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TRANSCRIPT OF DAY 7 – 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**

**WEDNESDAY, 14 DECEMBER 2022 AT 10.01 AM (AEST)**

**DAY 7**

**MR TONY McAVOY SC, Senior Counsel Assisting**  
**MS FIONA McLEOD SC, Senior Counsel Assisting**  
**MS SARALA FITZGERALD, Counsel Assisting**  
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Yoorrook Justice Commission

CHAIR: Welcome, Peter and Tessa. Today we continue the two weeks of public hearings on the primary areas of child protection and the criminal justice system. Before we start, I ask Commissioner Hunter to do the welcome to country and acknowledgement, please.

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COMMISSIONER HUNTER: Thanks, Chair. I acknowledge that we are on the lands of the Wurundjeri people today and pay my respects to ancestors, Elders, all Aboriginal people here, and honour those that come before us so we are able to have a voice here today. May Bunjil watch over us as we conduct Aboriginal business. Wominjeka.

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CHAIR: Thank you, Counsel.

MR McAVOY: Chair, my name's Tony McAvoy. I appear as Counsel Assisting the Commission.

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MS TIPLADY: I appear on behalf of the State.

CHAIR: Thank you. Welcome especially to Peter and Tessa.

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MR McAVOY: Thank you, Chair. Today it is proposed to call a number of witnesses from within the criminal justice area. The first two witnesses are Peter Hood and Tessa Theocharous. I'm hoping I pronounced your surname correctly. They will be followed by Coree Thorpe, Shaun Braybrook, Karin Williams and Nakia Firebrace, who will be examined by Ms Fitzgerald. This afternoon there will be evidence from a number of witnesses representing the Victorian Aboriginal Legal Service and I will be taking those witnesses.

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CHAIR: Thank you.

MR McAVOY: Chair, I call Peter Hood and Tessa Theocharous. Chair, for the record, Mr Hood and Ms Theocharous are on video, AVL link. Can I just ask you first, Mr Hood, to say your full name.

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PETER HOOD: Yes. Thanks. My name's Peter Douglas Hood. I'm a Kurnai man from Gippsland. I also have traditional ties to other parts of the country in Northern Victoria. So I would like, before I start, to dedicate my evidence today to my grandparents Clarence Atkinson, Evelyn Atkinson nee Hunter, Noel Hood, Beryl Hood nee Stephens, my mother Margaret Atkinson and my father Terry Hood. Thank you.

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MR McAVOY: Mr Hood, the evidence you will give today will be the truth; is that correct?

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PETER HOOD: Sorry, I didn't get that?

MR McAVOY: Do you undertake to tell the truth in giving your evidence today?

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PETER HOOD: Yes, I do.

**<PETER HOOD, AFFIRMED**

MR McAVOY: Thank you. Ms Theocharous, would you please tell the Commission your full name?

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TESSA THEOCHAROUS: It's Tessa Theocharous.

5 MR McAVOY: Thank you. And do you undertake to tell the Commission the truth in your evidence today?

TESSA THEOCHAROUS: Yes, I undertake to do so.

**<TESSA THEOCHAROUS, AFFIRMED**

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MR McAVOY: I apologise for the mangling of your surname.

TESSA THEOCHAROUS: That's quite all right.

15 MR McAVOY: Together, both you and Mr Hood have prepared an outline of evidence?

TESSA THEOCHAROUS: Yes, we have.

20 MR McAVOY: And that outline of evidence is true and correct to the best of your knowledge and you adopt it for the purposes of this Commission?

TESSA THEOCHAROUS: Yes.

25 MR McAVOY: Is that the case for you, Mr Hood?

PETER HOOD: Yes, it is.

30 MR McAVOY: Firstly, I might ask you, Mr Hood, to tell the Commission a little bit about your role with Kurnai Legal Practice.

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PETER HOOD: Thanks, Tony, and thanks, Commissioners. My role is predominantly basically as direct liaison. So Kurnai Legal represents the vast majority of Aboriginal people. So I liaise between basically our clients and our solicitors, here at Kurnai Legal, and mainly with Tessa, Tessa being the Principal. So I am providing cultural knowledge, traditional families etcetera, to our lawyers when they are representing our clients in court or any other parts of the criminal justice system.

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40 MR McAVOY: You've been involved in Indigenous affairs in the Gippsland area since 1987?

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PETER HOOD: That's correct, yes.

MR McAVOY: And you are presently a member of the First Assembly of Victoria?

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PETER HOOD: That's correct.

MR McAVOY: You've had other roles in the legal sector?

50 PETER HOOD: Yes. I worked with the Aboriginal Legal Service for quite a few years. I was a juvenile justice worker in Gippsland for quite a few years as well. I believe they are now

Yoorrook Justice Commission

called youth justice workers. I managed youth hostels and, yes, my involvement in the justice area has been for a very long time.

MR McAVOY: You've also worked for the Victorian Aboriginal Child Care Agency?

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PETER HOOD: That's correct, yes.

MR McAVOY: As a Program Manager, that's correct?

10 PETER HOOD: That is correct, yes at the Kurnai Aboriginal Youth Crisis Support centre.

MR McAVOY: Thank you. Turning now to you, Ms Theocharous. You are the Principal Solicitor at Kurnai Legal Practice?

15 TESSA THEOCHAROUS: Yes, that's right.

MR McAVOY: Can you just tell the Commission about the inception of that practice and your role leading up to the creation of the practice?

20 TESSA THEOCHAROUS: So Peter and I developed Kurnai Legal Practice together and we started it in 2008. My role has been as the Principal Solicitor since we started it in 2008. We have worked closely together in our respective roles to make sure that in our representation of the First Nations people, that the representation we offer is culturally appropriate representation. My role as the Principal Solicitor is as a lawyer but also to work closely with  
25 Peter to make sure that the representation we provide is appropriate representation at all times.

MR McAVOY: Can you speak about what prompted you to establish the firm?

30 TESSA THEOCHAROUS: Well, we both had various roles working within Indigenous community and I had previously worked at VALS and we both felt that we wanted to move towards a model that we had an idea where we could offer clients a more involved and more hands on approach in terms of being able to provide more time to our clients where we would be able to be more rooted in community.

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So looking at being able to develop simple things like being able to conference with our clients before court, being able to have less clients when we weren't actually at court so that we could spend more time with them developing the way we represented them so that our clients could feel that they had more time with their lawyers and more time to develop their  
40 representation and defence of their case.

MR McAVOY: Have you been able to do that?

45 TESSA THEOCHAROUS: Yes, we have. It's been really successful and it's something that we are really proud of. So there's now - I work with a team, there's three other lawyers who work with us and we have clients throughout Victoria, State-wide, and we have been able to develop the model that we had the idea for when we first started so that we are particularly rooted in the Gippsland area where we have and have had clients for a long time now but also throughout other parts of Victoria. We've found it's been really successful to be able to have  
50 that ongoing case work with our clients where we can spend time with them particularly

before court so that our clients feel that they have time with their lawyers to prepare their cases properly rather than having to try and speak to a lawyer at court on the day with a lawyer who might have up to 20 or 30 other clients on the day.

5 MR McAVOY: In that model, I understand that there is an important role for Mr Hood in terms of ensuring that the client feels comfortable working with the lawyers; is that the case?

10 TESSA THEOCHAROUS: Yes. It's an absolutely critical role that he plays with me and with the other lawyers. So on a daily basis we work together. It might be either with having Mr Hood at court with us or available by phone or having him actually in community with clients in terms of the networking that he does to help us get our clients to court. But sometimes it's in the role as cultural and knowledge holder. One example is if we have clients who elect to have their cases proceed to Koori Court, increasingly, the cultural knowledge that needs to be provided to the Koori Court for a case to proceed in Koori Court, 15 detailed cultural knowledge needs to be provided to the court in advance, and he plays a very important role in being able to work with the client and the lawyers to make sure that correct and detailed cultural knowledge is provided to the court in advance of those hearings.

20 MR McAVOY: Mr Hood, is there anything that you would like to add in relation to your role at delivering the legal service to Kurnai Legal's clients?

PETER HOOD: No. I think Tessa pretty much covered just about everything there. It has been important for Kurnai Legal to be able to provide - particularly the Koori Court structure now, all the details in terms of, you know, where people are from and who their people are, 25 who they are related to, all that sort of stuff. She's pretty much hit it on the head there.

MR McAVOY: Okay. I want to ask now about the funding of your clients' representation. Can you please explain the business model, I suppose, that supports your practice?

30 TESSA THEOCHAROUS: Well, quite simply, we rely on grants of Legal Aid for our cases. So we don't receive funding through any other arms of government. Consequently, a lot of the matters that we take on are pro bono cases. So increasingly Legal Aid funding has been reduced. So, for example, Legal Aid no longer funds driving matters, for example. So the majority of those matters we'll still - the First Nations people, we will still run those cases on 35 a pro bono basis. If we have clients who are eligible for Legal Aid funding, then we will submit those grants of funding, otherwise we receive no other funding through other funding sources.

40 MR McAVOY: Are you able to make any estimate of what proportion of your time each week is taken in pro bono matters?

45 TESSA THEOCHAROUS: I'd say up to 10 to 15 per cent of our time will be spent on pro bono matters. For example, one of our lawyers this morning is assisting a young First Nations child who has been charged with fines with offences from being on a train. They are offences that don't attract Legal Aid funding. He's a young child who doesn't have any ability to pay the fines. He doesn't have an income. So he's spending his morning making an application to the court to have those fines waived. So that's one out of four lawyers who is spending the morning working on an pro bono case. It's not unusual.

50 MR McAVOY: And your firm --

COMMISSIONER BELL: Counsel, can I just interrupt for a second. Tessa, I had thought that children in all cases, whatever, were eligible for Legal Aid. Things have obviously changed. Can you just give me an update on that?

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TESSA THEOCHAROUS: Yes. So, generally, children are, if they are charged with a criminal offence, but this matter falls under the civil jurisdiction technically of the Children's Court because it's what's referred to as (indistinct), or a fine against a child. So there isn't Legal Aid funding available for a civil matter against a child. So we'll do these matters pro bono because, for children, they can have an impact, they cause a great deal of stress to a family generally. This young child lives with his grandfather and they have very limited financial resources. So we are assisting in that way today.

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COMMISSIONER BELL: Thank you.

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MR McAVOY: Now, your practice covers most of Victoria, does it?

TESSA THEOCHAROUS: Yes, it does.

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MR McAVOY: Are there particular courts that you appear in more often than not?

TESSA THEOCHAROUS: Well, obviously being physically located in Morwell, that's our local court, so we're physically in the Latrobe Valley Court, I think, every day. For example, today we have a solicitor appearing online at the Warrnambool Magistrates' Court doing a bail application. We have other lawyers appearing online, I think, at Melbourne Magistrates' Court and Heidelberg Magistrates' Courts today, we have barristers briefed in other courts throughout Victoria as well.

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MR McAVOY: Do you operate in respect of all types of matters in court?

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TESSA THEOCHAROUS: Within the criminal jurisdiction and civil courts, yes. So in the Children's Court, the Magistrates Court, the County Court and sometimes in the Supreme Court and the Court of Appeal.

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MR McAVOY: Do you represent clients in relation to child protection matters?

TESSA THEOCHAROUS: No, we don't.

MR McAVOY: Do you represent clients in respect of domestic or family violence matters?

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TESSA THEOCHAROUS: Yes. A big part of our practice relates to intervention order hearings. They often run alongside criminal charges and, again, they are a big part of the pro bono practice that we run. So we'll find our clients are often facing intervention hearings in addition to criminal charges and that is something we will assist our clients with on a pro bono basis regularly.

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MR McAVOY: In your outline of evidence, you referred to a Court of Appeal matter in relation to bail for a child subject to a protection order. Is there anything further you wish to say about that matter?

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TESSA THEOCHAROUS: Just that it was a very important bail decision, not just for the child in that case, but for children generally throughout Victoria. That bail decision is used on an almost daily basis by defence lawyers throughout the State now. It was the first time that a bail case had been brought to the Court of Appeal with respect to a child and we are very proud of the result that we achieved for that young person. It's certainly a case that we use and other lawyers can now use and it's changed the landscape of bail law for children.

It's an important example of how despite the changes in laws and the impact that has had, particularly on First Nations people, taking tenacious steps like appealing bad bail decisions can result in changes to the law through cases like this.

MR McAVOY: That decision, although it is not referred to by name in your outline, is that decision HA v The Queen?

TESSA THEOCHAROUS: It is, yes.

MR McAVOY: The citation for that is [2021] VSCA 64.

TESSA THEOCHAROUS: Yes, it is.

MR McAVOY: It's a decision in which your firm acted for the child and it's become a matter of precedent for other bail applicants to use?

TESSA THEOCHAROUS: Yes, it is. And, in that case, the child was refused bail in the Children's Court twice by a magistrate, and then the bail application was brought to the Supreme Court where bail was refused by the judge of the Supreme Court. Then that decision was appealed to the Court of Appeal and, essentially, what the Court considered was in a case where a child was not likely to receive a term of youth detention, ultimately, that it was unjust to, effectively, detain a child as a way of containing them, that it was a human rights issue in terms of the State detaining children in that way. So it became a really important decision. That's one, as I say, that is often used now.

MR McAVOY: Thank you. In that decision, at paragraph 7, the Court notes that the appellant's youth and severe cognitive impairment, his vulnerability in custody, and the probability that he would not receive a custodial sentence, was so powerful as to entail the conclusion that such risk, as he presents, is not unacceptable. So that, in a nutshell, sets out the matters that the Court of Appeal took into account; you would agree with that?

TESSA THEOCHAROUS: Yes, I do.

MR McAVOY: And, as you say, that raised a human rights issue in relation to the detention of the child, bail refused?

TESSA THEOCHAROUS: Yes, that's right.

MR McAVOY: Thank you. There are certain aspects of your practice that are particularly tailored to the Aboriginal community; that's correct?

TESSA THEOCHAROUS: Yes.

MR McAVOY: And it involves being able to support the clients in coming to court, in ensuring that they are - warrants aren't issued for non-attendance and similar sorts of matters. How important is that sort of support for your clients?

5 TESSA THEOCHAROUS: Peter, do you want to answer that?

PETER HOOD: Look, I think it's - thanks, Tony. It's very important that - in the environment today, people, Aboriginal people in particular have only really cottoned on that a failure to appear is now deemed as a criminal charge. So it's an extra charge. So in order for us to counter that - you know, Tessa will give me a heads up, you know, days, sometimes weeks beforehand, that a particular client's had court on this date, so we work towards making sure that we get the client to court. So if that means that I have got to jump in the car on the morning and knock - door-knock to find particular clients, well, that's what I will do. We get them to court and the lawyers, or Tessa or her lawyers, and others will take over from there. That's something that we do do and I think it's working and it was part of the model when we developed Kurnai Legal.

MR McAVOY: What are the sorts of factors that might affect a client's ability to know that they have got court on a particular day; can you make some observations about that, Peter?

20 PETER HOOD: Yes. Look, it could be something as simple as - not all Aboriginal people have mobile phones, and if they do, well, then, mobile phones, they are not connected, so it's not as easy as sending a text message or making a phone call. We actually have to use our network, you know, our cultural network to find these people and, again, it's about getting out in the field and door-knocking until we do eventually find who we are looking for and, you know, it's not about, "Come with me, you've got court", there's a conversation that's had. If you don't go to court, these are the repercussions that could happen.

30 You know, some cases, I may not find one or two, and before you know it, they have been picked up and they are on remand. You know, it makes our job twice as hard. I do explain that to our clients as well, "You know, you need to come along with me, get to court, we'll get this thing over and done with", and then what this does is it's explained to the client that this makes it easier for the next fella, who might be your brother, it might be your cousin, that comes along. So it creates a really - it's a good flow-on sort of thing.

35 MR McAVOY: Do I understand your evidence correctly in that you say that people might know that they have got court but just either think that they won't go and it will be okay, and until you give them the information, they don't know the consequences?

40 PETER HOOD: Yes. Basically, yes. Some people - of a lot of Aboriginal people are nervous about going to courts because they'll lose their freedom in some cases and they think in order to get a day or two extra freedom but once we have found them - and I know that once we get them to court, Tessa has that ability, which is also, you know, she's trained and educated, everything's going to be all right, we are going to do our very best in order to keep you out of jail basically and, you know, nine times out of 10, it works. Generally, sometimes, some of the clients are just not contactable by phone or email and all these simple things that they just don't have the means to.



In order to counter that, we have to door-knock, or I have to, and sometimes Tessa will also. She gets out there and its not unusual for her to drive to Sale and pick up a client and bring them back to court. I have seen that done. It happened a few months ago.

5 MR McAVOY: Is it the case that many of your clients are homeless?

PETER HOOD: Yes. Yes. Absolutely.

MR McAVOY: Would you say - is it the case that some have mental health issues?

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PETER HOOD: Sorry, you broke up then, Tony.

MR McAVOY: Do some of your clients also have mental health issues?

15 PETER HOOD: That's correct, also, yes. Amongst other things, DNA issues, family issues, you know, a variety lot of things.

MR McAVOY: Do those things affect their memory and knowledge of court dates and ability to keep track of their requirements to attend court?

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PETER HOOD: Yes. Absolutely. It's the practice in the office that Tessa will also have - you know, any of the staff here know to try and reach out to our clients either a week or a day before right up to the day before court and say, "Listen, you've got court." There are various ways of communications there. There's communications through family members, whether they be a Facebook message or a text message or, you know, phone call, or even somebody on the street. I might go up the street and be where all the mob are hanging out and I'll you know, mention, "Have you seen so and so?" "Yes, he's here." We'll then chase that fella up and get him down to court.

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30 MR McAVOY: Thank you.

TESSA THEOCHAROUS: If I could just briefly add something to that. In the cases where we can't get our clients to court, what we do do is though we will still fight a warrant at court and we will argue against a warrant being issued and we will ask the magistrate for time. We will ask for a short adjournment and say to the magistrate, "Look, we've spoken to extended family today, can we have a week and we have confidence that we'll get the person to court within a week", which is something that you don't often see lawyers doing but we have a fairly proven track record and we find that magistrates know, because we do then come back in a week with our clients, so they'll give us that latitude. I did that yesterday, I argued against a warrant for a man on bail who has been very unwell in hospital, he doesn't have a phone and he's homeless, and we just didn't find him yesterday. So I argued against a warrant even though he was on bail and the magistrate has given me some time now to find him.

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We find that, as Peter was saying before, the flow on consequences of warrants and charges of failing to appear, when a person is then ultimately arrested by the police, those charges, and that bail record will be used against that person in a bail application, so the police will then say, "Well, this person has a very poor history of attending court", and they're a risk of failing to appear. Even if those failing to appears are from years previously, that bail record will then be used against that person in a bail application in future.

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MR McAVOY: So because of your position as a private practice, you are able to perhaps do things that are more difficult for community legal services?

5 TESSA THEOCHAROUS: I think so, yes.

MR McAVOY: All right.

PETER HOOD: Yes.

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MR McAVOY: And from your outline of evidence, you've included some information about providing suits for clients when needed for court; is that correct?

15 TESSA THEOCHAROUS: Yes. We think that's really important that people are well presented and that they feel good about how they look when they go to court. We know that it makes a difference in terms of how judges and magistrates view people when they are coming to court, so we have got a rolling clothing rack so we can make sure our clients are well dressed when they go to court.

20 PETER HOOD: My closet gets raided occasionally, I hand over shirts, shorts, shoes, all sorts of stuff. This is what we do. This is what we do.

MR McAVOY: I just want to ask you some questions about a COVID-19 related proceeding that you referred to in your outline of evidence. Would either of you like to describe for the  
25 Commissioner that proceeding? It's from paragraphs 36 to 41 of your outline.

30 TESSA THEOCHAROUS: I'm happy to speak briefly to the case. It involves a client of ours who - the court had indicated, it was during the COVID-19 pandemic when cases were being administratively adjourned. The court had indicated in writing that this man's case would be adjourned. However, the magistrate issued a warrant after the police prosecutor sought a warrant in court that day and then the police executed the warrant upon him. He was homeless at the time, we found him essentially sleeping on a park bench and these were for very minor criminal charges as well. He was then brought to court and remanded into custody. Bail was initially refused in the Magistrates' Court and we sought bail in the  
35 Supreme Court which was ultimately successful.

40 But it was just - we felt that he'd been just treated very unfairly by the system. It was a very concrete example again of how the changes to the bail laws impact - and have impacted so adversely upon First Nations people. He was in an exceptional circumstances position, even though the charges were relatively minor, and he ultimately did not receive a term of imprisonment for the charges. The impact that these law changes had upon him, upon him, being his liberty taken away from him, were extreme. The steps that had to be taken legally to secure his freedom were extreme in terms of the Supreme Court bail application.

45 MR McAVOY: So looking at the outline of evidence, the Supreme Court bail application was filed, but the opposition by police to the grant of bail was not withdrawn until the matter was set for hearing - the bail application was set for hearing in the Supreme Court?

50 TESSA THEOCHAROUS: Yes, that's right.

MR McAVOY: Can the Commissioners understand from your observations a few moments ago that that is largely a function of the bail laws; that's correct?

TESSA THEOCHAROUS: Yes.

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MR McAVOY: The client was an Aboriginal man. Were there any aspects of that particular matter that were changed or dealt with differently because of his Aboriginality; do you think?

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TESSA THEOCHAROUS: Well, we felt that there were. He was a vulnerable man, he was homeless at the time, and we felt that the police did act with extreme prejudice against him in every step in terms of right back to the point where they initially sought the warrant at court during the COVID period, down to when they came upon him and executed the warrant upon him, all the way through to their opposition to bail up until the point that we were in the Supreme Court. At every step, there was extreme prejudice exercised against him at every

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MR McAVOY: But it wasn't just the bail laws, there was an additional layer of opposition that you detected?

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TESSA THEOCHAROUS: Yes and that's not unusual in terms of the way we see our clients treated throughout the justice system.

MR McAVOY: When you say "our clients", you mean Aboriginal people?

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TESSA THEOCHAROUS: Yes.

COMMISSIONER BELL: Counsel, I have a question on bail. It might be appropriate to ask it now or not?

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MR McAVOY: Yes, please, Commissioner.

COMMISSIONER BELL: Tessa and Peter, you've been in practice over the whole period pre the Coghlan reforms arising out of the Gargasoulas case, and afterwards. Can you tell the Commission what, in your view, were the elements of the Coghlan reforms that have resulted in so much bail being denied and so many Aboriginal people not receiving bail?

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TESSA THEOCHAROUS: I think for a number of our clients they almost automatically have found themselves in this much higher category of exceptional circumstances. So people who, for example, are already on other - are either already on bail or technically serving sentence, which can include, for example, being on a good behaviour bond for a charge that includes a bail offence and then committing another offence, which is a schedule 2 offence, so it can include another bail offence, and then they are automatically in the most serious bail category of exceptional circumstances.

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We find that our clients are already at the very high threshold, even though the offences themselves are relatively minor, and we know are not going to necessarily attract a term of imprisonment. So for First Nations people, who might already be at such a disadvantage in the justice system to then have to overcome the most strenuous bail test that there is right from the start, before you get to the unacceptable risk test, it makes your bail position automatically extremely difficult.

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COMMISSIONER BELL: Thank you.

5 MR McAVOY: Following on from Commissioner Bell's questions, you've addressed the  
bail laws at paragraphs 70 to 76 of your outline. In particular, I draw your attention to  
paragraph 75, in which you note that following the high-profile case of James Gargasoulas, to  
your observation, there was a lot of trepidation on the part of the police about being the  
decision-maker that grants bail. So whilst the bail reforms affect decisions by magistrates,  
10 you also detect that there's a reluctance by police to exercise their discretion in terms of  
granting police bail?

TESSA THEOCHAROUS: Yes.

15 MR McAVOY: Does that particularly affect your Aboriginal clients?

TESSA THEOCHAROUS: We believe it does. Police have the power to grant bail at the  
police station, but you're relying upon their discretion, essentially, to grant bail. One example  
is last week we had a client, a First Nations woman, who was charged together with her  
partner. They were both arrested from their home. She had - her partner was non-Indigenous.  
20 They were both essentially arrested for drug offences from their home. Our client, the First  
Nations woman had far fewer priors than her partner. Her partner was processed out of the  
police station hours before she was and was granted police station bail. She was held and  
interviewed for a further six hours and then police remanded her and brought her before the  
court the following day. She was in a position of exceptional circumstances and the  
25 magistrate refused bail.

That's just one example of how we are relying upon police to exercise their discretion in a  
case like this involving an Indigenous person and a non-Indigenous person. We see it time  
and time again where we see the First Nations person not having the police discretion being  
30 exercised in their favour.

MR McAVOY: This absence of the exercise of discretion, that flows through to police  
opposition to bail in court, does it?

35 TESSA THEOCHAROUS: Yes. Yes, it does.

MR McAVOY: So, at paragraph 72, the observation is made that, 20 years ago, most clients  
would have been bailed at the police station or you could negotiate for them to be bailed.  
However, you have not had the police consent to bail for one of your clients at court for the  
40 last five or six years; is that correct?

TESSA THEOCHAROUS: That's right. That's right.

45 MR McAVOY: So every matter you've appeared in, the police have opposed bail?

TESSA THEOCHAROUS: Yes. Even when you look at it - and on the face of it you  
think even when our clients aren't in exceptional circumstances or even compelling reasons  
when they have a prima facie entitlement to bail, we go to court and we approach the  
prosecutor and say, "Will you consent to bail for this client?" We have not had one case for a

First Nations person where the police prosecutor will consent to bail. Every single application for bail that we run at court is opposed by police for our First Nations clients.

5 MR McAVOY: You've just added for your First Nations clients. Are you saying that because your clients are First Nations clients, that's your observation, or are you saying that in respect of non-First Nations clients, that you have had circumstances where police have consented to bail?

