YOORROOK Justice Commission

# TRANSCRIPT OF DAY 8 – WURREK TYERRANG

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

**THURSDAY, 15 DECEMBER 2022 AT 10.01 AM (AEST)**

**DAY 8**

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CHAIR: Good morning. Today we continue the second week of our two-week hearings on the priority areas of child protection and the criminal justice system. There is an overlap between these areas, as you will be describing to us as well, Vickie, and before we commence, I want to ask Commissioner Hunter to do the Welcome to Country and Acknowledgement of Country.

COMMISSIONER HUNTER: Thank you, Chair. I would like to acknowledge and welcome everyone here to the lands of the Wurundjeri people, my ancestral lands, pay our respects to Elders, past and present, and acknowledge those that have come before us, so we are able to give voice here today. Wominjeka.

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

MS FITZGERALD: Thank you, Chair. Counsel Assisting today, I'm being led by my leader, Mr McAvoy, Counsel Assisting. The State is represented by Gemma Cafarella today. If the Commission pleases, I will now call today's first witness, Aunty Vickie Roach, who is appearing remotely.

CHAIR: Thank you, Counsel, and welcome.

**<AUNTY VICKIE ROACH, AFFIRMED**

MS FITZGERALD: Will you introduce yourself to the Commissioners, Aunty?

AUNTY VICKIE ROACH: My name is Vickie Lee Roach. I'm a proud Yuin woman. I'm currently living on Yuin land although I was brought up in the western suburbs of Sydney with foster parents - with white foster parents. I ran away at a very young age and lived in many places all over the country, but this is my country, Yuin country, down here on the South Coast of New South Wales.

MS FITZGERALD: Thanks, Aunty. Today I wanted to ask you about the past and about the future because your insights into how things should be done in the future are very much informed by your past, and that is your experience of being separated from your mum at a very young age, of being a ward of the State, a heroin addiction, and the crimes you committed to service that addiction, of being a young person in prison and withdrawing from drugs in prison, of having your own child removed and of fighting to get him back. For the last week and a half we have heard evidence from Aboriginal and other organisations about child protection and the criminal justice system and we are absolutely privileged to have you give evidence of your first-hand experience of those systems today. If we can start at the very beginning: you're a member of the Stolen Generations, what happened when you were very young?

AUNTY VICKIE ROACH: When I was very young, my mother had myself and a younger half sibling, and she was pregnant again and she had to go into an unmarried mother's home, even though she was married by this time, and she had no family, of course, because she had been taken herself as a baby. So she really had nobody to go to. So she went to her only - the only guardian she'd ever known which was the Child Welfare Department, as it was known in those days, and they - because she couldn't take us to the home where she was to give birth at, so she had to leave us somewhere and there was nowhere for her to go. So she went to the

Welfare Department. They separated me from my brother and the receptionist of that office took me home, like a stray puppy, but she didn't want the boy - she didn't want the boy puppy.

MS FITZGERALD: From that point you were made a ward of the State; is that what happened?

AUNTY VICKIE ROACH: Yes.

MS FITZGERALD: And you've said that during that period your mum did maintain contact with you but she was told to pretend not to be your mum when she visited you?

AUNTY VICKIE ROACH: Yes. Yes. It was only - the arrangement was only supposed to be for two weeks while she gave birth, but there were complications with the birth and the baby. My little sister was sickly when she was born. She had diphtheria or she developed diphtheria soon after she was born while she was still in hospital. So that, I imagine, would have all been very difficult and then my foster parents went to court to get custody of me and --

MS FITZGERALD: If we can - sorry, Aunty.

AUNTY VICKIE ROACH: Well, they actually charged me on that day, when I was two years old, with being neglected by way of destitution, and exposed to danger, I think was the other one, or neglect, and that was neglect by way of destitution as a device to remove me from my mother.

MS FITZGERALD: So once you got a bit older, you realised you had a criminal record from, I think it was two years old, which was the mechanism by which you were removed from your mother?

AUNTY VICKIE ROACH: Yes. Yes.

MS FITZGERALD: You've given some evidence in your outline of evidence about your later contact with the law and I think you refer in your evidence to this trifecta of charges, which is being uncontrollable, being exposed to moral danger, there were these devices that were used in relation to Aboriginal young people. Can you speak to your teenage years and your interaction with the criminal justice system?

AUNTY VICKIE ROACH: Well, in my early teenage years it was mostly running away, and that would result in the trifecta: neglect, uncontrollable and exposed to moral danger. But nobody would ever ask why I was running away or any of the kids in the same homes I was being sent to. You know, none of them were being asked why they were running away.

MS FITZGERALD: Aunty, why were you running away?

AUNTY VICKIE ROACH: Because, according to my foster mother, I was trying to rise above my station. Yes. So I ran away to Nimbin. I thought that sounded like a good station.

MS FITZGERALD: Talk about your time there, and from your witness statement, it seems as though you started using heroin from a very early age. Will you speak to what you were doing at the time and how that happened?

AUNTY VICKIE ROACH: That happened because of the end of the Vietnam war and a lot of returned soldiers were coming back with very bad habits, on heroin, and would often bring heroin back with them, or have easy contact - easy access to it. So it was - it became quite prevalent. It sort of hadn't crossed my path until then, I say, but it wasn't really that long, and to begin with I wasn't interested because it involved needles, which, you know, as a kid, I was scared of needles but, in the end, it was the suggestion that I was too young to have it. So it made me say, "No, I'm not, I can do that, if you can, I can." So, yes, I started using and it became a great panacea for everything.

MS FITZGERALD: What was it a panacea for at that time?

AUNTY VICKIE ROACH: I pronounced that wrong. I knew I'd do that.

MS FITZGERALD: No. I'm not sure that I know how to say it properly either. Whatever that word is, what was it fixing for you, what was it giving you that was missing at that time?

AUNTY VICKIE ROACH: A kind of ease and numbness which most users will relate to. You can kind of forget about the things that have happened and whatever traumas you've experienced in your life. You don't feel so dreadful any more or for a while, and that's - well, that's a good state to be in. It's self-medication basically.

MS FITZGERALD: Aunty, at the point you start using, you're only 14 years old, what trauma had you experienced by that point?

AUNTY VICKIE ROACH: I'd been in the children's system and then subjected to internal examinations by the doctor at the holding centre for young girls, the Glebe Metropolitan Remand Centre for girls. By that time I'd also been raped as well.

MS FITZGERALD: You talk in your statement about the way in which your heroin use ended up having you involved in crime to support that habit. Can you talk about the connections between addiction and incarceration for you?

AUNTY VICKIE ROACH: Well, incarceration, I neglected to mention the superintendent of one of the homes I was in, who was charged after the Royal Commission into Institutional Responses To Child Abuse. He was charged. I think he's 84, I think. So he's had a lovely long life - but, yes, sorry, I strayed from the question there.

MS FITZGERALD: No, Aunty, I was just going to speak to you about the evidence you've given in your outline about the fact that all of the crimes you committed were really to support that habit and do you have some views about the utility of prisons and I'm interested in the extent to which you feel that it was really your addiction that saw you end up in prison. Can you just speak to what being an addict with an expensive habit required of you at that time as a young person?

AUNTY VICKIE ROACH: Well, as a young person, in particular, because I was unable to access any government services, like, you couldn't get, you know, any youth sort of allowance or anything like that then. So I was basically - while it was fine in Nimbin, and in the hippie communes, to have no money, it was quite different when I got back to Sydney. I

wound up doing sex work in Kings Cross as a very young girl which unfortunately had its advantages.

MS FITZGERALD: And obviously sex workers --

AUNTY VICKIE ROACH: The advantages were for me financially.

MS FITZGERALD: So you ended up doing sex work to pay for your heroin addiction?

AUNTY VICKIE ROACH: Yes. To pay for everything, really. It had to. I had no other source of income. That was it.

MS FITZGERALD: How old were you when you started doing that.

AUNTY VICKIE ROACH: I would have still been about 14.

MS FITZGERALD: How did you --

AUNTY VICKIE ROACH: I even tried to get a job in an ice cream shop up there. I think it was the first 33 Flavours in New South Wales, or something, and they wouldn't hire me because I was too young and would have to do shifts at night-time, you know. Yes. So, yes, there wasn't a lot of choice.

MS FITZGERALD: How did you come in contact with the police and can you speak to the first times you ended up being arrested and the results of your heroin use?

AUNTY VICKIE ROACH: Strangely enough, Kings Cross was - although it was where I was finally arrested and imprisoned from, for the most part, the police, or the detectives mostly, would ignore me because I was too young. I didn't hear them say it, you know, I was too much of a hassle, because I was underage. So they'd basically ignore me. Then when I was 17 they decided not to stop ignoring me.

MS FITZGERALD: Aunty --

AUNTY VICKIE ROACH: Yes. Well, I was actually pulled over and arrested with no evidence, with no drugs on me, just track marks. They saw track marks on my arms and they said to me that if I admitted to using heroin they'd get me help. Well, by that time I thought that sounded like a good idea. So I said yes.

MS FITZGERALD: Did they get help for you?

AUNTY VICKIE ROACH: No. They just threw me in jail and they gave me six months.

MS FITZGERALD: You give some evidence about how you feel that that six-month sentence was affected by the fact that you had a very long criminal record, since two years old, in fact, that that had an effect on how you were treated at that point?

AUNTY VICKIE ROACH: Yes. Yes. Absolutely. 100 per cent. Like, it was highly unusual to sentence somebody under 18 to prison back then.

MS FITZGERALD: I might just pause, I have been given a note. Can I just clear one thing up. Aunty, when we started, did I ask you if you were happy to undertake to provide truthful evidence to the Yoorrook Justice Commission today?

AUNTY VICKIE ROACH: Yes.

MS FITZGERALD: Good. I'm glad. Sorry. Thank you. I assumed you were. When we get to the end I will also ask you to adopt the witness statement which had some adjustments overnight but I will deal with that at the end.

AUNTY VICKIE ROACH: Okay.

MS FITZGERALD: Sorry, Aunty. In your outline, you've given some evidence about the extent to which, at that point, addiction gave you a purpose and a community. At that point, as I understand it, you didn't know that you were an Aboriginal person.

AUNTY VICKIE ROACH: No.

MS FITZGERALD: Can you speak to the role that addiction plays or played at the time in filling a void left by not knowing who you were?

AUNTY VICKIE ROACH: It played a huge part, actually, because the drug community, it becomes a community, there are people you know, you are part of that community, you belong, it's your network for local information. It's your family, basically, good and bad and, yes, I think that was - that was probably a positive thing, and you could also take that anywhere you went, you know, any city in the country, you'd find like-minded people and you had a community, a community of people to which you belonged. And, again, I'm side-tracked away from the whole purpose of that question.

MS FITZGERALD: No, you weren't, in fact.

AUNTY VICKIE ROACH: Good.

MS FITZGERALD: Can I just move to your time in prison. As I understand it, you first went to an adult prison when were you under 18 years of age?

AUNTY VICKIE ROACH: Yes.

MS FITZGERALD: How old were you and why did you end up in an adult prison, do you know?

AUNTY VICKIE ROACH: I was 17, and I think the magistrate was just trying to throw a scare into me, or I thought that at the time, because he remanded me first for two weeks to the prison without bail, and I thought that - and, you know, because you talk to other women, too, and I thought that that was just - they were trying to throw a scare into me to keep me out of jail and, yes, so it was pretty devastating to get sentenced, and come back to the jail.

I'll never forget when I came back and they put me back in the cell, the sound that the door made, you know, although I'd been hearing it for two weeks, you know, once I knew it

was - that was it, you know, I was going to be there for six months - well, in those days it wasn't six months, I ended up doing three or four months because we had remissions back then, but, yes, once I was sentenced, it was - yes, that noise was just like heartbreaking.

MS FITZGERALD: You were in and out of prison for a period of 30 years and currently you have 125 convictions, which, you think, seems a conservative estimate.

AUNTY VICKIE ROACH: Yes.

MS FITZGERALD: You spent numerous periods of time in prison. What is the longest period that you ever spent in prison at one time?

AUNTY VICKIE ROACH: The longest time I've ever spent in prison was the six-year sentence I received in Victoria in DPFC and was released on parole after four years.

MS FITZGERALD: Two of the rationales behind imprisonment are deterrence and rehabilitation. Did any of those prison sentences deter you or rehabilitate you?

AUNTY VICKIE ROACH: Neither. Neither. And I have questioned this point of deterrence in the sentencing formula before, and it simply does not exist. A magistrate told me once that it was not so much to deter me from offending again as to deter the public from offending in the way I had. I thought, well, that's just ridiculous, like I have been pinched for shoplifting or something like that, and who's going to hear about my paltry $50 fine for shoplifting, you know, that's not deterring anybody. It certainly wasn't deterring me because whatever I was doing I needed to do because I had to provide for myself.

MS FITZGERALD: We have heard some evidence over the last few days about the difficulties faced by people who are leaving prison after having been in prison for a long stretch and the extent to which people can really become institutionalised by that. Can you speak to how it feels in those first days, weeks, months coming out of prison after being there for four years?

AUNTY VICKIE ROACH: Look, it's kind of - it's kind of relative. You can be institutionalised in an even much shorter length of time. It takes very little to institutionalise someone. Of course, our jailers are trained in how to do that, and the institutions themselves are built to do that. They are designed to do that. I don't know what else to say, really. Yes.

MS FITZGERALD: Is your evidence it wasn't just the four-year stretch after which you felt institutionalised --

AUNTY VICKIE ROACH: I was already institutionalised from the kids homes and - yes, well, from the kids homes, basically.

MS FITZGERALD: What does that mean for your life skills, for your ability to operate in the outside world?

AUNTY VICKIE ROACH: Well, you have no life skills. You have skills in conformity or deviousness to get around, having to obey the rules, you know, or avoid stupid rules and stuff like that. No, there's nothing. Nothing rehabilitative or anything in being institutionalised. If anything, being institutionalised, it deskills people and, in a way, it lobotomises them into

compliance and conformity, and you still feel institutionalised, even though you're being the biggest rebel there is. You still feel institutionalised.

MS FITZGERALD: I wanted to move now to speak a bit about the future and about how you would like to see things change but, in doing so, I wanted so reflect on the fact that you are - you personally have managed to be, despite that institutionalisation, outspoken. The fact that you are an erudite, intelligent, outspoken woman who has been imprisoned with addictions, and are still able to speak about those things is unusual. It's fair to say that most women with your history are crushed by it. Given the voice that you have, you have some very strong views about the usefulness of prisons and I was hoping that you would - - -

AUNTY VICKIE ROACH: Yes.

MS FITZGERALD: If you would explain your view of prisons, whether they are useful and what alternatives you think the State should adopt instead of prisons.

AUNTY VICKIE ROACH: As we know - and there have been so many inquiries and Royal Commissions, etcetera, ongoing with Don Dale for juvies, or ongoing for a lot of places - but how many success stories do you hear out of prison? You know, like, okay, somebody did good and, you know, got a job or blah, blah, blah, but was anything achieved in stopping recidivism, for example. The period of time is two years. If you haven't returned to jail in two years, you're a success story. Now, that's bollocks.

If you return to prison at all, you would have to say prison was not a success. There are no programs that are rehabilitative in prison. They are all tendered for and, of course, the cheapest tender or the one that Department of Justice favours at the time is given that tender with no proper evaluation as to how well these programs work and, particularly, in the women's system, many of the programs are simply transposed from the men's prison into the women's prison with no adaptation or adjustment for the fact that we are women.

For example, there was a violence program which was ideally for men who had anger management, for men who were bashing their wives. Yet that's the anger management program they gave us, they gave women, but it ticked the box. I think that's what too much of the - all of them, basically, except for community-led Aboriginal programs that come into prison from time to time, all of the other services that are provided in prison are just box-ticking and have no serious evaluations done on them to, you know, for them to earn their continued funding or whatever. It's just the lowest price.

MS FITZGERALD: Aunty, you've given some evidence about the particular impacts of certain practices within prisons on women because women prisoners have often had a life trajectory that is different from male prisoners. In that context --

AUNTY VICKIE ROACH: Yes.

MS FITZGERALD: -- could you speak to - you gave some evidence in your outline of evidence about the impact of the process of strip searching that you experienced personally. Can you explain the process of strip searching and its impact on you and your understanding of its impact on a lot of women prisoners.

AUNTY VICKIE ROACH: When you realise that, like, around 90 per cent of women in prison have been abused, you know, physically, sexually throughout their lives, as a child or as an adult, strip searching is a particularly demeaning, terrifying, horrifying experience to have to endure. The fact is that it's not necessary. You know, it's not necessary to demean women in this way.

It causes women to avoid family visits, things like that, because they are being strip searched. It's like being raped. It's like being raped. You have got no choice. You know, you can't say, "No, I don't want to take my clothes off." You know, it's - you understand that it's not your body any more, it's theirs. Like, if I said no during a strip search, they'd just grab me and throw me down and tear my clothes off.

COMMISSIONER BELL: Counsel, could Aunty please explain the association between family visitation and strip searching?

MS FITZGERALD: Yes. Thank you, Commissioner. What is the link between those? Why would one have an influence on whether you wanted to have a family visit or not?

AUNTY VICKIE ROACH: For getting strip-searched, you would have to be strip-searched before and after the visit and, for some women, that was so intimidating and traumatic, that they would forego the visit rather than endure the strip search.

MS FITZGERALD: Is that a standard procedure that if you are having contact with someone from the outside world, you would need to be strip-searched before or after?

AUNTY VICKIE ROACH: Before and after, yes.

MS FITZGERALD: I also wanted to ask you about some evidence you have given in your outline of evidence about how culturally unsafe prisons are for women. If prisons are not going to be abolished or in the meantime, while we are working towards that, what do you think needs to be done to make prisons less culturally unsafe for Aboriginal women?

AUNTY VICKIE ROACH: Well, health is a good place to start. They are not served - no woman is served by the health systems currently installed in prisons, private companies again, private subcontractors from outside. So nobody's served by them. Aboriginal women can access the Aboriginal Management Service, but are not told that they are able to. There are basically no culturally aware or culturally competent medical practitioners within the jail. There used to be one that would come in once a month or something, but she has stopped coming as well. It seems like when a program is working, they stop it.

MS FITZGERALD: I want to touch briefly on some evidence you gave about comments made to you during the sentencing process, about your Aboriginality.

AUNTY VICKIE ROACH: Yes.

MS FITZGERALD: Can you discuss what was said to you and speak generally about this very complex, or about the identity issues that exist for the Stolen Generation and the way in which the judiciary, in your experience the judiciary, has dealt with considerations arising out of your Aboriginality?

AUNTY VICKIE ROACH: Well, because I'm - well, white passing, as you can see, I think this magistrate might have thought that I could - I should have taken advantage of that. He said that, in my case, the Justice Eames decision did not apply to me and that I had in fact reinvented myself.

MS FITZGERALD: What's this decision that the judge was talking about, this decision by Justice Eames?

AUNTY VICKIE ROACH: That prison should be a last resort for Aboriginal people, given our history of colonisation and removals, etcetera, throughout - well, throughout our history.

MS FITZGERALD: So there are two things in what you've said. The first is that the court, in your case, didn't think those principles should apply because of how you looked and then, secondly, accused you of adopting a new identity almost to take advantage of a sentencing principle; is that what your evidence is?

AUNTY VICKIE ROACH: Yes. Well, that's what I got from it. That's what I got from it. You may speak to the judge and he'll have been thinking something else entirely but that's what I took from it, as I think most people would, most reasonable people.

MS FITZGERALD: You've also given some other evidence in your witness statement about other aspects of the prison system that you consider are inhumane. One of those examples involves a car accident that you were in and, as I understand it, you'd been in a car accident and then were taken straight to Dame Phyllis Frost. Can you explain what happened and the way in which you were treated in that process?

AUNTY VICKIE ROACH: Well, actually, I didn't go straight to Dame Phyllis. I was in hospital for some time. For a period of some days I was in an induced coma which I didn't find out about until I went to court. When they did take me from the hospital, I could still barely walk, I had fractured ribs, a cracked sternum, fractured skull, fractured wrist, internal injuries and they put me in the leather escort belt, which is usually used for violent prisoners, and it's quite thick. It's like a wrestler's belt and you are handcuffed to the front of it. So I have got a fractured wrist and I'm handcuffed to that and I have got this huge heavy leather belt laying over the top of all these broken ribs and internal injuries. They must have been managing the pain really well in the hospital because once I got to the jail, and the pain started coming on, it was - it was just like nothing else, you know. There was no way I could get any relief.

MS FITZGERALD: As I imagine, a known drug user, what's your experience with trying to get pain relief in prisons?

AUNTY VICKIE ROACH: Zero. Zero. Like, you know, you have to be really, really good to get painkillers off them. The best you can expect is Panadol. Yes. If you're lucky you might get Panadol forte but you won't get that for long.

MS FITZGERALD: That was actually the last issue I wanted to discuss with you was withdrawing from heroin in prison, and any drugs of addiction but, as I understand it, in your case, you were often - well, you have been through the process of withdrawing from heroin, coming into the prison.

AUNTY VICKIE ROACH: Yes.

MS FITZGERALD: What treatment or assistance did you get on those occasions when you were withdrawing when you entered the prison system?

AUNTY VICKIE ROACH: Depending on which prison and when, the last time, zero. You get - you got something for three days and a few Valium, but the Valium, like, would decrease every day until the third day, or the fourth day, you got nothing. So it was all pretty quick and did not do much to alleviate the pains of withdrawals for most women.

MS FITZGERALD: Is it fair to say it was a forced withdrawal and a forced rapid withdrawal?

AUNTY VICKIE ROACH: Yes. Yes.

MS FITZGERALD: What do you consider would be a humane way to treat prisoners with addiction when they are imprisoned?

AUNTY VICKIE ROACH: To be safely and humanely able to withdraw from drugs or just maintain them. Like, if we are going to have a world where all drugs are decriminalised, or legalised, we have to start looking at it as something, not where everybody has to be clean, but that we have to understand that people are all different, as in my case and the case of pretty much every single woman in jail, drugs are self-medication. It's the way we do it, lacking the resources to be able to do it through doctors or services available in the community.

MS FITZGERALD: Chair, those were all of my questions. Do the Commissioners have any matters arising?

COMMISSIONER HUNTER: Just the last one. Aunty Vickie, I'm just wondering, your last time was Dame Phyllis Frost; is that correct?

AUNTY VICKIE ROACH: Yes. Yes.

COMMISSIONER HUNTER: Where that rapid withdrawal happened?

