police oversight and the lack of community confidence in the Aboriginal community about the present system. To your knowledge, does the lack of confidence result in Aboriginal people not making complaints about police because they are concerned about the system?

30 AUNTY GERALDINE ATKINSON: In most cases, yes. And they don’t. And sometimes, you know, our people don’t see the point because they don’t see it going any further and that’s one of the things that, you know, that they believe and that’s historical. They don’t see that if they make a complaint it will be fired up.

35 MR McAVOY: So there are actions or activities undertaken by police that people could make complaints about but they don’t because they don’t have any confidence?

AUNTY GERALDINE ATKINSON: Exactly. And if - I won’t tell any other stories today.

40 MR McAVOY: And I won’t press you to tell those stories. They are all of my questions, Chair.

45 CHAIR: Thank you. If I could just ask --

COMMISSIONER HUNTER: Sorry, I have just been thinking about the questions that could be asked. Could Aboriginal control extend to co-policing models? Just a thought.

5 AUNTY GERALDINE ATKINSON: I'm really not sure how I would feel, really, about that, Sue-Anne, because when we talk about co-, we talk about co-design or we cooperate or co-whatever. But there is always a power imbalance, okay, and our people are stereotyped and our people have always been overpowered and disempowered. So I'm not sure.

10 COMMISSIONER HUNTER: Thank you.

CHAIR: That's all right. Geraldine, I would just like to ask whether you feel that there has been a change in relationships between our First Peoples and the government, and I'm thinking particularly of this century how, you know, in just 20 years there's been rapid movement with legislation, not necessarily in the spaces we are talking about today, but do you feel some hope - some possibility that things can happen the way that we are looking at from the recommendations you've made?

20 AUNTY GERALDINE ATKINSON: I think so. I really believe - you know, I'm an optimist, I really believe that what we can do is we can create that change, Eleanor, and I know that we have done some really great things in Victoria in relation to other issues and we have been able to get things probably that we haven't had before but there still is - that I would see - the change that we want really is that we have - and it's probably pie in the sky or, you know, blue sky dreaming, or whatever it is, but I want that what we have been able to do, and what we have been able to achieve, is going to ensure that our next generations, my grandchildren and their children, are going to have parity, that they are going to have respect, that their culture and their Aboriginal identity is something that they are going to be proud of and that will be respected for the broader community.

30 CHAIR: Thank you. And thank you for the submissions you have made and your work in the community over all those years, because you have been on a journey yourself but it's a journey so many have been on before, as you've alluded to, and I think you are to be congratulated on the work around the Treaty Negotiating Framework which I think is going to be an interesting exercise, to see how well that goes, given that there is - I think there is a bit of a different atmosphere with the national conversation as well but thank you for your work and your contribution today.

40 MR McAVOY: Thank you, Chair. That concludes the evidence of this witness. The next witness will come at 2 pm. It might be appropriate now to adjourn until 2 pm. Thank you, Commissioner.

45 AUNTY GERALDINE ATKINSON: Can I just say: thank you very much for having the opportunity to present to you. I appreciate it. I really believe the work that we have been doing, Eleanor, and I thank you for your compliments on the work we are doing and I hope the work that's following is going to ensure that, through treaty, we will get what we want to achieve. Thank you.

**<THE WITNESS WITHDREW**

50 MR McAVOY: Commissioners, I do formally tender the witness outline of Aunty Geraldine Atkinson, it's 6.1.1, the First Peoples' Assembly of Victoria's submission to the Yoorrook

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Justice Commission dated 5 December 2022; and also tender, at 6.1.2, the Treaty Negotiation Framework First Peoples' Assembly of Victoria and the State of Victoria dated 20 October 2022; and, at 6.1.3, the Self-Determination Fund Agreement which is dated October 2022. Thank you.

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CHAIR: Thank you. We will tender those documents and they will have the next exhibit numbers.

**<EXHIBIT 2.6 AUNTY GERALDINE ATKINSON OUTLINE OF EVIDENCE**

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**<EXHIBIT 2.7 FIRST PEOPLES' ASSEMBLY OF VICTORIA'S SUBMISSION TO THE YOORROOK JUSTICE COMMISSION DATED 05/12/2022**

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**<EXHIBIT 2.8 TREATY NEGOTIATION FRAMEWORK FIRST PEOPLES' ASSEMBLY OF VICTORIA AND THE STATE OF VICTORIA DATED 20/10/2022**

**<EXHIBIT 2.9 SELF-DETERMINATION FUND AGREEMENT DATED 10/2022**

CHAIR: Thank you. We will adjourn until the next session at 2 pm.

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MR McAVOY: 2 pm.

**<ADJOURNED 12:18 PM**

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**<RESUMED 2:13 PM**

MS FITZGERALD: If the Commission pleases, I will now call today's second witnesses, Antoinette Braybrook and Anne Lenton. I might start with you, Ms Braybrook and take you through the truth declaration.

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**<ANTOINETTE BRAYBROOK, AFFIRMED**

MS FITZGERALD: Ms Braybrook, will you introduce yourself personally and professionally.

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ANTOINETTE BRAYBROOK: My name is Antoinette Braybrook. I'm an Aboriginal woman born on Wurundjeri country where I have lived all of my life but my family are Kuku Yalanji from Far North Queensland, and I have been the CEO of Djirra for 20 years since its inception in 2002.

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MS FITZGERALD: Last month you were awarded the Melbournian of the Year Award for being an inspirational role model who has made an outstanding contribution in your field and to the wider community; is that right?

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ANTOINETTE BRAYBROOK: Yes, it is. When I was given that award, I did dedicate that award to Aboriginal women because I am only in this work, and in this role, because of the many Aboriginal women who have put their trust and belief in Djirra for 20 years.

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MS FITZGERALD: Ms Braybrook, Djirra made a written submission to the Commission and has provided copies of Djirra's submissions made in five other inquiries, which you have

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provided to inform the Commission's inquiry into both child protection and criminal justice, and I will tender those at the end of this session.

ANTOINETTE BRAYBROOK: Yes.

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MS FITZGERALD: Ms Lenton, do you undertake to provide truthful evidence to the Yoorrook Justice Commission today?

ANNE LENTON: I do.

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<ANNE LENTON, AFFIRMED

MS FITZGERALD: Can you explain your role at Djirra?

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ANNE LENTON: I'm the Director of Legal Services at Djirra. I have been at Djirra for over 10 years as a lawyer and a senior lawyer based in our prison support program at Dame Phyllis Frost Centre and, yes, lawyer and now Director.