10 TESSA THEOCHAROUS: Yes. We have some non-Indigenous clients and there is a noticeable difference in the police approach to those clients.

MR McAVOY: Have you had occasions where they have consented to bail for non-Indigenous clients?

15 TESSA THEOCHAROUS: Yes, I can think of one case where that has happened.

COMMISSIONER BELL: Do you know whether that's because of a direction from above to the police in court and on the ground?

20 TESSA THEOCHAROUS: I'm not sure where that's come from. I'll often push back. So when our clients are being remanded I will often have a conversation with sergeants at the police station after hours and encourage them to consider bail from the police station. When I go to court I will also encourage police prosecutors to negotiate bail conditions. I'm just told, "No. There's too much of a risk, it has to be a magistrate's decision." I'm not sure where the  
25 directive comes from though.

COMMISSIONER BELL: Thank you.

30 MR McAVOY: Now, some of your outline of evidence refers to police behaviour and, in particular, the use of racial slurs and the overuse of tasers. There are a number of examples that have been given between paragraphs 50 and 69. Could you just tell the Commission about example number 1, which starts at 52, paragraph 52.

35 TESSA THEOCHAROUS: Peter, do you want to talk to that example?

PETER HOOD: Yes, I do. I wasn't actually present but I did see the video footage of this young Aboriginal boy getting --

40 MR McAVOY: Mr Hood, before you continue, I just remind you that we should, in your evidence, if you could not refer to matters that would identify any of the parties involved, either the client or the police officers.

45 PETER HOOD: Yes, of course. Thanks, Tony, I'm aware of that. With this young fella, what can I say, you know, I do know this fellow very well. I witnessed the video footage of him being chased, over fences, etcetera, and then being tasered constantly. It was very confronting for me. You know, I'm sure people hear this all the time, it was like we were in the movies. After being tased, copping all those volts of electricity, eventually his bowels gave way and, you know, had a mess in his trousers and things like that. It was very confronting witnessing that sort of stuff. I don't know how I would have reacted had I been there and actually  
50 witnessed it in person. It was, yes, very shocking.

MR McAVOY: Did the footage show how the police were reacting?

5 PETER HOOD: Doing their job, I guess. It was - I suppose, you know, when a police officer pulls out a taser, they believe they are justified in doing that. Look, it's a really grey area that needs to be - you know, needs to be sorted, because, yes, for me, just from my end, I don't believe anybody should be tasered but, in this particular matter, I just didn't think it was warranted and then the way it was - yes, it just sort of continued, it sort of got beyond it, as I said, it was very confronting.

10 TESSA THEOCHAROUS: The use of force continued long after after this young man had effectively been disabled by the police and continued. They physically dragged him over to the footpath and he was begging for help and they were effectively mocking him when he was waiting for medical assistance. The footage went for quite some time until an ambulance arrived. So it was really distressing footage to see.

MR McAVOY: So neither of you were present on the occasion but you saw the footage.

TESSA THEOCHAROUS: Yes.

20 MR McAVOY: Is that footage still in your possession?

TESSA THEOCHAROUS: Yes.

25 MR McAVOY: Is it something that could be provided to the Commission?

30 TESSA THEOCHAROUS: With the client's permission. The case has now concluded at court. It's a really brutal example of how tasers are used. I think one aspect of it is that our client was not presenting any physical danger to anybody and at the point where the police jumped over the fence, they didn't warn him or say - give him any instructions and say, "If you don't stop we are going to taser you." You can actually hear one of the police officers saying, "I'm going to taser him", and that's exactly what he does repeatedly.

35 COMMISSIONER WALTER: Can I ask: did he need medical attention because he'd been tasered? Is that why the ambulance was called?

TESSA THEOCHAROUS: Yes. Yes.

40 MR McAVOY: To your knowledge, did he have any injuries from the arrest?

45 TESSA THEOCHAROUS: From memory he did have. He was effectively given a cursory once over at the hospital and then taken immediately to the police cells and then the police sought his remand in custody. They told a very different narrative about what had occurred which is why we requested the body-worn camera footage. So the police presented the case as our client being physically threatening to the person at the house he was at and then physically confronting police as a justification for the violence that they used against him, but when we saw the footage, that actually was not the case at all.

50 MR McAVOY: Is it possible for you to obtain the consent of your client, do you think, to release that footage to the Commission? Is that something you're prepared to pursue?

TESSA THEOCHAROUS: Yes, of course. We'll certainly speak to him about that.

5 PETER HOOD: Definitely. After it's explained to him, and everything else, what it is going to be viewed for, etcetera, I think he'll give consent.

10 MR McAVOY: That sort of treatment that you've seen for some of your clients can be contrasted with treatment for non-Indigenous people by police from your observation? I'm looking particularly at paragraph 57 and paragraph 58 of your outline.

15 TESSA THEOCHAROUS: Yes. It's, again, a really stark contrast. We did have a non-Indigenous client recently that we were watching body worn camera footage for where he was severely drug affected and he passed out on the bonnet of a stolen car. It was difficult for us to comprehend the difference in the way the police approached him. They very gently woke him up, they made sure he didn't hit his head. They carefully lifted him off the car. He then just was allowed to leave the scene from the car. He had - as we found out later, he had drugs in his pocket, the car was stolen, he wasn't arrested. He wasn't confronted by police at all. So it was a really stark contrast for us in terms of that inherent difference in the way police approach First Nations people. We see it in the body-worn camera footage, it gives us  
20 real insight into those arrests and initial contacts that our clients have with police.

MR McAVOY: Clearly the inference is that the treatment is racially discriminatory. Is there any other reason why there might be such a difference that you can point to or it solely comes down to Aboriginal people being treated differently by the police because they are  
25 Aboriginal?

TESSA THEOCHAROUS: There is no other explanation for the difference in treatment. It just occurs constantly and all the time. I know from speaking to other lawyers and talking about their experiences with their clients, it's really - they find it really confronting when we  
30 speak about the experiences our First Nations clients have with police. They find it really difficult to even comprehend the experiences that our First Nations clients have.

MR McAVOY: Can we take it from the number of examples that you've used and your evidence just now that it's not restricted to isolated officers, but much more broad spread than  
35 that?

TESSA THEOCHAROUS: Yes. We see it State-wide. When we were giving evidence earlier about the different courts and the different regions we appear in, to be clear, we are not talking about police in Morwell only, we are talking about a problem State-wide in  
40 Victoria. It happens in Preston, it happens in Warrnambool, Shepparton, Bairnsdale, these are all examples throughout the State. It's not confined to a particular part of the State.

MR McAVOY: At paragraph 66 to 69 you talk about the use of strip searches, particularly with Aboriginal children, can you just tell the Commissioners your experience in relation to  
45 that form of policing?

TESSA THEOCHAROUS: It came to our attention just from speaking to our clients who were First Nations children, when we were speaking to them in the cells, we realised that the police were routinely strip searching them. We then started making inquiries with other  
50 lawyers about other children and realised very quickly it was only Aboriginal children who

were being routinely subjected to strip searches. It is something that we as a practice tried to address immediately.

5 We confronted the police about it. They denied the practice. We actually issued then  
subpoenas upon the police, on behalf of seven Aboriginal children who we were representing,  
after the police had denied that the practice had occurred. We then obtained evidence that it  
had, in fact, occurred, and we understand that that was then a matter which was taken up  
10 through the RAJAC and then the Justice Forum. Ultimately it resulted in a change in policy  
State-wide through Victoria Police. So it's something that we are proud of, the fact that we  
were able to effect that change but it's really concerning and it's another example of how  
insidious racism is within Victoria Police and how these practices are allowed to develop. If  
they are not confronted in this kind of way, they can just continue and children can be  
subjected to this, effectively, State-wide sanctioned violence if they are not confronted in  
terms of the practice.

15

As I say, when we looked into it, it was only Aboriginal children that were being routinely subjected to these strip searches.

20 MR McAVOY: I will just ask you a question arising from those observations. Are you aware of your clients making complaints about police conduct?

TESSA THEOCHAROUS: Sometimes they do. We encourage our clients to - we do refer them to civil lawyers if we believe that they have a claim that should be pursued. That's something that we, as I say, do encourage our clients to pursue that.

25

MR McAVOY: Do you have any view about whether there needs to be any independent police oversight in Victoria?

30 TESSA THEOCHAROUS: Peter?

30

PETER HOOD: Yes. Absolutely, I do. Yes, of course. It's like anything, you know, any investigation or anything else. You can't have - logically have an organisation investigating itself because, you know, there are conflicts coming out left, right and centre there. So, yes, I think that's the way to go if you're talking about having particular incidents investigated, or any complaints dealt with. Look, it can be very difficult talking to Aboriginal community in terms of the complaint process because some of them just think it's too hard, there is too much, "I don't want to go to court again, I don't want to do this", "just forget about this and move on." That sometimes can be the attitude and, you know, it's all based around fear.

40

MR McAVOY: Is it your observation, Mr Hood, that Aboriginal people, or your clients, have any confidence that their complaints will be dealt with satisfactorily under the present police complaints system?

45 PETER HOOD: Yes. No, no, they don't. They have no confidence whatsoever.

MR McAVOY: Does that deter them from making complaints?

50 PETER HOOD: Absolutely. Some say, "What's the" - from conversations that I have had over the years, over many years, "What's the point? What is the point? They are just going to



do this, this continues to happen.” So it’s, you know, something - again, it’s that grey area that we really need to get in there and address.

5 MR McAVOY: I just want to take you back to some observations that you’ve made particularly, Mr Hood, in relation to juries in Victoria and the juries that your Aboriginal clients appear before. You’ve made some observations in the outline. Could you just talk about that a little bit, please?

10 PETER HOOD: They were - some of the - look, I’ve seen multiple matters where juries have been involved and it’s - it has occurred to me over the years that the jury set-up is based on the person, the accused, being judged by his peers. Now, I can say confidently any of the people on a jury that I have witnessed, I have seen an Aboriginal person being accused, sitting in front - they actually aren’t his peers. There is no - he has really no - how can you say it, social involvement with these sorts of people, or anything like that. They are from a completely different world, as far as I’m concerned. To this day, I still have not seen an Aboriginal person sit on a jury. So, these are fairly obvious observations I have made over the years and I think Tessa can say the same as well. She’s probably seen twice as many as I’ve seen.

20 MR McAVOY: That’s your observation as well, Ms Theocharous?

25 TESSA THEOCHAROUS: Yes, it is. It’s a real concern. We often get concerned when we have Indigenous clients and we know they’ll be facing a jury and the jury’s going to decide on their guilt or innocence and we know that there is not going to be one other Indigenous person on that jury. We know that. Those juries are going to be made up of people that, you have to accept, will be made up of people who will have inherent prejudices and all the other problems that go along with that. To not have anyone from your client’s community on that jury, it’s a real problem. It is something that we are always concerned about when our clients are facing jury trials.

30 MR McAVOY: In your outline of evidence, you’ve identified that one of the issues is that the juries are drawn from the electoral roll and many Aboriginal people aren’t on the electoral roll. Is another issue the requirements, or the qualifications on eligibility set out in schedule 1 of the *Juries Act*, limiting people in terms of their criminal histories?

35 TESSA THEOCHAROUS: Yes.

40 MR McAVOY: That disqualifies people, if they have been before courts for various offences within, in some cases, the last two years, would that have a great effect on the availability of Aboriginal people for jury duty, given the way in which policing is undertaken?

45 TESSA THEOCHAROUS: Yes. It’s another thing that has an impact on having Aboriginal people available in jury pools. We also know just from speaking to community that many First Nations people feel that the white electoral process is disenfranchising to them and so they don’t choose to enrol in mainstream elections which means they can’t be selected for jury duty. It’s an area we think government needs to seriously look at, the way in which jury pools are selected.

50 COMMISSIONER BELL: Can I just make a comment here: I was a judge of the Supreme Court for 15 years and did jury trials intensely over that time, probably as many as 100,

though I haven't counted them, because there's 12 persons plus in a criminal jury, and six persons in a civil jury, I have interacted with several hundred jurors over my judicial experience, and because of the way that juries are selected, it involves selection from pools, and very - very many, 10, 20, 30, even more than that, depending on the nature of the trial, I  
5 have interacted with some thousands of people who have presented for selection on a jury.

I would say that I have never seen a recognisably Aboriginal person in either a pool or selected for a jury. That doesn't mean that there's not an Aboriginal person in that number, but not recognisably, and I have never seen someone declare their Aboriginality, though I  
10 wouldn't expect it. A concerning thing is that a large amount of work I have done in this capacity is in regional Victoria, where a very large number of Aboriginal people live, particularly in certain towns including in Gippsland, and I make the same observation with respect to my experience in those places.

15 MR McAVOY: Thank you, Commissioner Bell. I notice, Mr Hood, that you are nodding your head. Can we take it that you agree, that Commissioner Bell's observations accord with your own?

PETER HOOD: Yes, Tony, that's correct. Look and my evidence today is that because I  
20 haven't personally seen or viewed an Aboriginal on a jury, doesn't mean there hasn't been and, as Commissioner Bell pointed out, there could have been, but, yes - it can be really - it's frustrating, over the years it's been frustrating, particularly the jury set-up. I agree with what Commissioner Bell is saying. Yes, I do.

25 MR McAVOY: Can I ask you this: if there was an Aboriginal person on a jury panel, it's more likely than not that you would know them or their family, though, isn't it?

PETER HOOD: In Gippsland most likely, yes, in Gippsland. Maybe Melbourne. There are  
30 all sorts of complications but they'd most likely get expelled but it's really possible that, yes. Aboriginal communities are - people know people, related to this one, related to that one. You know, it's - Aboriginal communities are ultimately small, but as I said people know people. It's an observation that I think the jury needs a really hard good look at, in terms of - you know, particularly Aboriginal peoples' involvement in the jury system.

35 CHAIR: Counsel, just because we are having this conversation, I just want to share that I have been called up for jury service in regional Victoria and was knocked out by a defendant, just by his looking at me as I got close to him, so I just put that on the record.

PETER HOOD: Yes, that's right.  
40

COMMISSIONER BELL: Might have missed out on a good juror.

CHAIR: Whatever that means.

45 MR McAVOY: Can I just briefly take you to your outline of evidence where it deals with the role of Koori Courts. Is it fair to say that your experience with Koori Courts has been positive?

PETER HOOD: Yes. I - yes, I agree. Yes. Koori Courts, you know, like all whether it be courts or other systems, there is always room for improvement and I think evidently that will go with in time.

5 MR McAVOY: Ms Theocharous, you were nodding your head in agreement with that proposition, that it's generally a positive experience with Koori courts?

10 TESSA THEOCHAROUS: Yes. We have had a number of clients who had really good experiences in Koori Court. We'd like to see the model of Koori Court available to all courts, though, and I think that's something that our clients often say, "Why do I have to plead guilty to be in a Koori Court?" And we think there is no reason why the model of Koori Court can't be available to other courts. So having Elders available to provide cultural knowledge to magistrates and judges and having culturally - more culturally appropriate courtroom is a model that could - there is no reason why that model couldn't be available for a bail  
15 application hearing or even for a trial, as we have just been talking about. We would really welcome the opportunity for the model to be used in other court settings other than plea hearings.

20 MR McAVOY: Is the Koori Court available where a person has pleaded not guilty but ultimately been found guilty at trial?

25 TESSA THEOCHAROUS: Technically that should be the case but I think that is rarely available. So generally a judge who will find - a judge who has found a person guilty, or a jury who has found a person guilty, then the sentencing falls to the judge who has presided over that trial, although I understand the legislation does provide for sentencing to occur in the Koori Court. I don't believe that that generally happens.

30 MR McAVOY: Is it your observation that having matters heard in the Koori Court is more meaningful to your clients than perhaps in the mainstream court with an all white jury?

35 TESSA THEOCHAROUS: Yes. I always say to my clients, "In mainstream court, you'll just be sitting behind me and I'll be trying to tell your story for you, but in Koori Court, you can tell your story in your own words for yourself." I always say it's a good Koori Court if me, as the lawyer, doesn't say very much. So it's the one court where our clients have a real voice and where our clients' family and community have a voice. So it turns the mainstream court model on its head and that's something that we try to teach the other lawyers at our firm about as well as it's okay, as the lawyer, to not speak.

40 It's quite funny sometimes to see lawyers from other practices struggle with that when they are appearing in Koori Court. It is definitely the hallmark of a good Koori Court sitting where the lawyer doesn't speak and where your client has the voice.

45 MR McAVOY: That answer, I think, feeds in neatly to your observations regarding the importance of cultural knowledge for both practitioners and judicial officers dealing with Aboriginal people. Is it your observation that much greater work needs to be done in terms of cultural knowledge in the legal profession?

50 TESSA THEOCHAROUS: Yes. Definitely. We will still - I had a magistrate last week who ultimately bailed my client but said to him in granting him bail, you know, "You better comply with your bail conditions because next time you won't be able to play the Indigenous

card.” They were the magistrate’s exact words to my client which are words that should never be said in a courtroom. That magistrate obviously needs some training, I think.

5 Recently I had to seek an adjournment for a client because it was his Uncle’s funeral the following day and the magistrate was questioning my client’s relationship to - I had to provide the funeral notice. I was questioned about the family connection. The magistrate questioned that family connection. I had to explain to the magistrate that I was prepared to give evidence, having personally known my client and his Uncle, and the magistrate asked me about the location of the funeral and wanted to know what Cummeragunja was. Again, an  
10 example of a magistrate who needs some cultural training. So we still have a long way to go when we are still having to, as lawyers even, fight these fights in a court on a daily basis for simple things like this.

15 MR McAVOY: Thank you. I just want to take you back now to the issue of your involvement with the young Indigenous Aboriginal girl that passed away, on shoplifting charges. Are you able to speak to that, Mr Hood?

20 PETER HOOD: Yes, Tony, certainly. There was a very - I believe was a very - it was a very avoidable tragic event. It could have been avoided. It was very sad how it all panned out. It takes me back to my very first sitting as an Assembly Member of the First Peoples’ Assembly, Parliament House, and I actually had the Premier and the then Minister for Aboriginal Affairs come in and meet with us and I questioned - I asked them a few questions about the current *Bail Act* laws and how the system worked. They actually said they’d get  
25 back to me.

30 My point about the question was about, you know, how the bail laws were working against Aboriginal people. Now, it was probably just over three, maybe four weeks later, probably three weeks, we had a young Indigenous girl pass away in custody from being remanded on a shoplifting charge. Really sad, you know. It’s my testimony that that could have been avoided. Had things been in place, or the system that does exist, I don’t think it worked very well that day. Very sad.

35 MR McAVOY: Thank you. Commissioners, they are the questions that I have for these witnesses.

40 COMMISSIONER HUNTER: You may have answered it but I just wanted to flesh it out a little bit. I think, Tessa, you brought it up that you encouraged the clients to follow up any - pursue any police complaints, and then I think, Peter, you also said that people have had enough and they just want to get on and it’s just more court stuff for them. Would you be able to just roughly off the top of your head - what is the percentage of people that you ask to follow them up, actually follow them up of your First Nations clients?

45 PETER HOOD: It would be very little, I’d imagine. If I had to say out of every 10, maybe one or maybe two. You sort of sit and wait to hear how that process is going, and it’s - yes, are they may get to a certain point and just, as I said before, you put your hand up and say, “No, all too much, let’s just walk away”, because remember, and it’s explained that - it’s explained to the client who wants to put the complaint in, there will be opposition. It’s not just straight cut and dry process, where you put the complaint in and it’s dealt with. There will be opposition, you will be questioned. They don’t want to go through that sort of stuff,

even though evidence is clearly there that they have been violated or, you know, that aspect. But they don't want to go through that.

5 COMMISSIONER HUNTER: Thank you. Just one other thing. Tessa, you mentioned about pleading guilty in the Koori Courts, that you had to plead guilty to use them. How many of your - roughly, would a lot of your clients plead guilty to go to the Koori Court or they would just go through mainstream? You put in your statement, which is a barrier. I'm wondering where that sits for your client base of First Nations people.

10 TESSA THEOCHAROUS: We really encourage our clients to first try and negotiate their case and, then if it can't settle, then we can consider the plea in Koori Court, rather than saying we'll just go to Koori Court at the start and plead guilty, even though you have a defence. So it's part of a process but, yes, we definitely don't encourage our clients to plead guilty when they have a defence or we explain to them that they can't have their case heard in  
15 that way, if they want to challenge the charges.

But certainly if we go through a process, for example, we go through a contest mention and a number are charges are withdrawn, then, at that point, we'll book their case in for Koori Court if they want to with the charges that are left.

20 COMMISSIONER HUNTER: One last one: do you know any model similar to yours that operates similar - a legal model that goes above and beyond, I think, really, as you've explained and, you know, the amazing work you do of making sure people do appear, they're dressed properly, is there any model of another legal service that does similar work to  
25 yourself?

PETER HOOD: Not that I'm aware of, no.

30 COMMISSIONER HUNTER: Thank you.

PETER HOOD: Tessa?

TESSA THEOCHAROUS: No, not that I'm aware of.

35 COMMISSIONER HUNTER: Thank you.

COMMISSIONER WALTER: Thank you. We had a witness yesterday who stated that they believed that Victorian Police feel that they can act with impunity towards First Nations people; would you agree with their contention?  
40

TESSA THEOCHAROUS: I think that's certainly a big problem. That's borne out in the way that they do act towards First Nations people.

45 MR McAVOY: Just following on from those questions, Ms Theocharous, at paragraph 59 of your outline you set out an example where a single Aboriginal mother reversed into another car at a car park, went to the police station to try and report it, but the report wasn't accepted. So she went home. And then that night, at 10 to 12, police officers turned up at her front door with a tow-truck to impound her car, and Mr Hood had to attend at the scene to try and assist.

In circumstances where that's the response from police to what would ordinarily be an innocuous report of a small incident in a supermarket car park, do you think that explains to some extent the lack of confidence or reluctance of your clients to make complaints about police?

5

TESSA THEOCHAROUS: I think it really does. In that example, this woman called me and told me what happened. I advised her to go and report the accident and then she called me and said, "They wouldn't take my complaint." Only a few hours later I got the hysterical phone call. They weren't just there to tow her car, they were trying to break down her door to arrest her. She was trying to negotiate through the door to explain she was a single mum and had young children in the house, including her 10-year-old son who was a severe epileptic, and she didn't want to be arrested and taken away for the night, leaving her children unattended.

10

That's why Mr Hood ended up going there to try and speak to the police to diffuse the situation because it had been escalated to such an unreasonable and outrageous level where the police were trying to break down the door to arrest this woman over essentially a fender bender in a supermarket car park. Her car did end up going towed and we ended up having to go to court to make an application to get her car out of an impound yard so that she could drive her children to school.

20

MR McAVOY: Thank you. Commissioners, are there any other questions for the witnesses?

CHAIR: I have no questions but to thank both Tessa and Peter for such a --

25

MR McAVOY: Thank you, Commissioners. I would tender the witness outline of Peter Hood and Tessa Theocharous, as well as - that's document 7.1. Document 7.1.1, an article from The Age entitled, '*Aboriginal Man Locked Up In COVID Court Bungle*', 7.1.2 is an ABC news article entitled, '*Vulnerable Indigenous man locked up by police in 'string of errors' during Coronavirus pandemic*', And 7.1.3, 3CR radio interview with Tessa Theocharous entitled, '*Aboriginal deaths in custody and systemic racism.*'

30

CHAIR: Thank you. Those documents will be allocated the next exhibit numbers.

35

**<EXHIBIT 2.11 PETER HOOD OUTLINE OF EVIDENCE**

**<EXHIBIT 2.12 TESSA THEOCHAROUS OUTLINE OF EVIDENCE**

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**<EXHIBIT 2.13 'ABORIGINAL MAN LOCKED UP IN COVID COURT BUNGLE' ARTICLE**

**<EXHIBIT 2.14 'VULNERABLE INDIGENOUS MAN LOCKED UP BY POLICE IN 'STRING OF ERRORS' DURING CORONAVIRUS PANDEMIC' ARTICLE**

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**<EXHIBIT 2.15 3CR RADIO INTERVIEW WITH TESSA THEOCHAROUS ENTITLED 'ABORIGINAL DEATHS IN CUSTODY AND SYSTEMIC RACISM'**

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MR McAVOY: I confirm, Chair, that Counsel Assisting will ensure that contact is made with these witnesses in relation to availability of some of the video footage that's been referred to in the evidence and that might be tendered at a later stage.

CHAIR: Thank you.

5 MR McAVOY: That's the evidence from these witnesses. If they might be excused. Thank you, Commissioners, the next witnesses are being taken by Ms Fitzgerald.

**<THE WITNESSES WITHDREW**

10 MR McAVOY: We might adjourn for a few minutes to set up for that panel.

CHAIR: Yes, thank you.

**<ADJOURNED 11:27 AM**

15 **<RESUMED 11:36 AM**

MS FITZGERALD: Next we have a panel of witnesses who are all working with First Nations peoples who are caught up in the criminal justice system. They work for and run organisations that are providing First Nations-led solutions, healing and restorative justice and cultural connection. Those witnesses are Mr Alan Thorpe, starting on the end there, 20 Mr Coree Thorpe, Aunty Williams, Mr Firebrace, and on the screen we have Mr Braybrook. I will swear everyone in first and then I will ask the panel members to introduce themselves. Mr Braybrook, is from - I'm going to pronounce this: Wulgunggo Ngalu; is that right, Mr Braybrook?

25 SHAUN BRAYBROOK: Wulgunggo Ngalu.

**<SHAUN BRAYBROOK, AFFIRMED**

30 **<KARIN WILLIAMS, AFFIRMED**

**<ALAN THORPE, AFFIRMED**

35 **<COREE THORPE, AFFIRMED**

MS FITZGERALD: Finally, Nakia Firebrace, from the Victorian Aboriginal Child Care Agency, will you raise the Mulka and perhaps first explain to the Commissioners what that is and then I will ask you to make the declaration.