AUNTY VICKIE ROACH: Yes.

COMMISSIONER HUNTER: Thank you. I just wanted to clarify that. Thank you, Aunty.

COMMISSIONER BELL: Aunty, I wanted to ask you about the support that you got to develop and express your own Aboriginal identity and you mention this in positive terms as something that was meaningful to you. I wonder if you could just expand or share with us the significance of being able to do that when in custody and do have anything to say to us about the significance of Aboriginal people in custody being able to express their own culture?

AUNTY VICKIE ROACH: It's extremely important for Aboriginal people to be able to express culture in jail and, quite often, we are not - well, more often than not, we are not given the opportunity to do so. Me - it happens for so many women. I have seen it so much.

A lot of Aboriginal women seem to find their culture in jail through the other women, and through some of the programs that - some of the good programs that go through the jails.

It's something I can remember thinking still was, you know, why do we have to go to jail to learn our culture? You know, like, wouldn't this all be fixed if we still had our culture and, you know, didn't have to come to jail to learn it? So I think while we still have prisons operating, Aboriginal culture must be a huge consideration in the space, despite the fact that there are a few of us in comparison to the rest of the prison community. As we go through this process, of truth, truth-telling, we need to be able to express that in many different ways, and prisons being non-transparent, I think, we have to make a huge effort for that to be possible.

COMMISSIONER BELL: Thank you, Aunty.

CHAIR: I don't have a question for you but I would like to thank you for the dignity with which you have presented.

AUNTY VICKIE ROACH: Thank you.

CHAIR: Thank you for sharing something so painful. What would you like to have as a response to your evidence from people that are hearing your story today?

AUNTY VICKIE ROACH: I would love more people to get behind the prison abolition movement. I think I have shown in my evidence, or I have tried to, that there is no good achieved in prisons. When it's portrayed that way, it's a portrayal, it's not real, it's the person's own doing that's got them, you know, into whatever success they have achieved. They might have been in prison when they did it but the achievement is theirs.

I would just like to see more healing places. I would like to see Elders being able to pass knowledge on to our younger people and we have to heal. We have to heal. We are going through this huge process at the moment with the rest of the country deciding on our future. We need to heal ourselves and be able to heal the generations who are still being damaged by this current system that society in general seems loath to dismantle.

CHAIR: Thank you. Thank you. Your story is compelling, I hope, in an educational way, and it is inspirational. Thank you.

AUNTY VICKIE ROACH: Thank you, Aunty.

MS FITZGERALD: Thanks, Aunty. I will now tender into evidence the outline of evidence of Aunty Vickie Roach. There are some small additions to paragraphs 1 to 3, since the version that was circulated this morning, that have come in from Aunty recently. I will tender that and also the two documents referred to in it, attachments 1 and 2.

CHAIR: Thank you. They'll be entered into the next exhibit numbers. Thank you.

**<EXHIBIT 2.22 AUNTY VICKIE ROACH OUTLINE OF EVIDENCE**

COMMISSIONER BELL: Counsel, this is an open document, if I'm not mistaken?

MS FITZGERALD: It certainly is. Thanks, Aunty. Chair, if that's a convenient time for a 15-minute break?

CHAIR: Yes, please.

**<THE WITNESS WITHDREW**

CHAIR: Thank you. We will recommence at 11.15.

**<ADJOURNED 11:02 AM**

**<RESUMED 11:15 AM**

CHAIR: Counsel, we are ready to go.

MR McAVOY: Thank you, Chair. Chair, I'm appearing as Counsel Assisting the Commission with respect to the next set of witnesses. They are witnesses appearing on behalf of the Victorian Legal Aid, or VLA, and I now call Louise Glanville, Joanna Fletcher, Lawrence Moser and Dan Nicholson. They are present in the hearing room. I will just administer the oaths.

**<LOUISE GLANVILLE, AFFIRMED**

**<DAN NICHOLSON, AFFIRMED**

**<JOANNA FLETCHER, AFFIRMED**

**<LAWRENCE MOSER, AFFIRMED**

MR McAVOY: Louise Glanville, on behalf of the VLA, has agreed to make an opening statement. I invite her to make that statement now.

LOUISE GLANVILLE: Thank you so much. Thank you, Commissioners. On behalf of all my colleagues here and at VLA, I would like to acknowledge the Traditional Owners of the lands on which we are meeting, the Wurundjeri people, and pay my respects to Elders past, present and emerging, and note that their lands have never been ceded. It is a great privilege to appear before you this morning and my colleagues join with me in being very pleased to be here and to be able to talk to you about our evidence from Victoria Legal Aid. I would actually like to introduce you to them, and I will ask each of them to say what their role is in the organisation so you've got a sense of that. Lawrence.

LAWRENCE MOSER: Good morning, Lawrence Moser, Taungurung descendant, and I also pay respect to Country and to Elders, past and present, and I pay my respect to this process here today. Employed with Victoria Legal Aid, as the Associate Director for Aboriginal Services, and have been with the organisation now for a couple of years.

JOANNA FLETCHER: I'm Joanna Fletcher. I'm the Executive Director of Family, Youth and Children's Law which means that child protection sits within my directorate and I hold that responsibility.

DAN NICHOLSON: Good morning. I'm Dan Nicholson. I'm the Executive Director of Criminal Law, responsible for all of Victoria's Legal Aid services across the State.

LOUISE GLANVILLE: I'm the CEO of the organisation. I also hold the role of the Chair of National Legal Aid. National Legal Aid represents the eight Legal Aid Commissions around the country in States and Territories as well. So I hold that role for probably about a three-year period and I'm just at the end of my first year.

I just wanted to talk a little about VLA, if I could. To start with, we're a statutory agency, our independence is perhaps best described as decisions we make about who receives grants of Legal Aid and assistance. That's sort of the core, in my view. We are responsible for providing information, advice and assistance in response to a broad range of legal issues that individuals would raise with us across Victoria. We've got about a thousand staff, and we are based across the State in both offices in Melbourne, suburban, central Melbourne, suburban Melbourne, and out in the regions of Victoria. Thirty of our staff are First Nations people. So that is about three per cent.

We work alongside our partners as part of the legal assistance sector. So very importantly community legal centres, private practitioners and for us, most importantly, for this purpose, in particular, ACCOs, so in relation to VALS, the Victorian Aboriginal Legal Service and Djirra and I know you heard advice from their CEOs and their evidence yesterday and this week in relation to some of that work.

The problems that we encounter, that people raise with us, really cover the whole gamut that you would expect individuals to experience in their lives. So criminal law, child protection, family violence, mental health, debt, social security issues, mental health, NDIS, discrimination. All of those areas we are involved in and have staff that support individuals in that work. Our clients are diverse, and experience high levels of disadvantage and our means test is very mean. So that we have a very low ability to fund the amount of legal need that exists in Victoria and nationally and that's why it's important that we work together as a sector and that we support our partners in this work.

We have a legal help, both a phone line and web chat, which Victorians can seek information and advice from, also assistance with their legal problems, and we deliver specialist legal services as well, at both the Federal and State levels. It is important to sort of, I think, think about the fact that we are not just at the tertiary end, or when people are really in strife, but we also work in the prevention and early intervention space as well and we have a number of non-legal advocacy services, such as our Independent Mental Health Advocacy and our Independent Family Advice and Assistance Service, which are made up of non-legal advocates. So we support the model of legal and non-legal advocates working together and having a person at the centre of our work and working around and with their issues and concerns.

A little bit about our work in more detail: in 2021/22, seven per cent of all VLA clients identified as being Aboriginal or Torres Strait Islander, 8.2 per cent of these received a criminal law service from us, and Dan would be able to talk about more of that detail in terms of whether that was duty lawyering or remand duty lawyering or what type of service that was, and 17 per cent received child protection services from us, which is quite a significant figure.

Importantly, VLA uses the evidence we get from our practice, with the proper consent from people, either de-identified or brought together in a way to really support policy and law reform and strategic advocacy and litigation. We can provide advocacy directly to government Ministers. We often do that in a way which is not public around what we are seeing on the ground but our Act also enables us to draw attention to the Attorney-General of issues that are of concern to us, or things that we think need addressing, and we are particularly keen to also work with other Ministers across government, both at State and Federal levels, to really reflect the reality of the types of legal problems that people experience and how it is often connected to social disadvantage, poverty and these areas.

A good example of the way in which we use our evidence for broader systemic reform, because the Legal Aid fund is quite small, it is contributed to by both State and Federal Governments but it would never meet the amount of needs that existed and the amount is for Government to think about. But, generally, the best example in recent time is Robodebt. So Victoria Legal Aid took the two cases to the Federal Court that resulted in those decisions that indicated that the government was acting unlawfully in terms of the way it was collecting debt. We don't challenge the government's ability to - any government's ability to collect debt appropriately but, in this instance, it was an illegal unlawful way of doing it in terms of their Act.

This really was important because, in that instance, the Commonwealth Government's accountability for acting within its own legislation was compromised dramatically, as you would see from the current Royal Commission into Robodebt, which we have appeared with several of our clients some months ago and also we'll be back before that Royal Commission talking about this matter in February.

We also use evidence to contribute to Royal Commissions and inquiries, such as this, and other examples are the Victorian Mental Health Royal Commission, the Royal Commission into the Management of Police Informants, which was a particularly important one for us, the Parliamentary Inquiry into Victoria's Criminal Justice System and, as I mentioned, most recently, Robodebt. Probably if I was to try and characterise all of that, I would say, from our practice experience in courts every day and every night, in almost every court across Victoria, at Federal and State levels, we see that the criminal justice and child protection systems are failing First Nations communities and perpetuating disadvantage and disempowerment.

So that's why we have provided two submissions to you:  one on the injustices in the criminal justice system and the child protection system. We identify what we think are urgent priorities for reform that need to be acted on reasonably quickly and we also identify some longer-term issues. So I will just briefly touch on those.

The child protection system, we see the need for urgent changes to enhance fairness and support for families to stay together. The needs include re-instating the Children's Court ability to make orders in the best interests of children without time limits on reunification. Secondly, we are very keen and our workers recently went out to Broadmeadows Magistrates' Court and looked at Marram-Ngala Ganbu Koori Family Hearing Day and we are keen to see that specialist Children's Court State-wide so that the lessons that have been learnt there, and the approaches to justice that are being used by both the staff and the Magistrates that are sitting around that table, can actually be replicated in other parts of Victoria.

In the criminal justice space we see the need for urgent reforms to keep First Nations people out of the justice system by maximising the use of cautioning and diversion, increasing the minimum age of criminal responsibility, reforming bail laws, and other minor offences, and implementing a health-based approach to public intoxication.

So these we see are really critical areas. As well as we see the need for building a self-determined criminal justice system which prioritises First Nations experience and knowledge and recognises their leadership in building culturally safe places, practices, services and institutions throughout the system. This is ambitious but it is what we must aim for and we see that it's important to have some both short-term objectives here and some longer-term objectives as well.

Many of these reforms that I mention, I'm very sad to say, are not new. These suggestions are not new and, I think, in some of our materials we have listed the number of times that there has been reports and recommendations around these issues. These recommendations have been across many, many, many years. I'm 62 now and I can think about the last 20 to 25 years and count the number of reports that have touched on these issues. I won't be laborious and go through them all, but we can certainly give you some detail on that if you are interested.

We must all bear this responsibility, in my view, and ask ourselves why more changes have not occurred when we so well understand, from our practice, the nature and implications of many of the failures of these changes to occur for First Nations people.

So there is a real urgency here and that we need to embrace this and run with it in VLA's experience. We do acknowledge very much that the State Government is working towards truth and Treaty and we are very pleased that the Premier, Daniel Andrews, last week acknowledged that too many First Nations children are being taken away from their families by the State and that the government wants to see greater self-determination and greater Aboriginal control in the child protection system.

This is a significant first step, but we need to think about how this change occurs in practice particularly given the many recommendations historically on this issue that have not been enacted to date. For example, I cannot see how any significant reform like this can be led by a government department. I think we need to - which is usually the practice of how big reforms are done. I think we need very different governance and implementation models in the context of treaty and self-determination in order to make the shifts in Victoria that we are all working towards, in many different ways, but we really want to have a sense of movement much more thoroughly.

In our submissions, we call for long-term reform of both the child protection and criminal justice systems, underpinned by the principles of self-determination. Self-determination is a matter for First Nations communities and the process of furthering self-determination in justice must be led by them. We wish to be supporters in that process, but we understand our role in that way.

This includes embedding, in our view, First Nations peoples' law, cultural practices and other cultural interventions and supports ensuring that the right to choose an ACCO service can be realised, that we have strong and sustainable ACCOs, and that they are best placed to participate in and make decisions about their communities and First Nations data governance

and sovereignty. VLA very much appreciates its strong working relationships with Aboriginal community-controlled organisations and I particularly call out VALS and Djirra. As recently as yesterday, the VALS board met with the VLA board, a regular thing we have in place, which is really, I think, an excellent contribution to thinking about how we both can have common aspirations and what we need to contribute to in order for us to understand how we can best support the work of VALS.

We need to consider different ways to get the change we are seeking - to reiterate, self-determination is absolutely the key. It is unlikely that a government department will be able to deliver and drive these reforms in the transformational way that is required. We need First Nations peoples involved in the design of these new systems and driving this system as it is designed, led, and controlled by First Nations community.

In short, this is the most, I think, important part of the work that you have been charged with doing in many respects. Finally, we also acknowledge our own deficiencies as VLA. We have significant work to do as an organisation in being part of building a better child protection and criminal justice systems. We are continually working on improving our own cultural safety, including increasing the number of First Nations staff we employ, the pathways we offer, mandatory cultural training for staff and practice standards for the many practitioners that we fund every single year. But we still have some way to go. We are very pleased to answer any questions that you would have, or that Counsel would have, in relation to our broad submissions that we have provided and, once again, we thank you for this opportunity.

MR McAVOY: Thank you very much for those opening remarks. I propose to take you first to your child protection submissions. I will observe, though, that, in respect of the criminal justice system submissions, which are, to which a covering letter dated 21 November 2022 is attached, in the first paragraph the following observations are made:

*"First Nations people experience far-reaching and intergenerational harms at the hands of the criminal justice system. In my practice, in every court across Victoria, we see these harms persist today, including disproportionate rates of remand and imprisonment and deaths in custody."*

It goes on in the second paragraph:

*"These harms are a consequence of centuries of laws, policies, systems, and structures that have entrenched systemic and structural racism and normalised the exclusion and disempowerment of First Nations people and denied their right to self-determination."*

Those observations are made with respect to the criminal justice system. Can those same observations be made with respect to the child protection system?

LOUISE GLANVILLE: In my view, they can, and, Joanna, I'm sure, would be pleased to talk about this a bit more thoroughly. But I think part of what I understand to be the work of Yoorrook is for us to hear stories and people's experiences for someone like me to understand them as thoroughly as we can and to think about what changing and transformation looks like in that context. I think this does require us to look back quite thoroughly, to understand the history, not only of this State but of Australia, and I feel I have some understanding, but I feel one of the fantastic things about Yoorrook is that it's

continually presenting ways of understanding to us and we see our job as being part of this understanding. I think that the people that we see, particularly in child protection systems, exhibit a lot of their own pain and their own complexities that relate to experiences that are intergenerational, that they continually see in different ways, in their own contemporary experience and, therefore, we cannot not have that sort of lens. Joanna, did you want to add to that?

JOANNA FLETCHER: I wouldn't add much to that but just, I think, to point out that, in our submissions, Mikala's lived experience statement really does sort of underscore that point. You know, she was herself taken away from her mother by Child Protection as a child. She had ancestors who had been part of the Stolen Generation and then she herself became involved in child protection as a mother.

MR McAVOY: Commissioners, the lived experience of Mikala is at annexure 1 of the VLA submission. That might be a good point to start, Joanna. Can I ask whether you are able to give the Commissioners a bit more detail about that statement?

JOANNA FLETCHER: I can't give you any more detail, I'm afraid. That was a part of a very thorough interview that she did with one of my colleagues. I think she's really sort of set out her own experience, but also what she would really like to see Yoorrook come up with.

MR McAVOY: Sorry, not additional detail to that which is set out in the annexure but perhaps explain to the Commissioners the salient points from that from VLA's perspective.

JOANNA FLETCHER: Sure. I think the first one obviously was the intergenerational experience. Secondly, I think the fear that she, therefore, felt because of that intergenerational experience, which caused her to, you know, respond understandably with great concern when the Department became involved.

Another aspect of it, I think, that's really worth noting is that she was in a family violence relationship. That's the massive driver into the child protection system, unfortunately, at one point, her statement talks about she kind of lost it after being really under pressure with the family violence. That led her to be in prison, which then made her relationship with the Department even harder.

She talks about some of her experiences in the system, but I think the context for Mikala being able to tell this story is she is part of our advisory group, our Independent Family Advocacy and Support, and that is a representational advocacy model in which I think she felt she was finally given a voice and that was a voice that was then heard by Child Protection. I think this quote at the end, I really would like to highlight to you, and she's really become an advocate, you know, as a result of her own experience and then being involved with our service:

*"I want my children to grow up with a sense of belonging, I want my children to grow up with their identity being known to them, 100 per cent really open and honest because I never had that as a child. Adults' decisions and adults' choices got in the way of my identity and my Aboriginality and that's why my children are being taught now."*

I think that highlights in a way the really fundamental point that we need a self-determined system.

MR McAVOY: Thank you. Now, you are aware that last week the Victorian Premier Daniel Andrews made statements which were recorded in the press about the need for an overhaul of the child protection system.

JOANNA FLETCHER: Yes.

MR McAVOY: Can the VLA give a response to that statement by the Premier of the expression of a need for dramatic change?

LOUISE GLANVILLE: I think we would say we welcome that. It was very encouraging to hear the Premier talk about that. I think the key issue for us, really, is how that would be done and what are the steps taken in that. I think we'd also - our submission stands for the point really that we think there are some immediate things that could be done that should be attended to as well as longer-term issues. So the thought of standing up a whole new system and way of working will take time to do well and I think we do sit with the position that we would like to see some things happen earlier than that, which are more immediate as we have identified.

But we would be fully supportive of that, and our submission gives some examples of the things we think that should be thought about. I perhaps mentioned one in the opening statement that it's a bit different, I think, than just having a department manage things. We really need a process which is, from the very beginning, starts with self-determining and involves First Nations people in all the thinking around how this would look very, very thoroughly. So it's exciting, but it's a big piece and we would want to be supportive of that.

MR McAVOY: No doubt it is a big piece of work. The Commissioners have heard evidence this week from the co-chair of the First Peoples' Assembly of Victoria, Aunty Geraldine Atkinson, to the effect that the Assembly believed an overhaul could be conducted through mechanisms established through the Treaty Negotiation Framework with the Assembly working with the Aboriginal community controlled organisations in the sector.

Then yesterday we heard evidence from VALS, the Victorian Aboriginal Legal Service, calling for a stand-alone Aboriginal child protection legislation. You have mentioned the need for Aboriginal people in Victoria to be self-determining in the creation of these new structures. Are those propositions from both the Assembly and from VALS consistent, from your understanding, of a self-determined engagement in the child protection system?

LOUISE GLANVILLE: Yes, I would say. Joanna might want to add to this but I think that's exactly the sort of thing we want to see and that's why it's important to be talking and thinking about this because it would require very different ways of working with government, I think, and clearly there are roles with different organisations, we leave those to First Nations people to think about what they may be but, yes, we support these reflections and suggestions and recommendations made by ACCOs.

JOANNA FLETCHER: I would add I think the use of the word "reform", however dramatic it is, and reform is great, but transformation is really what's needed. I think, therefore, having a separate Act is probably - it's hard to see any other way of doing it than having a separate piece of legislation.

MR McAVOY: In evidence yesterday, VALS expressed the view that really the existing *Children, Youth and Families Act* couldn't properly be reformed to accommodate the needs of Aboriginal people of Victoria and there is a real need for stand-alone legislation. Is that a sentiment that VLA has any difficulty with?

LOUISE GLANVILLE: No, not at all. It's a very - like many Acts which are growing in size, they have often been constructed perhaps well in the beginning, or not, but they have had lots of provisions and changes added to them. So I think in order to really achieve the aspiration and transformation we are talking about, a new Act is necessary.

MR McAVOY: Thank you. Now, I just want to take you to some of the urgent measures that you have identified as requiring immediate action. The first is restating the court's ability to make orders in the best interests of the child without time limits on reunification. We heard some evidence from VALS about this yesterday. Could you just explain to the Commission what you mean by that?

LOUISE GLANVILLE: I will hand to Joanna.

JOANNA FLETCHER: This is a provision that came into the legislation in 2015. So it's relatively recent. It came in we would say with very little evidence to suggest that it would be in the interests of children. It has led to more First Nations children being on third-party permanency orders, on care by Secretary orders and with the court having less oversight of child protection decisions.

So, essentially, the way it works is that there is a rigid two-year timeframe for reunification when a child goes into out-of-home care, even where those are interim placements and there hasn't actually been a finding that there's a need for protection. At the end of that two-year period, if a child can't return home - and there isn't a permanent carer available - they end up with parental responsibility being held by Child Protection. So obviously this is an issue for all children but it's particularly acute for First Nations children.

COMMISSIONER BELL: Can I ask a question about this. I have a growing understanding of this, not a perfect understanding, and I think Commissioner Hunter will have close to a perfect understanding, my understanding is that the significance of the two-year time limit is that after that the child is permanently placed with a non-Aboriginal family; is that the bottom line?

JOANNA FLETCHER: Not necessarily a non-Aboriginal family, if there was a non-Aboriginal family available. One of the challenges with this artificial timeframe is that it's actually very difficult to get families the services that they need to enable them to be reunified with their children or their children to be reunified with them. Even the two-year timeframe actually only applies if you can show at 12 months that there is a compelling case that the child will be reunified. If you have someone who is struggling with drug addiction or mental health issues, or homelessness, family violence, those things take a long time to address and, as I said, the key thing really is the absence of services during that period.

COMMISSIONER BELL: If there is a two-year window within which reunification is to be achieved, what happens after the two years expires with respect to that prospect; can reunification be achieved after two years or is it ended?

JOANNA FLETCHER: It is still theoretically possible. I mean, some ACCOs, for example, have been able to get children reunified with parents from a care by Secretary order. So it can happen but it makes it very, very much harder.

COMMISSIONER WALTER: I think we established yesterday that the permanency does not necessarily mean that there is a permanent placement and that child doesn't necessarily go into a permanent placement even though that's the reason given for putting them on the order.