MS FITZGERALD: Ms Braybrook, you wanted to make an opening statement?

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ANTOINETTE BRAYBROOK: I do. Can I begin by acknowledging the original custodians on the land we are on today and my respects to Elders, past and present. Can I also take this opportunity to acknowledge the Commissioners and to thank the Commission for allowing me to speak today on such critical issues impacting on the lives of our people, child protection and criminal justice.

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The focus of the evidence we will give today will be on the work that Djirra does with Aboriginal women and their children. Before I go into my opening statement I would like to tell you a bit about Djirra. Djirra is a specialist Aboriginal community controlled organisation. We work with Aboriginal people who experience family violence or are at risk of experiencing family violence, with the vast majority of people accessing our services for safety being Aboriginal women and their children. That's 98 per cent.

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Djirra's approach is holistic. Our services include legal support and representation with personal support for individuals within the legal service as well as case management, counselling, and we develop and deliver early intervention prevention programs.

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Djirra's services and programs aim to reach women in metropolitan Melbourne and regional locations throughout Victoria as well as in prison. I say "aim" because our resources do not meet the demand. Djirra's legal work is in four key areas of law: child protection, family law, family violence orders and victims of crime. Djirra's signature early intervention prevention program, Sisters Day Out, Dilly Bag, and Young Luv focus on bolstering women and young girls' resilience in order to reduce vulnerability to male violence and system violence.

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Djirra is a young organisation but, in 20 years of our existence, we have been unwavering in our commitment to keep Aboriginal women and children safe, to live a life free of violence and to thrive in their culture and identity, to honour and celebrate being Aboriginal women. Aboriginal women and their children deserve better than what we continue to endure not only because our lives are at risk of violence from men from many different cultures and

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backgrounds but also because the system perpetuates this violence by silencing, targeting, and making us invisible.

5 Systemic racism and violence is very much present in our State today. Today, like every other day, we hope that we can shine a light on the many issues impacting on our women and children with respect to child protection and criminal justice. We hope this results in the necessary and urgent investment for real change. The Andrews Government has recently committed to a complete overhaul of the child protection system. Djirra welcomes this and promises Aboriginal women that we will continue to hold this government to account.

10 It is deeply concerning to see the rates of child removal and women's incarceration soaring, not declining. It is even more concerning that the investment into these racist and punitive systems continues to far outweigh investment into self-determined solutions and specialist organisations, such as Djirra, that keep women and children safe together.

15 We will demonstrate how the government consistently targets and fails, overlooks Aboriginal women, families and our children by perpetuating the wrongs of the past by investing in systems built on white foundations of oppression and marginalisation of our people. Child protection and criminal justice may seem different, but they are not. They are very much the same.

20 This intersection is well documented and understood. Aboriginal children who are removed are likely to be caught up in the youth justice system and then likely to land in adult prison. The Sentencing Advisory Council found that one in two children who had involvement with the youth justice system have experienced five or more child protection placements. In the recent inquiry, *'Our Youth, Our Way'*, it was found that Aboriginal girls and young people are disproportionately impacted by child protection and remanded and sentenced to custodial orders at a much higher rate than any others.

30 More than 80 per cent of Aboriginal women in prisons are mothers. Women are being removed from their children. Children whose mums spend time in prison are more likely to be removed, have disrupted education, poor health, and unstable housing; the cycle of trauma perpetuated. Djirra works with Aboriginal women who are blamed and punished for the violence they experience, who have their children taken rather than being supported to escape the violence with their children, who are misidentified as perpetrators of violence, who often fear the system more than their abuser, who are homeless and couch surfing or living on the streets, who are living in poverty, who are told by child protection workers not to involve lawyers because it will only complicate matters and then their children are taken, who are imprisoned for minor poverty related matters, things they need to do just to survive.

40 Today, in Victoria, Aboriginal children are being removed from their mums, families and communities at rates far greater than any time since white settlement. Our children are removed at 20 times the rate of other children. Family violence is a key driver to the removal of Aboriginal children and their placement in out-of-home care, too often, with non-Aboriginal carers. Despite the transferring of government responsibilities to Aboriginal community control, we have seen little change. In fact, things have got worse. Djirra questions whether this is really self-determination.

50 Aboriginal women in our country today are the fastest growing prison population. The number of Aboriginal women incarcerated in Victoria is unacceptable and it must stop. Our

women are 16 times more likely to be imprisoned than other women. The vast majority of Aboriginal women in prison sit on remand and may not receive a custodial sentence. If they do, often the custodial sentence is less than their time served on remand. This is deeply concerning.

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One day in prison will destroy a woman's life. She is likely to lose her children, her home, her employment. These are the tangible losses but who sees the emotional loss and attempted destruction of a mother's spirit and her cultural connection to her children? Right now in Victoria there are about 47 Aboriginal women in prison, of which around 15 are sentenced, and 32 unsentenced.

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About 90 per cent of our women in prison have experienced family violence and sexual violence and more than 80 per cent are mums. Of the women Djirra works with in our prison support program, 90 per cent are mums with their kids being caught up in the child protection system. Prisons perpetuate the cycle of disadvantage. Prisons are violent and harmful and are inherently unsafe for Aboriginal women. Women cannot heal in prison.

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New prisons are being built and existing prisons expanded and used as detox and mental health facilities and to address housing shortages and, dare I say it, to hide the so-called Aboriginal problem. So what must change? There must be an investment into Aboriginal women's individual and collective self-determination. Aboriginal women must have access to culturally safe legal representation and be made aware that child protection is a legal issue. *'Always Was, Always Will Be'* highlighted that if Aboriginal mums have access to legal representation, then child removal is likely to be prevented.

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There must be investment into specialist organisations, like Djirra, into holistic approaches that include frontline and early intervention prevention, policy and data sovereignty. Year after year, Djirra has unsuccessfully requested membership of the DFFH Children's Forum. Djirra's participation would only strengthen the work of this forum, not diminish it. Specialist organisations must be at the table, not excluded. All voices must be included.

30

The Victorian Government must stop creating punitive and racist laws and abolish the existing laws that ultimately target our people, including the reverse onus provisions in the *Bail Act 1977*, imposing unrealistic time limits, up to two years, on family reunification orders introduced by the *Children, Youth and Families (Permanent Care and Other Matters) Amendment Act 2014*, the proposed amendments under the *Children, Youth and Families Amendment Child Protection Bill 2021*.