40 NAKIA FIREBRACE: With this, Commissioners, this is the Mulka of (indistinct) this has been hand-carved by me with the blessings of senior members of my Nation. This Mulka has been held by children of care, children of Country, and also community members that work with our people in the community. So with this on the basis of law, and integrity (indistinct), yes.

45 **<NAKIA FIREBRACE, AFFIRMED**

50 MS FITZGERALD: Mr Braybrook, will you introduce yourself personally and professionally, and explain the work that Wulgunggo Ngalu does with men on community corrections orders?

Yoorrook Justice Commission

SHAUN BRAYBROOK: Definitely. And thank you for giving me the opportunity to speak. I am an Aboriginal man, was born on Wurundjeri country and lived all my life on Wurundjeri country. My grandfather's Aboriginal line, is from Far North Queensland, that is Kuku  
 5 Yalanji as well. Me, personally, I have worked in the space for a lot of years but didn't begin my life in this space. I would like to share this as well: I started my life as an apprentice plumber and I was a young Aboriginal boy that benefited from Aboriginal employment program. So I'm very passionate about that very early start in life as well.

10 So, from there, my professional life then took a major change and I ended up working with VACSAL for a little while as an Aboriginal youth support worker. My whole idea around the Aboriginal youth support unit at the time was I couldn't believe coming from a plumbing background that people paid you to do this work, doing great work in community and doing great stuff. I have great fond memories of Bert Williams and working across that  
 15 whole youth justice system and that whole diversion stuff.

From there I ended up working in Port Phillip Prison at the time. So I spent five years working at Port Phillip Prison and I would just like to note, too, when I started working at Port Phillip Prison in the year 2000 - 2001, actually, I was actually the only Koori support  
 20 worker working within the prison at the time and it was actually a private prison. We didn't have - and people would remember, Auntie Carmel Barry who worked in the system as well and was a great mentor at the time, and Uncle Reg Blow as well across that line as well but I was actually based in the prison so I share that professionally as well.

25 Then I actually left the prison and went and worked in Corrections head office for a while. I spent a lot of years working in Corrections head office and implementing a lot of cultural programs across the prison system as well. Since 2006, I have been a general manager of Wulgunggo Ngalu Learning Place. So what is Wulgunggo Ngalu? Let me share with you: we're a key initiative from the Aboriginal Justice Agreement, as a partnership with the  
 30 Aboriginal community and the Department of Justice, or the Victorian Government as a diversion program to see men, help men transition through the justice system. So our core business is to help Aboriginal men on a community corrections order to complete their orders.

35 What we actually do is we - men come down here and live anywhere from three to six months, live on-site. We do educational stuff, program stuff and the whole focus is around culture, so cultural identity. I can talk a bit about that more, about the actual work we do around our culture and our cultural identity. We have a real cultural overlay to the place and we support the men through that journey, strengthening cultural identity.  
 40

One thing we always say is the strength to Wulgunggo Ngalu is first of all we support the man, we strengthen their cultural identity and then we address the behaviour. So that's our sort of steps that we take in working with our men. They key is it's a voluntary place. Even though we are working with men that come in contact with the system, every man at  
 45 Wulgunggo Ngalu chooses to be here. There are some men that's in their best interests to be here but they still choose to be here on that journey. So that's in a bit of a nutshell about the work I do.

MS FITZGERALD: Mr Braybrook, you mentioned the cultural identity work that you would  
 50 like to touch on a little bit more. Can you explain practically what that work involves?



SHAUN BRAYBROOK: Yes. The whole place - we like to think that we have the cultural overlay right within a cultural facility, still being a Department of Justice facility, and we are all Department of Justice employees here at Wulgunggo Ngalu. So that's very important for us. So the first part was about the physical site itself. So we're actually based on the old Won Wron prison, which is down in Won Wron, which people don't know. I'm probably one of the lucky ones that I've got on my resume that I bulldozed a prison, not too many people have that.

10 But Aboriginal Elders walked the site and got their inspiration with an Aboriginal architect, his name is Dillon Kombumerri, and that's where the place grew from that. So the place is built with the Aboriginal overlay of the blue wren, so the Indigenous birds to the area. So very important that the whole site, first of all, has a real cultural feel to it. We're a big property, 162 acres, mostly natural bush and we occupy the front of it. So a very good layout for the place and significant cultural sites around the place with an open space, men have space to work and live.

I will just explain it quickly: our main buildings are up the top where our admin office is, we have a learning room, we don't call it a classroom, we call it a learning room. We have our common area and our kitchen area so there are three main buildings up the top. That's where we do our work. In the night-time, the men walk away to sleep, so they go down the hill or just over a little bit and they sleep in their units where there are three units of six. It is sort of like that transition, we come up, do our stuff, and they walk away. At the heart of it we have a fire pit and that's where all our business gets done. It is really - I think I can explain it like that, that's where all our business gets done. It's a real place that you have to see when you talk about that cultural overlay. It's a real visual thing. That's first of all for the place.

The cultural strengthening we look at is we want to - we want men to come here and be challenged around their cultural identity. What does it mean to be an Aboriginal man in today's society? That's a lot of the work that we do around that area. We teach dance. We have a set of Wulgunggo Ngalu dances that we dance. So we do a lot of work with the Gunai Kurnai people as well and we looked at what we could do on their land and that sort of stuff and got permission. So we created a lot of dances ourselves.

35 But the real cultural strengthening comes is when men come down here and share their cultural knowledge. We might have men that might not have a real strong cultural identity, yes, they will come down, they are like big sponges and soak up everything we do, around our cultural programs, our cultural overlay, our cultural dance and other stuff we do, and then men come down that may know dance, may know whatever they do know, we give them that opportunity to share that. It is really important. That's one of the parts that we say about passing on the knowledge, and sharing that. So it really takes that cultural strengthening to another level.

45 So when I say about strengthening one's cultural identity, then all the other stuff starts to fall in place. Men buy into the place, being a voluntary place, a three-hour drive from Melbourne, you know, choosing to be here, choosing to stay on-site, once they start to buy into that cultural identity, that's why men will stay, that's why men will participate. The rest of the work you do, especially around education and living skills, they'll be put on-site, and even our corrections order, the work that needs doing around the community corrections orders and that, all that gets accomplished and achieved as well because the men are achieving

something and something they want to achieve. Find out more about themselves, who they are and their cultural identity.

5 MS FITZGERALD: Thank you, Mr Braybrook. One more question for you before I ask the other members to introduce themselves: you worked extensively throughout your career within the mainstream criminal justice system, and specifically the corrections system. Some of our witnesses have said that the system itself is racist. Do you feel that you have been able to make a difference from within that system and what impact do you think having First Nations people working within that system can have?

10 SHAUN BRAYBROOK: Yes. Definitely. I spend a lot of time across the system, as people know, especially the five years at Port Phillip Prison. Being a private prison, let me talk about the system and understanding the system. I chose to work inside the system, and then work from outside. So some of the things that have really made a difference that I have had a big hand in was the - some of the cultural programs that come into the prisons now, the Murra Murra program is a big one, transgenerational trauma, which was bad in the Port Phillip Prison, and we are really grateful for the fellas to be able to have these opportunities to really focus on that.

20 My big thing, as I work across the prison system - and I hope to think this still continues today - is bringing the outside in. We can't take fellas out of the prison, bring the services in, you know, and that can be a challenge, I know that, but that's what we always did. So my focus, when I was working in prisons, was looking to what we could bring inside to support the member inside, building relationships and that as well. So I definitely agree, people  
25 would look back and see the racism within the prison system and I have seen that first-hand myself.

I do believe there is lots of goodwill in the Department of Justice and through the correctional system, especially at the top end where it all filters down, then, as it comes down on the  
30 ground and the way it works - and I think that's the challenge - is keeping the messages going through to the place and, for me, it's all about having more Aboriginal people working in the system and making sure we support the Aboriginal people working in the system. We need to do that. We need to ensure that.

35 MS FITZGERALD: Thank you, Mr Braybrook. Ms Williams, Aunty Williams, could you introduce yourself personally and professionally and explain the work - I think if we focus on Bert Williams, but if you would like to speak more broadly about VACSAL please do.

40 KARIN WILLIAMS: I'm Karin Williams, an Aboriginal and Torres Strait Islander woman from Queensland. My people are the Bindal and Jaru with my heritage from the Torres Strait Islands being Darnley Island and Murray Island also. I moved to Melbourne from Queensland when I was 21 in 1985 and I came to study Aboriginal health. I had a real feeling I wanted to be a nurse and I felt I could make a difference if I went into the health field for our people, and I did that course for 12 months and I then got work after that in the Victoria Aboriginal  
45 Health Service from 1986, and I left VAHS for a little bit of time and went into the youth justice - Koori Youth Justice out at Bert Williams Centre as a worker for a couple of years.

Then I got coaxed back to the health field for three more years and I really had enough. By that time of three years, I'd had enough and I needed to go into the space where I felt like I  
50 could make a difference with young people and working with young people before they turn

8 I really believe you can make changes. So I started working as a Koori Youth Justice worker at Bert Williams Centre.

5 I must say, I learnt a lot of my stuff from a lady by the name of Yvonne Luke, who I used to shadow around. So Yvonne worked within the Department as a Koori Youth Justice worker also with VACSAL. So I learned a lot of my stuff from Yvonne and I needed to acknowledge that today also. So I do - I have worked as a Youth Justice Worker and now I manage the service at Bert Williams. In our Bert Williams stream, we have three different streams, which is the homeless hostel for young people, we also have the Koori Youth Justice program and  
10 the Early School Leavers program that sits within Bert Williams.

I would like to start with talking about the work I do for VACSAL and the Bert Williams Centre. I really have a passion for young people and I will fight really hard. So I will start by an example of when a young person comes into - we get our referrals usually from the  
15 Department, or from the community, so we will actually do an assessment of the young person within the first day or so, make sure that we do a case management plan, work really hard on cultural support plans and the cultural support plan comes from information from the young person.

20 So one of the things that we really do is empower the young person to give us all the information for those cultural support plans - because that's their document and then we work from that. And we also work with the Department, because our referrals come from there, so we are doing a crossover with youth justice in the Department and our community workers.

25 MS FITZGERALD: Aunty, when you say Department in that context, is that the Department of Family, Fairness and Housing or the Department of Justice?

KARIN WILLIAMS: Department of Justice and the youth justice group.

30 MS FITZGERALD: Sorry, keep going.

KARIN WILLIAMS: You might want to ask me something to prompt me?

35 MS FITZGERALD: You were explaining the three different streams of work that Bert Williams does.

KARIN WILLIAMS: Yes.

40 MS FITZGERALD: And, yes, if you could step through those and then I will - there's an example I wanted to ask you about.

45 KARIN WILLIAMS: With the homeless hostel, it is for young men between the age of 15 to 22, and they are homeless young men, that have nowhere else to go. We'll take in young people but we also, at one stage BWAYS was a place for young people coming out of the youth justice system, so being in Parkville or Malmsbury. We used to be able to take them in at one stage. That's changed just because of - not a lot of supports are in place for our young people when they come out. So it's difficult to do it as one organisation and there's a whole heap of things going on with the young person.

So - and in the hostel, we get them in, and we get them into some kind of program. So they'll go to school if they are not at school already or we'll help them find a job, any kind of training, anything that keeps them busy during the day. We really want them to be active and really put some effort into their future. So we talk to them about what they want for their future, what do they want us to do, how do they want us to do these things. So it is real stuff for them to contribute.

Then we go and have a look at it again a couple of weeks down the track and see if things have changed for them as well. That's the hostel. They can stay with us for three to six - six weeks to three months. I would struggle with a young person leaving after three months when they have got nowhere else to go. So I'm a little bit of a softy and I'll keep them there for as long as I can because there's nothing worse than having a young person on the streets homeless. I have got real passion to keep caring for them and nurturing them through that process. That's just part of what we do in our hostel.

Then we have our Early School Leavers program, which is about keeping young people - and it came out of Justice funding, a lot of young people who were having issues in the youth justice system, they weren't at school, there weren't on an education pathway. So the ESL program gave us some funding to engage with young people to keep them at school. We get funding for 10 to 20-year-olds and it also helps our young people who are looking for apprenticeships and stuff.

So we kind of do a lot with them and it's like we want kids to stay in school. So we provide, right from the get-go, uniforms, supports in classroom, some books, everything, and we get other organisations involved. So a lot of parents can't afford high school books. So the ESL program will go out and source, and we are sourcing funding all the time to ensure our kids are at school and staying at school with everything that they need.

The Twentyman is fantastic, a part of our partnership program we do with the Twentyman is they provide all of our children with high school books. So we actually sign up with them every year and we do that work with them as a partner and that's just something we have done forever with them as well. Then we have got our Youth Justice Program which is where the referrals come from, community or the Department. It's a process. So the referral will come in, our guys will have a look and we don't say to nobody - we don't say no to anybody. We actually try and take as many in as we can and do what we can best. That's also with an assessment and a case plan and continuous cultural services for our kids because they are lost in the system.

A lot of them are in trouble because they actually trying to fit into the community. They are getting in trouble because they are trying to fit when they don't know and a lot of them will choose the wrong path if they don't know where they fit. If we can get them to know where they culturally come from, connect them to the community, it actually makes a difference. So our Youth Justice team are doing it constantly because a lot of the kids in the programs don't know where they come from. We have got a real - a real - it's an issue for us in community to actually find out where the kids come from. So we'll continue to work. We'll do everything we can to make sure that they don't get left behind in the system, if we can.

MS FITZGERALD: Aunty, in your role, you have supported young people going to court and you've given an example in your outline of evidence that I was hoping you would share

today. Can you tell us about the youngest child you've ever worked with, how old they were, and what their circumstances were and what ended up happening with them?

5 KARIN WILLIAMS: It was a fair while ago when I first went into my role as a Koori Youth Justice worker and it was actually in a Koori Court setting. The young person was a 9-year-old and had actually got locked up overnight. He was at court in the morning and he had no support. I don't know if his mother even knew and I'm not going to judge her for anything but she wasn't there. I actually cried because there is nothing worse than seeing a little fella, a little person, sitting there. He has no idea. You know he got picked up, I think he 10 might have stolen something, I can't even remember, but all I know is he was there.

One of the things I do for every child, if they ain't got the support at court, and especially Koori Court, I will take the seat beside them and I'll hold their hand, whatever. He didn't have anyone. I sat with him. I was crying like a baby beside him because it was disheartening. He 15 was crying. He was distressed because he had no-one with him. He ended up getting locked up again, I think, because he had no-one around him to take him home.

After that incident, I know he got released and he'd never got into trouble again for a fair few years, and I'm talking about a 9-year-old, 10 years, different, he did something silly when he 20 was 19. He did a bit of time for it but he has stayed well good since. But that circumstance was probably one of the hardest I've ever had to deal with because a 9-year-old in court, a 9-year-old had been locked up.

25 MS FITZGERALD: Thanks, Aunty. Alan Thorpe, I invite you to introduce yourself, personally and professionally, and explain the work that Dardi Munwarro does with Aboriginal men.

30 ALAN THORPE: Thank you. Yes. Alan Thorpe, I'm a Gunai man. Grew up in Wurundjeri country. I actually grew up in Gertrude Street as a six year old kid. I lived in George Street when I was a kid. So this street meant a lot to me in the community and a lot of my teachings come from there. So I was really lucky and grateful for that that I grew up in community and felt that nurturing support and get them teachings. So it's how I want to live my life today. That was a good foundation for me. So, yes, I'm really privileged in that way.

35 So, yes, I'm just on a journey, like a lot of people, carrying a lot of pain as well. So I want to sort - intergenerational trauma and that historical pain that we carry is something I'm really passionate about is to regulate and to clear so we can live our lives and feel free from that. So I'm really fascinated but I'm also willing to learn and willing to work with that space and heal. So that's just something I really love doing, you know, and learning about on the 40 journey.

MS FITZGERALD: How does that relate to the work that Dardi Munwarro does? That sounds like a journey you encourage a lot of clients to take the first steps on?

45 ALAN THORPE: I think from when I was working and growing up in community and seeing organisations and working in the AOD space, and seeing the trauma, and seeing the same cycles, you see it was repetitive, and it was sad seeing the same people go through detox 20 times and the same system, I thought, geez, there's got to be something different. What system are we following, you know?

50

5 So I wanted to explore more and so we - I remember when I first went to Yulluna, I said, "I want to do healing work", and they go, "What's that?" They didn't understand the language. But they didn't understand the meaning and I was a bit stuck and then sort of we talked about healing and change and particularly men taking responsibility and being a father, and being the role models, which we were lacking as well.

10 So they put me in this - they said - they were sort of stuck, you know, "Where do I fit in the system?" But I sort of got into the family violence because dealing with men who are high dependant and high levels of trauma, and complexities with all the housing and family violence and all the drug and alcohol, the high dependency stuff, and so I thought - they put me in that space but then they wanted to tell me how I'm going to do it and I said, "Well, I don't want to do it that way."

15 So we struggled for funding for 10 years just because I didn't want to take the 'no to violence' and just run that model. I wanted healing in our model and so I had to - I didn't compromise that. I didn't want to take the money for that reason just to fit in a model. So, yes, we developed and evolved over time. But it was at a cost. Time but also financially. But we learnt a lot, you know. It was probably a blessing in a way because we didn't compromise that.

20 Self-determination for me is not just compromising yourself, it's about your integrity and it's about being authentic and doing what's going to work for our people. So, yeah, I did that and I don't want to go too deep in the story because I'll be here all day, but I'm just trying to give you a bit of a journey. So the - the Deloitte report, and all the evaluations, speaks for itself, the outcomes.

30 But I think that was the foundation is about taking the learnings around self-determination about what it meant, and the spirit of that, and actually live in it and build on what's real and not compromise ours with the system. Even though we still have challenges with the system but that's how people do that, you know, that's how we struggled, you know, and that community spirit and the things that people sacrifice their life for community, that's what we did.

35 So, yeah, it's - it's probably the reason for Dardi, that's probably the reason we get the outcomes we get, because of that, we are going back to that. It's like going full circle for me, so - yeah.

40 MS FITZGERALD: It sounds like the model you see for self-determination is not Aboriginal organisations being given money and told what to do with it but it's you in the design seat deciding what you should do and then that being funded?

45 ALAN THORPE: I believe the model's worked the best. It worked for our people. I don't know what's happened in these last 30 years, but for me that was what worked, and our voices and the sovereignty, and all the things that we had, you know, over the years, we have lost that, I believe, and I never lose my sovereignty. I'm always a sovereign man and I will stay true to that. That's how I operate.

50 MS FITZGERALD: Coree, could you introduce yourself and if you - Dardi Munwurro sounds like it runs a huge number of programs. Perhaps if you could speak to the ones you are proudest of, I suppose.

COREE THORPE: Yes. Thank you. My name is Coree Thorpe. I'm a proud Yorta Yorta/Gundjtmara/Wurundjeri man and Wamba Wamba. I'm very passionate about who I am and where I come from. Growing up on Wurundjeri country, and both my mother and

5 father's family have done a wealth of work in the community as Al was saying, and Auntie Karin and cousin Nakia, you know, will allude to later. I have lots of gratitude to be in this space now from a lot of the learnings that I have seen and from my parents and my great grandparents.

10 I have come full circle. Like Shaun, I was a plumber for 10 years. There must be something in that for blackfellas, there's a few of us, but that was from my dad and my grandmother instilling, you know - and Al's father, around work ethic, understanding that, you know, that's a really - you can't take that away from you and I think that was ingrained to me as a

15 young person, seeing family and our community fight for what we believe we deserve and having that autonomy is what we held early days and I seen that through Fitzroy Stars Gym and the birth of the Victorian Aboriginal Health Service when I was young and Koori Information Centre, and all of these other spaces. I was a kid but I took as much as I could.

I have always connected with Al, my older cousin. Some people think that we are father and

20 son sometimes but we are related, closely related, and we have great conversations and our first interaction was back when I was about 20. Al asked me to come and to actually take his role on over at Ngwala and work with the place residential program, which is working with youth coming out of incarceration and support around connection to community and to

25 Country, and I was very naive and thought this was going to be an amazing process, and then I realised the structure that that program was part of, and the things that we could do and the things that we couldn't do was really frustrating. But I loved the opportunity.

Al had seen that in me and I have been very fortunate to work with him the last six years and I think he's seen something in me a long time ago, which I'm grateful for, and, you know, I

30 have been at Dardi for six years now and it's gone from strength to strength and, you know, the evolution of Dardi is very representational of the cultural process of dealing with the issues in the environment at hand at that time.

So we do build a lot of programs to suit for what the landscape is bringing. Through COVID

35 we built a Brother-to-Brother line which is a phone line dedicated for Aboriginal men to speak and to call if they needed support through COVID-19 times, when, you know, there was a lot of pressures, there was a lot of family connection points, there was a lot of changes that were happening. There was more families being stuck at home together, what does that look like?

40 We have got that program. We have - another passion of mine is our youth program, which is our Bramung Jaarn, and I see that as two very big programs of ours. It's a prevention program but an empowerment program around - and you've heard the others speak about the lack of identity, the need for it, and how that is something that we need to put at the crux of

45 all our programs to make sure that we connect in because that's one of the things that was taken from us, how do we actually connect back to connection of Country, on land, and how do we work those two spaces in today's society and our own stuff that we are still dealing with, the intergenerational trauma of it all.

So, yeah, we have - we continually talk about new programs and new initiatives but that's all from the connection with our community members. We learn from them and we hear them and we then try to enact that change to support that so that they know that we are invested in the community, into the work, into the families. I think that's a really important part of what we do and how we do it. We are State-wide. Aunty Karin talked about it, Al talked about it, and it won't be the last time it's talked about but funding looks different in different spaces.

We see that when we have Melbourne offices, regional offices, Dandenong is part of Melbourne, but there's a very different landscape for funding, and that's a big part of sometimes why the programs are different, but also why you have to be creative. I think that's the self-determination and the empowerment part of what we do well at Dardi and I can only speak on that part of what we do.

MS FITZGERALD: It sounds like you're not waiting for anyone to come to you with a bucket of money to tell you what to do, though; in fact you are always generating ideas and finding a way to do it regardless of funding?

COREE THORPE: I think there is a power in that to feel you can lead and have autonomy on building that process. It also gives you the responsibility and accountability to it. We are in the space for Dardi, but we are afforded by communities. The community have elected us to be in that space, especially in our regional offices. We work closely with the community. Al's specifically been in - the offices in the regions, in the rural areas, where community have asked us to be. We don't go and be a part of that without consultation with community.

We are always talking about the local cops and the justice and the people working in the justice space. We get conversations around that as well, and that's part of the empowerment that we get. It's also - it brings - there's a level of risk involved in that, but that then brings that we have to be accountable to making sure, you know, you do it the right way for community to be effectively useful for what they get out of it and then also making sure that we cross the Ts and dot the Is for the purposes of the funding and where we get the funding from.

MS FITZGERALD: Thanks. Mr Firebrace, please introduce yourself personally and professionally and, if you would, I mean, VACCA is a huge organisation, we have also heard from Aunty Muriel already, so it would be great if you could focus on the Youth Through Care program and then after that you wanted to read a statement.

NAKIA FIREBRACE: Correct. (Speaks Language). Commissioners, respect to the Kulin nation people and their lands, Wurundjeri, respect to the Commissioners. My name is Nakia Firebrace. I'm a Yorta Yorta man. I currently hold the position with the Youth Through Care program at VACCA. It's a State-wide program and we work in the pre-release and post-release juvenile justice space. We focus on the qualities of what it is to be First Nations. But more importantly, as well, knowledge to be able to retain it. We address that through mental health, we address that through cultural practice, and enlighten them with their songline and where they are from.

We work with Aboriginal liaison and other agencies within that space and we complement their work, making sure that when it goes to the post-release stage, that the young person is appropriately supported and has supports on the outside. We are a program that initially started as a pilot program in 2019. Subsequently, we have now been funded, which is a great



indicator of the work we do but, more importantly, the results we get for our young people and families.

5 The cultural role and governance is my role to make sure it is protecting our young people's journey. We work in this space to make sure when it comes to their journey, their voice being heard, we really take that to the next level. We also make sure that that voice is from the agencies and the other community, other programs, but we have a process that supports that as well. Pathway.

10 Again, the YTC program is making sure we have outcomes by going into custody and talking to them directly to find out what is their story and how that looks. We build rapport and respect and we develop that process that is culturally in tune with what that means for them in the sense of their start of their journey or what is it they need to know about their culture and where they are from.

15 We are very mindful that when we have people that start that journey that we don't open up old scars. We are very mindful of how that looks. So we provide that cultural safety and that space in discussion but also with the people that we work with as well. Our cultural obligation is to make sure that non-Indigenous people understand what that looks like as well.  
20 It's a collective effort and we focus on those elements of what it is to be part of a community that we are working in.

I'm in a privileged position but also very much accountable to the community and the family groups. I'm very fortunate that I have grown up with a strong matriarchal and patriarchal  
25 system. I come from Queens and Kings of Riverina nations. The laws that have been passed on to me from them comes from the mothers and fathers, it comes from them and is passed on.

I'm not talking in the sense of what is new but what we've been speaking about for thousands  
30 of years when it comes to integrity of our law. Each male, in particular, has a role and responsibility of title, understanding what that looks like, understanding that our Queens are our mothers, sisters, daughters. We need to be able to fulfil a space of when it comes to the cultural strengthening is that when I work with young people in custody is to have a discussion with what that looks like, fulfilling their cultural identity role through practice the  
35 integrity of that comes from members of community that are endorsed, Elders of Council, and members that are respected.