JOANNA FLETCHER: That's exactly right. There isn't data to suggest they are actually in stable placements. In fact, the Commissioners might be aware of a recent report by Sarah Wise and Judy Cashmore, in which is a comparative analysis of third-party permanency arrangements, and Sarah Wise is one of the researchers on the Department's permanency, amendments, longitudinal study, which has not been released yet, but their findings in that report were, yes, permanency arrangements that are not matched by evidence on the ground. In particular, there's no research on outcomes for children and we are now seven years into the amendments in Victoria.

There's little monitoring of whether those placements are actually stable and emotionally secure for children and where the carers may be facing significant challenges and they no longer get support if they are - if they have a permanency order placing the child with them.

COMMISSIONER WALTER: Did you say that report's been written by Sarah Wise?

JOANNA FLETCHER: Yes. That's available. It was in September 2022 and it's called, *'A Comparative Analysis of Third-Party Permanency Arrangements.'*

MR McAVOY: Thank you. The situation could be alleviated somewhat if there were sufficient resources provided to families to support them in terms of preparing for reunification?

JOANNA FLETCHER: It could be, but I would say that's not the solution that actually - you know, in very complex situations, when you are thinking about, you know, intergenerational trauma, having rigid timelines, and particularly removing the oversight and discretion of the court, I think, is particularly concerning. Services would make it less bad, but they are not a solution in themselves.

MR McAVOY: In their submissions, VALS have suggested a replacement care and protection order, as opposed to the suite of orders that now exist. Have you had the opportunity to consider that particular form of amendment that they are suggesting?

JOANNA FLETCHER: We have. It seems sensible. I mean, we haven't looked at it in the level of detail and obviously they basically drafted the provision, which is great and they have done that very thoroughly, but the idea of basically having one type of order with a range of different conditions, I mean, the simplicity, it's a good idea but also it addresses these issues about the reunification timeframe. So, yes, broadly supportive, but haven't been into the detail.

MR McAVOY: The VALS draft care and protection orders allow for ongoing monitoring by the court of the circumstances of the placement of children and the orders in relation to it.

JOANNA FLETCHER: Yes.

MR McAVOY: That is a good thing from VLA's perspective?

JOANNA FLETCHER: Yes.

COMMISSIONER BELL: Would that, in effect, mean that the balance to be struck between permanency and reunification, where that's an issue, is one for the court to make on an ongoing basis?

JOANNA FLETCHER: Yes. And that was the situation, not as neatly legislated as VALS's proposal, but that was the situation before the permanency amendments in 2015.

MR McAVOY: Now, another matter of urgency, from the VLA submission, is ensuring compliance with the legislation by the Department. One of the matters which is highlighted in the written submissions is the non-compliance, if I can put it that way, with the need for cultural plans. Could you just speak to the commissioners about that?

JOANNA FLETCHER: Sure. We have seen instances where cases are very close to a final hearing, 18 months in even, and a cultural plan has not been done. I'm not going to be able to reel them off, but I think the Commission for Children and Young People has made some findings about, you know, the rate at which cultural plans are not done at all or where there's a significant delay in them being done.

MR McAVOY: Thank you. There's also a recommendation in the VLA submission for greater investment in the Aboriginal community controlled organisations for the development of cultural plans and oversight of their implementation.

JOANNA FLETCHER: Yes.

MR McAVOY: If you could just speak a little as to the importance of that involvement by the community orgs in developing those plans, that would be helpful.

JOANNA FLETCHER: I think it's essential and there have been - you know, there are resourcing issues for those organisations that have meant that sometimes there are delays getting those cultural plans done. Sometimes the delay is clearly from the Department but, in other instances, resourcing has limited the - sorry, impacted timeframes which has meant children being longer in out-of-home care.

So there is a big resourcing gap and, I think, particularly, in addition to the one around the specific development of cultural plans, some of the other principles that are supposed to apply for First Nations children, including having Elders of the Aboriginal community or senior people from other parts of the Aboriginal community involved in decision-making, those are also not happening consistently and that's partly an issue of the resourcing of ACCOs to do that work.

MR McAVOY: Thank you. Going now from the development of the plans to supports for families, for reunification, the VLA submission speaks of intensive supports for families to achieve reunification and particularly mentions the importance of the VACCA program,

Nugel. Could you speak about your observations of the utility of that program and how it's working?

JOANNA FLETCHER: Sure. Nugel is VACCA's version of the section 18 provisions which basically mean that once an order is made, other than an interim accommodation order, an Aboriginal organisation can exercise those powers. Sorry, I just got distracted. What was the rest of your question?

MR McAVOY: Just as to VLA's observations as to the importance and value of the Nugel program?

JOANNA FLETCHER: I think the stats speak for themselves. I would like to be able to tell you what they are, but I think it's probably about four times the rate of reunification for a child managed by Nugel rather than Child Protection. So just purely on that basis it's very successful.

MR McAVOY: The VLA supports a more broad adoption roll-out of that program?

JOANNA FLETCHER: Absolutely. I think clearly, though - and again going back to the self-determination point - there may be Aboriginal organisations who don't want to take on that particular power because they are still having to operate within the legislation, which is problematic in itself and needs an overhaul but, in the short-term, if there were other Aboriginal organisations - I think currently it's only VACCA and BDAC in Bendigo who are fully authorised to exercise those powers and some other agencies have come onboard, I think, but are not yet - it's more in a pilot phase. If there are more Aboriginal agencies who would be willing to take on those section 18 powers, I think that would be very useful, given what Nugel has shown us.

MR McAVOY: As a further urgent recommendation, VLA's submission calls for the development of a State-wide specialist Children's Court. This is a recommendation that VLA has been making for some time. Could you just speak to it for a moment, including VLA's observations in respect of the Marram-Ngala Ganbu.

JOANNA FLETCHER: Thank you. As the Commissioners would be aware, outside metropolitan Melbourne, the Children's Court is basically held in the Magistrates' Court, and a magistrate who has a general range of responsibilities just puts a different hat on and is then the Children's Court. What we see both in terms of decision-making, sometimes delays in decision-making because a particular magistrate may feel they don't have the expertise really to make that decision, and I think - I'm not sure if this is more worrying or just the same but sometimes just actually getting time for things as urgent as emergency care application in a Magistrates' Court, because there is not a stand-alone registry or specialist registrars, those matters can be delayed in those courts and there is a lot of inconsistency in practice between the Children's Court sitting in the Magistrates' Courts and the Children's Court in Melbourne. So the President of Children's Court technically can make practice directions that apply in the regional courts but they are not always followed probably not even often followed.

COMMISSIONER BELL: What about the sitting arrangements; does this occur in court?

LOUISE GLANVILLE: I think it's a really important thing to think of the physical surrounding too. When our Board, and Joanna and I were there as well, we sat around the table where these matters are heard. The magistrate is not raised, she, in this instance, sits around a table as well. We watched the method and the dialogue, how people are engaged with, and there is a big emphasis on hearing from people, and making sure that there is an understanding of what's occurring. So time is given for this sort of thing and it draws on the comments that other parts of systems would make. So it's a supportive environment and there is - I think, you know, it's very impressive in terms of how that - even though it's a decision-making process and its nerve-wracking, I am sure, there is essentially an element of support and collaboration in there in terms of how this work is done. Look, I'm very familiar with Koori Courts, therapeutic jurisprudence, problem-solving courts, but this is, I think, really an excellent example.

COMMISSIONER BELL: You're describing Marram-Ngala Ganbu.

LOUISE GLANVILLE: Yes, I am. And can I say: it is also very cheap. I asked how much this would be to replicate in courts across Victoria, and I was - and I can't recall the figures but I remember thinking that is not much money. Often it's about the orientation and having the right people and having the right processes in place and just ensuring that people are treated with dignity and respect and I know that it's important for all our courts but, in this instance, this ability to engage and interact, to ask questions if you don't understand, it is just so important and essential. For us this is a bit of a no-brainer that this is something which is socialised much more thoroughly across Victoria.

COMMISSIONER BELL: Can I ask where the court sits in the regions? When a magistrate is in a region and is exercising Children's Court power, where does he or she sit?

LOUISE GLANVILLE: Just as in any courtroom of the building. This Marram-Ngala feels a bit like this. There is, you know, I probably referred to it incorrectly but what's on a table and what's in the middle of the table, paintings, cultural objects, statements, and things that are important, and very much a part of it. That is a terrific way to make people feel at the very outset that there's some understanding here of culture and family and community and there's, you know, writing's on the wall.

So often there is a room designated for this purpose. I think that's a minimum, really, in my view, but it is pretty impressive to sit and watch and we did hear several matters determined and, yes, even explaining who was there and why we were there. It was so respectful. It was so respectful. I think it's a great model.

MR McAVOY: Thank you, Commissioner. Without delving into emotions, the way in which you have responded to the Commissioner's questions about the Marram-Ngala Ganbu process, can I suggest your experience was one where you felt, "Why can't we do it this way, this is the way it should be done?"

LOUISE GLANVILLE: Yes. Exactly. That's right. I don't mind a bit of emotion, actually, because it is an emotional thing, in my view, to watch young Aboriginal children and their families be truly listened to when they talk of experiences and what they've been trying to do to improve their circumstances. So I think, you know, there's a place for that, appropriately, we are in a court so I know that, I'm a lawyer, I understand that completely, but I think that you have to look to see, and I think the people in this court looked to see what was going on

for this young person, for this family, for this mother, other relatives that were there. It was very pleasing to see.

MR McAVOY: If we could move on to the way in which the Department works now and perhaps, in contrast, your submissions identified that another urgent reform is the separation of the core functions of childcare. In particular you point to the separation of the investigation function from the support function. Can you just explain the importance of that?

LOUISE GLANVILLE: That's very important. But I would also like to say that we don't want to be - our purpose is not to be critical of the Department, it's just to say it's not working and there are many good people who are in there, that we know, that we work with, and I think that's important to say, and who want to work well and effectively. Our comment is really about how it can be done better, really, generally speaking, so this is where this point about the separation of protection and concern comes about, I think.

MR McAVOY: So the discussion that we are having is one at a systems level?

LOUISE GLANVILLE: A systems level. Exactly.

MR McAVOY: At a systems level, your submissions seem to suggest that there are really problems in having the same Department and, in fact, sometimes the same people, doing the investigative function as well as the support function?

LOUISE GLANVILLE: Completely. Absolutely.

JOANNA FLETCHER: It creates a massive distrust between the person being brought into the child protection system, the parent, the children, to have - you know, it actually probably would be the same worker that's supposed to be tasked with providing support, finding services to assist this family to stay together, then also kind of having the available option of a formal investigation and, you know, taking the family to court. Yes. As Louise said, that's built into the system, that's not about the way individual child protection practitioners take up the role.

MR McAVOY: Indeed, in submissions, oral submissions yesterday, we had some discussion from VALS about the need to separate out the litigation function from the other functions. I can see you nodding your head. Are you in agreement with that proposition?

JOANNA FLETCHER: Yes. I think this is another recommendation that's been made at least twice and not adopted.

MR McAVOY: And for all the reasons in relation to separation or decision-making regarding litigious functions from the support functions?

JOANNA FLETCHER: Yes.

MR McAVOY: Speaking of support functions, in your submissions you refer to the IFAS program. Commissioners, I'm not sure whether in your material you have this document. I might hand it up.

LOUISE GLANVILLE: It's a very short summary.

MR McAVOY: It's a very short summary. If you could describe the IFAS program for the Commissioners, please?

JOANNA FLETCHER: Yes. Independent Family Advocacy and Support and the focus is, as it sounds, on support, but the type of advocacy is, we think, reasonably - is quite rare, and that is in the child protection system it's rare and that is representational advocacy. So these are non-lawyers and that often creates an easier space with the Department, that they are non-lawyers, and they are advocating on behalf of the client. They are representing directly that client's wishes so they are not - it's not their responsibility to look into what's in the best interests of the child but, rather, they are a voice for the client.

That being said, of course, they can test what the client's thinking and saying about best interests so that they will know what is a likely response from the Department and how to manage that. That was evaluated last year, and it was a really favourable evaluation. Many qualitative things to say about parents' experience of IFAS but key, I suppose, is the percentage of families diverted from court, which is 20 per cent, so avoiding that very uncomfortable and difficult process, and we assisted during - I think it was during the period of the evaluation, we assisted around 200 people, 25 per cent of whom were Aboriginal.

We did that by having a co-located worker with both the Aboriginal Corporation in Bendigo and in Ballarat. I think what we are bringing to you, I think, is not Legal Aid needs to be funded to do this work, but just this is a very successful model of representational advocacy and currently it's only available in Northern Metro, Bendigo and Ballarat. Again, it's also very cheap.

MR McAVOY: Looking at page 2 of the evaluation, the observation is made that the program saves the Victorian government $2.66 for every dollar invested.

JOANNA FLETCHER: That's right.

COMMISSIONER BELL: What was the organisation in Bendigo?

JOANNA FLETCHER: Bendigo District Aboriginal Corporation.

COMMISSIONER BELL: Thank you.

MR McAVOY: And the organisation which undertook the evaluation on behalf of --

JOANNA FLETCHER: It was RMIT.

MR McAVOY: I will tender that summary in due course, Commissioners. Finally, I want to take you to the point in your submissions relating to criminalisation of children in residential care. I might ask you to speak as to the prevalence of the issue.

JOANNA FLETCHER: I'm not sure if I have that off the top of my head.

MR McAVOY: In general terms.

JOANNA FLETCHER: In all prevalence, yes. It's far too common and police are called for things as mild as throwing a sponge, taking food from a kitchen and, you know, that is a very obvious funnel into the criminal justice system. So, you know, we obviously know that there is - there's a lot of correlation between children being in child protection and children being in the youth justice system. This is a very direct connection. This is children who are in child protection, you know, directly being - ending up in youth justice because of the way they are responded to in residential care.

MR McAVOY: As your submissions point out, there was advocacy in place for a considerable period to develop and have adopted the framework for reduction of criminalisation of children in residential care, which was supported by the VLA. That framework has been in place now for some period.

JOANNA FLETCHER: Nearly three years.

MR McAVOY: Is there any observation that you can make as to the way in which it is being implemented or observed?

JOANNA FLETCHER: As far as I know it isn't really being implemented. The key things that we are calling for is real clarity about what that will mean for individual children. So it's a high-level document, the framework, and it needs an implementation plan and then appropriate measures, and that work lapsed for at least a couple of years and is now starting to move, but we are just concerned that it will - that there will be another lengthy delay before it is actually practically implemented.

MR McAVOY: We heard evidence yesterday, again from VALS representatives, that the framework - their observation was that police officers involved in matters involving children in residential care were often unaware of the framework. Does that come as a surprise to you?

JOANNA FLETCHER: No.

MR McAVOY: That points to the lack of an appropriate mechanism to ensure that the framework is actually brought into full operational use?

JOANNA FLETCHER: Yes.

MR McAVOY: Thank you. They are the questions I have with respect to the child protection submissions. Are there any matters which you would like to expand on at all, other than what's in your written submissions, which is of importance?

JOANNA FLETCHER: I don't think so. I think the other issues we have raised are very clearly laid out in our submission. The fundamental thing - you know, we have been talking about the urgent things and the relatively easy things that can be done right now, but just going back to where we started and where Louise started, fund mentally, this system needs to be rethought from the ground up for First Nations children.

MR McAVOY: Commissioners, if there are any questions on the child protection area before we move to criminal justice, it would be convenient to take those now.

COMMISSIONER HUNTER: We just heard about the Framework yesterday from VALS, about the Framework to reduce criminalisation of young people in residential care. You mentioned a few incidents. Would it be fair to say what a child may do at home, the police would not be called?

JOANNA FLETCHER: That's exactly right.

COMMISSIONER HUNTER: But in a residential setting, or even --

JOANNA FLETCHER: Relatively minor, yes.

COMMISSIONER HUNTER: Yes. As the carer or guardian, the authority over this child, for a sponge throwing, would turn into a criminal charge; is that correct?

JOANNA FLETCHER: Yes.

COMMISSIONER HUNTER: Thank you. I just wanted to clarify that.

COMMISSIONER WALTER: I just want to go a little bit further on that one. It seems remarkable that, despite the Framework being in place, this is still happening in residential care, which you would think would be more aware of the sort of guidelines and protocols and principles than perhaps a foster carer or kinship carer. Can you offer me any illumination as to why?

JOANNA FLETCHER: I think it might be something I will need to take on notice. My sense would be that it is literally because the Framework hasn't been implemented. It's essentially, at the moment, an agreement between DFFH, Justice and VicPol, and I think that might be it. But that, as far as I know, hasn't been rolled out to people actually doing the work. Because it's a framework, it's not a, "This is what you need to do if this happens." It's a kind of overarching document.

COMMISSIONER WALTER: Just as a follow up, you talk about the uselessness, but the lack of actual efficacy of the Framework without measurement of success and accountabilities built into them, and you can see a lot of frameworks without those.

JOANNA FLETCHER: Absolutely, yes.

COMMISSIONER WALTER: In this area.

LOUISE GLANVILLE: I think it's so true, and you always want to know what the implementation steps are, and you've got to have robust processes for understanding if there's been accountability in relation to those. Can I say there's also, I think, a very significant cultural piece that sits around this as well. How I would see that would be, in frameworks such as this one, those organisations should come together regularly and talk about how they are going, and what they are learning, and what differences they'd like to make to improve the experiences or the responses for young First Nations people.

So it's sort of - I think it's about how do we continuously appraise and get better rather than just saying here's something, yes, tick, we all like that. It has to be much more held in mind in terms of the work that's being done by people and that's a cultural piece. That's got to be

learning within organisations about what is proper, what is respectful, where are we trying to get here, you know, all of those sorts of issues.

COMMISSIONER WALTER: But as Aboriginal people, we're well used to seeing framework after framework after framework and I just wondered, does this sort of feel - like doing a framework is enough and then move on, that's okay, we have dealt with that, we have done a framework?

LOUISE GLANVILLE: My own view is maybe that's not intended but that's often, I think, what happens and that's why the implementation piece, there has to be monitoring and there has to be consideration of why things aren't moving, if they are not moving, and I wouldn't want to say that that's intended at the outset, but you would have to say that, yes, there's not much point in a framework if it's not implemented properly.

COMMISSIONER HUNTER: Can I just add to that, Commissioner Walter, would you agree that the most vulnerable of our children in out-of-home care end up in residential care?

JOANNA FLETCHER: Yes.

COMMISSIONER HUNTER: I do have one last question. I was going to bring it up with VALS yesterday but I forgot, with the permanent care order, and with the cultural support plans now in place, do you see the cultural support plans being part of assistance to getting kids home, or because of - well, we have heard a lot over the last week around, I guess, the lack of appliance or the lack of depth of cultural support plans. I'm just wondering if that would - I guess, from my experience, there's always been a culture versus attachment issue at permanent care. So I was wondering if that bringing cultural support plan in would sort of help settle that argument in court.

JOANNA FLETCHER: Sorry, could you explain what you mean by cultural safety versus --

COMMISSIONER HUNTER: If a child has been in care for two years, the stability, so the attachment of the child to the carer, whoever that may be, to going home, and it becomes an argument about cultural versus attachment.

JOANNA FLETCHER: I see. Yes. I do think cultural safety plans could really assist with that.

COMMISSIONER BELL: I have a question about human rights accountability, and it's a little bit arising from Commissioner Walter's question about failure to implement frameworks. With respect to the human rights in the Charter, there have been a number of test cases across a range of subject areas in the last 15 years, prisons, mental health, in several respects, working with children, and other areas, there have been test cases where the interaction between decision-making affecting the human rights of people and the Charter have been worked through. I don't think there's been any test case like that in the child protection area.

JOANNA FLETCHER: I think that's right.

COMMISSIONER BELL: That's one in relation to the procedures of the Children's Court, and that's about all that I'm aware of, which I find really surprising because of the really

serious human rights implications of child protection decisions. This is not meant as a criticism but, rather, just as an observation that one means of human rights accountability, that is judicial supervision, doesn't seem to have had any influence or relevance, can I put it that way, in relation to the system.

LOUISE GLANVILLE: I mean, I make a more general observation, Commissioner, I think, in closed systems, in systems that are more closed, less permeable, it is often less likely often that you do see these matters taken up within a Charter framework or a human rights framework or an UNDRIP framework. I think we know this because closed systems are - you know, they're not permeable in quite the same way. I suppose I'm thinking of prisons, I'm thinking of separate care arrangements, I think Dan and I have had discussions about this at different times, but the closed systems, I'm thinking of what happens, sometimes people with disabilities in their living arrangements and what they experience as part of that.

So, as a civil society, I think we have to have particular attention to closed environments and that's why this is a good example in the child protection space because, you know, it is hard to get a sense sometimes of what is happening, and what rights may or may not be being afforded to their proper place.

LAWRENCE MOSER: Could I come back to Commissioner Hunter's question, and just in response to the cultural plans, absolutely, yes, for cultural plans, but they need to be robust, they need to be well thought through, and they certainly need to have and be informed by the mob, not written by non-Indigenous people and put in front of us and used as a mechanism that says, well, we have got a cultural plan and we'll tick it off.

Look, we have seen this in parts of the education system, where learning plans for Aboriginal kids were put forward and some of those worked very well and some of those were just the tick and flick exercise for schools to be able to with staff then say, "Well, you know, we'll do X, Y and Z and we'll see where we get to at the end of the year or the term." With culture plans, absolutely, the self-determination side to that has to include, must be, our mob sitting at the table being party to that, writing those and ensuring that they are delivered in a way that meets the need of that child and that family in a culturally appropriate way.

To end on that, Commissioner Bell, you also - your comments in regards to oversighting things and that, certainly VLA has had a robust conversation and we put forward in our submission around a Social Justice Commissioner to oversight some things. But, again, it would need to have teeth, it would need to have the ability to bring things to account in a way that afterwards our mob with knowing that things - checks and balances are there and that we know we are going to be able to monitor and get outcomes from things and keep things where - as we have talked about, self-determined, in the principles of that sort of thing.

COMMISSIONER HUNTER: Can I just ask if that case of cultural support plans - and I think as you said before, the person who is going to litigate somebody shouldn't really be the one trying to - it just doesn't work. So the Department are in charge of writing those plans, am I correct?

LAWRENCE MOSER: That's right, yes.

COMMISSIONER HUNTER: How would that work in engaging the mob in the same respect as the people who are litigating them?