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The number of our women in custody or on remand has increased since the bail reforms came into force in 2018. We want to see a presumption in favour of bail. Aboriginal women with children should not be locked up full stop. When permanency was first brought into the legislation in 2014, it came with the promise of more services for women to access, but we have never seen this. Instead, we see women not being able to access critical services such as detox and counselling because of long waiting lists, and still housing shortages.

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The Department refused to write a letter of support for a woman that we work with, whose child is on a reunification plan, with housing as a condition.

If the Victorian Government is serious about a complete overhaul, it must also urgently raise the age of criminal responsibility. The Victorian Government must end Aboriginal deaths in

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5 custody and appoint an Aboriginal Justice Commissioner. The Victorian Government must establish and fund a mandatory child protection notification referral system whereby Aboriginal women, our mums, are referred to Djirra for legal advice and representation because early access to legal representation will prevent child removal. Woman must have an advocate and must be supported to escape the violence with their children, not punished.

10 All of what I have raised in this opening statement is not new. In fact, Djirra has been advocating for much of this for many years and there has been little to no change. You just have to look at our 2009 policy papers which outline the systemic injustices inflicted on our women 13 years ago, other Djirra submissions, including our 2015 submission into the Inquiry into the Children, Youth and Families Amendment Bill, seven years ago.

15 Individuals and organisations have provided expert advice, shared lived experiences, despite not being resourced, but we all continue to spend our evenings and weekends preparing submissions and witness statements to give evidence at inquiries such as this because we want change. This work for all of us is deeply personal. It is essential that the recommendations that come out of this inquiry are fully implemented and invested in. They cannot become another dust collector on the bookshelf for bureaucrats to reshuffle every now and again.

20 Finally, I want to leave you with the devastating reality of what our women experience every day in their lives. The women who put their belief and trust in us, who just want you to believe their story, their experience, and invest in their safety and their self-determination. I will call her Sally. A child protection worker destroyed her soul, her spirit, and every hope she had of getting her kids back, and even though she was making great progress on abstaining from marijuana use, and was relocating constantly to stay away from the violent ex-partner, the worker told her, "You are not fit to be a mum, you will never have your kids back."

25 30 Another client, I will call Mary, questioned the child protection worker as to why she had not been invited to any care team meetings regarding her child. The worker said, "I didn't think you'd want to come." There are no happy endings here for Aboriginal women and their children when it comes to child protection and criminal justice. The odds are stacked up against us.

35 We have hope that Yoorrook will make the necessary recommendations for real change so that Aboriginal women and their children feel safe, valued, heard, believed and invested in. Thank you again for giving Djirra the opportunity to make this opening statement and give evidence today.

40 MS FITZGERALD: Thanks, Ms Braybrook. It would be wonderful if you would start really - you've given a bit of a background on what Djirra does, and you've touched upon some of the programs that currently run, would you explain the specific programs that Djirra runs? You've mentioned Sisters Day Out and, in the written submissions, Sisters Day In, Dilly Bag, Young Luv and those three you mentioned in the opening. It would be great to know what they are. But also Koori Women's Place, your counselling service and the legal services you provide in prison.

50 ANTOINETTE BRAYBROOK: Sure. So I will start with Sisters Day Out, which came about 15 years ago, and we knew that women wouldn't readily walk through our door, we

had to take what we do to women in community and had we promoted this workshop as a family violence workshop, we knew that we would not get any women to come, so we used pampering as the hook: hairdressing, massage and manicure. We invited mainstream Aboriginal services from the area to come along and set up an information table about what services they provide so that then started to build some trust and confidence in those services and break down the barriers to accessing those services.

The other benefit, I guess, that came out of it was it was probably a bit of a cultural experience for the non-Aboriginal people, women, that attended. On the day we do presentations of what types of services we provide. We go through all of the legal services because we know that Aboriginal women don't understand that they have legal rights and we know that women don't identify child protection as a legal issue. So we have to work really hard in our communities to ensure that women understand their legal rights.

Then we have our lawyers and counsellors available on the day for private legal advice and often what we have found over the years is that the Aboriginal women in the room will come up to our non-Aboriginal staff member and just say, "Would you mind introducing me to the counsellor or one of the lawyers", if they are not Aboriginal. So that's been really good to ensure that women have access to legal representation.

To date, I think that we have had over 15,000 Aboriginal women participate in Sisters Day Out in Victoria. Some of our workshops - the average is about 100 women attending each workshop - this was pre-COVID - and some of our workshops got really big, to about 300 women attending. From Sisters Day Out, our other programs grew, with two younger Aboriginal women that were working with us at the time identified that younger Aboriginal women were feeling a little bit isolated and there needed to be something different. So that's how Young Luv grew.

The workshops used to run concurrently, and now it's moved into something else, Young Luv, and it's been really successful and it's about healthy relationships, not just in a partner relationship but within school, within family and other things. The Dilly Bag program is a retreat where Aboriginal women attend for about three days and it has a really strong focus on Aboriginal women's business and cultural activities.

Our Koori Women's Place, we have had a longstanding vision since our inception to have our own Aboriginal women's centre in Victoria and this has been the start of getting us to that and about six or seven years ago we purchased our own building to start that but now we have outgrown our building and we have so many women coming through that the Koori Women's Place provides just support for women who walk in off the street, and also we have programmed activities like basket weaving, earring making. We even have some workshops on developing a CV. And pre-COVID we were wondering how we might get that whole Koori Women's Place State-wide but now we know because there's online delivery and that's been really successful.

Our counselling service, currently we receive around \$60,000 from Dhelk Dja Partnership Forum for our counselling and we are unable to meet the demand for that. We have women on really long waiting lists for our counselling service, which is really interesting, because before COVID we had a difficult time with getting women to engage with our counselling service but, through COVID, the numbers just rose. Our Djirra legal services in prison - and Anne might want to expand on this - we also wanted to make sure that our women in prison

5 didn't become invisible and didn't have access to our child protection, which, as you know, is a really big issue, having intervention orders in place for when they come out of prison, have access to other legal protections, like victims of crime, and that's how we also started to develop our Sisters Day In in the prison. For one day women in prison feel like they are not in prison. The whole rec room is decked out with pink balloons and candles. So once the women walk in the room they have the biggest smile on their face.

10 MS FITZGERALD: Thank you, Antoinette. These are very - some of the services you provide are very concrete services but alongside that is this much less concrete wellbeing work that you do. How do you see these two very different sides to Djirra's work interacting and why do you do both?