The accountability is not so much something that is taken into consideration because it can be  
40 looked at as authority. I don't agree with that. Elders don't agree with that. It's accountability with the process of knowing who you are and where you are from. Return to Country is one thing that we focus on when that young person is ready. Preparations, do not tick a box with our young fellas, men and women that are going through that process. It may be multiple journeys required. Each step requires as according to what it comes to with guidance of that Council of Elders. The voice of the young person is a huge part of that, leading it, and being  
45 aware of it at all times. We are there to reduce recidivism but we are also there to make sure that is started by understanding their identity first and practice.

We ask where are they from. This question comes from the Elders. It is my responsibility as  
50 Yorta Yorta but also as a First Nations man working in this program that the accountability of cultural integrity is focused on. Youth Through Care is a way that we are able to facilitate and

support our kids in custody. This discussion has been happening for a very long time. I raise those words on behalf of those Elders, our community leaders, now and in the past.

Our way of culture works. We have multiple case studies within the YTC program. Our team, non-Indigenous and Indigenous, work collaboratively together on the basis of cultural safety and integrity. So over time, as we continue to work with our deadly brothers and sisters, non-Indigenous and Indigenous and our deadly brothers and sisters and other agencies, community, will keep doing this. So I'm blessed to be able to be in a position as a Yorta Yorta man but also working in the space at VACCA in the Youth Through Care program.

MS FITZGERALD: Thank you, Mr Firebrace. There were a number of common themes in all of your work and there was some general questions that I will ask the panel - and you are all welcome to answer - Mr Braybrook, as you are on screen, I'll check in with you before we move on to the next question to make sure you get an opportunity with respect to each question. The first question I wanted to ask was in relation to who is accessing your services. What do you see as the major issues, the major characteristics that are resulting in First Nations peoples being caught up in the criminal justice system?

NAKIA FIREBRACE: Trust. Young people in our families have been betrayed and lost trust in the past. The government in authority positions, from police to services, the breakdown of communication and the breakdown of the cultural lens and cultural safety in that space.

KARIN WILLIAMS: I was going to talk about the young people, a lot of the young people we have coming through are children of child protection already, and they're in resi care units and stuff, and one of the things is they have a big care team already that doesn't - they feel like they don't do a lot for them. I think that's where we need to step into the places and fill that cultural integrity within there.

It is - a lot of the kids' sense of belonging, where do they come from, "How do I know?" I know we can do cultural support plans for kids that are, like, are - I work with youth justice kids. It's different. A lot of them can come with some information but we can also help them with the information. So it is really around that cultural integrity stuff. Where do they come from, how do we support them, and it is that trusting stuff, because they have already had a big heap of people involved in their life, as little people, and they are growing still. So it is managing that stuff for them and that trusting is, like Nakia said, a big issue.

So many of our kids have had people in there that they say they are meant to work with them and want the best outcome, but at the same time they are stomping all over them and treating them badly. That's a true statement that I can make. I really know that happens out there because we don't get the best outcome while telling kids how to do it, you need to work with them and see what works for them.

MS FITZGERALD: In the adult space?

ALAN THORPE: I think it's just not one contributor. I think there's multiple contributors and I think one of the things we work - what we find and what we have discovered with transformational change is the intergenerational trauma, the historical, like, the pain and the suffering that our people are carrying for many, many years, you know, and all the abuse and all the things that have come from the system, from, you know, all that sort of holistic.

5 So there are multiple contributors that our people are driven underneath all of that dependency and violence and all the other things, the acting out, there's a level of pain, there's a level of - and that sense of belonging and sense of not knowing your sense of self. Like, not knowing who they are, you know, and that's part of the system. So I think for transformation, I think that's what I see works the best.

10 COREE THORPE: Yes. I think exactly what Al was saying. I think the trauma that's carried through generations and, you know, we know now that's carried in the blood. We are three - in Victoria, three generations removed from living off Country. So, you know, that violence of disruption and colonisation is carried through. The lack of responsibility taken from all sides. No-one wants that responsibility. So it's a lot of finger pointing, a lot of how do you deal with that pain when that emotional pain is always really raw and it doesn't subside?

15 We see that come through with the families, with the young people, with the partners, and it's a lack of connection, identity. There's so many ripple effects that we see. I think the thing that we, you know, we try to embed into it is just doing the work. You know, slowing them down, having a - simple thing that we do, when we do have that is just trying to have a coffee and holding them in a space, just to have the conversation. Because there are all these things  
20 community have to address and you can't address them all at the same time. I'm still dealing with my own, and everyone's still dealing with them, and we still have people dealing with bigger stuff or more complex stuff.

25 MS FITZGERALD: Mr Braybrook, was there anything you wanted to add?

SHAUN BRAYBROOK: Yes. Definitely. I'd like to add some stuff to this as well, I agree with all the other speakers and) we touched on very general terms about it all. The things that I see as well, and we had this journey of when we built Wulgunggo Ngalu and the community were against us, having an Aboriginal facility in their backyard. So I have a big story to tell  
30 about that. But the things that I'd like to say is everyone knows the common themes, the education, employment, and all that sort of stuff. The things that we see, the things that we have learnt a lot about, we have tried to strengthen our men and even work with the community around, number one is stigma, the stigma of people being in the justice system, of Aboriginal people. We do a lot of community activities, where we invite community out to  
35 participate in our activities, on site, with Aboriginal men. We show that positive side.

40 So that stigma can play a big role, especially when you carry that as well. Ignorance, ignorance is a big thing, you know, people are not fully understanding what we are about, what Aboriginal people are about, and that sort of stuff, and that's also been - when we built Wulgunggo Ngalu, when we heard a lot of the same stories of don't want an Aboriginal facility in your backyard, you know all your staff are gonna be drunk, and all these sorts of things in community consultation that we would hear.

45 Then when we rolled up our sleeves and actually worked with these people and understood what they were going on about, because we set up a little community advisory group, you really start to understand that it was just ignorance. People didn't know. Once we shared, culture was shared and it changed a lot and it really had the impact on the work we did. I see that as a big thing as well.

The other one that I would like to share is just opportunities. Where are our opportunities? I touched on it earlier, and Coree touched on it, I benefited from, as a young Aboriginal kid that was struggling through like, you got an opportunity as a plumber, none of my parents worked as plumbers, none of mine worked in the industry, or anything like that, are I got that  
 5 leg up there and that really helped me. Opportunities are a big thing that I see. The lack of opportunities for our men, lack of opportunities for our women, and lack of opportunities in the system.

The last one - well, I just have to throw resources in there. Resources hold us back. I'm a big  
 10 believer about investing in community-led initiatives, programs, intervention programs, early intervention, and all the stuff that goes with that. Last one, especially the work that we do, and we see, and Alan and Coree talked a lot about this, that transgenerational trauma, the black Australia/white Australia policies, all that sort of stuff, the impact that has on our men and on our people as well. That's very important. They are the things that I see with the men  
 15 we work with. We try to focus on them as well.

MS FITZGERALD: Thanks. The next question I was going to ask related to cultural safety and so if you have anything - if you wanted to contribute on that - and I might come to you first - and that question is: how do you ensure cultural safety in your services particularly  
 20 given that you were operating within a system that we have heard is very culturally unsafe?

SHAUN BRAYBROOK: Yes. This is a really great question. We work really hard on this especially in the early days. Wulgunggo Ngalu was born in about 2003, probably even had discussions back in 2001 about what it would look like, and that sort of stuff. So the key to us  
 25 is being born through the Aboriginal Justice Agreement. We are overseen by an Aboriginal Steering Committee, especially in the early days, and lots of people would know the names of the Steering Committee around, which I won't mention, strong Aboriginal people, leaders within our community there that really shaped what we were going to be. Then we brought the Department along on the journey. That was that sort of way around that.

30 Cultural safety has been a very important part and it's important to be able to handle that. One of the big things from the Steering Committee that oversees this is for the place to be voluntary. What we didn't want to do, we didn't want to build another prison, so the place is voluntary. So every man chooses to be here, which is very important, you know, very  
 35 important. So chooses to be here. So that's one of the real important things that comes from that.

Then there are support mechanisms. We don't charge men to be here. Being the Department of Justice, men don't get this taken out of Centrelink payments. Men are encouraged to save,  
 40 men are encouraged to send money back home to their loved ones and send money back home to the people that they need. We are also talking about budgeting stuff. So that's a very important part as well for our program.

When you talk about cultural safety, I can tell you some of the aspects to us. These are all  
 45 things that we share with the Department and share with the way that we move around as well. First of all, I mentioned about supporting a man, strengthening their cultural identity and addressing the behaviour. So that's a real big focus of ours. We have to get it right and we have to get it right in that sequence as well. That's that cultural strengthening, cultural  
 50 safety.

The second part is we take a holistic approach. So we are looking at the individual. What does that individual need whilst he's in the program. Yes we have a set that we run by and we work by, but what's that individual need? We want to really focus on that and giving that individual that support he needs to move through. Cultural strengthening process is at the core of what we do. Someone comes into the place, we have a welcome ceremony, someone leaves, graduates, finishes up, goes home, whatever it is, we do a cultural ceremony when they leave. They're really important for us to have that in the heart of the place as well. That's that fire pit that sits in the middle as well.

10 Aboriginal inputs from the beginning, so very important, if you are going to build a correctional - not a correctional - a Department of Justice facility, have Aboriginal input. Aboriginal people have got to be a part of the process. That's what we have done all the way through. That's how I explained about the Steering Committee and the rest of it that goes on.

15 Elders and - Aboriginal Elders come in and provide cultural mentoring, supports. Aboriginal Elders come out here and stay and share that journey and share that we move forward. So that's very important in our model and the way we move forward. The other thing is all our core staff are Aboriginal men. We have female workers doing a female program, facilitators and that, it is important for us to do that as well. The core staff of Aboriginal men within the place.

20 Let me just elaborate on that as well. Through the day, Wulgunngo Ngalu there is this mechanism that runs, we have all our staff in the facility, we have all our staff on-site, our men doing this and doing that, then of a night-time I would say that's where the magic of Wulgunngo Ngalu is created, when the place is handed back over to the actual men that participated in the program. We have one staff member on at a night-time and the place runs. They take ownership of it. So it's very important. It is Aboriginal men but then it's handed over to the men as well to take that journey and share that journey.

25 Then the last one I think I touched on is participation is voluntary. The men really are here because they want to achieve something and look at that. That puts a lot of challenges on the work you do, there's a lot of challenges on the facility itself, because if it's a voluntary program, you are not achieving stuff, men aren't learning stuff, men aren't getting stuff out of it, you're not running for 14 years like we have been. That's the whole thing about it.

30 So that's that sort of thing that we share with the Department right around the cultural side. The cultural aspect, we share with Aboriginal people and cultural aspect, it is probably really simple, three processes: number one is order and ritual, so we're big on order and ritual, we do things at the right time in the way we need to, the other one is respect and responsibility, yeah. So you take responsibility for your own actions and respect. Respect everyone in the place. And then the third one is about passing on the knowledge. You, as an Aboriginal man, you grow in what you do and what you understand, and it's your responsibility to make sure the next generation has that, that you're doing. So that's that sort of fundamental stuff about the work that we do and how we do it.

45 MS FITZGERALD: Thanks, Mr Braybrook. I might turn to the rest of the panel. The question was about the particular services that you offer, and how you ensure that they are the - that there is cultural safety in how you provide those services.

ALAN THORPE: I'm happy to start. That's a big one, hey. Big question because safety is really everything, hey. That's number one, I reckon, trust. I heard the word trust. And community will let you know when they don't feel safe. Our mob likes speaking, hey, and talking. So your service delivery is number one, you know, how you work with our mob and how they're respected and loved and nurtured. So that's number one too.

Safety is - they are always assessing risk. I mean, you're always looking at the physical space and the spiritual space and who's around and the first step is acknowledging the first step to actually come to you. I mean, that's number one, is about - that's another important aspect of this cultural safety they're seeing, and they are feeling it, they are feeling not only seeing it, but they are feeling the space, the nurturing and then, you know, being guided by your values, about what you stand for as well as an organisation, you know, how we support, and your principles around that, is a guide as well about, you know - and bringing some of the approaches back about why did people come to the service or why did they come to Dardi and why do they want and what are they there for? It's being able to let them guide a little bit and determine and hear their voices, what they want, and what they buy into.

So, yeah, just thinking about what they are there for and hearing that. Hearing their ideas, what they want, because you can't fix everything. Connecting I think is a real big one, I think the connection is really important around the relationship you have with the person and standing for things. You know, what you are clear about. What you can offer and not setting people up and give them that false - pretending that you can do things when you can't, because that's cultural safety too. Promising the world and not delivering. That's the integrity part. So there are lots in that question, but that's my observation and experience.

MS FITZGERALD: Do you want to address that?

KARIN WILLIAMS: For me, it's having Aboriginal people sitting in the space. We say we can do self-determination, we can do it for ourselves, so our practice is I believe about having the Aboriginal workers to do the work for our guys, our young people. It is - you talk about cultural safety, well, we can deliver a cultural safety program and we need to nurture that part of it for our young people. I wanted to expand more. We talk about cultural safety.

We are growing in different realms of life. I also wanted to bring up cultural safety for the QLGBIT community - I don't know if I have got it right but I always have a struggle - it's around that as well because we have a lot of young people who are coming out in community and we need to be prepared for that as well as the Aboriginal component of strengthening culture because they need to still belong in our community regardless. Their Aboriginality is still there regardless of whether they are from the LGBTQT community. I need to put that part in too, we think about cultural safety for our kids is Aboriginal stuff. It is around other things in our community too. We hear that more and more, our services need to be open for all kinds of Aboriginal children and young people.

I think for me it's having those people there and understanding that that's their choice, and we just have to be there to help them get through all of this stuff in their life regardless.

MS FITZGERALD: Thank you, Aunty for that reminder.

NAKIA FIREBRACE: Cultural safety, freedom of choice, listening to Uncle talk about voluntary - the power of voluntary, to being part of something, not because of a court order,

because of bail conditions, freedom of choice, to be empowered with their identity with spirituality and practice. When it comes to the governance of those steps, officially recognise the power of Council of Elders and each Nation respectively. The governing authority will come from their songline. We are fortunate enough where, when it comes to the practice of YTC, is that we're on the foundations within that program.

But I only say that because the program is a word that's thrown around too easy at times when it is a way of life for us. We are talking about healing and addressing these issues. The knowledge has always been there. So cultural safety is remembering our Elders' teachings and forefathers and matriarch bloodlines. That's cultural safety. Freedom of choice.

COREE THORPE: I just - yes, all of that - what everyone has said is amazing. I think for me as well it is communication of that, transparency of what you offer and how you deliver and all the partners and all the key stakeholders and that. The community, their organisations, the co-ops and how you communicate those and what you are delivering. In the crux of it all, that's going back to the cultural process, you know, our language is oral, our history is oral, in dance and art, and so communication is really key around passing that on. I think that's a huge part of the cultural safety.

MS FITZGERALD: The next question I wanted to ask, we have heard a lot about what's really working, what are the key challenges for people coming out of adult or kids prisons and what are they finding hard on release? What are the biggest issues you're seeing?

NAKIA FIREBRACE: Our program is designed to support our kids for up to two years and it does extend depending on when we get the referral before they are 18. So it's that consistency, being there face to face. There is no better feeling when you have a young person obviously for that transition from custody to post-release, seeing them outside, catching up and doing normality of culture. Having a feed, having discussions, keeping them - how are you going mentally, how are you processing? Not overwhelming them.

Over-servicing is not looked at properly enough. You know, having 15-20 organisations in care team when the young person just wants one or two or three people. So it's timeframes and consistency of work, that is therapeutic and has intent. Focus on things, listen to what the child's journey is, reducing anxiety around that. When it is done correctly, some of our children in custody, the longest they have been out is a weekend.

So what we worked out on the basis of let's work on three days, be realistic about this, about how that actually works. You know, some of the work we have done where kids have been there since 15, 16, 17, they have been out for two years, 16 months, 12 months, because we are consistent, we are there face to face in custody. We do our best work from a cultural perspective, following governments and teachings of Elders on the outside and young people gravitate to that.

MS FITZGERALD: Anyone else like to address those key issues for people, kids and adults?

COREE THORPE: Where do you start? The issues with prison stuff and - you know, I think challenges come from all different angles that we - each prison is different, there's private prisons, there's low, medium and high. The punitive approach to the men and the women that are in prison and the young people. In an instance, a lot of the behaviour change and healing

programs that the court orders a certificate of 14 weeks to then to deliver, they have to be a part of.

5 In my head, that doesn't make sense that in 14 weeks or a 12-week program that you will actually be cured of understanding or what you need to - it's an ongoing thing. That's a life thing, I think, having more realistic goals and a more tangible approach. We have had conversations with judges at their school around the actual approach that they have in court, and they have addressed some of the communications, and they have been told that they have a punitive approach or purpose. Shaun touched on it earlier, stigma.

10 What happens is they wear that. That's not cultural process. You deal with - in cultural process for mob, if you do something wrong - you are dealt with and then you are back in the community. You are part of that. The approach that happens right now for the prison is they may be - in the juvenile justice system and that affects them for five, six, seven years, lack of opportunity because they have a record, or there's a whole manner of processes that I find doesn't allow us to connect with our mob, to do the necessary work. Actually, you know, CCA orders also hanging ore these men's heads that we deal with. That's stress and anxiety that feed on their mental health.

20 It actually takes away from the opportunity to be a part of programs like Shaun's, which is really important, with what we need and what we do, healing, the way we run it. So we can talk about the issues, the prison stuff, and also I think on the prison side, you know, the representation of workers in there, it's hard for them. We work closely with the workers. There are one or two Aboriginal workers, and there's 160 to 180 Aboriginal men in prison. I don't know if anyone else can do that work, you know, constantly, without - that's potentially 25 50 to 70 different Aboriginal Nations that are represented in there and they have two people, or one person, with the knowledge to actually access and work with each person without being affected. That's the reason why you have high turnover of ALOs in prison system. There are good things, but, you know, the question is what are the challenges?

30 MS FITZGERALD: You touched there on there being two workers for 50 different Nations. Mr Firebrace, you've confronted this challenge in juvenile justice. Obviously you are one man and you are dealing with kids from a whole range of different areas, how are you dealing with - you know, you obviously don't have cultural authority for all of those different 35 children's mobs. How are you dealing with that issue?

40 NAKIA FIREBRACE: Protocol. First and foremost when it's not my Nation, follow protocol and get in contact with those members from that nation. But I'm in a position where I can also delegate. I'm also making sure that information I pass on to the team is culturally safe and informative, and that's where being able to facilitate that discussion with the staff is to make sure we have intent to support that young person's goals. But also how it looks before they are released, and follow up with the same work on the outside.

45 So it is a combination and having that cultural accountability to that to make sure it's done appropriately and safely for all, yes, it's therapeutic, but it takes time to be done properly. Again, it starts off with protocol. You can't have discussions with a young person if you haven't sought permission around songline in particular, and law. Everything from - even including their artwork. It happens. You see they are doing stuff that's not even from their 50 Country because that's the only thing they have been shown.



So, again, in line with they are from to heal their, Mullana, their spirit is to follow protocol. That's where it comes to my role first and foremost, as (indistinct) that's First Nations, is to make sure that that's done not only in my life but my workplace. I have that cultural obligation to make sure that staff understand. And they do. I'm blessed to have a great team  
 5 in the program but also an organisation that supports that vision on how to protect our children.

MS FITZGERALD: There are similar issues arising in the child protection space in relation to cultural plans. The idea that a white fella in the Department could, you know, put together  
 10 a cultural plan from Wikipedia and it sounds as though also for the young people that you are working with, that it is not a quick answer that you can look up on the computer. It involves a journey to go and visit some people.

NAKIA FIREBRACE: That happens. They Google it. That's only because that's the only  
 15 thing they know. Again, my position is not to drag them over hot coals and make them feel - they are in the position because, one, they are passionate and, two, they want to make a difference in the child's life. My role is to show them why but also point out the points they can't talk about and make sure it's done in a way that they understood the reasons behind that. So we can have a partnership but there is strict protocols that prevent them talking about  
 20 particular things because of law and that needs to be led and guided by the Council, where their Nation is from.

Therefore, the true songline of where they are from is properly connected because we are very, very spiritual people. When we have someone from a different Nation, it doesn't matter  
 25 where they are within this country, as long as their Elders are informed, that songline goes to that young person. I have seen it myself from a young person in Victoria, in the prison system, juvenile justice for five, six years. He's from Tiwi Island. We done things appropriate that changed his view. Things can change.

The team becomes better informed and better supportive and we got things done. The point is  
 30 that protocol needs to be understood. For those people that are non-Indigenous brothers and sisters that work together in our services, and have that passion, that vision as well, we need to make sure that discussion's done appropriately to protect them as well because we want to be able to have things moving forward, not mistakes done because they haven't been  
 35 informed appropriately.

MS FITZGERALD: Mr Braybrook, was there anything you wanted to add in relation to this, the question about the key challenges for people coming out for you, I suppose, it's generally  
 40 been adult prisons - you're obviously seeing men at the point at which they are on a community corrections order. What are you seeing are the main challenges for men, after a prison sentence?

SHAUN BRAYBROOK: Definitely it's a challenge and I think everyone's named a lot of  
 45 them too. They are not all challenges when you get out, no housing, accommodation and all the stuff that goes along with that, but I think that we are not getting men ready to come out. We need to assist them. They are not ready to leave. Next thing they are standing in front of the door, they are looking underneath to see officers waiting for them and next thing they are out. So that real readiness to go out and the pressures of life that come with that, when we talk about the stigma, ignorance, it is all that pressure. It is a real area we need to focus on a  
 50 lot.

We need to get that right. My goal would be let's do that in front and stop them from getting in there first before coming out but definitely getting fellas ready to come out. We see a lot here at Wulgunggo Ngalu where predominantly we were setup to work with men on  
5 corrections orders to stop them from going into the prison system and then we see the government change, the suspended sentences have been abolished, and we actually - now we see a lot of men going into prison and coming out on a corrections order.

10 So this whole suspended sentence, term of imprisonment, and that sort of stuff. So that really changed our focus here at Wulgunggo Ngalu where we are working about stopping men from going into prison to now seeing a lot of the men - we still have a lot of men who haven't been to prison come to us, but we see a lot now that are having these short-term, maybe longer-terms coming to us from prison. So some of the things we have to think about a lot in that sense is the work really changed for us.

15 Men that come out of prison come out with a lot of baggage, still, you know, with the prison environment and the way the prison runs and everything else, the trust is a big one. We work really hard on building up for them with trust. You know, we have a thing that we call a 21-day plan. That's just for the staff. It's not for anyone else. It's for the staff. When someone  
20 comes to us from prison we are doing things like we're making doctor's appointments in advance rather than them asking us.

We are looking to monitor their behaviour, watch it, and see how they are acting out - interacting with people - interactions with people as well. A common thing is someone  
25 might come to us from prison, the place is running and all of a sudden you see five or six blokes are in a massive big property walking backwards and forwards over a five-metre strip. We really work hard at challenging that prison environment, that prison baggage that they come out with. So it's all about really getting men ready to come out. They come out, they get a mobile phone, they hook up to Facebook, you know, and find out all this goss that they  
30 are not privileged to within the prison, well, they just shut off about, and stuff like that, so some of are real pressures - real life pressures that go along with that. So we work really hard in that space.

35 MS FITZGERALD: Thank you, Mr Braybrook. I think that is the end of the questions. I have just realised the time, also, but, of course, the Commissioners may well have some questions. I'll hand over to you, Chair.

40 COMMISSIONER HUNTER: Thank you all for your evidence. It's very enlightening. You all mentioned about identity, understanding who you belong to, where you come to and I guess as Aboriginal people we know that's a strength. I think you all mentioned that. You've also mentioned the cultural support plan. So you answered one of my questions. The identity work in linking people up, is that funded or is that just what you do?

45 KARIN WILLIAMS: With the youth justice funding that we get, it's a part of our funding that we actually have to do cultural support plans for every young person that comes to our service.

50 COMMISSIONER HUNTER: Can I ask, Aunty, are they generally from out-of-home care system or --

KARIN WILLIAMS: No. We have a different one for youth justice that is separate to a child protection one. So there are clear differences.

COMMISSIONER HUNTER: They could have two?

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KARIN WILLIAMS: They could have two.

COMMISSIONER HUNTER: Do they speak to each other?

10 KARIN WILLIAMS: Not necessarily. Because when you have a look at the child protection one, it's generic to the area where their family come from, it's not generic to them or their family, per se. So we look at their family tree, their family connections, what have their family done that are good things in community, nurturing that part rather than just the generic one that tells them about their area and everything else. So we try really hard to put in  
15 something about them and their family. That is - I'm part of history, you would hope. A lot of them don't have anything, but it's something we try to do.

COMMISSIONER WALTER: Thank you for all of this. We have heard over the last couple of weeks in the child protection and the criminal justice system is the idea that somehow just  
20 getting an Aboriginal service to deliver a program that's been framed by non-Indigenous perspectives, like even models that have come from overseas, that aren't even Australian, doesn't work. You've all talked about your own development of programs that are based around people, culture and identity and what people actually need.

25 Do you think that government departments and funding bodies are getting better at understanding that just giving a western model to an Indigenous service, an Aboriginal service, is going to improve things or are they starting to understand? The answer can be yes or no here, or maybe, that that's not self-determination and it's probably not effective program delivery.

30

ALAN THORPE: I'd say in some areas they may be getting better. It's - because funded programs. So navigating that is not always easy but it comes back to relationships as well within government and I'd say, just from my experience, people move around in government, so you lose them as well but they start to understand and they connect - it depends on the  
35 personality and the person in government and that's a contributor. I think, yes, some governments you go to health, and they will treat you differently, and you go to DFFH, they will treat you different again, so there is no consistency. I'd say - that's just my feedback.