LAWRENCE MOSER: I think there's been conversations around different ways of doing business and different models. Look, I think certainly some of the things that VLA have been going through recently in terms of lived experience groups and going back and providing mechanisms that are open and transparent, and bringing people to the table and you can actually see what's going on. That scenario that you speak to there, Commissioner Hunter, it's like having police investigate police. It just doesn't work.

COMMISSIONER HUNTER: Thank you.

MR McAVOY: Commissioners, I now propose to ask some questions in relation to the VLA criminal justice submissions. I might commence by making the very perhaps trite observation that in Victoria, as in other places in Australia, criminal justice is regularly reported upon. If we turn to Appendix B of the VLA submissions, we can see these submissions which have been made in the last two to three years, and then other relevant submissions in relation to the criminal justice sector and relevant public reports on the following page, all within the last few years.

So it's not as though the matters coming before the Yoorrook Justice Commission are not ones that have been brought to the government's attention in the past. Is that correct?

LOUISE GLANVILLE: Yes. I will ask Dan to talk a bit more about this in terms of his leadership of the criminal law space for VLA but it is our obligation under our legislation to advise Attorneys, Federal and State, and Ministers of what we are seeing on the ground through our work, and there are often calls for submissions. We see that as a particular responsibility we have to be bringing attention to things that we think are problematic in systems and it is - Dan will probably have more stats than I have but sometimes I feel we are asking for things we have been asking for a long time.

I think, you know, part of that really is trying to understand whether there's an appetite for doing things and how you actually get movement on some of these issues but many of these submissions, for example, would cover not dissimilar issues to what we are raising here today.

MR McAVOY: I might make the observation that, in March this year, the Legal and Social Justice Issues Committee of the Victorian Legislative Council produced a voluminous report, some 900 pages, into Victoria's criminal justice system. It was titled, I think, *'An Inquiry Into Victoria's Criminal Justice System'*, and that report included some 100 recommendations and 73 findings. VLA made a submission to that - the Legislative Council, and some of your officers gave evidence?

LOUISE GLANVILLE: Yes. Dan and I gave evidence.

DAN NICHOLSON: That's right, yes.

MR McAVOY: I'm just going to hold up the document which is your submission from September 2021.

DAN NICHOLSON: Yes.

MR McAVOY: That will be tendered in evidence. Since that report's been handed down in March this year, has there been a positive government response and any action upon the recommendations in that report?

DAN NICHOLSON: There hasn't been significant action on the recommendations in the report and I think I'm right in saying no formal government response has been tabled yet. If you look at the five urgent priorities that we suggest for reform in the criminal justice system, each of those is covered in that report in some way and in other reports that have been produced over the years.

MR McAVOY: It is clear that some of those recommendations or findings that the Legislative Council has made in Victoria in the report that came out in March this year, have their origins in the Royal Commission into Aboriginal Deaths in Custody report from 1992.

DAN NICHOLSON: That's right. If I took the example of public intoxication, we had a look back at the decriminalisation of public intoxication to see how long ago and how often it had been recommended and I think it was first recommended by a Law Reform Commission report in Victoria in 1989 and then in 1989 and 1991 in the Royal Commission into Aboriginal Deaths in Custody. So I think over the years there's been a number of other recommendations. Of course, the coronial inquest into the death of the Yorta Yorta woman Aunty Tanya Day. We know that's been legislated but not commenced.

I think our research indicated it's been 33 years and there have been seven different Commissions and reports that have recommended its decriminalisation yet today we are still waiting for that reform to take effect.

LOUISE GLANVILLE: Can I just ask, Dan, most jurisdictions around Australia have removed public drunkenness from the statute books?

DAN NICHOLSON: Most have.

MR McAVOY: Moving along, the VLA submission to this inquiry identifies six foundational reforms for a fairer criminal justice system as regards Aboriginal people. The first of those foundational reforms is that a self-determined criminal justice system be built for First Nations people. In their submissions, VALS has called for a Justice Treaty. If by that we assume that they are referring to a justice system which is enacted as a result of negotiations and gives full voice to the principles of self-determination, is that the sort of self-determined criminal justice system that the VLA supports and is referring to?

DAN NICHOLSON: Yes.

MR McAVOY: And in Appendix A to your criminal justice submissions you refer to a number of facets which are reflected of meaningful self-determination. So the first is building First Nations justice into the system. Can you just address the Commissioners as to what is meant by that particular statement?

LAWRENCE MOSER: I think if I start off on that. We have talked about the need to have a voice. So even today having a voice at this hearing here, and being able to speak to these sorts of things, being able to put forward initiatives that are driven by us, the mob, in that

space and you heard about a couple of initiatives this morning that are working very well, that have been again voiced and put forward by the mob in regards to fairer outcomes.

So I think in terms of the self-determination question on that, it goes to the heart of us as community, and the range of other stakeholders that are in the space, such as our peak bodies. And we have talked about some of those here today, such as VACCA, such as VALS, such as Djirra, whether it be VAEA, Victorian Aboriginal Education Association, the Aboriginal Justice Caucus, collectively, being part of the solution and putting forward, I think, the practical applications to that side of it.

So VLA, in terms of stepping up to and understanding what self-determination means for them in terms of delivering a service to Aboriginal people across the State, certainly you've heard bits of that here today as well in terms of lived experience groups, going back to Aboriginal clients and actually sitting with them and beginning to understand what worked well in a service delivery perspective, what needs to change, understanding what cultural competence or service standards, practice standards mean in that space. So I think there's a range of things in the delivery of what does self-determination look like in regards to that. But that's sort of my take on it. Dan?

MR McAVOY: There are a couple of other issues mentioned in the written submissions, one of which is data governance and sovereignty. The importance of control of information but not just control, access to it.

LOUISE GLANVILLE: Yes.

MR McAVOY: We note that the VLA has supported VALS's submissions in that regard. Also, there is support for the submission around an Aboriginal Social Justice Commissioner, and Lawrence spoke about that a few moments ago.

LOUISE GLANVILLE: Yes.

MR McAVOY: And that that Social Justice Commissioner could have a very important role in the accountability and monitoring of the system.

LOUISE GLANVILLE: Yes.

MR McAVOY: The second foundational aspect which is referred to in the submissions is the identification and addressing of systemic racism and bias in the criminal justice system. The submissions note the findings in the *'Our Youth, Our Way'* report and then talks about the way in which the system itself might change to reduce the effect or prevalence of systemic racism, including training of lawyers - that's correct?

LOUISE GLANVILLE: Yes.

MR McAVOY: Commissioners, on request from Counsel Assisting, VLA has produced a document with further background information about VLA, and there was some discussion of the content of this document in the opening remarks, but it's important to note that the VLA has mandatory eLearning modules for its staff, which include other ways of knowing Aboriginal culture, working inclusively with Aboriginal and Torres Strait Islander clients,

diversity in the workplace and unconscious bias in the workplace. So there is a range of mandatory training for their legal staff or was it all staff?

LOUISE GLANVILLE: All staff actually, yes.

MR McAVOY: All staff internally. So is that - I mean, it's difficult for VLA to talk about the way in which other organisations ought to go about their business, but is it reasonable to expect all organisations that are having dealings with Aboriginal community to have a high level of internal training to develop their understanding of their own biases and --

LOUISE GLANVILLE: I would say, yes, it is. I think at VLA - and I'm sure Dan will add to this - we have a strong staff network, so a First Nations staff network, and we see ourselves as very much accountable to them in terms of addressing the things that they would raise with me and with other executives regularly about how we can improve our practice. That's part of the continuous improvement.

You want that engagement and you don't want the burden to be totally on their shoulders, you want to be learning more yourself so you are really building organisations which can be proud of their cultural competency, understand the support of First Nations organisations, and be contributing to overall reform in that way. Dan can probably talk a bit more about if you want particular initiatives we have taken in that space.

DAN NICHOLSON: Yes. Sure. So, I mean, we have a role very much in working with our own staff and some of those foundational training are important, that you've mentioned. Also very specific things like when a First Nations person is on remand, making sure we are doing strong bail applications and we have done a lot of work with our own staff in that, making sure we are making full use of the law that can help get our clients bail. Then beyond looking at our own staff, you are right, there is a big challenge across the whole profession, and the whole profession, legal profession, starts from a pretty low point where in law schools and other formal education doesn't equip people to represent Aboriginal clients, as well as they should.

COMMISSIONER WALTER: If I can just ask a question on that. So legal training is quite lengthy. Why do you think universities are still not providing adequate education and training for people who are then going to be released out into the community, and to actually work with Aboriginal people?

DAN NICHOLSON: It's a big question. Others will answer better. I would say generally the legal training you get doesn't equip you to be a Legal Aid lawyer. It's a broad degree aimed at corporate law and other sorts. I know when I came out of law school and started dealing with marginalised clients, I was not at all equipped for that. I think we haven't generally around the country seen the number of First Nations legal academics and others involved in the education system that we'd like.

MR McAVOY: Commissioner, I can indicate that we will be receiving evidence from Dr Eddie Cubillo, Associate Dean at Melbourne Law School, this afternoon and his evidence goes to this point. He will be in a good position to speak about that matter.

COMMISSIONER WALTER: Thank you, Counsel.

LAWRENCE MOSER: Can I add a response to that, Commissioner. If it was me, I'd be mandating this stuff. But I don't get to say that. I'm just one person, nobody in the scheme of things, but it seems a no-brainer to me. There are things that we mandate around training requirements and skill levels and competency standards, you know. You know, you look at the construction industry, for example, there are some things, bits of tools or machinery you can't drive unless you get a ticket and you can demonstrate that.

Now, we have been talking about this - when I say we, I'm generally speaking about the mob - in Victoria, we have been talking about these things for I don't know how long. Education's one of those. But how can a teacher in a classroom teach Aboriginal children without understanding some of the things we sort of talked about here? So, to me, it seems to be a no-brainer in this space, and hence why, I suppose, the submission talks to things around practice standards, and us, VLA, doing some internal work around that and starting to see how we can drive some of that sort of change in that way. But in terms of the universities, I am bamboozled as to why it is just not mandated.

LOUISE GLANVILLE: It's fantastic to be talking about these sorts of things. I do wonder, though, to take an emotional standpoint again, whether there is a lack of confidence and almost a bit of fear sometimes in the sort of learning that's provided. I do think that in universities they're places of inquiry, but, I suppose, there are more and more market mechanisms in place now, people studying for purposes, for their career, and that's fine, and for the remuneration that will follow from that. I do think that there perhaps isn't enough consciousness about the experiences or knowledge about the experiences of people who are particularly disadvantaged. I suppose I'm talking not just about First Nations people, I'm talking generally, there is not an easy way sometimes for people who are senior in education systems to understand, put yourself in the shoes of the other and imagine what the experience would be like. Therefore, tailored training that is going to assist people. I think it's quite complicated and requires internal knowledge about your own beliefs and thinking as well as substantive knowledge and the coming together of those two I think is quite hard.

COMMISSIONER WALTER: That's not a new issue, is it?

LOUISE GLANVILLE: No. No.

MR McAVOY: But it is an issue gathering momentum and Dr Cubillo will be able to speak in some detail about this particular issue. I do ask, though, whether VLA has any requirement of its third-party providers. VLA reaches out to other firms to provide legal services?

LOUISE GLANVILLE: Yes.

MR McAVOY: Does VLA have in place any mechanisms to ensure those agencies have cultural awareness or competency?

DAN NICHOLSON: We do have practice standards. That's the way we say, you know, what we require of private lawyers who undertake Legal Aid work, which is a large share of it. There is some reference to cultural awareness in those practice standards, but it's not very well developed, and a significant focus of our work now, including with Dr Cubillo, is to strengthen those practice standards and the - you know, as training and other mechanisms are developed, the part that Legal Aid can own is to mandate those for people who are doing Legal Aid work, and that's something that still requires a lot of work, I would say.

LAWRENCE MOSER: Can I add to that I think there is an opportunity in this space too to bring in certainly the ACCOs, the Aboriginal organisations, such as VALS and Djirra, to be part of the response in terms of delivery of training or oversight of training or being part of the group that has some oversight of that sort of stuff in the context of what we were just talking about.

MR McAVOY: Thank you. That's an important point.

The submissions also refer to the need for greater levels of understanding within the other sectors of the - other parts of the justice sector, including police, judicial officers, parole decision-makers, corrections and court staff. So is it fair to say that there are some things happening in some places but there's no coordinated or overall structured --

LOUISE GLANVILLE: I think that's right. I think there is a much greater awareness of this issue than I would even say four or five years ago. So I think there is activity and, you know, it is good that we have a Judicial Commission in Victoria and that you can make complaints to that Judicial Commission about the behaviour, say, of court staff or judicial officers, and Legal Aid Victoria regularly does that, if it has evidence of what we would say is inappropriate behaviour by judicial officers or even other staff in raising that with the heads of jurisdiction.

Also, I think we have ourselves just launched an anonymous reporting tool at VLA, and that's because we know that many of our staff, for example, won't report perhaps the racist behaviour that they have been confronted with as a worker in a setting, and they might tell us about it after the event and we really want to be very proactive in addressing the experiences of our staff as well as the experiences of clients, because many of our staff are people are colour and, as I have indicated, the numbers of First Nations people within that.

It's not uncommon. Once again, Dan can talk to this, some of our younger lawyers whose appearance might be particularly, I don't know, colourful in some way, might be seen as either the translator, the client in a matter, but not the lawyer. It is a very obvious bias that exists in understanding what role people are playing and if they are a person of colour or a First Nations person, it is not uncommon for them to be seen as not playing the lawyer role, for example, which tells you something about the way the system constructs the players and the institutions within it.

MR McAVOY: You would agree there has been work done in creating those mechanisms in relation to bullying and gender bias in recent years in the legal profession?

LOUISE GLANVILLE: Yes. Still a long way to go, though, I would have to say and that's why we like the anonymous reporting tool because we can use that information where people don't want to disclose, because they worry about their careers or their future, or whatever it is, we can use that information to look at trends and take that information up with whoever we need to in our own systems or in systems in which we work, whether that be courts or hospitals or wherever it is, in order to improve practice in those areas. Did you want to give one or two examples, recent ones, or too particular?

DAN NICHOLSON: They'd be too particular.

LOUISE GLANVILLE: It's not irregular that we see these things happening.

MR McAVOY: The failings in the system are still quite present?

LOUISE GLANVILLE: I think so, yes.

MR McAVOY: We heard evidence yesterday morning indeed from a solicitor to the effect that a magistrate told her client that he wouldn't be able to use the race card on the next bail application.

LOUISE GLANVILLE: Yes.

MR McAVOY: Indigenous card. In your submission in relation to identifying and addressing systemic racism and bias in the criminal justice system, you also talk about criminal justice system laws an suggest that all legislation should explicitly recognise the primacy of self-determination; that's correct?

DAN NICHOLSON: Yes.

MR McAVOY: You also identify the need for culturally safe court services, culturally appropriate judicial decision-making, and make the observations that it should be supported, included through individualised and informed sentencing options, restorative justice processes and the use of Aboriginal Community Justice Reports. You've had some experience with the Aboriginal Community Justice Reports?

DAN NICHOLSON: Yes. It's a relatively new project, obviously, but we have had some experience, yes.

MR McAVOY: It's still in the early phase?

DAN NICHOLSON: Pilot, yes. But certainly in the case that I have seen it was incredibly valuable. In making the connection between the person's background, generally, and their specific experience of colonisation or dispossession or removal and the particular offending, but also in demonstrating to the court, in a way that a lawyer is never really going to be able to do in taking instructions, how cultural connection can be so important in whatever the sentencing outcome might be and in the process of rehabilitation or however you would like to describe it. But, yes, in our relatively small experience, it's a tremendously valuable resource that we'd like to see made more available.

MR McAVOY: That's that inability of the lawyer to get to the particular facts or issues that might be brought to the attention of the judicial officer, is that an observation that the Aboriginal community organisation with the right skills can collect that information from the individual or is it some other observation?

DAN NICHOLSON: Yes. It's both about skills and it's, realistically, in a very busy criminal practice also about time.

MR McAVOY: The other observation in relation to systemic racism is the corrections and transition services. The submission is that culturally appropriate supports in custody for

inmates, and you refer to your submission to the Cultural Review of Corrections Victoria, and that includes transition out of incarceration as well?

LOUISE GLANVILLE: Yes.

MR McAVOY: The third area that you address in your submissions in relation to the foundational aspects of a self-determined system is addressing the failures in intersecting systems that create and perpetuate disadvantage. Is it possible just to speak to that generally, to give the Commissioners a flavour of what's intended.

DAN NICHOLSON: Sure. I mean, I think we have probably spoken quite a bit today already about a great example of intersecting system, which is the child protection system and how that system is failing, people get drawn into the criminal justice system who shouldn't be there. One could make similar observations about the mental health system, the education system, housing, of all these systems that are not functioning to support people properly, providing culturally controlled or culturally safe support. People then end up, because of the failings in those systems, engaging in the criminal justice system. That's something that we see in courts all the time.

MR McAVOY: Those matters which are in other sectors often talked about as the social determinants of disadvantage or that type of indicators are the very matters impacting on peoples' interaction with the criminal justice system.

DAN NICHOLSON: That's right.

MR McAVOY: One of the other areas you speak to in your submissions is victim support. Can you just explain the need in this area?

DAN NICHOLSON: Yes. There's a lot of evidence now about the importance of treating victims differently as actors in the criminal justice system, providing them with early support, and it is well established, and again the child protection system properly points to this, being a victim of crime and ending up engaged in the criminal justice system, there is a long pathway and I don't know the exact - but one just has to look at the Royal Commission into Institutional Responses to Child Sex Abuse. The number of people who gave evidence as victims who were, at the time, in prison was quite striking.

MR McAVOY: Is the VLA able to comment on any difference of experience as a victim complaining to police for First Nations people in Victoria as to non-First Nations people?

DAN NICHOLSON: I think there's a lot of evidence in a range of areas about the different experiences that people have as victims of family violence, as victims of police misconduct, and the lack of confidence that First Nations communities have in many of those systems.

MR McAVOY: The submissions also point to civil legal need, and the support people need in relation to civil matters such as housing, income, their mental and physical health needs, all impacting on their experience and the impact on the criminal justice system.

DAN NICHOLSON: That's right, yes. Again, it's about getting help with those intersecting issues in your life. That if they are not fixed, you'll end up having much higher risk of getting engaged in the criminal justice system.

MR McAVOY: The fourth area that is suggested as a foundational aspect of self-determining the system is keeping First Nations people out of the system and the VLA has made submissions, at page 4 of Appendix A, about the minimum age of criminal responsibility. This is a matter that has had great public support, and it's been considered by the Federal Government, the State and Territory governments, with some movement. Are there further comments that VLA would like to make in relation to the need for raising the minimum age of criminal responsibility?

DAN NICHOLSON: I'm aware that a lot of people have commented on this already this week, so I won't repeat what's been said, I will just note, in the course of this week, the report to the Council of Attorneys-General about raising the age of criminal responsibility was released and if you look at that report, it's yet another piece of evidence about the importance of this reform.

What it makes clear is whether you look at the medical evidence, or whether you look at the disproportionate impact on very marginalised children, or whether you look at it from a criminal justice system impact, because the earlier you start in the system the more likely you are to go into the adult system, or even if you look at it simply as a moral issue, the case for change is very clear.

The only thing I would comment on is sometimes reference is made to the common law presumption of *doli incapax* and that this provides sufficient impact protection for children. This is, I'm sure you are aware, the presumption that a child under 14 doesn't possess the knowledge to commit a criminal offence, to have the mental element of a criminal offence. I just say that, in our strong practice experience, that doesn't provide sufficient protection because we still see people arrested and remanded in custody, even if they are *doli* - like, you know, if they should be covered by the presumption of *doli*.

That's particularly apparent once you get outside Melbourne, outside of the specialist Children's Court that Joanna talked about earlier, where it is very inconsistently applied and not often applied in the way it should be. So I can give a recent example, which sort of illustrates I think some of the shortcomings of this and I'm being a bit careful in talking about this client experience not to identify them, but this was a recent experience of a young First Nations woman who had a history of trauma, was in the child protection system, had had a number of placements break down, and ended up in residential care. During that period where those placements were breaking down she was repeatedly interviewed and charged with criminal offences relating to family violence and intervention orders.

She had a different lawyer, but we first came across her when she was remanded in custody, 12 years old. At that stage she had multiple intervention orders and 25 sets of criminal charges, more than 25 sets of criminal charges. So we assisted her and negotiated away a number of those charges on the basis of the presumption of *doli* ought to apply, but she was not - that she couldn't be found guilty of a criminal offence. None of those cases went to contested hearing. We won every case and every one of those 25 sets of charges was ultimately withdrawn or not proven.

Even despite that, on the day that we finished that contested hearing, as she walked out of court, more charges were served on her. So that, to me, just demonstrates that her prolonged

involvement in the criminal justice system just demonstrates how *doli incapax* is not doing the job and that there's an urgent need to raise the age of criminal responsibility.

COMMISSIONER HUNTER: She was 12 in residential care?

LOUISE GLANVILLE: We note I think that Northern Territory have announced they are moving to 12, that they are committed - the government has committed to moving to 12. We would say any move is good but we would prefer the 14 because we think that that is what the evidence indicates. I think the report that Dan referred to makes this very, very clear.

MR McAVOY: There is also evidence suggesting that, in addition to a minimum age of criminal responsibility, there should be a higher minimum age of detention.

DAN NICHOLSON: That's right.

MR McAVOY: 16.

DAN NICHOLSON: Yes.

MR McAVOY: I want to ask you questions about the need for bail reform. I note from your written submissions you identify that, in particular, there's been a five-fold increase in the number of Aboriginal women remanded in custody over the last 10 years. That's a fairly shocking figure.

DAN NICHOLSON: Yes. We have seen in the past 10 years, but particularly the past five years, since the most recent changes to the *Bail Act*, a very significant increase in the number of First Nations people on remand, but also the proportion of First Nations people in custody as a whole who are on remand as opposed to sentenced. You are right in saying that the impact has been most profoundly felt on First Nations women.

MR McAVOY: Are you able to comment on, in general terms, on the nature of the offending? Is it serious crime or does it tend to be low-level crime or can you not make that sort of --

DAN NICHOLSON: We are in every remand court, every day we're in the bail and remand court every day and night of the year and the new Children's Court Weekend Online Remand Court every day so I can certainly comment. The particular issue we see with the current laws is that people who repeatedly commit relatively minor offences, they commit an offence and may be on bail or some other form of community supervision, commit another offence, minor offences, end up in the reverse onus situation for bail, and may even quite quickly end up in exceptional circumstances bail, which means you have to demonstrate exceptional circumstances to get bail.