15 ANTOINETTE BRAYBROOK: We know that without our early intervention programs our legal services wouldn't work. They build trust and confidence in what we do because the law has historically been used as a tool of oppression against our people. So for many it is really hard to see how the law is something that might be able to help with the right lawyer. So that's about building trust and confidence. If we were just a legal service, I'm sure that, you know, we wouldn't be reaching as many women as we do through our early intervention and prevention programs.

20 I think, just as years go on, with us being in community, we make sure that all of our staff, our non-Aboriginal and our Aboriginal staff, have a real strong presence across the communities within Victoria and build relationships and we do that through these early intervention prevention programs.

25 MS FITZGERALD: You're a specialist organisation, that's how you characterise yourself, and you specifically support and empower women who have experienced family violence. Can you explain the ripple effects that this work - that the family violence work that you do can have on our two focus areas; to what extent does family violence impact on child protection and criminal justice?

30 ANTOINETTE BRAYBROOK: So we know that family violence is one of the key drivers to the removal of Aboriginal children and what we see in our work consistently is that the investment, firstly, that goes into a punitive and racist system; that is, targeting Aboriginal women and taking their children, Aboriginal women are not supported to escape the violence safely with their children. They are blamed for the violence that they are experiencing.

40 Then we also see - we know that, you know, more than 90 per cent of our women in prison have experienced family violence. We know that many of our women in prison are sitting on remand for very long periods of time, as I said in my opening statement, not receiving a custodial sentence and how that will destroy her life one day in prison.

45 We also see the targeting by police, or the racism that exists in the police, where women might finally get up the courage to report the violence and then women are issued with an outstanding warrant, they are not believed, or they are misidentified as perpetrators of violence.

50 MS FITZGERALD: In your written submission you make a statement that self-determination is the foundation of everything Djirra does. How does that play out practically in how things are done within the organisation?

ANTOINETTE BRAYBROOK: So all of our programs that I spoke about are delivered by and for Aboriginal women, led by Aboriginal women. The organisation is led by Aboriginal people, Aboriginal women. We have a board that's Aboriginal, a CEO that's Aboriginal, and also 40 per cent of our staff are Aboriginal women. We aim to embed self-determination across every aspect of our organisation, not just our front-facing, but also our backroom work. We have structures in place so there's decision-making that's led by Aboriginal people.

MS FITZGERALD: Yoorrook has heard about self-determination at the individual level and at the community level. Can you speak to those differences and the issues that arise in the family violence space in relation to individual self-determination versus collective self-determination?

ANTOINETTE BRAYBROOK: When I talk about Aboriginal women's individual self-determination, it's her choice, it's about her choice to make decisions about her own life. I think that we need to - sometimes the focus on building strong families creates an invisibility for Aboriginal women and takes away their individual self-determination. We see this through many partnerships with the government about strengthening families. I might add too that the focus solely on family violence being a community issue, we don't agree with that. We see it as a gendered issue. Our women are harmed by men from many different cultures and backgrounds, but this is not to say that there are not violent Aboriginal men who may harm non-Aboriginal women. But this should not be labelled an Aboriginal community problem. That creates an invisibility for Aboriginal women, and it keeps our women unsafe.

MS FITZGERALD: I want to turn to the aspects of your submission that deal with the criminal system now, in the context of considering self-determination in particular. How would the system look and how would it deal with your clients differently in the criminal system if Djirra had a say in designing that system; how might it look different?

ANTOINETTE BRAYBROOK: There would be no prisons. Prisons would not be expanded. There would not be new prisons built and our women would not be landing in prison because, as I said, our women go to prison for matters relating to poverty and homelessness and 90 per cent of our women in prison have experienced family violence. So women should be supported through a holistic approach in the same way that Djirra does for Aboriginal women in communities to link women into the much needed services, housing, health, detox, other mental health facilities, for example. You don't have to go into prison, or you shouldn't have to go into prison, to be able to detox or, you know, heal. Prisons are not a place where women can heal.

MS FITZGERALD: You had joined the Aboriginal Justice Caucus in calls for the establishment of a permanent Aboriginal Justice Commissioner. How do you see that role supporting self-determination in the justice system?

ANTOINETTE BRAYBROOK: Yes. We have supported that call and it's been a longstanding call, and I think that, you know, for 30-odd years, the Royal Commission into Aboriginal Deaths in Custody to be implemented, they haven't been, and I think that that Justice Commissioner would, at the very least, see what needs to be reviewed out of those 30 year old recommendations. They may not fit now but I think it would be one step towards looking or holding government to account to invest in the right places, to ensure that our people are not criminalised.

MS FITZGERALD: Djirra and the Centre for Innovative Justice have been engaged by the government to undertake a feasibility study to develop a community based residential model to keep Aboriginal women out of prison. Can you explain the proposal and how that reflects aspects of self-determination that you've been pushing for?

ANTOINETTE BRAYBROOK: So this has been something I know I have been involved in for many, many years, from the moment that Djirra became a member of the Victorian Aboriginal Justice Forum, I think, probably nearly 20 years ago. I remember sitting at the table and saying, "We have to do something about the increasing numbers of our women landing in prison", and I was told at that table, when there were six women in prison, that the numbers are not high enough to warrant the investment. Today, as I said, we are looking at 47 women in prison. Had there been an investment back then we would not be in this situation now where we have to pour so many dollars into addressing this unnecessary criminalisation of our people.

MS FITZGERALD: Turning to one of the issues that you mentioned in your opening remarks, you have identified Victoria's bail laws as a major issue. You mentioned that you see clients that are convicted - when they are convicted, they are sentenced to less time than they have already served. In other cases, your written submission notes that the refusal of bail sometimes means they serve time in prison when the courts who are deciding their matters eventually decide that a prison sentence is not warranted at all for the crime that they are convicted of. How often are you seeing that occurring?

ANTOINETTE BRAYBROOK: I'm told through our frontline workers that we do see it often in our work but I should point out that we don't work in the criminal law space. We work with women who experience family violence. But, you know, we see women refused bail because there is nowhere to bail her to, there's no housing, and the like. It just means that our women continue to be criminalised and that destroys our women's lives.

MS FITZGERALD: One of the things you said in your opening statement is, "One day in prison can destroy a woman's life." You mentioned that that single day in prison can result in loss of employment, loss of housing, and loss of their children.

ANTOINETTE BRAYBROOK: Yes.