KARIN WILLIAMS: I was going to say: I think we feed a lot into government, we are  
40 always giving government recommendations on how to do things, but Aboriginal community, one of the things - I just lost my train of thought really quickly. Sorry. Okay, I got it. Because it's really something I need to be passionate about. We do the work in our community because we love our community. We want to make our people better. We seriously do want to make our people better. Government want to give us funding to do it but they only want to  
45 give us half the funding to do it and expect us to do more. So they actually pay their workers in the government big money to tell us how to do it, to try and tell us how to do it. We get the pittance to go and do the hard yards. I think we need to talk about pay parity for the work we do in our community, because it actually doesn't sit that we do all this work, and we do it because we love them, we seriously do, and we want to see the change in our community and  
50 in our mobs.

If we got paid, or got funding appropriate, we could deliver more culturally appropriate services but we get the dribs and drabs. I will give you a really good example of what's happened in the last couple of years: every year, the last two years, three years, I have been offered funding to run a school holiday program. Guess what? They give me a call on the day I'm going on leave, on 20 December every year, say, "I got 10 grand for you or I got five grand", and that comes to me, but lucky I get on the frontfoot, I have already got a program developed to do the holiday program because I know they might come to me again, so right now I'm sitting waiting for funding for holiday program that I can run for my kids, I have got a program developed, I'm just waiting to see if they're going to give me a call on the 20th to say, "Yes, we've got some money for you." But they're the things that I'm --

COMMISSIONER WALTER: Christmas comes the same time every year.

15 KARIN WILLIAMS: Yes.

MS FITZGERALD: If they are listening today, maybe they could call you this afternoon.

20 KARIN WILLIAMS: That would be fantastic.

NAKIA FIREBRACE: Just in regards to that, I would like to respond in the sense of we've had so many advisory committees over the years, everything from black deaths in custody, recommendations to that Royal Commission, how many of them have been followed up? We have had these things around for such a long - the age - raising the legal age of responsibility, the empowerment of community of Elders, the governance around that.

The biggest problem is what we have and what we face is who is in power. Which government really determines which funding is allocated and how much that is. So it really comes down to if it's Liberal and Labor, as an example. That can affect what happens in each State under those voting processes. So that's an issue in itself. That we are fortunate enough we have had a government in Victoria for a three-year term that were able to facilitate the things that we are discussing. But it's not the same in every State. I just recently came from a conference, legal and justice in Tasmania, Hobart, of the Lutruwitra, of the Palawa people, incredible. We discussed about why is it that the only time we have momentum is when a government of particular politics is in power? That's an issue.

40 So that should not be a way that affects our empowerment, and our laws and customary practices. That should not be reduced by anyone in that space. It should be federally legislated, this is what we are going to do to support First Nations people in this country.

SHAUN BRAYBROOK: I would like to add something, if I could. I think it's a really great question. The question, if I can remember, because it was a while ago, mainstream programs being pushed on to Aboriginal people could work; is that basically the question?

45 COMMISSIONER WALTER: It was more about whether departments are learning that that's not the model and whether they are changing their openness and their flexibility about Aboriginal communities instead.

50 SHAUN BRAYBROOK: I think there is some - there is some growth in this area, and I see a little bit, making some of the programs culturally friendly and implemented by Aboriginal

people, but follow that model, and the things that I have seen a little bit is the identity of the program, having Aboriginal people in it, facilitators and that as well. So an Aboriginal person and a non-Indigenous person I think can work. Identity of the group being formed as an Aboriginal group, Aboriginal people within it.

5

The real thing that I think really makes it is when you're talking about these sorts of things, I think it is a lot to do with the delivery of the program and the person delivering it, yes, and especially that's what we see at Wulgunggo Ngalu. We are running some programs that might be a little bit mainstream focused. If that person in the group isn't culturally safe or culturally aware, or anything like that, if that was said straightaway, I always say it's real knows real, yes, and that's where you really break down. That's where you fall down in them areas.

10

That's what I see a lot. I definitely reckon there's some learnings to have as long as programs are open to an Aboriginal way about doing stuff as well and Aboriginal way of thinking.

15

COMMISSIONER WALTER: Thanks, Mr Braybrook.

ALAN THORPE: Can I just add just one thing I wanted to bring up: what I love about transformity and our people in them systems, in justice systems, they always want to come back to community, not only support, but they actually want to work. They want to be part of community, they want to give back, and there's these blockers, these systems, that don't allow us, Working with Children. It doesn't create opportunities for our people and our mob to actually - that's part of integrating. Part of integrating is finding a purpose and what you want to do.

20

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I wanted to put that in there because I'd love to see the system pay more attention about that, about opportunities for our mob. One of the game changers, coming out of a program or prison, they have done some good work, some people do really well, but can we open up opportunities for lived experience and our mob to create them opportunities. So I hope that is discussed, because they become the best workers, because they are really hungry and their intentions are strong about wanting to give back. We have the bureaucracy and systems that block the people from them opportunities. Hopefully that can be talked about more.

30

CHAIR: I think we have one more question here.

35

COMMISSIONER HUNTER: Mine was just a bit of a technical question. Mr Firebrace, I just wanted to - does your program work with kids in youth justice?

40

NAKIA FIREBRACE: Correct.

COMMISSIONER HUNTER: For two years under 18, is there an age limit?

NAKIA FIREBRACE: As long as we get the referral before they turn 18 we can look after them right up to 19.

45

COMMISSIONER HUNTER: If they come out of out-of-home care, where does the case management sit?

NAKIA FIREBRACE: Out-of-home care - well, it's - VACCA is a very big organisation. We do refer internally and we make sure that - if they happen to be resi care, what not, I mean, it's - we have got - we focus on making sure we keep them out of custody and whatever that child's needs is we make sure we refer directly to that organisational team.

5 Does that answer your question?

COMMISSIONER HUNTER: I was just wondering, when they are in out-of-home care and they go into - because we have heard evidence all week around the pipeline of going into youth justice, is there a continuity of workers? I know you have a care team.

10

NAKIA FIREBRACE: Correct, yes.

COMMISSIONER HUNTER: Is there a continuity of workers that sort of go --

15 NAKIA FIREBRACE: Part of that, yes. Yes. They are part of those discussions in the care team because if they are already placed we want to make sure that our work that we do with an outreach perspective is followed to support that process or placement.

COMMISSIONER HUNTER: Thank you.

20

MS FITZGERALD: I tender those outlines of evidence. I will now tender into evidence the witness outline of Alan Thorpe and Coree Thorpe, exhibit 7.2, and following, which are documents referred to in that outline, and the witness outline of Shaun Braybrook and its attachments, 7.3, the witness outline of Aunty Karin Williams, which is 7.4, and following, 25 the attached documents, and the witness outline of Nakia Firebrace, which is 7.5.

CHAIR: Thank you. Those will be allocated the appropriate exhibit numbers.

**<EXHIBIT 2.16 ALAN THORPE AND COREE THORPE OUTLINE OF EVIDENCE**

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**<EXHIBIT 2.17 SHAUN BRAYBROOK OUTLINE OF EVIDENCE**

**<EXHIBIT 2.18 AUNTY KARIN WILLIAMS OUTLINE OF EVIDENCE**

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**<EXHIBIT 2.19 NAKIA FIREBRACE OUTLINE OF EVIDENCE**

MS FITZGERALD: Thank you, Chair. I think we might be overdue for a lunch break. Apologies.

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CHAIR: Yes. I think it is break time. Thank you all very much.

**<THE WITNESSES WITHDREW**

45

CHAIR: We will reconvene at 2 o'clock.

**<ADJOURNED 1:10 PM**

**<RESUMED 2:03 PM**

50

MR McAVOY: We have witnesses representing the Victorian Legal Service and I call Nerita Waight, Kin Leong, Anna Gibson and Sarah Schwartz. Madeleine Stenmark is listed to appear but she's not present. She's not appearing today. They are seated in the witness area to my left. I will proceed to swear them in, and we can commence evidence if the  
5 Commissioners are ready.

CHAIR: Thank you.

COMMISSIONER BELL: Has there been some discussion about who is appearing?  
10

NERITA WAIGHT: Madeline is our comms officer. So we're just a little bit confused as to why she was on the list. She is wonderfully informative but wasn't - - -

COMMISSIONER BELL: That explains everything. Thank you.  
15

NERITA WAIGHT: Yes.

**<NERITA WAIGHT, AFFIRMED**

**<KIN LEONG, AFFIRMED**  
20

**<SARAH SCHWARTZ, AFFIRMED**

**<ANNA GIBSON, AFFIRMED**  
25

MR McAVOY: Commissioners, I understand that Ms Waight would like to make an opening statement. I'm grateful to her for making that. If she is ready to proceed.

NERITA WAIGHT: Yes. Thank you for entertaining my request. First, I would like to begin  
30 by acknowledging the Traditional Owners of the land that we're on today, the Wurundjeri people, and I pay my respects to the Elders, past and present, and the Aboriginal people here today. Aboriginal and Torres Strait Islander people never ceded their sovereignty, it always was and will be Aboriginal land. I'm Nerita Waight, a proud Yorta Yorta and Ngarrindjeri woman and I also have connections to Taungurung through my grandmother, Mary Hamilton,  
35 who later become Mary James. I am the CEO of the Victorian Aboriginal Legal Service which had provided and continues to provide culturally safe, legal and justice services to Aboriginal communities across Victoria for the past 50 years.

I am also the mother to two beautiful little boys, aged five and one. I'm joined today by my  
40 Principal Managing Lawyers from VALS, Kin Leong, who manages our criminal practice, Sarah Schwartz, who heads up our Wirraway unit, and Anna Gibson, who heads up the Balit Ngulu Legal Service, which is our service for Aboriginal children. I would like to thank the Yoorrook Justice Commission for the invitation to appear today. We have prepared submissions for the Commission on the criminal legal and child protection areas. I would like  
45 to begin our evidence by outlining our vision for an Aboriginal-led justice system and the critical need to transfer power, control and resources to a Justice Treaty with Aboriginal Treaty.

The reason we need a Justice Treaty is our legal system needs total transformation, not  
50 piecemeal reform. We cannot continue to make flowers out of weeds. The legal system has

Yoorrook Justice Commission

been central to the oppression of our people by the colonies since the first day the British arrived. From terra nullius to the way the legal system enabled hundreds of massacres and then involved to create the Stolen Generations, the legal system has been a tool for killing and enslaving Aboriginal people and erasing our culture and traditions.

5

In the face of a legal system that has always hurt us, Aboriginal and Torres Strait Islander communities in Victoria have consistently demanded self-determination, from William Barak's struggle to save Coranderrk in 1880, to William Cooper's petition to King George the 5th in 1936, to the powerful recommendations for self-determination from the Royal Commission into Aboriginal Deaths in Custody. Aboriginal communities have always been ready to fight for our rights and take control of our own affairs.

10

Over the past 20 years, the Aboriginal Justice Caucus has also been a consistent voice for greater self-determination through Victoria's Aboriginal Justice Agreement. The current government is committed to the principle of self-determination but, in reality, the power imbalance between Aboriginal communities and the government remains. Our communities and organisations remain in the background. We are simply an afterthought, a tick the box exercise, the lives lost remain in the shadows and their families' calls for justice go unanswered.

15

20

It is time for Aboriginal communities to exercise their right to self-determination in a way that is meaningful, holistically and legally enforceable. A Justice Treaty is an opportunity to aim for transformational change to repair the harms caused by the colonial legal system which can never be effectively mitigated, that can only transformed. Justice starts with the way that we are recognised, within the law, First Peoples need to be restored to their rightful place with their inherent rights respected and promoted which derive from their political, economic and social structures, from our cultures, from our spiritual traditions, our histories, philosophies, and especially our right to our lands, territories and resources.

25

30

Australian society desperately needs to eradicate racism in all its forms. To achieve this we need to aim higher than merely mitigating the harms of the colonial legal system. Yoorrook's recommendations should be directed at restoring First Nations people as decision-makers in their own affairs. The vision of a Justice Treaty is for a new legal system that is designed, led and controlled by communities and founded on First Nations law traditions and cultures.

35

That would end the focus on polices and prisons and prioritise culturally safe access to supports Aboriginal people need. It would help eradicate racism by placing power with Aboriginal communities instead of lobbies like the police union. A Justice Treaty must be negotiated by Aboriginal communities. It is not something for Yoorrook to decide but the impetus of this negotiation sits with the Yoorrook Commission. The Commission must recommend a mechanism for transformational change in the criminal legal system.

40

This naturally will take time and much consideration and consultation will need to take place to ensure that a Justice Treaty is established with the best possible resources and interests.

45

Whilst that is going on, there are urgent reforms that need to be implemented. To prevent further Aboriginal deaths in custody the government needs to urgently reform the punitive bail system. Aboriginal women are the most incarcerated cohort in the world and in Victoria the punitive bail system is one of the key drivers of incarceration and there should be no more Veronica Nelsons.

50



Established independent culturally appropriate attention oversight, the Victorian Government cannot keep waiting for Commonwealth funding while Aboriginal people continue to die in Victorian prisons. Established independent police oversight, Victoria Police must be accountable for racism and harmful policing and they cannot do that themselves. Overhaul the prison healthcare system and ensure that Aboriginal people are incarcerated have access to culturally safe healthcare delivered by Aboriginal controlled health organisations.

The RCIADIC recommendations clearly found that healthcare was one of the leading causes of Aboriginal deaths in custody. Those recommendations were handed down when I was two. I'm now 35 and we are in the same situation. Similarly, there is a critical need for urgent reform in the child protection system. Victoria has the highest rate of Aboriginal child removal in Australia and the child protection system simply does not work for Aboriginal families and communities. It does not create healing, it creates harm.

Victoria has transferred some child protection powers to Aboriginal community controlled organisations but not enough. We need child protection bureaucracy out of our kids' lives. New standalone child protection legislation for Aboriginal children would create a dedicated system that could deliver culturally safe legal support for every Aboriginal child, new protection orders that are tailored to children's needs, and an end to the criminalisation of vulnerable children in residential care.

Our communities know the truths about the origins of the legal system and its on going impact on Aboriginal communities across Victoria. We experience those truths every day. But this is not common knowledge in Victoria. The process of acknowledging the truth about our past and present has begun, but society has a long way to go and you have a huge role to play in that.

Yoorrook has far-reaching powers to unearth truth about the Victorian legal system and how it needs to change. The potential of this truth-telling process is enormous and we urge Yoorrook to use the full extent of its powers to tell the truth. I also take this opportunity to urge the Victorian Government, and the Premier, to commit to not just reform, but actual transformation. In doing this, they still need to implement those urgent reforms. Our communities have demanded for generations that our justice system needs to be considered just and, as we have been saying for generations, no justice, no peace.

MR McAVOY: Thank you. Now, your opening statement has touched on many of the matters which are contained in your - in the detailed submissions in relation to both child protection and the criminal justice system. I'd like to ask you a few questions about your submissions and many of the areas you've touched on. I would direct my questions to you, and if you want to redirect them to other members of the panel, I will leave that in your hands, if that's okay.

NERITA WAIGHT: Not a problem.

MR McAVOY: Firstly, just for the purposes of the record, if you could just tell us a little bit about the Victorian Aboriginal Legal Service, its size, the services it provides.

NERITA WAIGHT: Not a problem. Would love to. Love to. So the Victorian Aboriginal Legal Service has been around since 1973. Obviously next year is our 50th anniversary. We started off obviously very, very small, and just delivering a criminal legal service, and we

Yoorrook Justice Commission

have now expanded into the areas of family and child protection and family violence as well as civil and human rights.

5 Civil and human rights includes matters like tenancy, discrimination, we run an infringements clinic to try to address fines and the consequences they create for communities. As well as now we have our Wirraway practice which largely deals with coronial inquests regarding deaths in custody and police contact deaths and also civil litigation resulting from those matters.

10 Because we represent many parents - and there is obviously conflict rules around representation - we created an Aboriginal children's legal service called Balit Ngulu, meaning strong voice. In its conception in 2017 it was delivering legal services to Aboriginal children in both the family and criminal division of the Children's Court of Victoria. When it - that was self-funded through VALS. When those funds ran out, and we had to go to government, they refunded it, but only to provide criminal law service delivery. That's  
15 obviously very harmful and impactful for our crossover kids.

We have 110 staff. We provide services State-wide. Our largest practice is our criminal practice with 12 lawyers at this point. Our family practice has five, Wirraway has two, and  
20 Balit Ngulu has five now as well. We have CSOs, based in six locations. And we also have family violence support workers to work with families experiencing or at risk of family violence. We also run Baggarook, which is the women's transitional service for those exiting prison, which has just been fantastic and it has had untold benefits for women who have been able to participate.

25 We also run the VPer program which is where, if Victoria Police see somebody who is at risk, they might have been notified of the police situation, like such as a witness or have been tangentially connected to a family violence incident, they will go through that system and we'll link up with them and provide them referrals and assistance.

30 MR McAVOY: Thank you. These criminal law services you provide, is it a 24 hour service?

NERITA WAIGHT: Yes. We have an on-call duty lawyer to provide advice 24 hours, seven days a week, through our CNS program, which does the welfare checks for Aboriginal people  
35 in custody.

MR McAVOY: The Client Service Officers, the CSOs, are they all Aboriginal people?

40 NERITA WAIGHT: That's correct.

MR McAVOY: They are the first point of contact for your organisation when a person goes into custody?

45 NERITA WAIGHT: No. The first point of contact is our CNS officers, Custody Notification Service workers, they are all Aboriginal and Torres Strait Islander, and what happens is that once an Aboriginal person is taken into police custody, it automatically comes through to us, we then ring the police station to connect with the Aboriginal person, and do the welfare checks to make sure they are okay, get them legal advice and assistance, should they wish. If they have an alternative legal assistance provider, then we make sure to connect with them to  
50 give them the relevant information they need to do their job.

MR McAVOY: Thank you. Now, I want to first take you to the written submissions in relation to child protection. First, I'd like to start at page 56 of your submissions where you refer the Commission to articles 3 and 4 of the United Nations Declarations on the Rights of Indigenous People in relation to the right to self-determination. The observation at the second paragraph on page 56 is that self-determination - I'm assuming it is self-determination in the sense that is referred to in the United Nations Declaration of the Rights of Indigenous People, your submission says:

10 *"Self-determination has not been realised in Victoria's child protection system."*

Do you see that submission?

NERITA WAIGHT: Yes, I do.

15

MR McAVOY: It goes on to say that the Victorian Government says it is supporting the vision to increase Aboriginal self-determination in the child protection suggesting that it sees self-determination as some sort of spectrum. Would you like to just comment on your observation of the way in which self-determination is given voice in the child protection system in Victoria?

20

NERITA WAIGHT: Yes. So when you are talking about self-determination spectrum, certainly the child protection system, our version is it's self-determination light. When you look at the handover of power and responsibilities to Aboriginal organisations, there's not enough resources to support that. But they are also not provided the same decision-making power as if they were the Department, which, for us, means it is not true self-determination.

25

MR McAVOY: So you make a reference to section 18 of the *Children, Youth and Families Act*, and say that that transfer or delegation of power is a gesture in the direction of self-determination in the child protection system but falls far short of what genuine empowerment is. You clearly stand by that submission but, in saying that, you're saying there's a lot more that needs to be done by the Department and the government if it wishes to see true self-determination in its proper sense?

30

NERITA WAIGHT: Perhaps that self-determination would see a transfer of power and responsibility and decision-making.

35

MR McAVOY: And you've - on the same page, in talking about the power, which is transferred under section 18 of that Act, you note an article that was published in IndigenousX where a kinship carer, Sissy Austin, states:

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*"The key facts here are that ACCOs are not making the life altering decisions for our families. Children's Court is. The children are not mandated to be in Aboriginal care, they're being case managed by an ACCO, where they might not even get an Aboriginal worker and this case management must be in-line with what has already been ordered by the courts."*

45

So that's - if I suggest to you that's a long way from self-determination; would you agree with that?

NERITA WAIGHT: I would.

50

MR McAVOY: In some of the analysis that follows in your submission you point to things that indicate perhaps a failure to understand or a failure to observe the rights of self-determination in its proper sense. One of those is poor consultation. Commissioners, on page 57 at item 3.1, the submissions are available to be read, but the thrust of the submission in relation to present methods of consultation is that the Department tends to only consult with the Aboriginal Children's Forum.

NERITA WAIGHT: Correct.

MR McAVOY: In your view, that should be minimum?

NERITA WAIGHT: Correct.

MR McAVOY: And one of the concerns that you have is that the Aboriginal Children's Forum members are funded by the Department; is that correct?

NERITA WAIGHT: That is correct.

MR McAVOY: You don't say this explicitly, but is the inference that it is difficult for them to speak out against the Department when they are the ones that are funding them?

NERITA WAIGHT: Yes.

MR McAVOY: The point is made that other ACCOs, such as VALS and Djirra, are not consulted by the Department; that's routinely the case, is it?

NERITA WAIGHT: That is routinely the case. When we are consulted it is literally at the last minute.

MR McAVOY: Given that that seems to be part of the methodology of consultation of the Department in terms of child protection matters, does that say anything about the intent of the Department, if it's not speaking to the bodies that have their legal expertise to comment in a thorough manner?

NERITA WAIGHT: Yes. I think it suggests what anybody would take from that is that they don't want to hear contrary views. They don't want to hear views that go against their envisioning of what self-determination light is. Certainly we have come up against this time and time again and we have tried to develop close relationships with the Department in order to kind of rectify that consultation deficit. We have tried to obtain membership to the ACF. But time and time again those attempts are rejected. I just wonder, Anna, do you have any else to add to that?

ANNA GIBSON: I think you've pretty much covered it. No, I don't have anything else to add on that particular point. No.

MR McAVOY: Thank you. At 3.2 of your submissions, which commences on the following page, 58, you identify that the transfer of powers to Aboriginal agencies hasn't occurred in the way that it should do in order to give voice to principles of self-determination.

NERITA WAIGHT: Yes.

MR McAVOY: In particular, you've identified that section 18 of the *Children, Youth and Families Act* purports to achieve this, but only has the effect of transferring a limited amount of function and powers. And you go on to break down the - your submissions go on to break down the nature of the powers or functions that the Secretary might have into three categories. I wonder, is it possible to summarise for the Commissioners how the agency might better go about transferring its powers to support self-determination?

10 NERITA WAIGHT: Sure, not a problem. I will hand over to Anna to do that.

ANNA GIBSON: Thanks, Nerita. So what VALS proposes is that it would be far more effective if there was an Aboriginal-specific Act separate from the *Children, Youth and Families Act* rather than trying to adapt that Act which is the current legislation that empowers the Department to exercise its powers. Rather than trying to adapt that Act, for the transfer of powers, that there should be a separate Act that empowers the ACCOs to exercise those powers in and of themselves, in their own right and, in that way, they would - the numerous other issues that there are with the Act, or Aboriginal families, but indeed for all families, but these seem to impact, or have a greater impact on Aboriginal families, those changes could be made in the Act that's for Aboriginal children and it could be drafted by not just in consultation at the last minute with Aboriginal community controlled organisations, but it could actually be led and drafted by those organisations and that would need to include Aboriginal legal services as the organisations that do have the legal expertise and the organisations that do represent fathers, mothers and children in those proceedings in the court.

MR McAVOY: So --

NERITA WAIGHT: The only thing underpinning that of course would be the principles of the distinct rights and responsibilities of Aboriginal children, because they are certainly not given voice to in the current regime.

MR McAVOY: I missed that last part?

35 NERITA WAIGHT: They are certainly not given impact in the current regime.

MR McAVOY: So on page 63, there is a recommendation from VALS that the Victorian government should develop stand alone child protection legislation for Aboriginal children and their families to enable the complete transfer of child protection functions to ACCOs and address systemic failings of existing legislation, policy and practice. I understand from Ms Gibson's response that the current legislative arrangements are in VALS's view beyond repair as they pertain to Aboriginal children, and the appropriate course would be to start the fresh standalone legislation; is that the view?

45 ANNA GIBSON: That's the view. There are a range of reasons for that view. The one that I just mentioned about enabling Aboriginal organisations to create their own court orders, as Nerita just said, incorporate international human rights standards for Aboriginal children and have the whole thing based on a human rights based approach for Aboriginal children.

The other issue it would resolve is the fact that the current scheme substitutes - when section 18 is exercised, and an ACCO is authorised with those powers, the current Act refers to the Secretary, it doesn't refer to the ACCO or the principal officer the CEO of the ACCO, who is authorised with those powers, and, therefore, there's a whole range of powers and functions throughout that Act that refer to the Secretary or indeed refer to third parties in relation to the Secretary, that are completely inadequate, when an ACCO is authorising those powers. A third party is not going to know am I required to do this with the Secretary or with the ACCO. It is just unfit for the purpose that it's designed to achieve.

10 NERITA WAIGHT: I mean, from years and years of our experience, the answer to the child protection crisis is not to put Aboriginal organisations in the shoes of the Department of Families, Fairness and Housing, is to design and transform a system that works, it is based on their cultures, on their philosophies, on their beliefs and our inherent power to self-determine our futures.

15 MR McAVOY: Thank you. The question that arises to my mind is if there is to be standalone legislation designed, that would have to be with the support and imprimatur of the Minister and the Minister would be taking advice from the Department. Does that raise concerns for you in terms of how the government may engage in the preparation and creation of such standalone legislation.

NERITA WAIGHT: Yes.

25 MR McAVOY: Is it the case that the legislation, or draft legislation that you're talking about, would need to be designed - I know Ms Gibson said designed or drafted by the community organisations, is that the preferred mechanism, that it is firstly drafted in the community and then provided to the government rather as a way of, form of negotiation rather than the Department consulting and trying to interpret what communities want?

30 NERITA WAIGHT: Yes, that's correct.

MR McAVOY: I'm sorry I took so long to get there on that one. Of course, if the Department were involved in the design and drafting such legislation, would you have concerns that it would in that process in a way that served its own interests, the Department's own interests?

NERITA WAIGHT: If it didn't go with our --

40 MR McAVOY: So if the Minister asked the Department to design the standalone legislation, would you have concerns about the Department's --

NERITA WAIGHT: Yes.