This is the threshold that was previously reserved for the most serious charges, rape, murder, terrorism, those things. But we particularly see people who aren't facing imprisonment for the offences they have committed that we find in custody. I can give some concrete examples of the kind of offending that are seeing First Nations people on remand that we have seen through our services in the past few years. These are, as I said, people who would be on bail for some other kind of offending but then commit another minor offence and end up remanded in custody with the reverse onus to get bail.

We had a pregnant woman remanded on two counts of shop theft, possession of cannabis and a charge of failing to appear. A young Aboriginal man experiencing homelessness who was remanded for the theft of a single bottle of soft drink. A young man with an intellectual disability who was remanded for kicking a car because police charged him with the indictable offence of criminal damage rather than a summary offence of wilful damage.

A young man who was on bail for other matters, in the Children's Court, doing really well, he turned up to the court for a bail review, but on his way into court he was found with pocketknife and a small amount of drugs in his pocket. The Children's Court magistrate hearing that matter said he was doing very well, and rather than those matters being raised before her, he was later arrested and, after several hours in police custody, presented at night to the adult Remand Court.

These are all very real examples of how minor offending brings people into custody and I suppose, to summarise, we see too many people in custody because of issues in their lives and failures in our systems, not because of offences they have committed.

We know that even short periods of remand are very harmful to people. It's long enough to lose key supports like work and housing and of course for women it has child protection implications. But, of course, a short period of remand, short period in prison, is not long enough to get any support or transition support in prison either. So I think I would say that, from the perspective of our frontline lawyers, bail reform is the most pressing issue that they see, and indeed the Criminal Justice multi party Inquiry made recommendations or it found that our current bail laws are just not targeted to risk properly and we agree with that.

But we would say that the Inquiry made recommendations for further review of the bail laws, we would say that we don't need review, we need urgent change to address the number of First Nations people on remand but also to make sure that the bail laws, and particularly reverse onus bail provisions, are properly targeted to risk, which they aren't at the moment.

MR McAVOY: We heard evidence yesterday from VALS about their observation that Aboriginal people in Victoria are subjected to over-policing and racial profiling. By this, it's meant that they are more heavily policed and more likely to be charged for matters where other people might not. Is that something that VLA can comment on from your observations?

DAN NICHOLSON: Yes. I think the *'Our Youth, Our Way'* report found that something like 70 per cent of the children they spoke to reported experiences of racism in policing, and they are our clients, too. So that rings true and is consistent with the experience of our lawyers. I think what we see in court every day is the unreasonable exercise of discretion. There's a lot of discretion in the criminal justice system, from whether you help someone in the street, or when you stop them, if you detect some offending whether you just warn or caution them, when you charge them, whether you offer them diversion, when you charge them, whether you bail or summons them. Perhaps a decision to bail or remand at the station and then a decision to go into court and argue for remand or bail.

We see all these exercises of discretion and we consistently continue to see First Nations clients where we see unreasonable exercises of discretion, and this is why some of those case studies have demonstrated the things we are seeing.

MR McAVOY: Not just unreasonable, but exercises of a discretion towards a heightened criminal justice response rather than a lesser response.

DAN NICHOLSON: Yes.

MR McAVOY: And together the number and consistency of that exercise of discretion towards a heightened criminal justice response indicates some sort of bias; would you agree with that?

DAN NICHOLSON: Yes. I think the degree of overrepresentation has to be not explained by - has to be explained by how that exercise of discretion is done over a prolonged period of time.

MR McAVOY: So you make some recommendations in your written submissions regarding a legislated cautioning system and removing the requirement for police to consent to diversion in a way that brings closer court oversight?

DAN NICHOLSON: That's right. I should say, in fairness, a lot of good work is being done. The Aboriginal Youth Justice Cautioning Scheme that Victoria Police is working on now is positive. A lot of hard work is being done. Again, it's not to criticise individual pieces of work, but we think that some of these decisions require oversight, because we can't - we frequently see irrational or unreasonable refusal to give someone a caution or diversion. We think those things should be properly overseen by courts.

LAWRENCE MOSER: Counsel McAvoy, just on that point, going back to the bail stuff, in regional locations, the Justice of the Peace also are part of this process too, at an early point, where bail applications may be being required, and what have you, and they are another part of the jigsaw puzzle that are not getting any cultural knowledge and understanding, leading into those other sorts of things as well. I just wanted to make sure I made comment about that before we lost it.

MR McAVOY: Thank you. I suppose the point can then be made that the exercise of discretion in these ways and the over-policing only serve to compound the difficulties with the bail legislation.

DAN NICHOLSON: Correct. So you don't see a person being remanded in custody for theft of a single soft drink unless there's been a whole range of decisions along the way that's got you to that point. Part of it is the legislation, but part of it is of course the way police and others exercise discretion.

MR McAVOY: Thank you. You also refer in this section to the removal of public intoxication as an offence. We have dealt with that. Item 5 is making imprisonment a sentence of last resort for First Nations people and the reduction of harm in imprisonment. There were whole sections of the Royal Commission into Aboriginal Deaths in Custody report that dealt with the notion that imprisonment should be a sanction of last resort for First Nations people and it's disappointing that we are still in this position today.

In your submissions you refer to a number of submissions that VLA has made, including the Inquiry into the Victorian Criminal Justice System, Cultural Review of Adult Correctional System, *'Our Youth, Our Way'*, Statutory Review of Youth Justice, Royal Commission into

Victoria's Mental Health System, Productivity Commission, Mental Health Review and the National Legal Aid Submission, which I assume you are a part of, to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. So the submissions have been made before, is the point that the Commission should take from this.

DAN NICHOLSON: Yes.

MR McAVOY: There are some particular issues that you've highlighted. Again, these are generally not new submissions but the first is to replace short sentences of imprisonment with culturally appropriate sentencing options. So non-custodial options; yes?

DAN NICHOLSON: That's right. Most of the world is moving away from short sentences of imprisonment, and referring to people in the community, particularly because of the effect of the bail laws, Victoria is going the other direction. As I said before, and as I'm sure is well known, the particular impact of short sentences of imprisonment is positive supports in the community get disrupted but there is no opportunity for any rehabilitation inside the correction system and it becomes very difficult to run an effective corrections or youth justice system if you have a large number of people churning through for short periods of time.

It's really impossible. Of course, the particular opportunity for First Nations clients is that you can have - there can be strong culturally appropriate or controlled supervision in the community, if we tried to keep people out of custody.

LAWRENCE MOSER: The only bit of Corrections Victoria in terms of where mob are sent to that's working well is Wulgunggo Ngalu and that's driven by our mob.

MR McAVOY: Yes. Figures from New South Wales, at least, indicate that, during COVID, when short sentences weren't being imposed, there was no discernible effect on crime rates or other matters. There are a lot of compounding features in the COVID era but, nevertheless, the world didn't stop because they stopped sending people to jail for short sentences. There's a reference to sentencing reform and we have already discussed the use of Aboriginal Community Justice Reports and the potential for those to be expanded. You've made observations in relation to removing uplift provisions. Can you just explain what you mean by that?

DAN NICHOLSON: That particularly relates to Children's Court matters being uplifted into higher courts more readily and we just think it particularly loses the opportunity to properly - I mean, inevitably it escalates children into the adult system more rather than a specialist children's response.

MR McAVOY: You also, in relation to the youth justice systems reforms, refer to the removal of mandatory penalties and suggest differentiated and age-appropriate responses, and outcomes, for First Nations children and young people. But those observations will apply across the board, not just for First Nations children; is that correct?

DAN NICHOLSON: Yes.

MR McAVOY: You recommend strongly repealing mandatory sentencing?

DAN NICHOLSON: Yes. If we are serious about trying to have individualised and tailored responses to people, to try and address offending in a meaningful way and help people to rehabilitate and re-enter the community, then mandatory sentencing is fundamentally inconsistent with that principle.

MR McAVOY: I notice the time. I want to take you to your submissions in relation to healthcare in custody. You've made the observation that you support VALS's recommendations and submissions in relation to provision of healthcare and mental healthcare to people in custody. There's a failure to adequately provide primary healthcare in VLA's view or is that not something VLA can comment on?

LOUISE GLANVILLE: I don't know that we can comment on the health systems more generally and whether there's a failure to provide. We are more stating the fact that if people need healthcare and health assistance, it should be available to them. I think this has been particularly evident for us perhaps in some instances where a person with a disability has found themselves in a custodial situation, for example, and what they have been able to access that might be part of a normal regime for them. That might be difficult to be made available. But I wouldn't feel confident to say more than that unless, Dan, you are thinking of something particular here?

DAN NICHOLSON: We have been involved in some of the same coronial matters that VALS has been where getting healthcare has been an issue. So our observations are probably consistent with what was just observed.

LAWRENCE MOSER: I think on that one it sort of goes back to the conversation earlier on about cultural plans. I mean, I think in the correctional setting, that those sorts of concepts, or that sort of thing, could be rolled out in a way that is more advantageous to the individual, in terms of their cultural mental wellbeing, cultural health, and their health-related matters when they are in custody overall.

MR McAVOY: Thank you. Finally, I would like to take you to the part of your submission where you address the need for system oversight, accountability and the need for an independent form of police oversight. We have heard evidence from other witnesses about this, but it would be useful to hear VLAs view about the importance of independent police oversight.

LOUISE GLANVILLE: We can address that. We do support independent police oversight, and Lawrence referred to it, it's something we see in a lot of areas, like, we don't like judges hearing complaints about judges and we don't like police hearing complaints about police, and we probably see that you need a more arm's-length process in order to monitor and assess and give oversight to particularly the actions of bodies that are very vital to healthy civil societies but have available to them discretion in large part and can - therefore, they are entrusted, I think, with exercising that appropriately, for example.

So we think that certainly the Royal Commission into the Management of Police Informants really did indicate, in large part, that oversight is a very important part of being able to talk and think about proper policing, and we would support the strengthening of independent police oversight as part of that position.

MR McAVOY: Thank you. They're the questions I have in relation to the VLA's submissions, Commissioners. Are there any questions that have?

COMMISSIONER WALTER: Thank you. I have asked them along the way.

COMMISSIONER BELL: I have no questions, Chair.

CHAIR: No further questions.

MR McAVOY: In that case, Commissioners, I tender the Victorian Legal Aid submission, *'Systemic Injustice In the Criminal Justice System'*, dated 21 October 2022, and that's document 8.2, and the documents which follow, including the submission to the Yoorrook Justice Commission, *'Systemic Injustice In the Child Protection System'*, and, Commissioners, you will note at the end of the list of documents that are tendered we have included the additional document with further background information on the Victorian Legal Aid and the Victorian Legal Aid final evaluation summary, which was spoken to during the course of evidence.

**<EXHIBIT 2.23 VICTORIAN LEGAL AID SUBMISSIONS WITH ATTACHED DOCUMENTATION DATED 21/10/2022**

MR McAVOY: There being no other matters for these witnesses, Commissioners, I ask that they be excused.

CHAIR: Thank you.

**<THE WITNESSES WITHDREW**

MR McAVOY: Commissioners, we have gone over time. Thank you for sitting a bit longer. We have further witnesses at 2 pm. If you wish to start at that time, it's now 20 past 1.

CHAIR: I think 2 pm.

MR McAVOY: Thank you, Commissioners.

CHAIR: We're adjourned until 2 pm

**<ADJOURNED 1:20 PM**

**<RESUMED 2:02 PM**

CHAIR: Thank you, Counsel.

MS FITZGERALD: If the Commission pleases, this afternoon we have the Human Rights Law Centre and the Centre for Innovative Justice to speak in the criminal justice context about what needs to change, examples of good practice and what's preventing much needed changes. I will swear the panel members in.

CHAIR: Thank you. We are pleased to welcome you today.

**<NICK ESPIE, AFFIRMED**

**<MONIQUE HURLEY, AFFIRMED**

**<STAN WINFORD, AFFIRMED**

MS FITZGERALD: Both Centres have provided detailed submissions which I will tender at the balance of this panel session. If we can go back you, Mr Espie, will you introduce yourself personally and professionally and, in particular, if you would explain your recent experiences working in the Northern Territory, and I understand after that the Centre would like to make an opening statement?

NICK ESPIE: Yes. Thank you, Commissioners, for allowing us to speak here. I'm a lawyer. I'm an Aboriginal man, I'm an Arrernte man from Central Australia, working as a director at the Human Rights Law Centre as a Legal Director, and I'm here with Monique Hurley, who is my colleague, also working for the HRLC. We work nationally across the country, although I'm based in the Northern Territory, the work we do includes - and historically the organisation's done a lot of work here in Victoria.

Can I acknowledge the Wurundjeri people of the Kulin nation, and pay respects to the Elders, past and present. I have been a lawyer for more than 20 years practising in both the Northern Territory and Western Australia, and that's included starting my career in prosecutions in my hometown of Alice Springs, and then working primarily in criminal defence, as well as other areas of law, including child protection as well across Northern Territory and also the Kimberley region of Western Australia.

I worked shifting from criminal practice more to policy and advocacy work. I started working on the Royal Commission in the Northern Territory. That was the Commission into youth detention and child protection. From then I was employed in the Northern Territory Government managing the law reform that was subsequent to that Royal Commission. I saw the implementation of legislative reforms in youth justice and child protection before working back in NAAJA, which is the Aboriginal legal service in the Northern Territory, and then coming to work at HRLC.

Frustratingly, seeing important reforms in child protection and, in particular, in the youth justice space, using my own 20 years of experience as a lawyer, 20-something years of experience and as a parent of Aboriginal children, implementing or writing recommendations, being a part of that process, and implementing important law reform and the frustration of watching that deteriorate and be wound back and regressive laws, contrary to the wealth of evidence that was gathered during that Royal Commission is something that is extremely disheartening and frustrating.

So, I guess, it's something as words of caution for yourselves to consider how to make and create recommendations that will bring lasting change, and something concrete that can't be wound back and dismantled. So that's just something to say. HRLC, we are an independent not-for-profit organisation. We are non-government, we're independently funded, and that's an important aspect of our work so that we can, in giving - in the advocacy we do, we can be independent and not have the fear of biting the hand that feeds us, which many Aboriginal organisations, in my experience, nationally have that fear.

Our work is - we work in solidarity with Aboriginal people and organisations to address systemic injustices. We acknowledge the powerful work of VALS, who have already given evidence here. That's an organisation that we often partner with. We endorse their submission to Yoorrook. In particular, we support their calls for the Victorian Government to negotiate a Treaty with Aboriginal and Torres Strait Islander people, community and organisations, and to set a new foundation to transform our criminal justice system.

For years governments spend more money on police and prisons and expand those processes, not just in Victoria but across the country on the false premise of tough on crime and more presence, more police, is going to create community safety. In my experience - over the course of my career, the experience of the work that HRLC has been involved with - and obviously there is a body of evidence, we know that's not true.

So those approaches of just more police and prisons, I guess, we know it doesn't work. It's a shame that we have to be discussing that at such an important truth-telling event but the fact that Aboriginal people across the country just getting justice shouldn't be a starting point. It's a hurdle to so many other things.

I guess just touching on what I said before about the experience of the Royal Commission, I worked on it as well as many other Commissions and inquiries. Often they identify evidence-based solutions to the repeated systemic failings of government, and government agencies, the solutions identified always include resourcing enabling the Aboriginal sector for co-design and participation. However, when it comes to implementing any recommendations, it seems that government agencies responsible for systemic failures, they let down our people, their punishment always includes increased funding to implement and address these things, which inevitably then gets wound back and they sort of go back to the same starting point. There are always recommendations that they engage and allow the sector to participate, but there's always a failure in doing that properly, a failure to resource the Aboriginal sector sufficiently, or to listen to the Aboriginal sector.

Unfortunately, the motivation that comes from things like this often dwindles and recommendations are ignored, or only partially implemented, and, as I said, or subsequently repealed. Sorry, I'm going on, but just with reference to the recent work in the Northern Territory, a piece of work that HRLC has been involved with now is the inquest into the police shooting of a young man referred to as Kumanjayi Walker, who was a young teenager in the community of Yuendumu.

This is another instance of governments failing to proactively act on evidence and take steps to address systemic injustice. Unfortunately, Aboriginal people and organisations are forced to respond to these sorts of tragic deaths and working in the space of advocacy. It's a cruel irony that you are often waiting for another death, whether it is Kumanjayi Walker, Ms Tanya Day or Ms Nelson, waiting for an opportunity to create a momentum of change when there is already a wealth of evidence around that. So it's that tragedy of not only people in justice advocacy, but the Aboriginal community. It's that question of whose mother or son is going to be next and then, unfortunately, having to seize that opportunity to say again, this is why we need to create change. I will pass to my colleague, Ms Hurley.

CHAIR: Thank you.

MS FITZGERALD: Just briefly introduce yourself professionally and then any further opening comments you wanted to make.

MONIQUE HURLEY: Thank you. It is a real privilege to be here today. My name's Monique Hurley and I am Nick's colleague and a lawyer at the Human Rights Law Centre. I have got 10 years' experience working across Victoria and the Northern Territory in Aboriginal legal services and community legal centres and that's what I'm bringing here today. So alongside the need for transformation of the criminal legal system that I know that you have heard a lot of evidence about, and particularly from the Victorian Aboriginal Legal Service, there is urgent need for the Victorian Government to take action and reduce the number of Aboriginal and Torres Strait Islander people experiencing injustice at the hands of the criminal legal system.

With the stroke of a pen, the Victorian Government could make changes that would have both an immediate and intergenerational impact, and a brave Victorian Government would be working towards a future without people in prisons. This starts with - we've identified four priority reforms, from our perspective, firstly, the Victorian Government must raise the minimum age of criminal responsibility from 10 to at least 14 years old. No child should be in prison, but right now children as young as 10 can be locked away in Victoria prisons and police cells.

The current incredibly low age of criminal responsibility contributes to the overrepresentation of Aboriginal children in youth justice prisons and is out of step with the rest of the world, international human rights standards, medical science and the criminological evidence. Following the lead set by the ACT, the Victorian Government must do the right thing and raise the age. Secondly, we say that the Victorian Government must overhaul the State's bail laws, which are currently resulting in unsentenced Aboriginal people being locked up in pre-trial detention at really alarming rates.

Knee-jerk changes to bail laws that have disproportionately impacted Aboriginal people and Aboriginal women the most are needlessly removing women from their families and funnelling them into prisons where they are getting trapped on remand. To fix this injustice, the Victorian Government must repeal the reverse onus provisions in the bail law as a matter of priority.

Thirdly, the Victorian Government must end the status quo of police investigating police. While the government has invested significant amounts of money into expanding and militarising the State's police force, there has been no commensurate increase in accountability. For too long, police have been able to act with impunity and dodge accountability for misconduct and discriminatory policing along with deaths in custody. To address this, the Victorian Government must properly resource an effective and independent police oversight body in the form of a best practice police ombudsman.

Finally, in terms of priority areas for action, the Victorian Government must get public intoxication reform right. The government's commitment to repeal public intoxication laws is testament to the tireless advocacy of the Day family, Belinda, Apryl, Warren and Kimberley, and activism and work done by Aboriginal communities in this State since the Royal Commission into Aboriginal Deaths in Custody handed down their findings in 1991 and the government owe it to them to decriminalise public intoxication and replace it with a best practice Aboriginal-led State-wide public health response without further delay.

As the Day family have consistently said, for these reforms to work there must be full transition away from the current criminal law approach to a genuine and best practice public health one that does not involve police. Thank you.

MS FITZGERALD: Thank you. Mr Winford, I invite you to outline your professional background and explain the work that the Centre for Innovative Justice does.

STAN WINFORD: Thank you. I'm a lawyer and also a policy worker and I have been involved in working on a number of projects with Aboriginal communities which are mostly aimed at bringing about their vision for self-determination in justice. Our centre's work is really about exploring innovation in the justice system and thinking about lived experience and how that can influence better policy design. Our objective is to really expand the capacity of the justice system to meet the needs of diverse users and, where possible, to be a positive intervention in people's lives.

Our centre is also very focused on practical outcomes. So testing, piloting, implementing some of the ideas that we look at, including restorative justice and therapeutic jurisprudence. Our work involves work with victims, with family violence services, women's decarceration and disability in the criminal justice system and looking at how human-centred design can deal with legal issues and processes.

We do a lot of work with government, with courts and tribunals, with non-government organisations, community organisations. We have a service called Open Circle which delivers restorative justice processes for people and also designs restorative programs, and we also work with law students. So we lead study tours looking at innovation internationally. We also teach, and I teach, a subject called Innovative Justice in the RMIT law school. Recently we have been working with the Aboriginal Justice Caucus, with RAJAC with an organisation called Woor-Dungin and with Djirra and VALS.

MS FITZGERALD: Thank you. If we can start now with what needs to change. Mr Espie and Ms Hurley, the Human Rights Law Centre's submission calls for the closing of prisons, not building new ones. We heard this morning from Aunty Vickie Roach. And this is a call for reform that these she's been making for some time. It sounds radical. What do you say needs to happen to make this a reality?

MONIQUE HURLEY: So, yes, a real privilege to hear from Aunty Vickie Roach this morning and really echo her calls for action. I think that for too long successive Victorian governments have been spending millions and millions of dollars on building and expanding prisons that the evidence - and a mounting body of evidence is really showing don't work and that they actually even undermine community safety.

That's something that the recent Victorian Inquiry into the Criminal Legal System found. They confirmed that in terms of saying that the current kind of punitive approach to law and order and locking everybody up isn't working and that we need to be thinking about different approaches. And I think that that's really, really important and really is an exciting opportunity for a truth-telling Commission, this kind of forum, to be thinking about really ambitious and bold ideas for change, and thinking about how do we work towards a future where there aren't prisons that really are harming and hurting people in the ways that Aunty Vickie Roach spoke about this morning.

Prisons have a really harmful effect on people. They've been death traps for over 500 Aboriginal and Torres Strait Islander people who have died in custody since the Royal Commission into Aboriginal deaths in custody in 1991 and earlier this year two Aboriginal men died in prisons within a six-week period.

The fact that we live in a State that allows that to happen, and that that's not treated as a crisis, is really - it's shameful and it's appalling and, for those that survive prisons, people like Aunty Vickie, the stories that they recount, and the experiences that they have in terms of being subjected to practices like solitary confinement and routine strip-searching, it's really easy to understand how that system isn't working and that we need to really be thinking about new and different approaches, and that starts with not spending money on prisons and investing that money in alternatives and thinking about what those alternatives can look like, how they can build stronger communities, how they can support people and how they can address the risk factors that cause people to be criminalised by the current systems in the first place. That's, in this context, looking at self-determined solutions and investing in those.