MS FITZGERALD: If that one day was unnecessary, if that person could have been bailed because a court's eventually going to decide that no prison sentence is necessary, is it your experience that it's easy for women to get those things back, get housing back, get the kids back, get the job back?

ANTOINETTE BRAYBROOK: No. It's not easy for women to get those things back. Often women don't have an advocate and that's why we say that organisations, specialist organisations like Djirra, need to be invested in so that women have an advocate and, yes, I mean, these are all tangible losses, but the emotional loss is something that can't be quantified. Women's spirits are destroyed and the attempted decimation of the cultural connection between mother and child is a very difficult one.

MS FITZGERALD: You've spoken about - in your opening, you explained Djirra's position on the age of criminal responsibility. Why is this an issue of particular importance for Aboriginal children?

5 ANTOINETTE BRAYBROOK: I think it's for every child and Djirra has been a strong advocate for raising the age of criminal responsibility to at least 14. No child belongs in prison. If you just look at, you know, what path that leads a child on, we know that there's a clear link between Aboriginal children being removed and being caught up in the child protection system, to then going on to land in youth justice and then adult incarceration. So  
10 it's absolutely essential that, as a starting point, the age of criminal responsibility is raised. I say as a starting point because we don't want to see any of our children in prison at all and we don't want to see any of our people in prison.

MS FITZGERALD: Some of Djirra's programs you are mentioning are tailored towards  
15 young people. How can government learn from the work you're doing to address criminal behaviour by Aboriginal young people?

ANTOINETTE BRAYBROOK: The work that we do with young women and girls is about building on women's resilience and Aboriginal women just need to be invested in and valued.  
20 I think that that's what the Victorian government needs to learn and needs to acknowledge, that they are putting the investment in the wrong place. It needs to go into specialist organisations that see the strength and resilience of Aboriginal women, and that's Djirra.

MS FITZGERALD: Your submission also addresses, and your opening comments also address, the Royal Commission into Aboriginal Deaths in Custody. You've noted that the  
25 recommendations are 30 years old now and that Aboriginal women were ignored in that process. What should the government do with those recommendations now?

ANTOINETTE BRAYBROOK: I think that they need to appoint an Aboriginal Justice  
30 Commissioner to review those recommendations and, yes, not one of the 339 recommendations identified Aboriginal women in that process and that's created a real invisibility when it comes to policy decisions and funding allocations for women, and it's probably most likely contributed to Aboriginal women being the fastest growing prison population in the country today.

35 MS FITZGERALD: You say in your written submission, in particular, there should be investment in Aboriginal community-led solutions. Are there parts of the criminal system that can and should be handed over to Aboriginal people and, if so, what parts?

40 ANTOINETTE BRAYBROOK: I think transferring failed government responsibilities to Aboriginal community controlled organisations. I don't think that that's self-determination. We are seeing that more and more. I think just taking over a government failure is a missed opportunity for us to really look at this and develop through a self-determined lens.

45 MS FITZGERALD: So what you're speaking to is just handing over a concrete part of a system that's already been constructed without first --

ANTOINETTE BRAYBROOK: A concrete part of the system that's already been designed  
50 and on white foundations that target and oppress the most vulnerable and disadvantaged in our communities and that's our people.



MS FITZGERALD: Turning to prisons, you've said in your submission that your primary aim is to keep women out of prison and you have spoken to investing money, much more money to do that. If First Nations women are imprisoned, you've spoken about real  
5 shortcomings in the healthcare that's given to First Nations women. So obviously your priority is to keep women out of prison. If they are imprisoned, how would you like to see their healthcare given better oversight?

10 ANTOINETTE BRAYBROOK: I think that there needs to be some oversight by an Aboriginal community controlled health service but I do need to say again that our women shouldn't have to go into prison to receive a health service.

15 ANNE LENTON: I might add something there. I think, too, there's a real lack of continuity of healthcare. So say, for example, if you had a psychiatrist that you worked really well with, the moment that you enter prison that relationship ends. And that's incredibly disruptive. Also, too, I can kind of reflect on, when I was accessing the prisoners as a lawyer in the programs area, pre-COVID, you know, it was kind of - women would come to me and say, "It's been six weeks, I can't get access to folate", she's a pregnant woman. So it's, you know, the most minor health issues and that's something that, you know, Djirra's really been  
20 concerned with, with COVID, in that when we went going into the prison, in the programs, how that kind of - that trust, you know, who are women able to go to see?

MS FITZGERALD: Ms Braybrook, you also raised housing as a critical issue in your written submission and you've mentioned that women will be often need to make a choice between  
25 family violence and homelessness. What is the causal link between family violence, housing instability, and incarceration of Aboriginal women?

30 ANTOINETTE BRAYBROOK: So for a woman who is trying to escape family violence, there's a housing shortage, so she may not be able to get a home and might end up on the streets, couch surfing, lose her children. And also for women who - and that will essentially mean that Aboriginal women land in prison. Then for women exiting prison, there's a housing shortage. So there's nowhere for women to go and we have called for guaranteed housing for Aboriginal women who are escaping family violence and also our women who are exiting prison.

35 MS FITZGERALD: Speaking about the point at which a woman's leaving prison, is housing availability or securing housing relevant to parole decisions for women? Is that taken into account? This might be a question --

40 ANTOINETTE BRAYBROOK: I think it is, just from my understanding, if you don't have a house, there's nowhere that you can be paroled to.

MS FITZGERALD: Turning to the issue of child protection, and going back to questions of  
45 self-determination we were discussing earlier in the criminal system, in your submission you say that self-determination does not mean simply - and you repeated it just before - doesn't mean simply delegating existing powers and responsibilities to Aboriginal organisations. In the child protection system, you've observed that your view is that is, to an extent, what is happening with section 18; what do you see as being wrong with that?

ANNE LENTON: I guess, yes, from my perspective, I'd have concerns in how women would be able to trust. You know, say for example if you have an established relationship with your Aboriginal health ACCO, for example, but that same organisation was also child protection or if the Aboriginal family-led decision-making meeting was also - I just - I think at Djirra we see the same concerns with Orange Doors in that, you know, when you are experiencing family violence, how do you kind of tease out who to trust and I think that can be a problem when, say, for example, at Orange Doors, if child protection are there and you are seeking safety, how do you trust that.

10 ANTOINETTE BRAYBROOK: The other point I want to make, we made this and we will probably keep making it through the next couple of hours, the Victorian government seems fixated on investing in systems that are targeting our people, and since the section 18 came in, we have just seen numbers rise, that's despite all of the money that's gone into that.