45 MR McAVOY: I ask that question because in the course of identifying the difficulties with the transfer of powers within the present structure with the *Children, Youth and Families Act*, you've identified a number of circumstances where the Department takes a narrow interpretation of the provisions, which seems to be at odds with the intent of the part and the whole of the Act, in a way that - I think the term "self-serving" might have been used in your submissions. With that sort of history and that minimalist approach, is that something that

would raise concerns if the Department had too big a hand in the drafting of stand-alone legislation?

NERITA WAIGHT: Yes.

5

MR McAVOY: At 3.3 of your submissions on child protection, there's discussion about separation of Department functions. I might read you the first paragraph of that submission:

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*"The colonial context of the child protection system and the paternalism that has been a strong feature of it mean that many Aboriginal and Torres Strait Islander people are rightfully sceptical and fearful of the child protection system. The poor governance structures feed into those concerns."*

15

That submission goes on to say there needs to be a separation of functions within the Department. It's not explicit, but is that put on the basis that there is not standalone legislation, if we are stuck with the existing legislation, then there should be a separation of functions; is that the case?

NERITA WAIGHT: Yes.

20

MR McAVOY: Can you explain what the separation of functions is that's proposed?

25

NERITA WAIGHT: Yes. So certainly in 3.3, in paragraph 3, you'll see that we are trying, perhaps not as clearly as we could have, I'm not saying they shouldn't be drafting their own legislation and that function should be separated out, and we talk about the litigation functions of the child protection system being separated out. I know this is being explored by Queensland, I believe, and I think there is also a New South Wales review that recommended that New South Wales follow that example but, unfortunately, there's not much evidence on what has resulted from that.

30

MR McAVOY: In your submissions you helpfully draw a contrast in your submissions between the criminal justice litigation in Victoria and the child protection litigation in Victoria and the separations of functions within the criminal justice sector. Is there any - can you just expand on that a little bit for the Commissioners and express a view as to why there should be a distinction between the two areas.

35

COMMISSIONER BELL: Counsel, can I just get straight in my mind what functions we are talking about which need to be separated?

40

MR McAVOY: So --

NERITA WAIGHT: Certainly in - is it okay if I answer?

COMMISSIONER BELL: Yes, please.

45

NERITA WAIGHT: In 3.3 we are talking about that they shouldn't be responsible for drafting legislation, because they do a very poor job at it. The second is that we note there have been developments in Queensland and New South Wales around also separating out the litigation function. So that is obviously when a protection application arises and that has to be actioned.

50

COMMISSIONER BELL: Yes. Got it. Thanks.

5 MR McAVOY: And so you've drawn on those examples in Queensland and the developing example in New South Wales as being circumstances in which the litigation, in respect of child protection, has been separated from the operational aspects; is there any reason why that can't be done in Victoria?

10 NERITA WAIGHT: No. And I would urge the Yoorrook Commission to get some further information from those jurisdictions to see how that has actually eventuated. You have more power than I do to get that.

15 MR McAVOY: Just going back to the drafting of legislation in the third paragraph on page 63, under the heading 3.3, '*Separation of Department Functions*', the observation is made that there are clear conflicts of interest in this arrangement and VALS believes there have been occasions where child protection has drafted legislation solely in its own interest.

NERITA WAIGHT: Yes.

20 MR McAVOY: Now, I want to take you to 3.4. Commissioners, this is at page 64 of the submissions, part 3.4, where you talk about ineffective governance. Your submission is very critical of the Department of Families, Fairness and Housing in relation to its internal governance?

25 NERITA WAIGHT: Yes.

MR McAVOY: Of course, in your view, that's warranted.

30 NERITA WAIGHT: Correct.

MR McAVOY: One of the key aspects of that criticism, if I can put it this way, is the poor record-keeping.

35 NERITA WAIGHT: Yes.

MR McAVOY: And do you see record-keeping as not only for its practical importance, but is it some marker of poor governance, in your opinion?

40 NERITA WAIGHT: Yes. And it's not only poor record-keeping, it's the continual change of Ministers. I mean, there have been five. There has been the machinery of government changes in terms of separating out functions and calling them by new names and establishing, you know, committees, and when they fall down and consultative mechanisms, and then they fall down. But the poor record-keeping not only affects when we're representing children and families, but also just affects, I believe, like, their ability to do their job and they don't know  
45 where kids are, or their address. It kind of feels like that's crucial information.

MR McAVOY: You cite the Auditor General's report for 2022, that the Department did not have a primary address for 462 children in its care?



NERITA WAIGHT: Yes. If I didn't have an address for my child, Tony, I think that I would be in trouble.

MR McAVOY: And of those - or perhaps another 171 were recorded as address unknown?

5

NERITA WAIGHT: Mmm-hmm.

MR McAVOY: Are those figures shocking to VALS or they don't come as any surprise?

10 NERITA WAIGHT: They are not shocking because they don't come as a surprise. It's certainly disheartening and tragic. But through our CNS we also obviously pick up children who absconded from placement. So we're quite aware of the fact that the Department of Families, Fairness and Housing often don't know where children in their care are.

15 MR McAVOY: Should the public be concerned about that or parents of those children?

NERITA WAIGHT: Yes. Anybody who understands the responsibility of having a child and caring for a child should be concerned at those facts.

20 MR McAVOY: And there have been many reports over recent years about this particular problem in respect of record-keeping, but many other problems. And these failings have not been addressed. Do you have any view as to how that happens?

25 NERITA WAIGHT: Perhaps part of it is, you know, report fatigue, but there are so many reports, there are so many recommendations, and there is limited workforce to implement those but also there is not effective oversight of implementation of those recommendations. So who is making sure they are getting done? I think that's a reason why you see that not addressed.

30 MR McAVOY: I just want to take you to part 3.5 of your submissions now in relation to data and accountability. The observation's made in the submissions that there is limited availability of data. So not only limited availability, but limited collection, or limited appropriate collection of data.

35 NERITA WAIGHT: Yes.

MR McAVOY: The contrast is made with the criminal justice sector?

NERITA WAIGHT: Yes.

40

MR McAVOY: Is it your evidence that there is better collection of data in the criminal justice sector than the child protection sector?

45 NERITA WAIGHT: There is slightly better data collection in the criminal justice system as compared to the child protection system.

MR McAVOY: Your submissions make this out fairly clearly, but just for the purposes of the Commissioners, the absence of appropriately collected and publicly available data has real effects in terms of transparency and accountability?

50

NERITA WAIGHT: Yes.

MR McAVOY: Does it also have effect in terms of observing trends and management of work and ensuring that the agency's able to fulfil its role?

5

NERITA WAIGHT: Correct.

MR McAVOY: In respect of now part 3.6, Commissioners, on page 66, you there address oversight measures in the child protection system and make the observation that current oversight measures of the child protection system in Victoria have been ineffective at driving improvements. This goes to your point a few moments ago about perhaps report fatigue. Is it fair to say that your submission on this point makes the point that there are many reports being undertaken and that action following the reports is limited; that's a very bland way of putting it.

10  
15

NERITA WAIGHT: Correct.

MR McAVOY: You have recommended an independent detention inspector.

20 NERITA WAIGHT: For closed environments.

MR McAVOY: And your submission says, if I am correct, that, come January 2023, the Victorian Government will be in a position of having failed to have met the obligations with respect to the Protocol and Convention Against Torture?

25

NERITA WAIGHT: Yes. The second deadline.

COMMISSIONER WALTER: Can you just repeat what it is that the Victorian Government will be missing again in January?

30

NERITA WAIGHT: Establishing a national preventive mechanism, also known as an MPN, under the Optional Protocol to the Convention Against Torture and Inhumane and Degrading Treatment.

35 MR McAVOY: So your submissions have been or are quite thorough, and notwithstanding you called for a standalone legislation, and a new system, you have offered some suggestions as to how that current system can be improved, including recommendations regarding the replacement of the current system of protection orders with a new care and protection order.

40 NERITA WAIGHT: Yes.

MR McAVOY: Commissioners, at page 41 of the submission you'll see recommendation 17. That recommendation provides that - I'm not going to read the whole of it - the chapeau reads:

45

*"Legislation should be amended to replace the reunification orders, care by Secretary orders and long-term care orders for Aboriginal children with a new care and protection order."*

And then it sets out the terms of the care and protection order and the conditions that may be made against that order. Can you explain the reasoning behind this change to the system of orders?

5 NERITA WAIGHT: Certainly, this change has been as a result of what we see as  
deficiencies in the current system and what we've tried to do is come up with a proposed  
order that would increase the power of the court to attach appropriate conditions in the order  
because, through the permanency amendments, that was all but eradicated. Also ensuring the  
legislative contact with children and making best interests for Aboriginal children without  
10 that arbitrary oversight. But, Anna, can expand on that further.

ANNA GIBSON: The idea behind the new order and replacing those existing orders is very  
much to address the concern that's been raised in many of the hearings that the Commission's  
already - many of the witnesses that have already spoken to the Commission about the  
15 permanency amendments. Many of the witnesses referred to these as the - a two-year time  
limit. It is actually not the time-limit itself that is the problem, it's what happens after that  
time limit expires, and what happens is there's only three orders available to the court to  
make and those three orders have very little - court has very little power to make conditions  
or control what those orders do.

20 It gives all the power to the Department, once any of those orders are made. So two of the  
orders are to transfer sole parental responsibility to the Department, that one order will stay in  
place until the child turns 18, the other will stay in place for two years, and the significance of  
the duration of the order is that the duration of the order is the primary mechanism that  
25 enables cases to come back to court so there will be court oversight. With Legal Aid funding,  
that's when parents and children have a legal representative to argue their case in court.

So if the order expires when the child's 18, that mechanism is not there - similarly, if it's two  
years, whilst two years is shorter than 18 in most instances, it is still a long time where there  
30 is no conditions for contact with parents or family, no conditions to support parents to access  
services, to address the issues that they are having in their lives that caused child protection to  
be involved in the first place.

So there are those two orders and then the other is the permanent care order. On that order the  
35 parental responsibility is transferred to the carer, and the Department then ceases to be  
involved altogether. So at that point, I think the Commission's already heard from a witness,  
I'm not sure who it was, someone I remember said that once that happens, then it is really in  
the hands of that carer as to whether that child will ever see their family again or have any  
connection to their culture, despite there being some provision for that to happen, it's really  
40 left in the hands of the carer.

MR McAVOY: If I understand the VALS's submission correctly, it's not suggesting that the  
amendments, in relation to this suite of orders, were intended to have the effect that they had,  
but, rather, that the resources haven't been made available or aren't available in order to  
45 ensure that the proper assessments and work is done prior to the engagement of the  
permanency order, or have I misunderstood?

ANNA GIBSON: I'm not sure I properly understand your question, but I would say that in  
my view, the way those permanency amendments were introduced, there's a lot of - there are  
50 many sections of the Act that make reference to the purpose of them at different points in the

sections about the orders themselves, but also in the case planning section about permanency objectives.

5 There were also two additional best interest principles added into the section 10, which is right at the beginning, which is supposed to inform all decision making. Anyway, these multiple sections of the Act that were added all talk about ensuring stability for the child. So the goal is to - if the child cannot be reunified within - it's really actually 12 months that it is geared towards. The two-year thing is meant to be an exceptional situation.

10 The Act is guided towards the child being able to be reunified within 12 months of being out of the parents' care and if that can't be achieved in that time, then the move is to find a stable placement and in doing so removing and severing all contact with family. So that's the sort of stated intention in the legislation, but you could also say that --

15 NERITA WAIGHT: This practical application has had a disastrous effect on Aboriginal communities and, in fact, during the consultation process for those permanency amendments, the Department of Families, Fairness and Housing, which was then called the Department of Human Services in that iteration, was warned that if they proceeded, the practical effect of those would be disastrous to our communities, and that's what happened.

20 MR McAVOY: Thank you. Your submission does point to the disjunct between the permanency objectives and the unacceptable risk test. I understand that to be something you've just spoken about, in terms of the stability versus the desire to remain with the family. Now - one moment.

25 COMMISSIONER HUNTER: Counsel, while you are doing that, can I ask Ms Gibson a question: you just talked about stability and permanency and 12 months as the objective. You talked, in your statement, about women going into prison at a higher rate. What happens if an Aboriginal woman is incarcerated for more than 12 months; what does that mean for the Act?

30 ANNA GIBSON: The Act doesn't accommodate that. That would just be a situation where the child isn't able to be reunified in the timeframe the legislated timeframe because she's incarcerated.

35 COMMISSIONER HUNTER: Would that be a possibility of the stability going into permanency so that could go into the permanency of the carer?

40 ANNA GIBSON: It should be noted, though, that just because the objective is to move away from the parent after the 12 months, or the two years in the exceptional situation, doesn't necessarily mean that there is this permanent placement just there waiting for this child. In most instances, the child then goes on to a care by Secretary order.

45 The Secretary is the child's guardian, and in many cases especially for adolescent children they'll move from placement to placement and the most likely placement that would be - to provide stability would be with the child's parent, but there's no direction to look at the child's parent.

50 COMMISSIONER WALTER: So there is no accountability for the Department for when they bring in provisions based on the promise of stability to actually deliver that stability.

ANNA GIBSON: No.

5 MR McAVOY: I want to ask you some questions now about the Aboriginal Child Specialist Advice and Support Service. That's covered at page 24 and onwards of your submission. I understand your submissions to highlight that ACSASS advice is not being accessed or, when it is being accessed, is not being used in the way that it appears to have intended to have been used. Just for the Commission's purposes, could you explain the role that VALS understands ACSASS should have?

10

ANNA GIBSON: So the role of ACSASS is a funded program. So the Department funds an Aboriginal community controlled organisation to provide them with - well, they - there is an obligation for the Department to consult with the ACCO on every significant decision for an Aboriginal child, and they have program requirements that list a whole range of decisions that they consider to be significant decisions but it also says this is not an exclusive exhaustive list of decisions, and that - yes. So any significant decision should be consulted with an Aboriginal organisation.

15

20 The goal or the intent is to ensure that the Department's decision-making is taking into consideration cultural issues and it's also stated in section 12 of the Act to be a mechanism of self-determination. Does that answer your question about the purpose?

20

MR McAVOY: Yes. Thank you. So there are a number of problems with that model of support that you've noted in your submissions. Can you just speak about those issues?

25

ANNA GIBSON: I think one of the main problems we see at the court, obviously our role is as lawyers, so most of our involvement in families' lives is at the court stage. But the Department should be consulting at all stages, not just at the court stage. What I have most experience with is seeing it play out at the court stage and at the court stage, the decisions that they are consulting on have legal implications, like, for example, what order the Department is going to seek and ask the court to make. That's something that they would need to consult with the ACCO about.

30

35 The best example to illustrate the issue is that if the person providing - from the ACCO, providing the advice, is not aware of different orders and the technical aspects of different orders - and I must say that the legislation is not drafted well, and has multiple amendments in it, so it's complicated for anyone to understand. So I'm not trying to suggest that the people providing advice are, you know, incompetent, but they are not lawyers and they are providing advice on a legal outcome that has real consequences for the children and families who it impacts.

40

45 The best example I can give is one of the orders is called a family reunification order, and an ACCO may endorse that decision based on the fact that they believe that in seeking that order, the child will be reunified to the family when that order is made. In most instances they are never reunified on that order. They are certainly not on the day the order is made. The lawyers representing parents of children in that might be actually seeking for either a family preservation order, which would mean the child would be at home with the parent or in some cases they might say an order is not even needed, and instead they are going to this order that is an out-of-home care order.

50

MR McAVOY: So the ACCO workers are being asked to give advice about the child's rights, in fact?

5 ANNA GIBSON: Yes, they are. Yes.

MR McAVOY: Without legal training?

ANNA GIBSON: Yes.

10 MR McAVOY: And without access to legal advice?

ANNA GIBSON: Yes. I should add that on top of - probably that is the biggest concern that I have just illustrated. But there's a whole range of concerns with it. There are concerns like incorrect information being provided to the - so in this instance they have been told the correct information, we are seeking a family reunification order.

15 The ACCO doesn't understand what that fully means for the child. But there are instances where child protection will give misleading information to the ACCO, or leave out information, to try and, you know, get the answer that they want from the ACCO, or there's also instances where due to under-resourcing and funding there is no ACCO available to provide the advice for the decision.

20 The information's also relayed inaccurately to the court, the court is forever - the magistrates in the court are regularly voicing frustrations about this situation where they have to rely on the child protection worker to tell them what the advice is of the ACCO.

25 MR McAVOY: You make the observation in the submissions that advice is sometimes not sought at all.

30 ANNA GIBSON: Correct. Sorry, I should use that example as well.

MR McAVOY: In relation to many of the decisions?

ANNA GIBSON: Many, yes. That's frequent. I should have said that.

35 MR McAVOY: If I've understood the submission correctly, it is also your submission that ACCOs are involved very often at a late stage and asked to give advice under extreme time pressures?

40 ANNA GIBSON: Correct.

MR McAVOY: So that doesn't allow them to consider the matter properly or make considered - give considered advice?

45 ANNA GIBSON: Yes, that's correct.

MR McAVOY: It sounds as to there are many issues with that system.

ANNA GIBSON: Yes.

50

COMMISSIONER WALTER: Can I just clarify: so is the Department - is there anything there that tells them they must seek advice?

5 ANNA GIBSON: It is in the legislation but it's drafted in a very vague way. So it's section 12 and section 16 of the Act. So section 12 talks about the need to consult with Aboriginal organisations, and there are a number of subsections that then relate to different functions of the Department. One is about Aboriginal family-led decision making; one is about this function we are talking about now; and then just consulting generally with Aboriginal family members, but it doesn't - it's not expressed in a very clear way that really specifies what the responsibility is.

10

Section 16 refers to the Secretary's responsibility to - I can't remember the exact wording but to follow protocols with Aboriginal organisations and so there is a protocol that details this function that we are talking about here and spells out what the decisions are to be consulted on. So the details in the protocol, not in the Act. But they also have program requirements and a child protection manual that does detail - provide all the detail.

15

COMMISSIONER WALTER: What do they tell magistrates if they haven't done any consultation? How do they justify that they haven't completed that part of their obligations?

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ANNA GIBSON: No comment on that. Any number of responses.

MR McAVOY: Do you say that it's a matter about which the Commission might use some of its powers to inspect some of the files and make some or draw some conclusions?

25

ANNA GIBSON: Yes, please.

MR McAVOY: Just before we leave this point, you've also made the comment that there is insufficient training for the ACSASS officers.

30

ANNA GIBSON: Yes.

MR McAVOY: Do you say that there should be some legal component to their training, if they are required to make decisions in this way and are VALS or Djirra in a position to give that sort of training, do you think?

35

ANNA GIBSON: Yes and yes.

MR McAVOY: Thank you. Clearly you've given a lot of thought to this area, and how it's failing Aboriginal children and families. Do you have any views as to what the drivers of this failure, system failure is?

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ANNA GIBSON: I do think a big factor also behind the permanency amendments and a range of the issues that have been raised by us as well as other witnesses to the Commission, is the under-resourced nature of the workforce, and that they are stretched. They are definitely under pressure, the child protection workforce, and, you know, that's obviously not an excuse for Aboriginal children ending up in the way that we are seeing the rates of removal, and so forth, but it has to be acknowledged that that has to be a driving factor in the way the Department develops its policies which reduces anything which involves labour intensive - each time a child protection worker has to go to court that's labour intensive. So

50

let's reduce the court oversight. Any time they have to have contact with a parent, and it needs to be supervised, requires --

5 NERITA WAIGHT: Even at earlier points, there are drivers. You know, our clients are often  
remanded for petty offences like shoplifting. That then takes them out of the home and then  
their children end up in care. They try to flee a family violence situation but there's no  
adequate housing, so their children are taken off them. I mean, all of these things just - there  
is not enough social support, housing, but predicated on a system that doesn't understand  
10 Aboriginal ways of being and knowing, and instead, enforces a non-Aboriginal conception of  
how you raise your children and how things are supposed to be which is completely at odds  
with our culture and tradition.

15 If I can just use a personal example, you know, non-Aboriginal conceptions of families are  
often nuclear, mum and dad or mum and child, those kind of variations, but I grew up - my  
Dad unfortunately passed when I was quite small, but I had my Mum and I had my  
grandmother and my great aunt, who was like my other grandmother. That was my family  
unit. If my Mum wasn't there, either grandmother stood in the shoes of my mother. Those are  
not things that are well understood and that's often why child protection become involved  
and actually did at one point, and it's unfair. That's why we talk about a transformed system,  
20 because it's not just saying let's throw all the social supports in, it's saying we actually need  
to address the racism within our structures and our institutions, and our legislation to create a  
system that works for our communities.

25 MR McAVOY: Thank you. There is structural racism within the system, but in relation to  
the ACSASS issue, do I understand you are saying that in part the lack of resources and the  
very - the overload of work for the workers has an effect and do you have any view as to  
whether that effect causes them to cut corners in their work?

30 ANNA GIBSON: I'm sure they are forced to cut corners all the time. I'm sure they have to,  
but I do want to reiterate what Nerita has said, the role of racism as well. Where there are  
corners to be cut, which corners do they decide to cut?

35 MR McAVOY: That was the next point I was coming to. I was going to say that where  
people are cutting corners, they tend to rely upon the stereotypes and biases, whether they are  
conscious or unconscious, and is it an observation - is there an observation you can make  
about whether those biases tend to come to the fore in the child protection space, where it is  
overworked or overloaded?

40 ANNA GIBSON: Yes, I believe it does. Yes.

NERITA WAIGHT: It's obvious it does.

45 MR McAVOY: Now, I just want to ask you a couple of questions about what are called the  
crossover kids, kids in the child protection system and the criminal justice system. That's at  
part 4 of the submissions, page 67, Commissioners. One of the - you talk in the submissions  
about the really quite unacceptable ratio of children who are in the criminal justice system  
who have come from the child protection system, and how much or how little the child  
protection system is able to do to protect those children from the criminal justice system. One  
of the factors you talked to is the criminalisation of children in residential care. That is a big  
50 issue?



NERITA WAIGHT: Undoubtedly.

5 MR McAVOY: There is a role that police play in respect of the criminalisation of children in care?

NERITA WAIGHT: Of course.

10 MR McAVOY: Is it the case that VALS has observed an over-readiness of police to charge children who are in residential care?

NERITA WAIGHT: Yes. Can we just go through a case example?

15 MR McAVOY: I have a case example here on page 71; is that the one?

NERITA WAIGHT: Yes, that's the one.

MR McAVOY: I'd be grateful if you did.

20 NERITA WAIGHT: So M was an Aboriginal child who was placed in residential care at 11 and has been placed in at least 12 different care facilities since that time. During their time in residential care their behaviour indicated serious mental health and disability issues including self-harm and suicidal tendencies. Despite that, there is no consistent mental health support, nor consistent schooling or cultural support.

25 His contact with police escalated throughout their time in residential care and the carers often contacted police for behaviour management matters. When they contact police, those police officers respond immediately with arrest rather than summons or de-escalation and, as a result, they have been repeatedly detained in police stations and at Parkville. This is not just, you know, a matter of 11 or 12 incidents or 20 or 30 or 40 or 50. M has spent months on remand despite never being sentenced to a term of imprisonment. Carers contacted police for behaviour, including stealing household items, throwing items around their residential care unit and assaulting carers. They have also attended in the middle of the night to conduct checks on them.

35 When police attend, instead of engaging de-escalation, he's violently arrested and subsequently charged with assault police and resist arrest. In most instances, charges relating to the original behaviour charges are dropped and the only charges that remain are the police offences of resist arrest and assault police. He's also been targeted by police and has been violently arrested in public for reasons including to check whether they have warrants on public transport offences.

40 The arrests are often highly violent and led to sustaining physical serious and mental injuries and being hospitalised. They often used abusive and humiliating language and now M has significant trauma around police which impacts the interactions with police. Underpinning all these situations was that there was a 'Framework to reduce criminalisation of young people in residential care' operating at that time. It simply wasn't implemented until this matter came to our attention and we then brought that Framework to their attention despite it being their framework. Sarah, do you want to expand?

50

SARAH SCHWARTZ: Just to say that there is in 2020 the Victorian Government published its 'Framework to reduce the criminalisation of young people in residential care'. Both the Department and Victoria Police are signatories to that Framework, and these instances in regard to M all occurred after the Framework has come into place. What we see is carers still  
 5 contacting police for behavioural issues and Victoria Police proceeding immediately with arrest and highly violent arrests. Also to say that none of these individuals involved in M's case appear to have in any knowledge or understanding of what the Framework entails.

The Framework puts in place very specific instructions for police and for the Department to  
 10 not proceed with arrests as a matter of first resort for police. The carers are not to contact police for behaviour management issues but instead to engage in de-escalation. While the Framework is a positive document and looks great on paper, there's absolutely no implementation and no-one on the ground seems to be applying it. It seems to have been taken as a broad - it seems to be seen by both the Department and Victoria Police as some pie  
 15 in the sky objective that they are working towards at some stage.

They are now talking about training that is being rolled out but this Framework's been in  
 place since 2020 and there is absolutely no oversight of it, there's no evidence that we have  
 20 seen that there has been training delivered to Victoria Police members on the ground or to carers on the ground, and we are only coming into contact with these kids after they have been charged with criminal offences at a very late stage and then we can intervene on behalf of them. But there are criminal charges already on foot and the violence caused by the policing has already taken place.

NERITA WAIGHT: That commitment to training only comes after months and months of  
 25 advocacy of our service, and continual engagement with all of these bodies to try to get something off the ground. There seems to be this practice of coming up with these beautifully phrased documents and vision statements, but they are not actually doing the work to implement them and then oversight it.