MS FITZGERALD: The Human Rights Law Centre has also called for independent oversight into the police. Can you explain what the centre thinks that should look like?

NICK ESPIE: What we would recommend is an independent police ombudsman and I think the best practice example is out of Northern Ireland. It needs to be independent of police. What we see not only in this jurisdiction but across the country is police investigating police. It just doesn't work. It's too much of a conflict of interest and it requires investigation upon independent citizens that are properly resourced. It is something that does have to be properly resourced.

Other issues that we have come across is the timeliness of complaints, not being investigated thoroughly and timely, speaking to witnesses in a timely fashion. An independent police ombudsman needs to be transparent, open to public scrutiny. It's obvious what's happening in the case of Aboriginal people, culturally appropriate systems, you know, in how police matters are investigated.

MS FITZGERALD: The submission also calls for amendments to the Charter of Human Rights and Responsibilities to introduce self-determination and also economic and social rights. We have heard in the evidence not specifically in relation to the Charter but in general that there is a real issue with First Nations people enforcing and even knowing that they have the rights that they already have. Would amending the Charter alone be enough to see these rights being protected?

MONIQUE HURLEY: I think the Charter plays a really important role in helping inform government decision-making and making sure that that a human rights lens is applied over government decision-making and, as you point out, we support the call from the Victorian Aboriginal Legal Service for the right to self-determination to be enshrined in the Charter. I think that amendments to the Charter can help Aboriginal people access justice and I think some of the ones that you pointed out are important. I think that a stand-alone cause of action, and access to appropriate remedies, would also be of significant assistance in terms of, at the moment, if you want to run Charter arguments in court, you need to piggyback them onto an existing cause of action, and so you need to be quite strategic in your thinking in terms of identifying a principal cause of action that you are then going to attach your Charter

arguments to and that does create accessibility issues for everybody and, particularly, for Aboriginal and Torres Strait Islander people.

So those kinds of reforms are really important, but I think that, yes, it's not - the Charter in itself and making it as wonderful and as robust as it could be is not going to be a panacea to the issues that are being raised before the Commission in terms of the changes that need to be made to the criminal legal system and that's why it's really important that that kind of work is done alongside the broader calls for more transformational justice in terms of considering how all of the different kind of government systems in the first place are resulting in systemic injustices, so doing that work alongside each other is really important.

MS FITZGERALD: Turning from what needs to change to examples of good practice. Before going through the examples, Mr Winford, the Centre's written submission sets out some key insights that have come out of the Aboriginal-led projects that the Centre has undertaken, and your submission lists those as being, firstly, that positive outcomes are achieved when Aboriginal communities lead change, and the second is that power and resources need to be shifted from government back to community, and the third insight that you shared is that the voices of people with lived experience are critical for change.

Can you tell us, firstly, with those insights in mind, about the Yallum Yallum Project that the centre collaborated on and what you think has been important to its success.

STAN WINFORD: The Yallum Yallum Project involved our centre being engaged by VACSAL, the Victorian Aboriginal Community Services Association, and the Grampians, RAJAC, to make recommendations for an independent self-determined justice model incorporating an Elders and Respected Persons Council to be known as Yallum Yallum.

The model that was developed by the community was a process for referring community members to an Elders and Respected Persons Council that would promote cultural healing, social and emotional wellbeing, and a stronger role in culture and community. The process aims to provide an alternative that diverts people away from further involvement in the criminal justice system and address overrepresentation.

Part of the work involved co-design with the community where the community initially began with its vision for what this alternative model would look like and some values that would underpin that model. The values were self-determination for a community control of both the process and the outcome and the community felt that they should have control over those aspects and it should be run by the Elders and Respected Persons who would sit on the Council and determine outcomes.

Enabling the voice of ancestors, Elders and participants were seen as important and it would involve honest and open communication between the Council and the person before them and it was thought that the process could be held at the Goolum Goolum Aboriginal Cooperative and be moved on Country if there was sufficient resources to enable that. It would involve cultural protocols including Welcome to Country and other cultural elements.

The Council process itself would enable community members to identify and connect with culture, set cultural milestones, and acknowledge and celebrate when those milestones were met. The community had an interesting view about accountability, which, in the criminal justice system, means something, often means, you know, punishment and so on. For the

community, they felt that the participants would be held accountable to the community and it would relate to their strength and the relationships that they would develop within the community. It was thought that the Council could provide problem-solving outcomes for people and that people wouldn't have to admit guilt but would acknowledge obligation to the community.

So those were the vision and values. They were established through a co-design process and, importantly, in the design process, that community involvement was separate from discussions with the justice system stakeholders, so with the courts and police and so on. It was felt that it would be important to enable the community to establish their own vision for this process and then to come to the formal system and indicate what they required of the system to enable that to function - for example, referral processes and so on.

MS FITZGERALD: Mr Winford, you speak a bit about that in the submission and I think it's a really important issue to highlight. In the co-design process, just having community members in the room with a whole lot of judges and justice system people is not necessarily going to be effective because those people are used to sitting silent in rooms with judges and that, in some ways, they need to be separate and allowed to have their ideas in a space where they feel free to communicate.

STAN WINFORD: Yes. That's exactly right. I think these processes require - often we have worked in this way with other communities and one of the critical things is about enabling people who are often marginalised and dispossessed to take power back in terms of determining their own solutions, and when conventionally the experience of people might be to come into a courtroom and bow to the magistrate or judge, and to be silent, those dynamics are to be avoided in those processes, and I guess also even, in our experience, working with the community it can be difficult to think outside the square or think outside what's been customary practice in people's experience of the justice system and to sort of give space for those community values and that vision about the strengths and resilience of the community to come through.

I think, in this case, it certainly occurred and people were really thinking about what is it we could do in our community that would enable us to contribute to the community and understand who we are and our culture and people came up with some really great ideas about cultural activities including working with the Barengi Gadjin Land Council on cultural burning and water management, working in the nursery, looking after Country, which was seen as a very positive way of addressing the obligation to the community.

There were discussions about how that could lead to employment, for example, as a ranger, as well as just an outlet for people to heal and reconnect with their Country and with their community and, of course, things like community counselling, men's and women's groups, social and emotional wellbeing, even mowing the lawns for Elders in the community were seen as things that could be done as part of the participant connecting back with their community through this process.

MS FITZGERALD: The other work that you've been doing that I was hoping you would share with the Commissioners, Mr Winford, is the work the Centre has been doing with the Aboriginal Justice Caucus to reimagine the current system of youth justice.

STAN WINFORD: Yes. So we have been very privileged to be able to work with the Caucus on their vision for youth justice and, again, it's a really striking vision when it's compared with what we currently see in the system, which is one that seems to inflict further trauma, in which abuse and further harm seems to be endemic. If you look around the nation, whether it's Northern Territory, Don Dale, or Banksia Hill or Ashley Youth Detention Centre, each of those environments, despite being closed environments, the abuses and the further trauma that's occurred within them is really evident.

Those are systems which seem to prefer stability and security over rehabilitation and often the response to issues that arise is about restrictive practices and, you know, convenience operationally over the needs and interests and welfare of the young people within them. The Caucus vision for the youth justice system was one which was controlled by the community that focused on a healing and therapeutic approaches, that promoted social and emotional wellbeing and strengthened connection to family, community and culture, that it would offer support for health, mental health, disability, alcohol and substance abuse.

The caucus was also really clear about what community controlled alternatives to youth justice custody might look like and they were really interested in examples in Canada, where there are healing lodges, in Spain where there's a response that's provided by the Diagrama Foundation. Even our example here in Victoria of Wulgunggo Ngalu Learning Place. So each of those ideas, you know, they're supported by research and evidence about what's effective with young people but they also align with the community's vision for what justice should look like.

MS FITZGERALD: Mr Winford, the Centre's submission talks about the importance of lived experience and the co-design and the Human Rights Law Centre has also mentioned the importance of co-design when driving reform, and we heard this morning from Aunty Vickie Roach, who spoke very powerfully about her experiences of these systems and what she thinks needs to change. Why does the Centre for Innovative Justice consider that people with lived experience need to be involved in redesign processes?

STAN WINFORD: For many reasons. I think it's a good way of developing policy because people closest to problems are closest to solutions and, unfortunately, they're often furthest from resources needed to make change. So part of working with lived experience is ensuring that those voices are heard in ways that they haven't been to date and I think if you look at any system, whether it's the criminal justice system or youth justice, most of the problems with those systems relate to the fact that the people that they are supposed to be achieving outcomes for, whether it's rehabilitation or otherwise, have never really been part of contributing to how they work or don't work, and I think that's - it's also respectful of people's dignity as human beings, to involve them in decisions that affect them. I think that participating in the design of systems and processes is important for people's dignity and to help them heal.

So, I mean, the third sort of reason that I think I've seen in many contexts is that the power of people's direct experience is far more persuasive than anything I could say about how or why something needs to change. I think people at the centre of systems can cut through in a way that reports don't, and that was the case in the Don Dale Royal Commission. It's been the case in a lot of the work that we do with people with disability in the criminal justice system. It's been the case with many social change movements when people who are really directly affected by the failures of systems are able to speak about them directly and people can hear

from them about the pain and trauma that they cause. That can be a very powerful and effective form of advocacy.

MS FITZGERALD: The final part of the Centre's submission that I would like to ask you to speak to, Mr Winford, is about self-determination in justice. You have pointed out that the UN Declaration on the Rights of Indigenous Peoples, in fact, acknowledges the right of Indigenous people to live by their own law, to make law and administer law. But you've also noted that there is a perception that self-determination in this area is a direct challenge to the State's authority. From a policy perspective, what does the research indicate about whether self-determination in the justice system is effective in achieving positive, social and economic outcomes?

STAN WINFORD: The research is very clear that self-determination leads to very positive outcomes, both in justice and social and economic senses. I have read several reports about that, including better analyses about other bits and pieces of research and, yes, it's really clearly the most effective way of addressing policy problems and challenges for communities and to me that seems to make sense because, for a start, going back to the point I made earlier about people knowing about what the problems are themselves, those are the people who know how to solve them as well and they just need to be given the power and resources to do that, if they don't already have them.

I think the failures of our system at the moment reflect that because we have a very one-size-fits-all justice system that doesn't allow for local solutions or community-led solutions in a way that might work in one place but not in another. So there's a great deal of benefit in that level of expertise being able to be delivered locally to tackle complex multi-faceted problems.

MS FITZGERALD: What mechanisms have been used in other jurisdictions to provide greater self-determination in the justice systems to First Nations people in particular?

STAN WINFORD: Well, in New Zealand, the Treaty of Waitangi has had an influence on that. I mentioned before that our centre take students on study tours and I have seen some incredible courts that are seen to be very much led by First Nations people. So the Waitangi Youth Courts are a terrific example which begin by people being sung on to a marae, a Māori meeting place, that involve young people, Māori people speaking Pepeha, which is their cultural identity and learning about that and developing that over a series of meetings with the judges and community leaders.

They involve really terrific practices that I think First Nations communities here often demonstrate that involve bringing people together to solve problems in a way that is very different from my experience as a former criminal lawyer going to the Magistrates' Court and seeing the stress and the conflict and the argument and the adversarialism played out in very unhelpful ways.

In the Rangatahi Court, all the participants in the court, including the judges, including the youth workers, even the police prosecutors meet together and share a cup of tea and a scone before they go into the hearing. The sort of sense in which the work is being done is very different to my experience of adversarial courts.

So I think self-determination can work very well but it also needs some infrastructure around it. In New Zealand, for example, there's obviously legislative changes that reflect self-determination but there are also changes in relation to funding and resourcing for Māori controlled organisations. So they have a commissioning agency which is separate from government, which works with community controlled organisations to fund and develop programs which might address the needs of young people in the justice system, for example, and those efforts seem to have been very effective. They are obviously led, run, resourced by the community.

COMMISSIONER WALTER: Can I just ask a question there. It's just a bit of a clarification between co-design and self-determination but I worry a little bit that these two things might be conflated. Can you explain to me what you see as the difference in those two approaches?

STAN WINFORD: Yes. Well, I think co-design is probably more about power sharing between potentially Aboriginal or non-Aboriginal people around the design of a system or a process. Self-determination wouldn't necessarily involve knowing First Nations people, it would remain entirely a process held and controlled by a First Nations community.

COMMISSIONER WALTER: You can't have co-design and self-determination?

STAN WINFORD: Well, the way that I have been involved I think in some of the work that we do, I guess you could call it - it's design in that we are exploring how to improve a process or how to develop a process, but I'm not telling the community what to do. The community's telling me what they want to do and I'm bringing my - what expertise I might have in the justice system to help that community achieve its aspirations. The community can do it itself, or they might want to draw on some of the expertise that I might have to offer.

MS FITZGERALD: One of the points I think the Commission is getting at is we currently have co-design within Victoria operating in a model that does not involve self-determination but where a specific project is handed over.

STAN WINFORD: So I think - sorry, if I'm understanding correctly, I think - thinking about co-design, usually - and we are working on frameworks, for example, for the Department of Families, Fairness and Housing around the forensic system and how the voices of people with lived experience can be incorporated into the design of policies and programs in that system, and when you look at a framework you can look at a continuum of different levels of participation by the people who don't have the power in this case, people within that system, and it begins with things like consultation, like, you know, well, government often consults and says, "We'll tell you about what we are doing", but the extent to which people have feedback and that that feedback will be acted upon, you know, it moves towards something that's much more empowered and, yes, people - particularly, dare I say, in government use that term, and it doesn't mean what I would think it means in terms of the power and control that a community would have over the outcome and whether there was --

COMMISSIONER WALTER: And co-design is never defined, is it?

STAN WINFORD: No, that's very true. Yes.

MS FITZGERALD: Turning to the Human Rights Law Centre, your submission discusses two particular things that are, you say, blocking change at the moment. The Commissioners

have heard a lot of evidence about things that need to change and they are things that, indeed, the community's been speaking about for decades, if not longer. One of those blockages that you mention in your submission is the influence of the Police Association of Victoria on State Governments regardless, really, of what party is in power. What role do you see playing in the development of justice policy?

NICK ESPIE: I guess I would say probably too much of a role. The Police Association not only in Victoria, but across the country, really do act as lobby groups and we endorse VALS's recommendation that they be treated as such because - and, essentially, we would say most of the positive reforms that we as an organisation advocated for are constantly challenged and blocked by Police Associations, if not the police.

An example is the reforms into public drunkenness where there's collaborative working groups co-designing with the relevant government agencies and you not only have police representatives but you have Association representatives as well who are often in conflict with each other, either quite obviously or, you know, discreetly behind the scenes.

So that's extremely concerning that, you know, you really should have the one voice speaking on behalf of police issues, but when police themselves - it's quite apparent that there is this constant undermining by the Association, it not only prevents positive reform but it's people in the Aboriginal community seeing that. It's quite alarming and frightening that there is no kind of genuine power structure. It's undermined. Constantly undermined.

An example of that in the recent inquest that we were working on in the Northern Territory in relation to the police association is that senior members of NT Police have given evidence explaining how - and this goes back to the issue about problems with complaint mechanisms and disciplinary proceedings - that even the most minor things that should be relatively straightforward, where there's been a complaint or an issue that should be addressed so that a young officer can learn the lessons of what they may have done wrong, receives some sort of discipline and some sort of re-education and just get back to their job. There is this constant situation of trying to prove their innocence and that they haven't done anything wrong. That can create quite a dangerous situation.

Without commenting on that matter in any detail, to an Aboriginal person that's receiving the rough end of that undisciplined behaviour by police officers, what we know not just in this jurisdiction but elsewhere is that it can lead to lethal outcomes as the worst examples of that. Just going back to that, we do endorse the submissions that were made around Police Associations being treated as lobby groups, having some transparency around when they meet with Ministers and agencies, etcetera. I won't repeat their submission.

MONIQUE HURLEY: Just to add to that, Nick said that the Police Association is publicly opposed to best practice public intoxication reform. They are also on the record as being opposed to raising the age of criminal responsibility from 10 to at least 14 years old, they're opposed to reforming bail laws and also opposed to implementing best practice - ending the practice of police investigating police, which are all key and shared reforms that we are advocating for, and that organisations like VALS have been advocating for some time.

I think that, just to add to what Nick was saying, in terms of it really stokes this tough on crime situation that we find ourselves in in Victoria where successive governments have really been stoking fear-driven politics around criminal legal system reform and that's been

fuelled by the Police Association and public comments that they make that misstate what progressive reform would look like. They are very effective in making claims that invoke fear as the basis to resist any winding back of police powers and stoking spurious narratives about the drivers of crime and effective solutions.

MS FITZGERALD: On this issue of tough on crime politics, I might ask you all: is there a way to approach reform so that this bipartisan race to the bottom can be circumvented?

NICK ESPIE: I guess just calling it out as nonsense. I had another word in my head but the term "political football", particularly when you come from a minority community such as the Aboriginal community, you see it every time there's an election, you see it every time there's this knee-jerk reaction to a tragedy where it's used as an opportunity to create punitive reforms that persistently affect people living in poverty, people from the non-white community, whether that's Aboriginal people or people from other migrant communities. So I guess calling it out.

Actually, as we have talked about before, looking at involving, you know, the term "lived experience" was used, but "affected people" is perhaps a better way of describing it, because it's not just the Aboriginal person that's experienced violence by police or had a traumatic time in prison, it's not just those people that have a voice and have the role and experience, it's the family and community that pick up the slack and, generally, you know, when I look - at the last 20 years of being a lawyer, the people that succeed in breaking their own cycle and becoming rehabilitated are people that have had family and community supports that pick up the slack of the insufficient services provided by government or the gaps in services or the lack of programs.

It's families and communities that help people to succeed because they are affected because they know what it means when it is a relative that's experiencing trouble. They don't have to tip toe around whether their nephew or cousin or neighbour was unjustly treated by police because they don't have to worry about tip toeing around the word racism because they understand it, it's a general fact of life, so they can just get on with it, "All right, you may have been treated racist, but this is what we need to do to help you in the situation."

I guess it's that issue of co-design or self-determination, it's where, rather than what do we do to make prison a better place, you know, self-determination is the community saying, "We don't even want to be involved in talking about how to fix prisons in our community, we need A, B and C, and we want to talk about those things because we know - you address these issues around education and our school or a health service that picks up people that are intoxicated rather than them getting arrested by police. We want to talk about those things because we know that's going to assist us and help address the issues in our own communities."

MS FITZGERALD: Those are all of my questions. Do the Commissioners have any questions?

CHAIR: I certainly do. It's very hard some days listening to some of the stuff, and I have to say it feels like somebody has thrown a jigsaw puzzle on the floor and they tell people to go out, pick up a piece and see where they end up, let alone thinking about respect for individual human rights or the rights of children.

I have two questions. One is about the collaboration exercise. I won't use co-design, I will use collaboration, the exercise you described, and the other is about training, which I would like to ask you in relation to your own preparedness for what you are now doing. Collaboration, is there much more room for collaboration in the way that you have done this work in the West of the State? There are so many bodies out there, so much money thrown, throw the money on top of the jigsaw puzzle and everybody gets busy busy. If you could just comment on collaboration.

STAN WINFORD: I think more collaboration is better than less collaboration, for sure, because all of these issues are not justice system issues, they are issues across lots of different dimensions of people's lives, and the solutions require all communities and lots of different areas to be part of the response.

I do think sometimes the way government, for example, funds things, doesn't support collaboration in that every community organisation is probably under-resourced and under-funded and they're often competing for a small pool of funds available, whereas what you hope to see was ways of financially supporting collaborative approaches to solving problems, and I think the way government works, and the way even some philanthropic organisations fund things does not support that form of collaboration. Maybe there needs to be different structures to support that.

Having said that, the project that I talked about, Yallum Yallum, arose as a priority of the Aboriginal Justice Caucus and for that regional committee. So there was collaboration in the sense that everyone agreed, "This is the priority for us, we would like to develop our own self-determined justice response, instead of, for example, having a Koori Court in our region."

CHAIR: Thank you. Any comments on training because it's come up before about training of lawyers. I think the legal profession, you probably look at old law rather than what's the transition that's happening in law in modern times, and certainly in our spaces.

STAN WINFORD: Absolutely. I think, personally, always learning and learning as much as I can about the community and really derive a lot of benefit from the wisdom of Elders that I've worked with and, indeed, Commissioner Hunter has delivered some training for me and other partners in the work that we have done before. I think it's absolutely critical for people to have a greater awareness of Aboriginal culture and, indeed, the historic process of colonisation and what's occurred and, you know, people of my age didn't get any of that through our schooling and, unfortunately, we have all had to go out and learn about it ourselves and learn about it from our colleagues.

I have got a number of members of my team who are Aboriginal community members and I learn from them all the time. But equally, I recognise that it's not their job to teach me, it's my obligation to go out and learn more. As a person going through the law school at Melbourne Uni, absolutely nothing, and probably the closest we ever got was starting to learn a bit about native title because the Mabo decision came down when I was at uni.

Certainly in the work that I now do, we, through the RMIT University, where I contribute to teaching law students, we are really trying to show people and educate students about Aboriginal culture, where we can, and show them the workings of the Koori Courts and know

the Aboriginal family hearing days at the Children's Court and various other options but, yes, so much more needs to be done for that to improve our works around these issues.

CHAIR: Nick, I would be interested in your view too.

NICK ESPIE: I guess not the opposite, but I guess I think the question is focusing more on how do we train and get better education and support for Aboriginal people to get into professions like law, and medicine, and everything else, you know, how do we flood the education system with resources or communities with resources to do that, whether that is scholarships or culturally responsive programs. I think you may have another witness speaking to that issue later today but, I guess, my own experience of it was being lucky to be involved in a pre-law bridging program 20-something years ago, which was bridging or a gateway into studying law, but reaching out to people that aren't necessarily - you know, don't have the same access to education as other people in the community.

I went to a very tiny law school and I walked half an hour in the Melbourne University and thought, "This has got more bricks and pieces of steel, etcetera, than some of the small towns and communities I've lived in and visited in remote parts of the country", and just that vast difference between where a lot of people live. I make assumptions on rural Victoria but certainly places where a lot of our mob live and grow up in but having people be able to learn to be lawyers, etcetera, and then influence not only the justice system, the judiciary, to their colleagues, but having that influence rather than having to train or retrain people that are already in that profession. I guess just examples of that is what people value in the knowledge that they gain.