15 MS FITZGERALD: Is your perspective that just swapping out Aboriginal organisations for the existing mainstream organisations just means there's a new person doing the same thing?

ANTOINETTE BRAYBROOK: Yes. Or a new structure doing the same thing.

20 MS FITZGERALD: And you want something else done?

ANTOINETTE BRAYBROOK: Yes. Women need to be invested in to escape violence with their children. It's simple, really.

25 MS FITZGERALD: On that, I asked you earlier just to reflect on how the criminal system would look differently if Djirra had a say in designing it. If you could think about the child protection system, how would the child protection system look and how would it deal with your clients differently if Djirra had a say in designing it?

30 ANTOINETTE BRAYBROOK: I don't want to be involved in designing any system that is punitive but what I will say is that, if there was going to be a redesign, as we have heard the Andrew Government say, that there will be an overhaul, that all voices must be at the table and included in this redesign, and that's including the voices of those who are too often silenced, and that's Aboriginal women who experience family violence.

35 MS FITZGERALD: In your written submission, Djirra says that any reforms to child protection must include five things. I'll run through those and then just ask you to explain what you mean by those. The first is shifting focus to prevention and support for mums escaping family violence; the second is investing in ACCOs, like Djirra, to deliver that support; the third was developing a child protection notification scheme so that mums have early access to legal advice and representation; the fourth is stopping legislative changes that are designed to reduce Children's Court oversight and punish mothers who need support; and the fifth is winding back the permanency fast-track laws from 2016.

45 If we can just turn to prevention and support firstly. What should that look like? What's working and what's not working for the services currently available for Aboriginal women in this area?

50 ANTOINETTE BRAYBROOK: Well, what I see is working is what Djirra does. It just needs more Aboriginal women to be able to have access to what we provide, and prevention

isn't just a program like we've said, about, you know, Sisters Day Out or our Dilly Bag program, but is also early access to legal representation, that will prevent child removal. It's about women knowing their rights.

5 MS FITZGERALD: You referred to a proposal for a child protection notification scheme. What would this involve and why is it needed?

10 ANTOINETTE BRAYBROOK: So we liken this to the custody notification system that exists when an Aboriginal person is taken into custody, an Aboriginal legal service is immediately notified. So what we want to see is we know that notifications on Aboriginal children come in many ways, that could be police, it could be a neighbour, it could be someone in your family. It could be a friend. So just to look at one way that this notification is made, by police, and pilot this, focus on this, so that if police do make a notification on an Aboriginal child because they have been called out to a family violence incident, or a mum  
15 has come to report family violence, then mum is immediately referred to Djirra for legal advice because we know that early access to legal advice will prevent child removal.

MS FITZGERALD: This might be a question for Ms Lenton. Amending legislation was tabled last year and one of the five points raised by Djirra is stopping legislative changes. A  
20 concern Djirra raises in its submission is that this legislation will delay or limit the court's oversight of the Department in child removal decisions. Why do you say that is the effect of the proposed amendments as they are currently drafted?

25 ANNE LENTON: So the proposed changes are quite detailed, but I think we have real concerns about delays in emergency hearings, which will also - there will be a reduction in the discretion of the Children's Court to make interim orders to a parent who is not a risk to the child, but needs supervision.

30 So I guess in - we see that quite regularly, where an interim accommodation order would be made for a child to be with their mother, but there is a condition that they must reside in a house where there's someone who can support that parent. I think any change like that would really impact, particularly women experiencing a disability, which is a real concern for us.

35 Kind of linking to that, we had a - there's a case study which is a client who had a learning disability and the Department wrote in a court report that she needed to take accountability for the work that she wants to do and recall information. So I think, you know, that example, like, really - it really does speak to workers often just don't appreciate what women are going through. It's inflexible and it doesn't look at the family solutions and what support women in that situation require.

40 COMMISSIONER WALTER: Can I just ask a question there: I was caught by that part of your submission, can you explain, or do you have any inkling as to why the State would want to do this, given it seems to run counter to everything that is trying to be changed - that they say is trying to be changed about the child protection system?

45 ANNE LENTON: I think - I can't speak for the government but I'd imagine it's - when you look at time limits, so in the event a child would be placed on an interim accommodation order to out of parental care, the clock would be running for the time limited order. So, you know, I think that's - with an interim order to the mother, but in a house with support, the  
50 clock's not ticking, technically, but that would be what I suspect.

ANTOINETTE BRAYBROOK: I think it was about their stability as well so that kids weren't shifted around --

5 COMMISSIONER WALTER: So maybe it's counterproductive.

ANTOINETTE BRAYBROOK: Yes. Because with the introduction of this came the promise of more services for women to access but that's never come. It's never been invested in. We see long waiting lists, for example, of the detox and rehabilitation, which are often,  
10 you know, part of the reunification plans and also housing shortages.

ANNE LENTON: I'd like to refer to, sorry, Victoria Legal Aid did a really good report - sorry, bear with me - it's '*Achieving Safe and Certain Homes for Children*', it's a 2020 report. I think it's quite powerful when they say permanency in law is not the same as a  
15 permanent home and I don't - yes, I think we can reflect on our own work in that, in that multiple placements - you might - the bond with a parent might be broken, but is that - yes. With, you know, children on these orders, they can be in, like, four to five different placements and it's not brought back into the court. There is no oversight. And we see that in youth justice as well.

20 MS FITZGERALD: Is what you are saying a permanent order might be made, and it's got the word "permanent" in it, but underneath that is a child going to five different homes. So it has the label of permanency which satisfies this theoretical Holy Grail of a child being in a settled single home, but what it hides is being shipped around because the Secretary can't  
25 find a stable place for them to be looked after on the Secretary's behalf?

MS LENTON: Yes.

30 MS FITZGERALD: Okay. So the Secretary is the permanent carer, but they are not - that's happening through a number of different people over time?

ANNE LENTON: Yes. I think when the legislation changed, as well, it's a while back, the old care by Secretary orders, they'd name - there would be conditions or they'd name the placement but now these are orders which are just - what's coming into my mind is a blank  
35 cheque, but, like, inappropriate, but, you know, the Department can move a child without bringing the matter back into court. So at what point is anyone really analysing or having independent eyes on where would be best?