It is iterative of my whole legal career. I'm sure many others with longer careers can say the  
 same thing. Each and every time when you draw attention to the harm that has been caused,  
 it's, well, that's just too bad. There's no ownership of the harm, no commitment to engage in  
 a restorative practice so that, say, if M was a victim of crime, M's not going to go to the  
 35 police and report it because he's going to be afraid that he will be hurt - there is no commitment on their end to say let's restore that relationship because we don't want M to be in that position.

There is nothing. In fact, all it is is, well, just blame individual officers or move it across, or,  
 40 you know, label our service as dogmatic and rather unforgiving and that perhaps is an accurate assessment in some parts, but these children are being criminalised just by being in care. This is no fault of their own. Often they are in care, again, situations that are out of their control. But they are painted with a brush that they must be accountable for that and they can be criminalised. These are the same kids who then end up trapped in that adult system and  
 45 their children will end up in the same place if we don't do something to disrupt the narrative structures now.

MR McAVOY: Even without the Framework, the fact that the police are arriving at a scene  
 and then charging young people with offences, then dropping the original charges but

proceeding with the police contact charges, it seems to be an offensive way of dealing with young people; would you agree with that proposition?

NERITA WAIGHT: 100 per cent.

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SARAH SCHWARTZ: Can I add as well that there is a legislative provision, section 345 of the *Children, Youth and Families Act*, which states that police should presume that children should be proceeded with way of summons rather than arrest. And across the board, we see that provision completely not being applied. There is no case law on that provision, and it doesn't seem to - police don't seem to be aware of it.

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MR McAVOY: I might draw the Commissioners' attention to the case study in relation to R at page 73 and the case study in relation to CH at page 75. The case study at page 75 deals with missed opportunities in the child protection system and, in particular, a failure to diagnose mental health conditions that a young person had been suffering for a long period of time whilst in care. It had never been picked up and really affected the - and had a role in the young person's contact with the police and the criminal justice system.

15

COMMISSIONER BELL: Could you give me that reference again, please.

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MR McAVOY: It's page 75 and it's case study CH. The recommendations of the - of VALS in respect of this area are contained on page 74 in recommendations 27 through 35. The submissions speak for themselves, Commissioners. In the interests of time, I propose to move on to the criminal justice submissions, but I will point out that, at Annexure A to the child protection submissions, VALS are recommending to Yoorrook that it should invite or compel people to give evidence.

25

They are suggesting that the Minister for Child Protection, the Secretary to the Department for Families, Fairness and Housing and the Deputy Secretary with responsibility for Child Protection, Department of Families, Fairness and Housing should be called, the Deputy Commissioner from Victoria Police, with responsibilities of the Framework to reduce criminalisation of young people in residential, care and the Officer-in-charge at Ringwood Police Station, and officials with representative responsibility for child protection practitioners. I am assuming everybody is happy to continue on. If there is a need for a break, please let me know. I wish to continue on with the criminal justice submissions now. This is a separate document. I understand you have a copy of the criminal justice submissions, November 22.

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35

Ms Waight, you spoke in your opening about a Justice Treaty and that also formed the subject of a press release from VALS today?

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NERITA WAIGHT: Yes.

MR McAVOY: The Justice Treaty, I understand, is seen by VALS as a mechanism by which the right to self-determination can be more fully realised in Victoria for Aboriginal people?

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NERITA WAIGHT: Yes.

MR McAVOY: Now, at page 27 of these submissions in relation to criminal justice, at the bottom of page 27, discussion commences in relation to a justice treaty under the heading,

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Yoorrook Justice Commission

*'Self-determined solutions for Aboriginal communities.'* The submissions talk about decision-making and diversion opportunities in a general sense. Can you just speak generally about how a Justice Treaty might operate or be - how it might be brought into existence in Victoria?

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NERITA WAIGHT: So our envisioning of the Justice Treaty was really based on seeing Yoorrook and the current Treaty framework as an opportunity to create some transformational and radical change to build a system that embodies self-determination and a system that's designed and delivered by Aboriginal communities, grounded by a holistic concept of justice.

10

There were early attempts of this in terms of what you see in the Koori Courts and certainly what you see in Aboriginal cautioning projects and Aboriginal diversion pilots. But, again, there is a very limited role for our participation in decision-making. Everything is still in the hands of the authorities, and what we are trying to move people across to is thinking that, "Well, let's design a system that really embodies self-determination and really transfers that decision-making and resources back into the hands of First Peoples." So just restoring our original position on this land.

15

Also on that, I mean, the current system is so focused on risk and deficit rather than looking at strengths and opportunities and we have had over 200 years of this justice system so far and I'm struggling to really see what's been achieved. Under this risk and deficit approach, all the evidence is if we take a strength-based approach you have a real chance of making sure you are not building new prisons because you need to house more people, that you are actually being able to engage in providing resources at that earlier stage. People have a chance to have successful lives.

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Our parents have the opportunity to create generational wealth and privilege and being able to engage in education, and employment, and a society where people like me aren't an exception, they are the rule. That's really kind of the envisioning of it. I know these are very broad statements and the honest truth is that as an organisation, we have had very little capacity to really put down what the nuts and bolts are. I do think that part of that is because we have to do that with community. We can't just say, "This is what it should be from our perspective." That's not self-determination.

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MR McAVOY: In trying to envision what it might look like and how it might be achieved, you do look to the processes happening internationally by the First Nations?

NERITA WAIGHT: Yes.

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MR McAVOY: You refer to that on page 38 of your submission. Would you just like to speak a little to what your understanding is of what's happening in other like jurisdictions?

NERITA WAIGHT: Of course. Would love to. So in New Zealand there's been partnerships created with Māori communities and those partnerships are based on existing Treaties that have been in place for quite some time. But what those partnerships are creating is a real transfer of responsibility and control and that's also seen in the legislative framework which formally embeds that policy to implement such approaches but also acknowledges Māori law, which is what they call the right way.

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It has led to partnerships in terms of family conferencing, remand homes, courts, youth support, and all have had fantastic outcomes because they are based on principles of their local laws and customs and really also don't just look at the individual before them, but look at the family, and the family over there is broader than just a nuclear family. So it means anybody who is important to that person, and really seeks to make sure that that change can be created for all and engaging restorative practices where there has been wrongs committed. So making sure there is that chance to restore those relationships and repair that wrong so that your spirit can be well.

10 It's just - it has had some amazing outcomes and if the Commission has the time, I would really urge you to call upon those New Zealand experts to really talk about what those responses are.

15 MR McAVOY: Is it your observation that those New Zealand examples operate in a positive and restorative therapeutic space as opposed to deficit space and a punitive space?

20 NERITA WAIGHT: Yes. Everything is done from a strength-based approach, they don't do it from a deficit or risk viewpoint, and they don't have strict criteria in terms of time and resources. It is all about looking at the person, their family, and then dedicating those resources and time to do that work. But also making sure that at each and every stage, culture and tradition is at the fore. That goes from the very point of welcoming the person into the process, to the end where you engage in that self-transition out.

25 MR McAVOY: At page 29 of the submission, you list out, in the dot points the first paragraph, areas that may be included in a Justice Treaty. They are some of the areas which you've addressed in the submissions as areas of concern but they involve communities being involved in decisions regarding cautioning, diversion and supervision of diversion plans, Aboriginal supervision of community-based sentences, in particular, for low level offences, an Aboriginal-led body for investigation of Aboriginal deaths in custody and police contact deaths, expanding the Koori Court's jurisdiction to the pre-resolution stage, including bail and diversion, and expanding the role of Elders and respected persons in Koori Courts and also Aboriginal pre and post-release support for Aboriginal people transitioning out of prisons and youth justice systems.

35 NERITA WAIGHT: Yes. And connected to that also is our early commentary on looking at an Aboriginal Social Justice Commissioner, but also, importantly, looking at requiring that, where legislation is to be introduced, that its impact on Aboriginal people and communities be investigated. If that is going to be a negative impact, then legislation has to change. This operates in a different way in the Charter of Human Rights and Responsibilities when you look at statements of compatibility. The Aboriginal impact assessments go one step beyond in terms of monitoring and also looking at making sure those assessments are done independently of government by Aboriginal people in communities.

45 COMMISSIONER WALTER: Is there anything along the sort of same shape as an Aboriginal impact assessment done currently with any of this legislation in the criminal justice or the child protection space?

NERITA WAIGHT: No. This is an entirely new concept.

MR McAVOY: We'll have some opportunity before we finish to discuss some of those issues that you've said might be included in a Justice Treaty. One of the other matters that you've dealt with in your submission is the transfer of power, control of data and resources to Aboriginal communities to develop and implement an Aboriginal justice system.

5

NERITA WAIGHT: Mmm-hmm.

MR McAVOY: Clearly, those are the elements that would make up an effective transfer of control.

10

NERITA WAIGHT: Yes.

MR McAVOY: It is important to note that not only is power and control suggested to be transferred, but also data. Can I just ask you to comment on how important it is that the data be transferred as well?

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NERITA WAIGHT: Data is the key driver of Aboriginal people and decision-making on policy, in order to make evidence-based policy you need access to data. So you can identify issues, and you have a clear picture of what is going on.

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MR McAVOY: And, of course, you suggest that the resources need to be transferred as well. Are these all matters that ought to be - or could be negotiated within the parameters of the Justice Treaty?

25

NERITA WAIGHT: Yes.

MR McAVOY: In your submissions you've also identified the impact of cross-cutting issues within the current system. The two cross-cutting issues that you particularly addressed are racism - and if, Commissioners, you turn to page 30 of the written submissions on criminal justice, you'll see at paragraph 2.2 and following there is some discussion of racism in the Victorian context - we have discussed this generally, and also in respect of the application of the child protection laws. In the criminal justice setting, are there particular observations you want to make about how racism affects the delivery of that system?

30

NERITA WAIGHT: Sure. So racism for us is systemic in all parts of the criminal legal system. Laws, policies, institutions operate to produce discriminatory outcomes for Aboriginal people and this is never remedied, despite decades of advocacy and even prior warning. Racism is also particularly prevalent in Victoria Police, both in the actions of the individual officers, and systemic racism that pervades police practice. There are explicit instances of racism, like the denial of peoples' Aboriginality, repeated arrests of children who should be given a caution or summons, and a shocking use of excessive force and racial abuse against Aboriginal people.

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There is systemic racism in the way we are constantly overrepresented, in police searches, move on orders and arrests for public order offences, like public intoxication, which, in the last year, has seen rates increase in Mildura by 100 per cent. It goes beyond police, it is in every part of the society, it's from child protection, to housing, to employment. Aboriginal people are constantly marginalised by Victoria's social system. There isn't one Aboriginal person who hasn't experienced racism in all its forms. It is everywhere. I don't know there's much more I can say on that.

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MR McAVOY: With the understanding that it is everywhere, how then do you operate a legal system which delivers fairness to Aboriginal people?

5 NERITA WAIGHT: I think my contention is fairly clear in looking at creating the Justice Treaties is that the system as it stands is there is no justice for Aboriginal people within it and it is not created equitable because it is based on a colonial past, which is racist, but also a contemporaneous maintaining of structural racism and bias.

10 MR McAVOY: The second point you raise is in respect of the lack of accountability of the police, in particular, as a cross-cutting issue. Can you just speak to that, please?

NERITA WAIGHT: Which issue, the issue in relation to Victoria Police? There are a lot of them.

15

MR McAVOY: Lack of accountability, sorry.

NERITA WAIGHT: Well, in terms of accountability, there isn't any for Victoria Police. At the moment they investigate themselves. There's been a wide - a number of reports by IBAC  
20 and the Auditor-General, and the Commissions are very clearly showing that when a police complaint is made through IBAC, in the vast majority of circumstances, it is handed back to Victoria Police for investigation, and there are very poor outcomes for Aboriginal people in that space. Even when an Aboriginal person dies as a result of a police contact, during the coronial process, it is Victoria Police that is doing the investigation of that death, which, in  
25 and of itself, is just a direct conflict and VALS has done - a lot of advocacy has been done around independent police oversight and because of the issues in policing in our community and the lack of independence, we had to create the Wirraway unit in order to facilitate those numbers of complaints.

30 COMMISSIONER BELL: I missed that key word?

NERITA WAIGHT: The Wirraway unit.

COMMISSIONER BELL: Yes. Wirraway unit, thank you.

35

NERITA WAIGHT: Just in order to bring these egregious cases to the attention and also be able to provide Aboriginal people with a way to air their complaints against police institutions and arms.

40 MR McAVOY: Is it possible to have a system, a criminal justice system, that delivers fairness to - applied in a manner that's fair to First Nations people, where there is no proper oversight of police conduct?

NERITA WAIGHT: No, not at all.

45

MR McAVOY: Now, in terms of urgent or priority reforms within the existing system, one of the matters that you point to in your submissions is the urgent need for bail reform.

NERITA WAIGHT: Yes.

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MR McAVOY: Commissioners, this is at page 47 of the submissions. 46 and 47. And then there are some draft recommendations on page 48.

NERITA WAIGHT: Yes.

5

MR McAVOY: Are you able to speak to the recommendations regarding bail reform?

NERITA WAIGHT: Yes. Over 30 years ago, RCIADIC recommended that the government should revise any criteria which inappropriately restricts the granting of bail to Aboriginal people and that prison must be used as a sanction of last resort. Instead of doing this, we have done exactly the opposite and created more punitive bail laws and regimes, which have seen remand rates grow exponentially for our people, and particularly for Aboriginal women since the 2018 changes.

10

15 Sadly, this has also cost our community their lives, particularly if you look at the case of Veronica Nelson, who was a proud Gundjimtara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman who died in DPSC only three days after being arrested and refused bail for shoplifting offences. You know, Uncle Percy says it best, he says Veronica shouldn't have been in prison and she shouldn't have died, and he wants to know what happened. He wants to know what happened and he wants somebody to be held accountable.

20

But the sad fact is that every time we introduce changes to the bail regime, they are punitive and discriminate against Aboriginal people, each and every time, and much to do with that is the law and order approach and the influence of Victoria Police and the police union, and certainly what we are asking you to do is really urge the Victorian Government to turn this around, to repeal the exceptional circumstances test, to repeal bail offences, to amend the unacceptable risk test and that bail must not be refused if there is a risk that the applicant will commit a non-violent offence, amend the new facts and circumstances test and require bail decision-makers, who are judicial officers, to articulate the matters taken into account with reference to subsection 3A and 3AA of the *Bail Act* and the reasons for any refusal to grant application for bail made by an Aboriginal person.

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30

These reforms cannot wait. They must be done as soon as possible, and I have given you the most disastrous outcome in Veronica Nelson but each and every day, on average, we have 35 Aboriginal people arrested in Victoria. Every one of them is at risk of a similar outcome. Often we are talking about petty offences, shoplifting, drug possession, and often these individuals are in the most worst circumstances.

35

They are homeless, suffering from mental health and disability. There is no housing for them. There is no supports - and instead of providing that, we criminalise them and lock them up for our failures. It is no longer acceptable.

40

MR McAVOY: Government is aware of your position on the bail law?

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NERITA WAIGHT: They don't have a choice not to be. Every chance we get.

MR McAVOY: Are you seeing any movement?

NERITA WAIGHT: No.

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Yoorrook Justice Commission



MR McAVOY: And do you put that down to the matters you've already mentioned - the influence of the police union?

NERITA WAIGHT: Correct.

5

MR McAVOY: And the service?

NERITA WAIGHT: Yes.

10 MR McAVOY: Are there any other factors?

NERITA WAIGHT: Yes. I think I mentioned earlier the law and order debate but I also think that racism plays a clear role in why these changes haven't been made because they see that Aboriginal people apparently have all these untold benefits and rewards that I have never  
15 seen, but apparently it's just giving them one more thing.

What I think is also frustrating is that whenever there is reporting on this issue, often I don't think it's very clear to your average citizen what the problem is, and how it can be fixed and how that doesn't jeopardise community safety. I think we have also warped community  
20 safety into something that it does not mean, and not looked at ways of redefining that for community and talking to them through a strength-based view rather than a deficit view.

We keep telling them that they are in need of protection without realising that they can protect themselves, and they can engage in restorative processes but often enough the people  
25 they need protection from are those who are shoplifting a can of coke, who, you know, are sleeping rough and, you know, and public order offences are a key thing.

But often enough, particularly for our homeless community, those with mental health, those with disability, public order offences and drug possession and shoplifting are things that are  
30 regularly engaged in. These are all considered very low-level crimes but it will still put them in a position where they have to show exceptional circumstances.

COMMISSIONER WALTER: Currently there is no threshold of the seriousness of the crime that would be affected by --

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NERITA WAIGHT: Post-2018, what we did was we basically brought 100 offences into exceptional circumstances rather than the strict test that it was before. And Kin can certainly elaborate on that further.

40 KIN LEONG: Yes. So not only that, they also compound - if that offence is committed whilst they are on bail, that can be a low-level offence, then that can also catapult them into having to demonstrate exceptional circumstances. So a situation could be where someone is on bail for shop theft, then commits another shop theft and then they have breached bail and they are picked up again and possessing a small amount of cannabis, for personal use, they'll  
45 then be put in the exceptional circumstances test, basically to - the presumption is against bail and to get bail they need to achieve the same threshold as what would previously apply to alleged - murder, treason, and definitely the high-level drug trafficking offences.

So that's quite a lot of people, what we call really low-level offending that would never attract its own imprisonment and finding they are doing time in prison for these sorts of offences.

5 COMMISSIONER WALTER: So you wouldn't have to repeal the *Bail Act*, you'd just have to amend it to exclude these petty offences and restrict it to crimes that actually have a serious law and order impact on the community?

10 KIN LEONG: There could be some, I would say, very simple changes to the *Bail Act* that would definitely go a long way to fix this problem.

NERITA WAIGHT: Our recommendations don't say repeal the *Bail Act*, they say amend. Children have to meet the same bail test as adults.

15 MR McAVOY: We have heard evidence about over-policing of Aboriginal people.

NERITA WAIGHT: Yes.

20 MR McAVOY: When you combine over-policing with a quite aggressive bail regime, that has a compounding effect?

NERITA WAIGHT: Yes.

25 MR McAVOY: It's possible that an Aboriginal person might be on bail for some offence and then be picked up for something else which they have come to the police attention for just because they are an Aboriginal person?

30 KIN LEONG: It's every day. It's playing out in the Magistrates Court. Multiple remands this morning that would have been as a result of simply being on bail for something else and committing an offence that is really low level, and how they come to the attention of the police. We would say it is racism.

NERITA WAIGHT: It's not an exceptional circumstance for us, it is every day.

35 MR McAVOY: In your recommendations on page 48, I will just take you to a couple. Recommendation 41 provides that the government should increase understanding application of section 3A of the *Bail Act* by, and that's subsection (b), requiring all bail decision-makers, judges, magistrates, police and bail justices to complete mandatory and regular training on section 3A, cultural awareness, systemic racism and unconscious bias. Can we take it from  
40 that recommendation that you are of the view that there is a deficit in understanding of those particular aspects of 3A and 4A?

NERITA WAIGHT: Yes.

45 MR McAVOY: I have been very polite in the way I put that.

NERITA WAIGHT: Yes. I mean at the inquest into the death of Veronica Nelson, clear evidence suggested that fact.

MR McAVOY: And recommendation 42, if I just draw your attention to the recommendation 42 says the Victorian government should increase access to culturally appropriate bail hearings by, (a), expanding the jurisdiction of the Koori Court to include bail hearings.

5

NERITA WAIGHT: Yes.

MR McAVOY: That would expand the work of the Koori Courts?

10 NERITA WAIGHT: Yes, it would have resource implications.

MR McAVOY: You are aware of that?

NERITA WAIGHT: Yes.

15

MR McAVOY: You say it would have a significant impact on bail results for Aboriginal people?

NERITA WAIGHT: Correct.

20

MR McAVOY: Now, the next item I want to take you to in your submissions, follows on from this section. It's at the bottom of page 48, and it's in relation to raising the age of criminal responsibility. Your submission provides that it is VALS's view the minimum age of criminal responsibility should be at least 14 years, and a minimum age of detention of 16 years.

25

NERITA WAIGHT: Yes.

MR McAVOY: Is that position supported by any other agencies or international views?

30

NERITA WAIGHT: Yes. So it's supported by Smart Justice for Young People Coalition, which is a coalition of justice firms - CLCs, Legal Aid Commission, also known as Victoria Legal Aid, social services, bodies like Jesuit Social Services, the Victorian Aboriginal Child Care Agency, etcetera. We also have international support for this position, and in fact many other countries certainly would find our position unjust that we currently can put a 10-year-old in prison.

35

MR McAVOY: We see from your submission on the second paragraph on page 49 that the national raise the age campaign delivered a petition to the Federal Attorney-General and Minister for Indigenous Affairs with over 200,000 signatures, raising the age campaign, of which 65,800 were Victorian residents. That's a significant number of Victorians who support that particular reform?

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NERITA WAIGHT: It is. And also tangentially connected to that is the fact that prior to that, they completed a survey of the Australian community to see what they actually thought the criminal age of responsibility was. No surprises here, nobody thought it was 10.

45

MR McAVOY: So there's a plea to the Yoorrook Justice Commission at the last sentence of the second full paragraph on page 49 which reads:

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Yoorrook Justice Commission

*“We strongly encourage Yoorrook taking a strong stance on this issue. Raising the age must be on the government’s agenda for the first 100 days after the election in November 2022.”*

Some by that submission, you are saying this needs immediate action?

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NERITA WAIGHT: Yes. I’m pleading, I’m begging. All of it.

MR McAVOY: Those submissions are made out in your recommendations on recommendation 44 to recommendation 46 on page 49.

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NERITA WAIGHT: Mmm-hmm.

MR McAVOY: I just want to then take you to page 58 of your submissions, which deals with people in custody, and under the heading, *‘Ending violence in custody.’* One of the issues of particular importance is the healthcare that’s provided to people in prison and youth detention.

15

NERITA WAIGHT: Yes.

MR McAVOY: Can you just speak to the Commissioners about VALS’s concerns in relation to this issue?

20

NERITA WAIGHT: Gladly. Over the past 12 months in Victoria there have been three Aboriginal deaths in custody and there are clearly - investigations into those deaths reveal shocking evidence about the adequacy of healthcare provided in Victorian prisons. I’m not sure if you are aware, but prison healthcare is provided by a private body, Correct Care Australasia, and not through the Department of Health. In fact, it’s the Department of Justice and community safety that oversight that through their justice health section.

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It’s - those three deaths are obviously reflective of a broader trend across Australia with research from 2021 showing that Aboriginal people are three times more likely to not receive medical or required care before they die in custody. It is important to note that, back in 1988, I think, when it first started, they investigated 99 deaths, 11 of which were women, and the vast majority of causes of those deaths was lack of healthcare. So this is a trend that continues.

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There are some examples where healthcare is provided by outside health agencies. So in the ACT, Winnunga, which is an Aboriginal community controlled health organisation, provides healthcare to the local prison there and they do that through their doctors, their mental health nurses, their psychiatrists, psychologists, Aboriginal health workers, as well as also providing justice reinvestment programs and the like. That obviously has led to improved health outcomes but also provides a pathway for community healthcare once they exit prison which is also very important.

40

Certainly, what we are trying to push for here in Victoria is really addressing the challenges of the prioritisation of healthcare, oversight of the delivery of healthcare through the Department of Justice and Community Safety, which, in our view, should be through the Department of Health. Lack of internal oversight of prison healthcare and people who are in prison actually can’t access the Medicare benefits schedule, or the pharmaceutical benefits scheme which then affects what medications are available to them.

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Yoorrook Justice Commission

There is also a lack of cultural safe healthcare for Aboriginal people who are incarcerated. We are not alone on this position, VACCHO, the Victorian Aboriginal Community Controlled Health Organisation, as well as the ACCHOs, have been clear in demands for culturally safe healthcare to be provided to Aboriginal people who are incarcerated by ACCHOs. I just wondered if you would like to expand upon that, Sarah?

SARAH SCHWARTZ: I guess I could speak to - we speak to a lot of people in prison at VALS who have healthcare issues in custody. We speak to people who have to wait for weeks to see GPs, who have very, very serious medical issues who come to us with issues like cancer, extremely serious medical ailments that are not being treated, and we speak to people who have very serious mental health issues, who are not provided with regular psychiatric support, but instead are often placed in solitary confinement to prevent their self-harm for extended periods of time as a mental health remedy rather than being provided with treatment.

I think that there is, certainly from VALS's view and what we see in deaths in custody investigations, the impact of there being a private healthcare provider in Victoria's prisons is that there is a contractual incentive for that healthcare provider to avoid accountability for inadequate healthcare in custody, as a first step, but also for deaths in custody.

There is a complete lack of oversight, from our view, on that private healthcare provider by Justice Health. The UN and the World Health Organisation say that healthcare in prisons should be provided by State services, the Department of Health, yet in Victoria, not only is it overseen by the Justice Health Services, the Justice Department, but it's subcontracted out to a private provider which leads to complete fragmentation of healthcare and complete lack of continuity of healthcare between the community and the prison setting and with people moving between those two settings very frequently, particularly in Victoria, given our current bail laws, we see no continuity between those systems.

The Victorian government has said there should be equivalent healthcare in prisons to that in the community. We say that we can't see this at all. People in prison - particularly Aboriginal people in prisons are treated - receive the impacts of racism in the healthcare they receive in prisons but also aren't provided with access to Aboriginal health services, like VAHS, that are able to provide culturally safe healthcare, which they would have been provided with in the community.

NERITA WAIGHT: That access to healthcare is predicated on the corrections officers themselves and I've done a number of yarning circles this year at different prisons and each and every time numerous participants have talked about the fact that if they get into a dispute with a corrections officer, then access to healthcare is hampered. This is in the most dire of consequences. These are people, like Sarah said, who are suffering from cancer, from diabetes, and then there's also the problem that, once they go through intake, a lot of the time they are not provided - if they have mental health issues, with those requisite medications. They can go weeks or even months, as has been reported, without that medication which then detrimentally affect their mental health and lead to poor outcomes.