I worked for 11/12 years in the Kimberley, which is not my community, but the assumption that a lot of non-Indigenous lawyers made about my knowledge, intricate knowledge, of people in the communities and family connections and historical issues, they weren't things that I grew up in, knowing about that community. I have connections to that community but I didn't grow up there but, from my own life, experience, I see value in understanding who the Elders are in this community that I work with, who do I approach in the community to understand who is going to successfully help my 16-year-old client rehabilitate himself and get help because I know the locally funded non-Indigenous program's not really going to be effective or they just don't exist. So who do I go to in that community knowing who the extended family of people are in a community because that's going to help that same kid reconnect or connect with a positive family member that's going to steer them on the right track, knowing who to speak to about doing submissions around, you know, law reform or community development because people that have the history of a town or community.

Those are the values that you sort of learn. Or things, like, understanding family relationships, and why one family member may not be able to speak to or assist another. So all those cultural intricacies that maybe if it's not your own community, you have a better understanding from your own cultural background, I suppose. So, yes, I think focus on creating more Aboriginal people working in this space.

CHAIR: Thank you. Monique, do you want to say anything at all, about your training?

MONIQUE HURLEY: Not a lot of training through university and when I hear about the work that Dr Cubillo's doing now at Melbourne Uni, I think it's really important and really incredible work.

COMMISSIONER BELL: Just two questions, thank you, we have received evidence from others about the pressing need for a change to the system for police oversight in favour of a fully independent controlled system and evidence has been given about want of confidence in the present system to deliver fair outcomes from Aboriginal people complaining about police conduct. I wanted to ask you about that question: do you have confidence in the present system to deliver fair and objective outcomes for Aboriginal people complaining about police conduct?

NICK ESPIE: My answer would be no, not a lot of confidence, from experience. There are challenges of Aboriginal people wanting to make complaints. People come into contact with the justice system, and there is some other conflict or challenges in their life, and often - and I'm speaking generally because I haven't practiced in Victoria, but also the experiences of our organisation, that people just want to address their issues and sort of get on with life. But the number of matters that should be complaints that aren't are very concerning.

There's always issues of timeliness and the slow nature of the complaints process and there's also reluctance of police investigating and disciplining their own colleagues as well as the issues raised about the toxic influence of Police Associations that I think those things in combination I would say address the issue of why we need independent police complaints mechanisms. Anything I have missed there?

COMMISSIONER BELL: Monique? You're in Victoria?

MONIQUE HURLEY: Yes. I would say that back when I did a lot more direct service delivery, I think when you explain to the clients how the process works, even though there is IBAC, and that IBAC technically has the function that it can conduct and have oversight of complaints made against police, when people understand that the vast majority of those complaints are going to be referred back to police for the police to investigate the actions of their colleagues, like, the chilling effect that that has on people even wanting to engage with the process to begin with is immense. So I think that - I don't think that anyone can have faith in the current system and I think that that's been confirmed by a lot of the evidence that the Commission's heard, particularly from VALS and there are studies that have confirmed that particularly Aboriginal people are distrustful of the current system and that they are not making complaints and when they are making complaints, they are not - there's systemic racism within that, in terms of how the complaints are being investigated and dealt with.

NICK ESPIE: I guess there is a genuine fear. Many Aboriginal people have an inherent and reasonable, in many circumstances, fear of police, of interactions with the police, that if not negative for themselves, they have witnessed or experienced that through other members of their family or community.

COMMISSIONER BELL: Stan?

STAN WINFORD: As a lawyer I started my career at Fitzroy Legal Service and the very first case I did was a police accountability case. I remember going to the Moonee Ponds Magistrates' Court and acting for a man who had been assaulted by the police and it was only through some very lucky piece of evidence that came out about another investigation into one of the police members involved that he was able to have those charges be - be acquitted of those charges and, subsequently, I gave evidence in the County Court hearing where the legal

service represented him in civil action against the police and the police changed their evidence in the County Court and my notes as an article clerk were persuasive in convincing the judge that their evidence wasn't to be accepted and he won his civil case.

But that was a very rare occurrence and I remember, even at that time, talking to different members of the community, including Aboriginal people, and no-one felt as though their complaints would be investigated seriously and they were, as they are now, consistently referred back for local responses and I remember we wrote back to the police who had investigated this complaint originally that led to the criminal charges, and pointed out to them that two courts, the Magistrates' Court and the County Court in the civil action, had found against the police and they still dismissed our complaint on behalf of our client and actually when we spoke to them broadly about the lack of confidence in the complaints system, their response was, look, the numbers of complaints are declining significantly over years, so it shows that we must be working well.

I think this is a long-standing problem and I think that efforts so far have indicated that it needs to be institutionally hierarchically separate from the police and that's the position in other jurisdictions and it seems to be a better system.

COMMISSIONER BELL: My second question related to the comments that you made about Charter reform. One of the submissions you make is that the Charter should be reformed to include a free-standing cause of action of some kind. If an independently enforceable cause of action were to be created in the Charter, what would that mean for greater protection for the human rights of Aboriginal people?

MONIQUE HURLEY: That's a good question and I think that - in the ACT there's the stand-alone cause of action, and a recent example of that being used by a person in prison to assert their rights to be detained with dignity in the ACT, allowed them to get declaratory relief that has then prompted policy change within the prison to improve the conditions within the prison. So that's just one example of how a stand-alone cause of action can be used to the help improve the day-to-day life of people living in prison so that they're less likely to be subjected to cruel and degrading treatment and more likely to come out and be able to go on and, you know, start again and live the best life that they can.

But I think that that in itself - like, there needs to be more done in terms of making sure that it's a stand-alone cause of action and the ability to access compensation if your rights have been infringed upon and, yes, making it more accessible more generally would also be really useful.

COMMISSIONER BELL: Thank you.

CHAIR: Thank you.

MS FITZGERALD: Commissioners, I will now tender into evidence the following submissions: the first is the *'Human Rights Law Centre's Towards Ending Systemic Injustice and Transforming Victoria's Criminal Legal System'*, dated 7 December 2022; and the second submission to the Yoorrook Justice Commission on, *'Systemic Injustice In The Criminal Justice System'*, authored by the Centre for Innovative Justice dated November 2022.

CHAIR: Thank you. Those documents will be entered into the record as the next exhibit numbers. Thank you.

**<EXHIBIT 2.24 'HUMAN RIGHTS LAW CENTRE TOWARDS ENDING SYSTEMIC INJUSTICES AND TRANSFORMING VICTORIA'S CRIMINAL LEGAL SYSTEM' DATED 07/12/2022**

**<EXHIBIT 2.25 'SYSTEMIC INJUSTICE IN THE CRIMINAL JUSTICE SYSTEM' AUTHORED BY THE CENTRE FOR INNOVATIVE JUSTICE DATED 11/2022**

MS FITZGERALD: Thank you, Chair. I wonder if we might just break very briefly. I think the next witness was going to start at quarter past but if we just have a brief interchange.

CHAIR: Yes.

**<THE WITNESSES WITHDREW**

**<ADJOURNED 3:14 PM**

**<RESUMED 3:19 PM**

MR McAVOY: Thank you, Chair. We are about to hear evidence from our last witness for today, Dr Eddie Cubillo. I call Dr Eddie Cubillo. Commissioners, you will note that Dr Cubillo's in the witness box.

<**DR EDDIE CUBILLO, AFFIRMED**

MR McAVOY: Dr Cubillo, you have prepared an outline of evidence for the Commission and I understand that you would like to read that to the Commission?

DR EDDIE CUBILLO: I'm happy to.

MR McAVOY: Please, we would be grateful if you did.

DR EDDIE CUBILLO: Okay. I just want to acknowledge that I'm on Wurundjeri country and acknowledge the Elders, past and present and emerging, and I also want to acknowledge those that have come before me and allowed me to do what I have done and present here today.

So just from my evidence here, I just want to say I'm a descendant of the Larrakia, Wadjigan and Central Arrente peoples of the Northern Territory. I'm a Senior Indigenous Fellow at the University of Melbourne Law School and I'm admitted as a legal practitioner in the Northern Territory. I'm also an Associate Dean of Indigenous programs, Director of the Indigenous Law and Justice Hub of the Melbourne Law School. I will just give you an outline of the positions I've had in the past, which will go toward my evidence.

I was the former chair of the Yilli Rreung Regional Council of ATSIC, 2002 to 05, chair of the Northern Australian Aboriginal Justice Agency from 2006 to 08, Indigenous director of NT Corrections between 2005 and 2007. I was a legal officer at the same time at the Northern Territory Department of Justice between 2004 and 2007, Anti-Discrimination Commissioner

of the Northern Territory between 2010 and 2012, executive officer of the National Aboriginal and Torres Strait Islander Legal Service between 2012 and 2016, and director of the Community Engagement for the Royal Commission for the protection and detention of children in the Northern Territory, also known as the Don Dale Royal Commission, between 2016 and 2017.

So as an advocate and academic, I have written on issues regarding Aboriginal youth in custody, Aboriginal deaths in custody, and the biases of the Australian legal system against Aboriginal people. My PhD completed in 2021 was titled, *'What Does Self-Determination Mean In The Context Of Legal Service Provision For Aboriginal and Torres Strait Islander Legal Services?'* My thesis analysed the complex factors characterising the environment in which ATSILS continue to survive and continue to achieve just outcomes for Indigenous people and Australia's justice system. The abstract of my thesis is available as attachment 1.

The need for action and response to Yoorrook. It is frustrating that no-one seems to be listening to the recommendations made by previous Royal Commissions and inquiries relating to First Nations justice. Yoorrook needs to be different. It is critical to build rapport with the affected communities before expecting people to pour their hearts out about these issues again and to follow through with action. People have done this multiple times but no-one listens.

I have written on successive inquiries with no response on Indigenous people. In the article, *'30th Anniversary Of The Royal Commission Into Aboriginal Deaths in Custody And The White Noise Of The Justice System Is Loud And Clear.'* That's also available in attachment 2. In this article I noted I have thought long and hard about whether this practice of appointing bodies, and then ignoring them, is a deliberate strategy of distraction, designed to keep our people occupied and engaged with these serious problems, but always kicking the response down the road to some future government. Our human and material resources are always stretched thin. The demands made of us by these inquiries, especially on those who are already suffering, would only be worth it if they generated concrete action and meaningful systemic change. So far they have not. They have resulted in a rehash and rewrite of recommendations and themes that have been emphasised and repeated in all these past inquiries.

If you go back to the Royal Commission into Aboriginal Deaths in Custody, from '87 to '91, there is a whole chapter on racism in the report. Very few people have read it. It looks at all the underpinning issues that affect our people and drive them into the criminal justice system. If someone revisited all of those recommendations, we would see they have all been redone that many times by other inquiries but not implemented. There have been at least 500 First Nations deaths in custody since the Royal Commission handed down its final report in '91.

Even as recently as the Australian Law Reform Commission report, *'Pathways To Justice - Inquiry Into The Incarceration of Aboriginal And Torres Strait Islander Peoples'*, from 2018, this has not been responded to or implemented by the current or former government. It's pretty current and no-one is even looking at it or implementing it. It had 35 recommendations designed to reduce the disproportionate rate of incarceration of Aboriginal and Torres Strait Islander people and improve community safety. This is not even mentioned in State and Territory inquiries around children and education, the justice system. Many have never gotten out into the community or taken up by government.

We are always talking about these things, giving evidence and no-one listens. Government act as though the inquiry itself is the action addressing the systemic issues rather than a preliminary exercise to inform evidence-based action. It's an indictment and it's a kicking the can down the road exercise to keep Indigenous people happy. Everyone gets involved in Royal Commissions and people hope for things to come out of them but we have told these stories before and no-one listens.

This takes a real toll for Aboriginal people involved with these Royal Commissions and inquiries. As I said, I worked on the Don Dale Royal Commission as a director in community engagement. We had a really short time period to act. We had six months initially, which wasn't even enough time to pull together staff, and didn't allow us to get the best people.

After the Don Dale Royal Commission, and despite our recommendation, the government went the other way and the change introduced was that kids on the streets after certain hours would be taken away from family. We had just given these recommendations on a silver platter and we just get more punitive measures. Why have these processes and inquiries and invest so much time and energy and money and recreate the trauma for these individuals involved if the government continue to respond with more punitive measures?

Very few of the recommendations were implemented. They even changed the bail and sentencing laws to be harsher straight after the Don Dale Royal Commission.

Ultimately, the whole issue turns on the political vote. The public thinks that tough on crime works even though the research and statistics tell us this isn't the case. Once you go into incarceration, you come out the other side and you graduate to being a better criminal. We have been making these recommendations for 32 years. Something needs to change.

With regards to experience of Indigenous advocates, the work Aboriginal people do as advocates takes a personal toll on all of us. It is difficult working towards changing a system that is so stacked against Aboriginal people. People do not appreciate the sacrifice made or the emotional toll of the work. We hear stories that cannot be unheard and often triggers our own trauma from our personal experiences.

I've survived my advocacy work but I'm scarred internally. Working on the Don Dale Royal Commission I saw the intrusion of these policies that continue to disrespect our values, our people and our culture, which won't allow people and our culture to address the problems that we know how to deal with.

After returning to the NT for the first time after participating in the Don Dale Royal Commission I was approached and treated with hostility by Indigenous people who did not see any indication of real positive change as a result of the Don Dale Royal Commission's investigation. Within hours of being home, I was confronted, subjected to obscenities and physically threatened by Indigenous people in relation to my role in the Commission.

A copy of an article I wrote titled, *'On The Personal Toll For Indigenous Advocates and People When Governments Fail to Act'*, it refers to this incident and discusses these issues. It is available in the attachment 3.

Our Royal Commissions have huge mental health impact on the staff. On the Don Dale Royal Commission we were provided with counselling on the job, but you don't necessarily need it

on the job because you are surrounded by people and debriefing with colleagues all the time. It's when you are gone, you don't get that support mechanism anymore and you need assistance. You are in your family home and no-one understands what you have heard and what you know.

My experience was that I needed psychological assistance after the Royal Commission was over and I was no longer an employee but I was told you are no longer are covered for this assistance. Former Commissioner Mick Gooda lobbied on my behalf to get further cover but by the time they got back to me with an answer, I had already engaged with my Aboriginal medical service who provided me with assistance. These issues impact staff and community constantly. Indigenous people have a lot at stake when participating in these sorts of advocacies. We have a huge responsibility to our family, extended families and communities. It is not a game for us. It is our families' and our kids' lives that are at stake.

Our mob keep hearing promises, but those promises have not led to real implementation to make change. This needs to come across in the recommendations made to the government. Namely, the importance of implementing and acting on Yoorrook's recommendations, that it needs to be bipartisan.

The racism in legal systems. I have been impacted by trauma, colonisation and systemic racism. As an Indigenous person with white settler law qualifications, I have heard in academic and legal institutions how the law is supposedly fair and just, and that doesn't resemble what I have experienced in my life. I have seen personally from my experience, and on the Don Dale Royal Commission, how unconscious bias plays a big role in impacting outcomes for Aboriginal people in the white settler system.

I've written a PhD on Indigenous legal services, writing from an Indigenous perspective, and how my life and experience reflects what the system does for our people after dispossession. I will share some stories on bias I personally experienced in the legal system to demonstrate that my qualifications and positions do not protect me from experiences of blatant racism.

When I started out as an admitted lawyer in the courthouse in the NT, the first day I arrived to represent clients in the court as a Legal Aid lawyer, the court orderly asked me to move from where I was sitting to sit behind my lawyer. She assumed, based on my appearance, that I must have been a client rather than a lawyer. I told her I was a lawyer. A short while later another orderly came over and asked me the same thing.

Again, this still persists. 22 years later, the same thing happened at the Don Dale Royal Commission. I was sitting in court with another Indigenous lawyer, who just recently gave evidence, and I told him that the court orderly was going to come over and ask if we were in the right place. Sure enough, the court orderly came over a short time later to ask if we were on the list, if we were in the right courtroom. My colleague showed them his Royal Commission ID and we walked out laughing to ourselves. That's the only way we what cope with these things. We are angry and hurt, but it's so constant that you can't do anything but laugh. How do we get justice when you are already judged based on the colour of your skin? This is the racism of the system.

In my role as Associate Dean at the law school at the University of Melbourne, I was moving some boxes to a different office within the faculty. On my third run, a student asked me to come and clean up his coffee that he had spilt. He thought I was a cleaner, based on my

appearance, and I was carrying boxes. It happens all the time. People will follow you on campus asking what you are doing there.

It is hard to accept the racism at the university. It's like a betrayal working with a curriculum with such silence and omissions, knowing it will have an effect on our students and that the students will carry this into their actions in the profession perpetuating cultures of legal institutions which harm Aboriginal people.

Recently I was pulled over by police while driving in a wealthy eastern suburb of Melbourne. I heard this described as the offence of 'driving while black'. The police searched my car while I was sitting on the sidewalk in the rain. During the search they asked me what I was doing in the suburb and asked me how I afforded my car. I would have challenged the police's behaviour if I hadn't had the experience I've had, but I know that, as a black man, you have to act a certain way to protect your safety. Throughout this ordeal, my anxiety was really high, even though I know I had done nothing wrong.

These individual biases and decision-making means policies and laws affect Aboriginal people differently to non-Aboriginal population. Aboriginal people are overrepresented in all areas of the criminal justice system. Our women are the fastest growing proportion of incarcerated people. This has a particular impact on our family dynamics. Men have been incarcerated for so long and the women have been at home looking after the family unit. What happens now when they are being locked up too?

The trial of Zachary Rolfe marked a historic moment in accountability for Aboriginal deaths in custody. This was the first time a police officer faced a murder trial in an Aboriginal death in custody case in the Northern Territory since the Royal Commission into Aboriginal Deaths in Custody. I wrote an article on this case with Professor Thalia Anthony titled, *'Kumanjayi Walker Murder Trial Will Be A First In NT For An Indigenous Death In Custody. Why Has It Taken So Long?'*, which is available, again, at attachment 4. When the officer was found not guilty of murder and other charges, by an all white jury, no Indigenous person thought there would be a different result in that case.

At the coronial inquest in Kumanjayi Walker's death, I attended the proceedings to observe a number of the police officers in Alice Springs give evidence. The police officers giving evidence basically all said they had never heard or observed any racism in the workplace. But I saw a police officer break ranks and give evidence against them in the police force. The Police Commission told that officer that they wouldn't represent him anymore. He had to find his own lawyer. The blue line was really apparent with the police.

At the part of the inquest that I attended, the majority of the Indigenous people present didn't enter the courtroom, and I believe this was because of the large police presence observing the proceedings. Instead, Indigenous people present stayed in the park outside and waited for updates.

There were, however, a lot of positives about how the inquest was run. The Counsel Assisting the Coroner, Peggy Dwyer, did a good job in engaging with Aboriginal people and preparing parties to tell their story. Time wasn't wasted, and people weren't left waiting forever. There was a unique welcome to country which set people at ease and, really, you could tell that it really meant a lot to people in the courtroom.

The fact of the matter is if you lock up vulnerable people, especially in a biased system, the risk of a tragic death in custody is increased. I wrote about this in an article titled, *'Aboriginal Deaths In Custody: NT Paperless Arrest Police Powers Need Urgent Review'*, available at attachment 5. If we want to reduce the number of Aboriginal deaths in custody we need to reduce the rates at which Aboriginal people are taken into custody. This was the core of the recommendations from the Royal Commission into Aboriginal Deaths in Custody. Custody should be used as a last resort for the most serious situations and only where absolutely necessary.

The importance of culture. Culture and kinship are strengths which help us to survive this kind of thing. They need to be acknowledged, though, through our policy settings and our administrative system. When my parents split up when I was one, I lived with extended family. This enriched my cultural life and, therefore, supported my wellbeing. This isn't afforded to our people in the same way anymore. We don't get to rely on kinship. We have people evaluating our home lives and what is best or most suitable for us. If it wasn't for staying with family, I never would have survived the breakdown of my immediate family. It traumatises you each time a family breakdown happens, but I was nurtured and guided by cultural kinship practices and my Uncles would take care of me.

Changing law school curriculum and legal accreditation. I'm currently an academic staff member at the most prestigious law school in Australia. I think out of there came four Prime Ministers, 14 High Court Justices, and it troubles me that most graduates have no clue about Indigenous law. The reality is that there is no real push in the profession for systemic change. We have students coming out of sandstone universities, they will become leaders; they need to have an understanding of Aboriginal issues.

When I was in New Zealand recently I met university deans who spoke te reo Māori without blinking an eye. There is real Māori immersion in New Zealand throughout their curriculum. There is an acceptance that Māori are Traditional Owners. They are a very long way ahead of us. Further, the regulator of the legal curriculum in New Zealand has recently announced the introduction of a requirement that all law schools must teach Tikanga Māori.

We get great turnout at our events at the Indigenous Law and Justice Hub and greater engagement by students in our classes. Our students are learning about First Peoples in Australia, but we're not giving them the information they need to work effectively alongside Indigenous people in the justice system. Our profession needs to accept that we need continuous education on these issues. Our position is that in the context of the small number of Indigenous academics, all teaching staff have a responsibility to teach Indigenous content proficiently and that we, as institutions, need to support teaching staff to do this.

We currently have a small grant where we are investigating how to support our teachers to develop these capabilities. My experience is that in universities we teach the law but we don't teach the reality of the law a lot of the time. Additionally, my experience is that some teachers bring biases into the classroom, their omissions and narratives dictate how they frame their clients. By the time the students get into practice, I fear they have it engrained in their heads that Indigenous people are problematic, that they are trouble, not that they carry intergenerational trauma or have complex needs.

In December 2020, the Council of Australian Law Deans released a statement condemning the systemic discrimination that permeates the Australian legal system with respect to First

Nations people. The Council of Australian Law Deans acknowledged the part that Australian legal education has played in supporting the law of systemic discrimination and structural bias against First Nations people while noting the positive contribution that law schools can and should make in partnership with First Nations peoples.

The court called on all Australian law schools to work in partnership with First Nations people to give priority to the creation of culturally competent and culturally safe courses and programs. A copy of the core statement is available at attachment 6. Part of the problem is regulation of legal education in the Priestley 11, the core subjects required to do a law degree, not one of these subjects is Indigenous, and no content is required to be delivered with any Indigenous lens or content. As a result, many students go through three or four years of university studying law without being taught how the law systemically impacts First Nations people.