40 ANTOINETTE BRAYBROOK: But also often a non-Aboriginal family can say, "I don't want this child anymore."

MS FITZGERALD: I was going to turn to the final of those five recommendations in the space which is advocating for the repeal of the permanent removal fast-track laws. My understanding is they were introduced because it was said to be important for children to  
45 have certainty about who's going to look after them and that it was thought, you know, by two years, a final decision should be made and my understanding is that, looking at the system, was that the legislature thought, "Well, we'll put in this two-year inflexible end point and that will force everyone, and the bureaucracy, to get their act together and have everything resolved neatly at the end of that two-year period." Why do you say that objective,

which sounds quite good from the outside, why do you say that's been harmful for your clients?

5 ANTOINETTE BRAYBROOK: We haven't seen it work, and it is Aboriginal women and their children that are mostly impacted. You just have to look at the statistics and how many children are being removed. Aboriginal women need to be supported to escape the violence and keep their kids and be linked into those services that will keep everyone safe. Not punished, and their children removed.

10 MS FITZGERALD: One of the sections that Djirra made a submission about to another inquiry - which I would just like to ask the operator to bring up - which is section 276 of the *Children, Youth and Families Act*. I will just read out specific sections, parts of it, I wanted to ask you about, Ms Lenton. This section is currently part of the legislation, isn't it?

15 ANNE LENTON: It is.

MS FITZGERALD: And we have heard about how decisions are often being made to remove children because of poverty, substance abuse issues, family violence issues. Now - actually, I will withdraw that. I will just - given the size, I will just step through the  
20 parts of the section I was going to touch on with you. The section provides that the court must not make a protection order unless - and one of those two mandatory things is it's satisfied that all reasonable steps have been taken by the Secretary to provide the services necessary in the best interests of the child.

25 Then it provides that the court must not make a protection order that has the effect of removing a child from the care of the child's parent unless - and the first of those is - the court has considered and rejected, as being contrary to best interests of the child, an order allowing the child to remain in the care of the child's parent and - which is the part that I wanted to discuss - the court is satisfied by a statement contained in a disposition report that  
30 all reasonable steps have been taken by the Secretary to provide the services necessary to enable the child to remain in the care of the child's parent and the court considers that the making of the order is in the best interests of the child.

The final subsection in that section is the fact that the child does not have adequate  
35 accommodation is not, by itself, a sufficient reason for the making of an order referred to in subsection (2). Ms Lenton, as I was just saying before, we have heard about how decisions are often being made to remove children because of poverty, substance abuse issues, family violence issues. Does that sum up the major cause that you see for child removals for Aboriginal mums?

40 ANNE LENTON: Yes. And also I would say mental health as a result of child removal or family violence.

MS FITZGERALD: Now, most issues are seen to be things that the Department, just from an  
45 outsider's perspective, could address by working closely with mum to provide services to help find housing, mental health services, links with rehab supports or empowering mum to deal with family violence issues. In your experience, Ms Lenton, are families being given the services they need by the Department to address those issues?

50 ANNE LENTON: No.

MS FITZGERALD: Can you enlighten us about why they are not getting them and what the Department's response is to requests for those services?

5 ANNE LENTON: I think there's delays in making referrals to services, and then when you consider the wait list of many services, and also, too, there is often, you know, the day before the court report, you know, the court hearing, they are rushing to do the court report and then, I think, you know, that prompts an email being sent about a referral. I think that's where Djirra's really critical in that the holistic model of providing legal assistance has meant that we constantly follow this up.

10 But there are things that are out of our control, and I think the example Antoinette gave in her opening statement about, you know, there's been two recent examples of the Department not providing a housing letter of support. So, yes, there are real gaps there. Also there are referrals to services that aren't appropriate, that aren't culturally safe, or, you know, that could be an hour and a half from your home and you don't have a car. There's just – it's very layered.

15 MS FITZGERALD: This section doesn't mandate that the Department must provide the services. I can see that it is caveated, but a requirement that the Department take reasonable steps. Do you consider that the Department are taking reasonable steps to provide those services?

20 ANNE LENTON: No.

25 MS FITZGERALD: How often do you see protection orders being made by the Children's Court in circumstances where you do not consider that reasonable steps have been taken to provide the services necessary in the best interests of the child, in particular talking about removal from a parent, that section requires the Secretary to provide the services necessary to enable the child to remain in the care of the child's parent. How often are you seeing protection orders made where you don't think that's been done?

30 ANNE LENTON: Regularly. But, I guess, too, because that is the focus of our work. In Djirra's work, we work really hard to ensure that appropriate services are engaged. But we can't control wait lists or the investments of government.

35 MS FITZGERALD: Is it fair to say that the way the court views it, as long as the Department takes reasonable steps, the fact that those services don't exist for the Department to take reasonable steps to get is just sort of the elephant in the room?

40 ANNE LENTON: Yes. And I think, too, with courts under pressure, I think it's kind of a system on autopilot and I think that extends to lawyers and, yes, I think everyone's kind of going through the motions.

45 MS FITZGERALD: I have no further questions, Chair. Are there any matters that the Commissioners wish to raise?

50 COMMISSIONER HUNTER: I was actually going to ask about the new laws that would delay and reduce court oversight. I didn't quite get that. You explained that. Can I just clarify: is that the Bill that didn't go through last year?

ANTOINETTE BRAYBROOK: The 2021 Children - Child, Family and - Child Youth and Family --

5 ANNE LENTON: Protection Bill 2021.

ANTOINETTE BRAYBROOK: 2021. But we think that's been put on hold and it should be permanently put on hold.

10 COMMISSIONER HUNTER: Can I ask why? Can you explain a bit more?

ANTOINETTE BRAYBROOK: Because that's the bit where it reduces the judicial oversight of the Department's decision.

15 COMMISSIONER HUNTER: There was consultation with community around that?

ANTOINETTE BRAYBROOK: Yes. There were - and Djirra, as a specialist, was not engaged with early in the piece, and we found out by chance that there were consultations and engagement on this, and also one of the other issues was that we were not able to actually  
20 see what we were being consulted about, because it was in confidence.

ANNE LENTON: I think you are referring to the Statement of Recognition. Yes. So I think, yes, Djirra was --

25 ANTOINETTE BRAYBROOK: It was flashed up on the screen to our policy staff who said that, you know, "We need our Aboriginal leadership to be able to have input into this" because all of our policy staff were non-Aboriginal in the room, and that wasn't allowed.

30 COMMISSIONER WALTER: With the Statement of Recognition, I have read through that, and to pick up on this section 68, but it seems rather contradictory to have a Statement of Aboriginal Recognition at the front and then a reduction and oversight within the Act itself.