COMMISSIONER WALTER: You probably don't know the answer to this but is there any financial incentives within the contracts for - do they get paid more if they deliver less service, I guess, is my question.

SARAH SCHWARTZ: We do know the contracts are worth over \$700 million, between Correct Care Australasia and the Victorian Government. That's over a number of years, not per year. From the public, there is a contract that is publicly available, yet redacted. In that  
5 publicly available contract there doesn't appear to be any financial incentives for the provision of good healthcare or inadequate healthcare.

In our view, in any case, it would be impossible to tell, because there is simply no - there doesn't appear to be any independent oversight of the healthcare that is provided to people in  
10 custody and when there is a death in custody, those immediate first investigations, which take place, are done at the departmental level and internally within the prison healthcare provider and so there is no independent oversight of the prison healthcare system.

NERITA WAIGHT: There is also no involvement of the family or any advocates in those  
15 reviews.

MR McAVOY: Is there access to the NDIS program for inmates, in terms of disability supports?

20 NERITA WAIGHT: I cannot give you a firm answer. Certainly my understanding, from our clients, is that there is a lack of access to disability supports.

SARAH SCHWARTZ: I believe there is some access at some prisons to disability supports. What we hear from clients is that it might take many, many months, or even years, for them  
25 to get transferred to a part of the prison that has those disability supports available. It differs prison by prison. People are meant to be able to get NDIS or sign up at least in prison.

NERITA WAIGHT: But the youth environments don't have those barriers in terms of requiring a transfer to an appropriate prison and then to an appropriate section. They are  
30 better structured.

MR McAVOY: I just want to take you back, Ms Waight, to the concern you raised about people having their medications or access to medical treatment withdrawn, as a behavioural  
35 management tool. Are you aware of any formal complaints that have been made in respect of that type of conduct, or behaviour?

NERITA WAIGHT: Certainly, in the yarning circles, they talked about, you know, they had tried to complain, so a lot of the time what they have is these little internal governance bodies that they can then communicate with the prison. They'll use those as a way to communicate  
40 their complaints. But they report that when that happens, the record of what they report is incorrect, and often they face reprisal for making those complaints.

MR McAVOY: The withdrawal of medical treatment or access to medicines as a behavioural management response is quite a serious state of affairs; would you agree?  
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NERITA WAIGHT: It's not behavioural management in the sense that it's just when they go into prison, they then have to submit a number of forms to then see a doctor or a psychiatrist. Those can take weeks to months, so they don't get access to their medications during that  
50 period. So it's less behavioural management, and more poor intake. What happens is that where they have complained about health services, or where they are trying to see a doctor, if

they have had an issue with a corrections officer, then they'll find it difficult to lodge those necessary forms. They will find it difficult to get access to those healthcare providers. They'll have difficulty getting access to other services, which are few and far between during COVID and now post-COVID environment.

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MR McAVOY: Thank you for that clarification. I now want to take you to page 67 of your submissions, and you'll see it goes over to page 68 and recommendation 81 onwards. At page 67, the submissions speak to the need for independent review or investigation of Aboriginal deaths in custody. Can you speak to that particular response?

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NERITA WAIGHT: I think I have made this point before - and I'm happy to make it again - Aboriginal deaths in custody and police contact deaths inflict harm and trauma upon our communities. When people who are involved in that death are then investigating it, it is even harder for those families to trust the process, to engage, to feel like there will be true accountability and true justice.

15

It is also particularly harmful because often enough our communities have had a history of really poor interaction and poor experiences with police and corrective environments, so they are feeling as though with that history and with their involvement in the death that there is an honest opportunity for truth to be told. It's rather limited. There's a lack of independence when police investigate deaths in custody or police contact. The nice way is deficient investigations, including a failure to preserve critical evidence, poor exercise of discretion regarding the investigation and an alarming rate of rigour.

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That obviously impacts the coronial process, but it also affects avenues for civil and criminal liability and obviously limits that ability for truth and accountability as well. For us, racism, unconscious bias, and lack of culture competence within VicPol mean that families are not always treated with respect and dignity. Like I said, many Aboriginal people have distrust in police and whilst previous inquiries recommended that the investigating Coroner be given authority to direct the police investigation, there is actually not enough to meet those requirements and whilst we celebrate the incredible work of the Koori Engagement Unit and the adoption of the Aboriginal death in Custody Practice Note, which have improved some of the experiences, and some of the issues, it just doesn't go far enough to ensure that independence and that ability to trust that there can be truth and accountability, and Sarah can expand on that further, if you'd like.

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MR McAVOY: I know that you had covered some of that earlier and I thank you for that. If there is anything that you can add, Ms Schwartz?

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SARAH SCHWARTZ: I would just - I think Nerita's covered it very well. I would just add that, within the coronial process, you know, we are talking about families who are experiencing extreme grief, the loss of a loved one, and when those families have to fight for fair investigations, to fight for evidence to be obtained, to fight to be provided with evidence that hasn't been provided to them maybe for months, or years, that can really exacerbate their grief and trauma.

45

The Koori Engagement Unit does an amazing job working with families but the fact that we don't have an independent investigation in coronial proceedings, it's not - it exacerbates the grief and trauma of families and leads to distrust of the system and, you know, we have situations where families, in many cases, are having to conduct their own investigations into

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their loved ones passing in custody, firstly, because they are often not provided with any information for months. After their loved one has died, they are left to speak to other people in prison with their loved one, other people in the community who have details.

5 The Department is sitting on swathes of information that's not provided early to families and the fact that there is no timeframe set also leads families to have to conduct their own investigations. That process, in and of itself, further exacerbates trauma and grief where I know in other jurisdictions families are provided with information at an early stage, sometimes a week after someone has died. I think that there could be provisions like that, but  
10 also fundamentally, it is police investigating police that's leading to a huge amount of distrust.

MR McAVOY: Given that it's police investigating police, families might already be suspicious and where there is then extended delay in delivery of information, that only adds  
15 to that suspicion and their grief and trauma?

SARAH SCHWARTZ: Yes.

NERITA WAIGHT: It feels like that death goes unacknowledged, it feels like that death  
20 doesn't have an impact and it feels as though for community, every time a loved one comes into custody, you are preparing for that bad outcome because the same systems and issues repeat themselves over and over again.

MR McAVOY: A related issue I might seek your view on is whether a death in custody of  
25 an Aboriginal person has a much broader effect within the community and the Victorian Aboriginal community than, say, a non-Indigenous person's death in custody.

NERITA WAIGHT: Yes. It's something that - you know, it affects families whenever a  
30 loved one goes into custody. Our CNS officers will often receive calls from families distraught and concerned and wanting welfare checks and wanting us to try and intervene with a prison to find out what's going on because they are so fearful that their loved one will become Veronica Nelson, [Redacted] Calgaret, Josh Kerr, and then, you know, there is the other effect of, you know, looking at - sorry.

35 MR McAVOY: Ms Waight, we have been going for over two hours. I have about 10 or 15 minutes left in terms of the questions I need to ask. There are two more topics. Would you like a five-minute break?

40 NERITA WAIGHT: No, it's okay. We can proceed. I think it's just - you know, it's a topic that hurts your spirit and it's something for us that is an everyday reality and we had to set up a unit, which is ridiculous that we have to create specific units to deal with this issue because it is so prevalent. You know, I see this Commission - sorry, I have been talking about justice issues all week and I think it feels all very overwhelming. I see this Commission as an  
45 opportunity not only to transform the justice system but, you know, to honour our communities, to honour our people, and really make sure those ones that have lost their lives, that they get a chance to go home.

MR McAVOY: Thank you. I might ask a question now about those parts of the present  
50 system that require health responses as opposed to criminal justice responses.



NERITA WAIGHT: Yes, that would be great.

MR McAVOY: One of those areas which you speak to in your submissions is reforms to the public drunkenness.

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NERITA WAIGHT: A long-awaited reform. Given, this was a reform that was put forward in RCIADIC, again, which, I think, is older than me. It wasn't implemented in Victoria. We then had the death of Aunty Tanya Day who was arrested on a train for sleeping really and, as a result of that inquest and the Coroner's early recommendations that the public intoxication laws be revoked, the Victorian Government committed to do so.

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It's important to note that they missed their deadline and they had to seek an extension, and that reform has again been complicated by issues relating to structural racism, but also the roles of the law and order narrative, the police union's involvement, and also that age-old issue of resources.

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MR McAVOY: It is the case that the public drunkenness reforms are really minor reforms in the scheme of things that shouldn't attract this level of opposition?

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NERITA WAIGHT: No, not at all.

MR McAVOY: You set out some reasons just now as to why that hasn't happened but it speaks volumes as to the difficulty in terms of reform that runs against the law and order narrative; is that correct?

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NERITA WAIGHT: Yes. It's an inability to see what are health issues as health issues and instead implement a justice response because that's our default to ensuring community safety. It is really frustrating, particularly in this space, because these reforms are well overdue, and there has been much work about it, but often the narrative is boiled down to, well, you know, drunk people are problems because they are going to act aggressively, they are going to hurt people. There is the assumption that if you are intoxicated you will do harm.

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It is frustrating and, often enough, that is levied at the Aboriginal community in particular and, you know, even in resourcing the trials, it was really - there was all this money committed to mainstream trials and getting them set up, but we have to fight hard, and really hard, to get resources for a standalone Aboriginal response. But yet our services, particularly our ACCHOs, had already been delivering these services in the past, that have been cut off in terms of sobering centres, in terms of what we call Koori night patrols. Again, we were just a tick the box, an afterthought.

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You know, Victoria Police have been on notice that this is a reform that is going in place but in regional communities, like Mildura, you're seeing 100 per cent up take of people being charged with public drunkenness in the last year. I mean, it's horrifying.

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MR McAVOY: Those figures would indicate a disconnect between policing practices in Mildura and the current sentiment in regards to dealing with drunkenness as a health issue?

NERITA WAIGHT: Correct. It underlies our concern that, unless there is proper implementation and oversight of police, what you will see is when they don't have the power

to arrest an Aboriginal person for being publicly intoxicated, they will use other powers to arrest and detain, and that Aboriginal person will end up in a very vulnerable position.

5 MR McAVOY: You also mentioned in your submissions the decriminalisation of drug possession for personal use and you are aware of the recommendations coming from the Ice Inquiry in New South Wales regarding a health response to personal drug use and addiction.

10 NERITA WAIGHT: Yes. Certainly some of that early work helped inform our policy paper entitled, *'Harm Reduction Not Harm Maximisation: An Alternative Approach to Drug Possession.'*

MR McAVOY: And you also speak to health-based responses to mental health and disability?

15 NERITA WAIGHT: Yes.

MR McAVOY: It's another area in which health response is required rather than a criminal law response?

20 NERITA WAIGHT: Yes. And at the moment, those justice responses in those circumstances can have a really disastrous impact. I wonder if we would have a quick moment just to take you through an example, particularly in the mental health space?

MR McAVOY: I'm in the Commissioner's hands. I'm comfortable with a further example.

25 NERITA WAIGHT: Thank you, I appreciate it.

30 KIN LEONG: So a young Aboriginal man, early 30s, no prior interaction with police, no criminal crimes whatsoever, behaving erratically in a park. Police are called. They speak to this young man. They search him and it quickly escalates into an arrest because they find a small amount of drugs on him. The police can see that it's small and personal use. He's posing no threat to the community. This is also conceded by police. The behaviour's non-threatening. He's arrested, taken to the police station, interviewed and released on bail.

35 A couple of weeks later, a similar situation. This time the young man's on the street, again, having what the police concede to be obviously a mental health crisis. Again, they search the young man. Again, they find a small amount of personal use drugs. He's arrested, taken to the police station, interviewed, released on bail again. This happened pre-bail, the bail reforms.

40 Had this happened now and he'd been picked up a third time he would then find himself with a presumption against his bail and in court he'd need to demonstrate exceptional circumstances to be granted bail. The biggest problem of course is now his mental health issues and drug issues are now being dealt with in the criminal justice system. When it is finally resolved in the court system, the only people that have any real input into this young man's fate is a lawyer, a police prosecutor and a magistrate, an ex-lawyer. At no point at the  
45 table is a health professional engaged, is a health professional's opinion sought. One, because, of course, we wouldn't get funding for a medical report for such low-level offending and it is a matter obviously this young man wants dealt with very quickly. He doesn't want to spend any more time in court than he has to. Now he's entangled in the criminal justice  
50 system.

Otherwise, to all other appearances, a member of society, you know, a fine, functioning member of the community, that actually just required help with a mental health issue. That's one very clear example of police intervention, really being a detriment to this young man's life. Now he has a court outcome, among other things. It is problematic for him, along with other systemic racism that happens, him just gaining employment, now loaded up with a criminal record. It's a significant problem. The contact with police was just by result of him having a mental health crisis.

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NERITA WAIGHT: I think the earlier case example where we went through, M, also talked to why police shouldn't be involved in mental health responses, and certainly it is so widespread. It was really tragic to hear a few months back at a forum a mother raise concern about the way her daughter who was fleeing sexual assault and experiencing a mental health episode associated with that, was tasered and then suffered a head injury and then continued to be tasered even though she was unconscious. It instituted a fear of engaging with police and ultimately meant that she didn't pursue the wrongs committed against her. So it plays out in all different ways. There are such high rates of mental health and disability amongst our communities.

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You know, I think the last estimates were that imprisoned community members are facing rates of 85 per cent in terms of mental health and disability. A lot of the time our children who come to our attention in the criminal field will have diagnosed mental health conditions associated with their removal as a child, resulting in inconsistency in being connected to culture, kin and community, also just really harsh residential care environments.

MR McAVOY: Thank you. Did I hear the figure correct, did you say up to 35 per cent?

NERITA WAIGHT: No, I believe the last report was around 85 per cent.

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MR McAVOY: 85 per cent?

NERITA WAIGHT: Yes.

MR McAVOY: Of people in custody --

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NERITA WAIGHT: Aboriginal people in custody, yes, but I can't for certain say that. I don't know if it was 85 or 87.

COMMISSIONER BELL: I believe that to be well understood and accepted.

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NERITA WAIGHT: The sad thing is it could even be higher, because there isn't appropriate screening for disability and mental health within these environments, particularly when we are looking at how often Aboriginal people who won't serve custodial sentences cycle through the remand cycle, those issues are never going to be picked up for them, so they weren't counted in those statistics. When we certainly did an intake with them, those issues they identified themselves as requiring support, but when you don't have a roof over your head, where you don't have any stability, and when you are constantly being over-policed and criminalised, when do you have time to get the help for those substantive issues?

COMMISSIONER BELL: It is also the case that a significant proportion of them have cognitive disabilities, not amounting to mental illness, as such?

NERITA WAIGHT: Yes.

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COMMISSIONER BELL: But a cognitive impairment one way or the other.

NERITA WAIGHT: Yes. There is even not appropriate supports in place for those. Even when they are trying to undertake programs in order to obtain parole, where they are sentenced, or even if they are just trying to do programs for themselves, there aren't programs that are tailored to those with cognitive disability, or any form of disability. How can they adequately address their risk or be seen to be engaging in supports, if those supports are not suitable for them? Sorry, I think I have taken us somewhere else.

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MR McAVOY: I'm very happy to be taken in that direction. One of the additional matters that you have addressed in your submissions is the need for some reform in respect of parole matters. In particular, on page 63, recommendation 71, one of the recommendations is recommendation 71(f), that youth and adult parole board's exemptions from the operation of the Victoria Charter on Human Rights and Responsibilities should be removed.

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NERITA WAIGHT: Yes.

MR McAVOY: There are a number of reforms that you are recommending with respect to the Parole Boards. Is it the case that there might be application of the Charter of Human Rights in that parole setting for decisions that are made?

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NERITA WAIGHT: Sorry, are you asking --

COMMISSIONER BELL: I didn't get that either. Hypothetically it could be so?

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MR McAVOY: Sorry, if the exemptions for parole are removed from the Charter, would there be circumstances in which VALS could see applications being made or complaints being made under the Charter?

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COMMISSIONER BELL: It would be a public authority under the Charter. It would be applicable, according to its terms. The exemption takes it out of that range.

MR McAVOY: Yes.

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COMMISSIONER BELL: It would be automatic. It would be a public authority and the consequences under the Charter would flow, I would expect.

NERITA WAIGHT: Yes, I agree with your assessment.

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MR McAVOY: I accept that point, Commissioner Bell. The point is are there circumstances which would otherwise then be breaches of the Charter? I see Ms Schwartz nodding her head.

SARAH SCHWARTZ: Yes. I'm just nodding my head because I think that, you know, we are obviously not appearing before the Parole Board because we can't because there is no procedural fairness, or natural justice, so I think as a first step, there would be an automatic

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breach, and if people aren't provided with legal representation, or procedural fairness, which means that even if we are representing someone, which we do occasionally, for example, kids who are transferred by the youth parole board to the adult prison system, or by the adult parole board aren't transferred back to the youth justice system, we are not given access to any documents or anything, so, you know, as a very first step, yes.

COMMISSIONER BELL: I think, Counsel, your question really is are there human rights in the Charter which the Parole Board would have to have regard?

10 MR McAVOY: That's another way of putting it, yes, Commissioner Bell. Thank you.

COMMISSIONER BELL: Can you answer that question maybe? Are there human rights in the Charter to which the Parole Board would have to have regard?

15 NERITA WAIGHT: Yes.

MR McAVOY: I note the other recommendations with respect to the amendments to the *Corrections Act*, the *CYFA* and the *Youth Justice Act* which are contained in recommendation 71. I won't take you to each of those now. They are in the submissions. I will take you to one other issue. It is recommended that there be an Aboriginal Social Justice Commissioner appointed to oversight Aboriginal justice issues?

NERITA WAIGHT: Yes.

25 MR McAVOY: Can you just speak to that recommendation?

NERITA WAIGHT: Sure. So this recommendation is actually originally a recommendation from the Aboriginal Justice Caucus from the Aboriginal Justice Agreement, and this recommendation arises from a long-held frustration that there has been no oversight or implementation of the number of inquiries into Aboriginal people, obviously including RCIADIC, but also when there is a death in custody, that there is no capacity to participate in immediate reviews done by Justice Health and what was then JARO, but I believe is now iterating into something else. They would also obviously provide advocacy and advice, but also that role that we talked about earlier around Aboriginal impact statements.

35 MR McAVOY: There is one further area I wish to touch on, and that is in relation to sentencing, and in particular the use of Aboriginal Community Justice Reports.

NERITA WAIGHT: Yes.

40 MR McAVOY: Could you just explain what community - Aboriginal Community Justice Reports are for the Commissioners?

NERITA WAIGHT: Yes. Sorry, it's one of my favourite programs. So we currently run a pilot called Aboriginal Community Justice Reports, and that report operates from a strength-based perspective and is supposed to inform sentencing. At the moment, it's piloted in the County Court of Victoria in La Trobe in Melbourne across both mainstream and Koori Court. The court has had really positive feedback. They have engaged in continual training and there is a desire to rapidly expand it but, at the moment, it is literally self-funded. So that's just not possible.

5 It has had some really good outcomes, not only just in terms of having the psychiatrist input as well as obviously the cultural input, but really allowing somebody to tell a story not just about themselves but about their family, and really that intergenerational trauma and impact and really look for ways that they think cannot solve these issues, but help them along their way to healing, and also how they can engage in restorative practice, how do they engage in righting their wrongs. We have had positive reports from participants, we have never had anybody withdraw as yet.

10 There has been some favourable commentary in Supreme Court judgments. So it's wonderful and it's something that should be expanded further, and was based on Gladue reporting from Canada, which is now widespread and has evidence of being really --

COMMISSIONER WALTER: Did VALS initiate this program?

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NERITA WAIGHT: It was developed and initiated over a partnership with our Canadian ALS counterpart. So we engaged in a number of study swaps. So they went over there, we did little swaps, to see how it could operate. We then developed the project. We went through an ARC bid process. It took a few tries but we got there and that has allowed the evaluation to continue, which is currently being done by Thalia Anthony at UTS.

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MR McAVOY: Are those reports prepared by VALS of its own volition or are they court-ordered reports?

25 NERITA WAIGHT: The individual is the one who has to request them. They can do that through their lawyer representative. The representative does not have to be from VALS, it can be VLA, a private law firm, CLC, wherever, we're not fussed, and we work with that client, and it's not just one meeting, it's a series of meetings and yarns just noting there is a lot of - a lot of trauma and, I suppose, it is quite difficult for them to engage in such a thorough process. We then - they then review that report with their lawyer, and then it's submitted to the court. At the moment, it's mostly used in the Koori Court setting.

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MR McAVOY: And the funding for that program?

35 NERITA WAIGHT: So the ARC funding principally supports the UTS evaluation function, which is really important then to developing a further bid for funding, and then there is a little funding to support the development of those reports, which was supposed to be just 12 reports. We have certainly surpassed that and now it is basically just self-funded.

40 MR McAVOY: But it is a matter which the reports are reports that have been well received by the courts?

NERITA WAIGHT: Yes. The reports are also a recommendation of phase 4 of the Aboriginal Justice Agreement.

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MR McAVOY: VALS would say, I suspect, it's a matter that ought to be funded to deliver a more widespread fashion?

NERITA WAIGHT: Yes. Certainly across the State and also across the Magistrates' Court, just noting that we are looking at a breakdown of matters across both courts. It's important we have that magistrate coverage given a lot of our matters are there.

5 MR McAVOY: Thank you very much. I was glad we could end on a high point. It's been a long trip this afternoon. Thank you for staying with us. They are the questions I have in-chief, Commissioners.

10 COMMISSIONER WALTER: I have asked my questions as we have gone along. Thank you.

COMMISSIONER BELL: I just have one topic to cover and I will try to keep it brief. It relates to the question of public confidence in the current system during investigating police complaints.

15 NERITA WAIGHT: Yes.

COMMISSIONER BELL: Particularly confidence by VALS in the current system or lacking that confidence. You called for the establishment of a fully independent system for police. 20 Can you tell the Commission whether you have confidence in the present system or not?

NERITA WAIGHT: No confidence whatsoever.

25 COMMISSIONER BELL: Could you briefly explain why it is you lack that confidence?

NERITA WAIGHT: Sure. So a lot of it - we have been calling for independent police oversight for quite some time and it's been a long-standing piece of advocacy work for us and through that we have been able to look at models like in Northern Ireland, which have been incredibly impactful in increasing community confidence in police, but also ensuring that 30 there is an independent investigation. The reason why we are wanting to implement a similar model here is because, at the moment, Aboriginal people are entirely distrustful of making complaints about police because they just go back to police for investigation.

35 It's a direct conflict of interest. It makes no sense. And, often enough, particularly in regional Victoria, it is even more precarious to make those complaints because often enough you can find the same police station investigating the complaint of which the officer was from.

40 COMMISSIONER BELL: Thank you. Now, I think it was you, Ms Waight, before that drew a connection between the need for independent and effective investigation of police complaints and the operation of the criminal justice system generally. Now, the point was made that the two are connected. Can you explain that connection, please?

NERITA WAIGHT: So just like in --

45 COMMISSIONER BELL: I think the idea was that without an effective and independent investigation system for complaints against police, the whole system is undermined.

50 NERITA WAIGHT: Well, yes, for me, you know, police accountability is part of creating a just justice system. If we can't have an independent police oversight system, how can we ensure that over-policing doesn't occur? How can we ensure the systemic racism is

addressed? All of these key issues for us so that situations like M don't occur where we are talking 90 plus charges for matters that should never have come to their attention. They never should have dealt with. For me that's why.

5 COMMISSIONER BELL: Thank you.

MR McAVOY: Thank you, Commissioners. Commissioners, I tender the submission from the Victorian Aboriginal Legal Service in relation to Child Protection dated November 2022, that's document is 7.6.1, and document 7.6.2, which is the submission of the Victorian  
10 Aboriginal Legal Service in relation to the Criminal Legal System, and I take a moment to draw the Commission's attention to page 73 of that submission, and 74, where it appears that the many, many submissions, letters, policy papers and webinars and podcasts and community fact sheets and petitions prepared by the Victorian Aboriginal Legal Service are set out, and it appears they are hyperlinked, and will form part of the submission.

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I also draw your attention to Annexure B, which is at page 75, which sets out the witnesses that the Yoorrook Justice Commission should invite and compel to give evidence, including the Premier, current and former Attorney-Generals, Minister for Police, current and former  
20 Ministers for Corrections, Minister for Youth Justice, current and former Ministers for Aboriginal Affairs, Minister for Health, Minister for Mental Health, and various officers from Victoria Police, TPAV, IBAC, Corrections Victoria, GO Group, Correct Care Australasia, G45, Correctional Services, St Vincent's Correctional Health Services, Forensicare, DJCS, the Adult Parole Board, Youth Parole Board, the Judiciary, Court Services Victoria, and the Office of the Victorian Ombudsman and the Commissioner for Children and Young People.  
25 That's pages 75 to 76.

I note that the submissions from the Victoria Aboriginal Legal Service include a recommendation that the term of this Commission be extended in order to have time to hear those witnesses.

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NERITA WAIGHT: Yes, please.

CHAIR: Noted. They will be the next exhibits.

35 **<EXHIBIT 2.19 SUBMISSION FROM VICTORIAN ABORIGINAL LEGAL SERVICE IN RELATION TO CHILD PROTECTED DATED 11/2022**

**<EXHIBIT 2.20 SUBMISSION OF THE VICTORIAN ABORIGINAL LEGAL SERVICE IN RELATION TO THE CRIMINAL LEGAL SYSTEM**

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CHAIR: Yes. Thank you, Counsel. Thank you very much. That concludes our session for today?

MR McAVOY: It does. We have further witnesses tomorrow.

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CHAIR: We will resume at 10 am in the morning.

**<THE WITNESSES WITHDREW**

50 **<ADJOURNED 4:40 PM**

Yoorrook Justice Commission