35 ANTOINETTE BRAYBROOK: Yes. I also think that there's not real value from service providers, mainstream and Aboriginal service providers, about the importance of women being able to access legal representation. I don't see that that is - that there is a lot of value placed on that. We see that a lot through Orange Doors, for example, who we don't receive many referrals from Orange Door.

40 COMMISSIONER HUNTER: Do you get many referrals from the Aboriginal agencies?

ANNE LENTON: Yes. We definitely do. I think it's intermittent, I think, regionally sometimes. But, yes, that's something that we all have to constantly, you know, work at.

45 COMMISSIONER HUNTER: Do you have a wait list?

ANTOINETTE BRAYBROOK: We try to provide a service, no matter what, to women for their safety, and we are constantly unable to meet demand and we are trying to manage case loads across the organisation.

CHAIR: Could I just ask: your comment about there's not the emphasis on Aboriginal women, is that as against families or is it something else?

5 ANTOINETTE BRAYBROOK: I think it's a combination of things. I think it's - when we talk about family violence in Aboriginal communities, that creates an invisibility because it's actually a gendered issue. It's Aboriginal women that are 45 times more likely to experience family violence in Victoria and 25 times more likely to die from a violent assault. So how can we just keep that out of the conversation?

10 Then I often sit at meetings where I'm told we can't have a gendered lens on this but then, just across the table, we are talking about the need to invest in men's programs. I think that that's important. Aboriginal men who use violence should also be provided with culturally safe services. Aboriginal men who experience violence should also be provided with culturally safe services. Aboriginal women should not be made invisible.

15 CHAIR: So is there an issue around focus within family violence? Do you think it's lopsided? How do you explain it?

20 ANTOINETTE BRAYBROOK: I just think that there's a fear by calling it violence against women that that would demonise Aboriginal men. That's why we are always very clear about our women experiencing violence from many from many different cultures and backgrounds. This is not a race issue. It is a gendered issue.

25 CHAIR: Thank you.

COMMISSIONER BELL: My question was along the same lines but half answered. I noticed the strong emphasis in your evidence upon supporting the strength of women - and I get that loud and clear - but I also noticed the relative lack of attention on perpetrator responsibility and prevention from that point of view, from the point of view of the perpetrator, not identified by race but by being a perpetrator.

30 You just went to the question of programs of prevention, of support for the perpetrator, and so on. Can you develop that side of things? Is that a focus of your work? What should be done with respect to the perpetrator to prevent this violence?

35 ANTOINETTE BRAYBROOK: Certainly we should see an investment for Aboriginal men who use violence against women, whether the woman is Aboriginal or not. It needs to be a culturally safe service for men to access, and there is a service like that, Dardi Munwurro.

40 COMMISSIONER BELL: Yes.

45 ANTOINETTE BRAYBROOK: I am always asked that question. Always. And I make no apology for being a voice for Aboriginal women in our community. It's not my job to advocate for an Aboriginal man who uses violence. My job is to ensure that Aboriginal women are safe in our communities, and there are men's programs that can do that, that we support.

COMMISSIONER BELL: I understand.



COMMISSIONER WALTER: Just a quick question: When you are talking about the bail reform and the impact that has had on Aboriginal women and especially Aboriginal women who are mothers, so that's only a fairly recent change, if that could be reversed, the effect would be almost instantaneous in reducing children being taken into care, do you think?

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ANNE LENTON: Yes. Definitely. But I think, too, that, again, kind of going back to why are women for such minor offending ending up in prison? I know that it sounds reductive but that sums it up.

10 ANTOINETTE BRAYBROOK: I think that, to come back from this, if that was gone, there would still need to be an investment to fix the damage that has been done by these punitive and racist laws.

15 COMMISSIONER WALTER: You've proposed accommodation of a day program, a residential program, and intensive residential programs as alternatives to prison?

20 ANTOINETTE BRAYBROOK: Yes. So the work that we are doing with the Centre for Innovative Justice is looking at that and we don't look at that through the lens that women are criminals. We see that through the lens that the big system that is out there is racist, it's punitive, and it's not going away, so let's build something that's about building on women's resilience and their cultural strength and investing in women.

COMMISSIONER WALTER: You said that was a pilot. When will that --

25 ANTOINETTE BRAYBROOK: Well, it's still underway and, hopefully, that will go through a budget process and be invested in.

COMMISSIONER WALTER: In the next budget?

30 ANTOINETTE BRAYBROOK: Yes.

COMMISSIONER HUNTER: Can I just ask: you said, historically, the law has been used as a tool of oppression; do you still believe that's current today?

35 ANTOINETTE BRAYBROOK: When you look at the racist and punitive laws that our governments continue to make, yes.

COMMISSIONER HUNTER: Thank you.

40 ANNE LENTON: I think, too, coming back to strength and resilience, I think, you know, as a lawyer at Djirra, working in a holistic way, I think once Antoinette pulled me up on something, I was being quite lawyerly, like, responding to try and fix a problem, like, always trying - and I think - yes. I just remember the time, you know, that you have to focus on women's strengths, including in courts, because often observing in courts, you know, I think  
45 sometimes there's an expectation of failure and it's incredibly negative.

50 That's just not - that's not - only from the bench, other lawyers and child protection workers or - and I think, really, I think we need to look at how to focus on strength and offer optimism and, you know, I think recognising, too, the trauma, an intergenerational trauma that a woman who, you know, has lost her child, often - her mother may have been Stolen

Generation and, you know, that child may have been in care herself and, you know, I think it extends even to our workforce where our Aboriginal paralegal support workers, you know, the impact that - you know, being in a courtroom, how that impacts them and their own experiences.

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COMMISSIONER BELL: Thank you.

CHAIR: Thank you very much.

10 MS FITZGERALD: Thank you, Chair. I will now tender into evidence the submission from Djirra that responds to both the child protection and criminal justice streams of the Commission's current work and also the five other submissions which are annexures to that submission.

15 CHAIR: Thank you, Counsel Assisting. These documents will be allocated the next exhibit numbers.

**<EXHIBIT 2.10 SUBMISSIONS FROM DJIRRA**

20 MS FITZGERALD: We have now concluded today's evidence.

CHAIR: Thank you. We will now adjourn until tomorrow morning. Thank you both very much.

25 **<THE WITNESSES WITHDREW**

**<ADJOURNED 3:38 PM**