The curriculum is racist and it needs changing. An article I wrote on the issue around Indigenous content in legal curriculum, titled, *'Indigenous Programs At Law School'*, is available at attachment 7. In that article I note such content is lacking and, where it is included, efforts to date have been fragmented and sometimes tokenistic. At the Melbourne Law School I have been involved in a curriculum review seeking to incorporate Indigenous content in the Juris Doctor law curriculum. Firstly, we approach legal methods and reasoning, a 10-day crash course on legal principles, and we have Indigenised that and received a lot of good feedback. Now we're focusing on the Priestley 11, so students can have an idea about the predicament of Indigenous people in this country.

Again, we have got a small grant to train in a law school around delivering Indigenous content, acknowledging that teaching staff need to implement these changes. Information on this review is also available at attachment 7.

We're also delivering new elective subjects including on country learning experiences for law students to enhance their understanding of First Nations people and law. Our aim is to ensure that all students have a baseline understanding of Indigenous experience of law and skills for working safely with Indigenous clients while also providing opportunities for real depth of learning through specialisation.

I recommended that the Law Council adopted a 12th Priestley unit, with a unit on Indigenous history and a law made compulsory to graduate with a law degree. I recommended something aligned with, *'Call to Action #28'*, from the Canadian Truth and Justice Commission where they say:

*"We call upon law schools in Canada to require all students to take a course in Aboriginal people and the law which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous People, Treaties and Aboriginal rights, Indigenous law and Aboriginal Crown relations. This will require skill-based training in intercultural competency, conflict resolution, human rights and anti-racism."*

In line with Canadian Truth and Justice Commission recommendation 27, I also recommend that lawyers should be supported to work with Indigenous people through ongoing training and accreditation post-admission. As explained in an article by Sandra Shuck, in the Canadian Lawyer, entitled, *'TRC Offers A Window Of Opportunity For Legal Education'* in 2015, the Canadian Truth and Justice Commission recommendations 27 and 28 showed that

there are substantive elements of the story of Indigenous settler relations that are essential to understanding what it means to be a legal advocate, a law student or a lawyer today, and that gaps in existing knowledge have caused harm. A copy of this article is available at attachment 8.

I do not believe that there is an appropriate regulatory incentive or market availability of ongoing professional development education for cultural capability and cultural safety training for lawyers. Working with Aboriginal and Torres Strait Islander people, this is a barrier to effective access to justice for Indigenous Victorians and is unsafe.

When New South Wales Legal Aid was run by Brendan Thomas, an Indigenous man, if you wanted to work there as a panel, as a firm, you needed to have Indigenous accreditation and they would do evaluation and surveys with clients about how they rated their practitioners. This should be mandated and rolled out for lawyers working with Aboriginal people.

I was at the AIATSIS conference in Queensland this year and Justices French and North both said that they did not have appropriate knowledge of Indigenous people to perform their duties when they were appointed as judges, and that they were still learning towards the end of their tenure. This bolstered my determination that things need to change.

Solution and reforms. Perspective on Aboriginal issues need to change. Australian people should have an understanding of the trauma that continues to affect Aboriginal people. These traumas and stories and the hiding from police continue to happen until we see proper change.

We need to start with this early in our education systems and carry it through institutions such as universities. In Darwin if you get on a plane and leave for a hospital, people think you're going there to die because you don't come back. There are real stories and experiences from our mob. We need the broader public to understand these experiences to get over the systemic and unconscious bias against our people. Many of us mob work in Indigenous advocacy and take on the toll of the work, as Aboriginal people are saying the same things in terms of asking other Australians to stand with us.

After the Don Dale Royal Commission, when they changed the bail and sentencing laws in the Northern Territory, we wrote to them saying it went against the recommendations from the Royal Commission. We spoke to one local member at the time who had supported us and she replied saying she listened to her constituents. She was worried about her constituents and worried about keeping her seat. This is really disappointing. We won't get anywhere until the wider public has a sympathetic view that Aboriginal people are not getting a fair go in the justice system. We are only three per cent of the population. So we are not an impactful voting group. We rely on the public to keep government accountable.

The public wants to see tough on crime, but are not across the fact that locking people up doesn't make them any safer. Our politicians don't understand it either. If we really want to make change, it needs to be better understood. Biases and structural racism need to be accounted for. We all have them. When we have new governments, we don't have a new bureaucracy. They make the same racist decisions. The same people decide whether we get the welfare card or if our kids stay in houses or not. That's where the issues are. The same people write the policies.

The need for better accreditation in legal industry. Like I said, I'd like to see it come from Yoorrook's recommendations that people working in the justice system need to understand Indigenous law and lore as well as basic competencies and understandings for working safely with Indigenous people. The accreditation or CPD points need to be ongoing and professional working with mob should be accredited. Judges who work with Indigenous people need it as well. These were the recommendations implemented at the Canadian Truth-Telling Commission. If we get the ball rolling in Victoria we can provide something for the rest of the country to point to.

Re-imagining goals and policies around the criminal justice system. Currently the reality of the criminal justice system centres around controlled coercion and punishment. A re-imagined system would be more reformative and focused on rehabilitation looking at the trauma and the factors that contribute to the behaviour. The laws and policy can have a profound impact and be implemented immediately. If you can get rid of bail and sentencing reforms and raise the age, these polices can all make a change straightaway.

There needs to be other options around sentencing, mandatory sentencing as impacted on judges who adjudicate the law and separation of powers have basically been breached. These changes are simple and would make a lot of change.

Indigenous legal services. We need to appropriately fund Aboriginal legal services, enable access to justice for Indigenous people. The tough on crime approach in Australia increases the work for Indigenous legal services and has not been provided with enough funding to manage this increase. Aboriginal legal services are the most culturally safe place for Aboriginal people to go to but there is very limited funding. Government policy service has been moved away from being community controlled to adopt a standard corporate governance model.

I'd just like to touch on treaty. With frameworks, the governments need to consider whether they are willing to negotiate and relinquish with regards to what treaty can allow Indigenous people to do. But also Indigenous people cannot take something on that alleviates the government of their responsibilities. The treaty should be a living document that is flexible to achieve the best outcomes for everyone. It can help build a respectful relationship between government and Indigenous people as Indigenous voices need to be heard at every level to make changes.

For better outcomes for First Nations people we need to move to genuine self-determination and shift decision-making powers to First Peoples. To prevent our people coming into contact with criminal, legal, and child protection systems, we need to address disadvantage, discrimination, disempowerment, by improving outcomes in health, education, powers of employment and that change happens when First Nations people are in control. This will happen by redesigning of both child protection and criminal legal systems must be part of the state-wide treaty negotiations.

First Nations people should be the ones designing the system that affect them. The treaty process can deliver this. The Victorian Government should make investments now, should resource First Nations peoples and experts to thinking about the redesigning of these failing systems. This could be done by resourcing the assembly to work with the ACCOs and the communities to develop aspiration and priorities to shift decision-making to First Nations people.

Integration of Indigenous laws. Aboriginal people have laws that are not recognised as laws or embraced as a source of meaningful justice in Australia. In my recent travels to New Zealand I saw how Tikanga, being Māori law and customary practices, are increasingly being incorporated into the common law and grappled with by courts. The Waitangi Tribunal has a broad scope in New Zealand to make findings and recommendations on historical and contemporary breaches of the treaty with First Nations people, including in relation to Tikanga. We are far off this in Australia. We need more writing from our people on models of legal pluralism to enable recognition, Indigenous laws and, if appropriate, some integration of legal systems.

The common law in Australia is meant to be flexible and reflect our community values. It should be able to evolve to accommodate the presence of Indigenous legal systems. Importantly, this needs to be done in a way that does not deny the validity of law and culture which have evolved since first contact as this legal system so often does.

The urban blackfellas have their cultural beliefs, practices and identities. We have been teaching it in history that the real blackfellas are those running around in underpants with a spear. But no culture is stagnant. Indigenous people have been adapting for years and yet we are expected to stay the same to whitefellas. That's a racist point. I think there's evolution and it underpins what a justice space should look like. We need to look at where we made wrongs in history in the legal space.

Just finishing off, need for action on Yoorrook recommendations. There needs to be follow-through and investment and rolling out of recommendations to community. Even at the stage of letting community know where the recommendations were, and any commitments by governments, people have invested themselves to tell their stories and no-one gets told what the outcomes are usually. I have seen it happen before, but it shouldn't happen. If you are lucky and have a laptop and Wi-Fi, you might be able to download it. My hard copies are currently sitting behind me and no-one uses them and communication needs to be rolled out in a way that is relevant and accessible to First Nations people. That is it from me.

MR McAVOY: Thank you, Dr Cubillo. I might just ask you some questions in relation to the Don Dale Royal Commission. That Commission was initially given a timeframe of six months. You would agree with me that was an unrealistic timeframe?

COMMISSIONER BELL: Did you say six months?

MR McAVOY: Six months. It was then extended to 12 months. This Commission of Inquiry is convened as a Royal Commission and it has a much lengthier timeframe. Do you see that lengthier timeframe as some benefit in terms of ensuring action upon the recommendations, given that the Commission proposes to issue an interim report, the Yoorrook Justice Commission proposes next June, in relation to the priority matters about which it is hearing evidence at the moment.

DR EDDIE CUBILLO: I see - obviously, that six months, as I said in the statement, to bring together the actual workforce is - you know, it takes some time to pull people together, to get commitment from people to come and work on a Royal Commission. You know, short-term, even three to four years is really hard to get people to commit and leave jobs at their end. So

any sort of timeframe is difficult and, again, we are dealing with trauma and people that are continuously faced and presented themselves to give evidence on, like I said, numerous occasions and that trauma is revisited each time.

Then people are reluctant and it puts pressure on the actual vehicle to get things going and to meet these deadlines that are put there by government with no real understanding of what it takes to work in this space. You know, four years is definitely way longer than our six to 12 months, but the reality is we are dealing with intergenerational trauma, that people have lost people on that journey and are reluctant to come forward and to encourage people to come forward, to build rapport and trust from the Commission to the community is also a big thing as well.

Also the educational process that you need to do with not only Indigenous community, which is pretty across what happens in these things, it's trying to build that with the non-Indigenous community to get them to understand the processes and what you are trying to actually get out of such a huge ordeal with regards to a Royal Commission.

MR McAVOY: Thank you. The Northern Territory Government largely accepted all of the recommendations of the Don Dale Royal Commission and then didn't take much action in the way of implementation. In this process, given that it is over a lengthier period of time, there is the ability to recall ministers and departmental heads and subpoena documents and to hold them to account as to why particular recommendations haven't been implemented during the course of the Commission - do you think that that presents some hope in terms of holding government to account?

DR EDDIE CUBILLO: We have bipartisan support here at the moment and that does have some strength in it in regards to reinforcing the recommendations. As I pointed out here - and on Monday and Tuesday I was in Canberra on the National Justice Policy Partnership discussions, and for me personally, the reality, as I mentioned in here, is the political power and the vote. The bottom line is, in the end, every political party wants to get re-elected, and the difficulty is tough on crime is usually a vote-winner, which makes that difficult.

But here in Victoria I see the possibilities with the treaty on foot and the treaty authority being in place, the possibilities of reinforcing the recommendations that come out of Yoorrook could possibly be a lot stronger on either political party when in government to follow through with what's happened. So I think it's a lot more encouraging here in Victoria at the current time, which, as an Indigenous person, working in this space, I see that as a positive.

MR McAVOY: I just want to ask a question now about the racism that you talked about in your statement. The heading is, *'Racism In The Legal System'*, but some of the instances you are talking about are just racism generally in the population. So can we take it that you are pointing out to the Commission that racism is fairly rife and widespread in the population; is that your view?

DR EDDIE CUBILLO: Yes. Look, in some of those attachments that I handed up, that's not only coming from an Indigenous person, we have former Chief Justices of the Supreme Court saying the system is systemically racist. As a former Anti-Discrimination Commissioner, and hearing evidence from the previous people, I have had people coming knocking on my door, Indigenous people, and telling me all about the racism that's rife in the community and within

our systems, who aren't willing to lodge complaints because they know the system is right against them and not willing to be subjected to the system but also to the - failing them yet again.

I think, as a parent and a grandparent, you know, we hear that our grandparents went through this stuff so we wouldn't have to face it. Unfortunately, we face it constantly. And I gave just a couple of examples of being at school, just driving home and working in the court system. This is about a week ago, I got locked out of my uni room because I left my ID card on my desk, and I asked someone to let me in so I could get in. Basically they wouldn't let me in until I told them I was the Associate Dean and then they stood there and Googled me and checked my photo against me and then they were satisfied that I was who I said I was. I suggest they wouldn't do that to a non-Indigenous academic. So, yes, it's pretty rife and I think it's constant and you just - some days it's difficult, but, as our Elders have done, we just have to continue on doing to try to make that change.

MR McAVOY: With that recognition of broad systemic racism within the community, does it come as a surprise to you that the legal education system, the law schools, have difficulty even themselves recognising their failings in terms of inclusion of Indigenous material through the law degree?

DR EDDIE CUBILLO: When I got to Melbourne Law School, there were eight Indigenous students and now there is some 30-odd. I have been there five years.

COMMISSIONER BELL: Indigenous?

DR EDDIE CUBILLO: Yes. And just to give you an idea - 500 come in the first year, this year. So, you know, those are considerable numbers. I listen to lecturers and I have been asked what do I think and I said, "Yes, he taught the law well", in this case it was criminal law, I said, "But I'm not sure he's teaching the reality of the law." When I say that, I mean, like I said in the discussion, in the evidence, that, you know, he's defending a client, but he's talking about how they're problematic, they're troublesome, and you hear that enough times in three years, you start to believe that, right?

If you don't qualify why they are troublesome or problematic, you never really have an understanding of what the current issues are and why this individual is in front of the court. I think there is a real problem if that's - and I heard from the previous evidence that, you know, the alumni of the law school said they never received that type of teaching and it's apparent when you - people doing an undergrad and they get to the law school and read my paper of the *30th anniversary of Deaths in Custody*, when they are talking in a classroom, they are unaware of how racist the system is and these students, you know, they've had the best teachings and will become great legal advocates, but not in a space where they deal with Indigenous peoples because they have no understanding. They have never been hungry or never had to share a bed or gone homeless for a while or something.

So it's foreign to them and we are somehow - that understanding is lost, and if I go back to my PhD, you know, I interviewed lawyers and prosecutors, and judges, and they are saying that, you know the example that one of the prosecutors gave me is that the young defence lawyer was reading a precis rather than talking to their client and their client is in the box, who is probably more skilled at the legal system, because they have been there a bit, saying,

"That's not what I told you", and so the judge had to stop proceedings and ask them to go and speak to their client.

I heard that several times in my interviews, similar stories, and I think it starts to become a problem when we are not talking to our client and we have no ideas on how we relate to low socioeconomic peoples and the world that they face. That really puts the advocacy right behind the eight ball and we have real issues.

We are currently doing engagement with VLA, Victoria Legal Aid, and LIV, Law Institute of Victoria, discussing around CPD and ongoing accreditation for lawyers practising in Indigenous spaces. So, as you know, Tony, I have had huge discussions at the Law Council Indigenous Reference Group about how we do that Australia-wide. So we are hoping that Victoria could lead the way there and that's why I mentioned it in the evidence that there are possible recommendations that I would call for and I think - I don't want to be disrespectful to anyone, but we have as many black lawyers and justices in this country than we've ever had but we've also got as many people incarcerated and children in out-of-home care. So the system is not working. So there needs to be some real leadership from, I suppose, from the Commission in regards to its recommendations but also from governments to make sure that they implement the recommendations that come out of here.

COMMISSIONER WALTER: Eddie, you've talked about the CPD and the accreditation there. Should law schools themselves be accredited and Indigenous accreditation bodies that actually accredits law school courses in the same way (indistinct) and other things?

DR EDDIE CUBILLO: Well, like I said, the Council of Law Deans have called it out and said that things need to be better than what they have been.

COMMISSIONER WALTER: But we can't start with a 20-year voluntary process.

DR EDDIE CUBILLO: No. But I think if we get recommendations, like they did in Canada, we can start to really reinforce and push the Council of Australian Law Deans to follow through what they said and also have the professions start to really stand up and, in some places, the silence is deafening but, in other places, they're really - there are spot fires everywhere, people trying to do the right thing but there needs to be a real push from, you know, key places like government and the profession itself. Law schools definitely need to do their part.

MR McAVOY: You have really painted a picture of your attempting to take on the legal academia and hold a mirror up to it, and force some change in that area. Do you sometimes feel frustration that you should have to do it and they can't figure it out for themselves?

DR EDDIE CUBILLO: Where I am, there are 120-plus academics and two Indigenous. So the job is frustrating. There is a lot of pushback. Academic freedom is widely thrown around. I have heard one or two people say, "Well, the Council of Australian Law Deans don't represent me." So that's the environment we are working in. It's very hierarchical. That's just with people talking to me upfront. There's a lot behind the scenes that you hear second-hand, and I have been around a bit, so you have seen some of my CV, but - so I'm able to utilise my networks that I developed over the years to help me when there are certain issues and that.

But what worries me is younger people who work in these environments and also our students. You sit in class and we hear, you know, the way it's taught and sometimes it's really confronting and it doesn't represent how the law and that is in your life. It's constant and you try and, you know, develop your own mechanisms, the tools to assist you through that process. But it's a - others have been there before and that's why I said I wanted to acknowledge my Elders and those who have been here before. It's a very slow change, if any, at times.

MR McAVOY: Thank you. Commissioners, I don't have any more questions for Dr Cubillo in relation to his statement. Are there any questions?

COMMISSIONER HUNTER: I do, Counsel. Dr Cubillo, you were talking earlier about racism just in general, being asked to go in and show your ID, and things like that. So that's just on a day-to-day basis. Within the structures that you work in, within the law school, and you are talking about the curricula having no cultural overlay or underpinning; would you say it's racist?

DR EDDIE CUBILLO: Like I said in the evidence that there's very little in some of them.

COMMISSIONER HUNTER: Have you started to roll something out with the law school, something with other - you said that, you know, you got some money for a train the trainer, or what have you, but if you started doing or thinking or piloting something with lecturers there or professors and people teaching subjects, has anything started to be rolled out with them and, if so, what's the response to that?

DR EDDIE CUBILLO: We have done with myself, and we have been able to grab other Indigenous academics or lawyers to come in and do the 'dos and don'ts' when teaching on Indigenous content and have, you know, open sessions where they can chat and we can ask questions in a safe space. That's been appreciated by those who attend. That's not always happening. We have also engaged with Ruben Burke from - who runs a cultural business and he's delivered to the law school on various Indigenous cultural information, which is also well received, and we have also had a racism training which people are - they are not instructed to attend, you have to volunteer to attend. There's one on racism and there's one specifically for allies. We have done that.

COMMISSIONER HUNTER: Are they voluntary, both?

DR EDDIE CUBILLO: Yes. So if you force people there, they won't participate anyway. It was well received by - people did turn up. Obviously, not everyone. They provided - made it flexible for people to attend, and we also - again, with those grants, we are developing a train the trainer-type program and hopefully we can roll that out with the conjunction with Indigenising our Priestley 11 subjects.

COMMISSIONER HUNTER: Do you think all universities - and we'll call it, for the sake of frontline workers, social workers, police, nurses - should be within all the curriculum and all the courses and universities, that will come - we know will come into contact with our people. Do you think there should be something within each course?

DR EDDIE CUBILLO: Yes, I think so. I think - obviously, I'm not saying we are doing it the best or anything. I know there are some other law schools doing it as well, doing things.

Usually the health stream and medicine do these things better than us and I'm not saying that that space is perfect. What I'm saying - but if we look to our cousins in the health space, if you are a nurse and you want to work in an Indigenous space, you have to get accreditation. Those sort of things are something that we should really look to.

I wrote a chapter in my PhD which didn't make the cut but I looked at the health and justice space and looked at particularly the Close the Gap vehicle, which allowed health to be at the table and to initiate them to be involved in key policy movement as well as have that debate with the profession - within their profession. I think that's allowed them to have some movement and change where, unfortunately, in the justice space, we initially didn't make the cut for Close the Gap, KPIs. We had a national partnership agreement, which no State or Territory really took up in the end because there were no new dollars attached to it.

So out of the decade of Close the Gap, the justice space sort of wasn't involved in those. There were all these key areas where they met and discussed key policy changes within government and I think the national justice policy partnership is sort of like a precursor of that now. It's sort of following that road, which is a long way off, they are heavily reliant on, you know convening a meeting of all the Attorney-Generals across the country.

I have seen a discussion around raising the age. We have had some movement with the Northern Territory going to 12, with the possibility of going to 14 down the track, and hopefully some of the other States and territories would move to 14.

COMMISSIONER BELL: I want to ask you a question about whether law schools are culturally safe places for Indigenous students. You've described your own personal experience which makes me doubt that. I have just come from working in a law school and I was informed that there were 25 Indigenous students enrolled in undergraduate law, who identified to the university, but only five identified to the faculty. So I did not know most of them. I wonder if you can comment whether more can be done to make law schools culturally safe places?

DR EDDIE CUBILLO: To answer your first question, I have numerous discussions with students around things in class and outside of class which would say to me we are a long way from being culturally safe in these places. The numbers tell you that as well. I'm just speaking for the law school I'm at. I don't get to know all of them because they don't make themselves known to you. There are a whole lot of reasons. I speak to non-Indigenous alumni of the law school and a lot of them tell me they have never been back because it wasn't a nice place for them.

I spoke to non-European students who also have some issues with the safety of the environment that we are in. So, you know, look, where I am, I'm a director of the Indigenous Law and Justice hub, there are four staff members and there's no partial care person because it's a postgrad, right, it's not an undergrad unit - degree. So there's all these, you know - most of the people who are looking after the Indigenous students are undergrads, or government funded, so it's difficult. Unlike health, where people bequeath funds and are happy to donate to, lawyers aren't, you know, law firms, they are happy to do pro bono in kind sort of thing but they don't like to donate funds. So it's really hard to assist students through university, Indigenous students, who come from outside of Victoria, or even from the country, right, it's hard to assist them if you don't have the ability to do so.

We were on a trip and someone's grandfather died. There was no way, you know, the cost, and all of that, trying to assist and that, to do a PRT, you know, it's 10 grand after you already paid 40 for your degree and not even - so it all adds up. A lot of Indigenous students - and non-Indigenous students struggle because of the cost of those to become practising lawyers. So, yes, there's this whole culture within some of these places, not just - you know, there's an elite wealthy culture that also compels the racism in these places.

MR McAVOY: Dr Cubillo, just carrying on from Deputy Chair Hunter's questions, you are aware of the developments in New Zealand in relation to the proposals to incorporate Tikanga Māori into the undergraduate law system and review of each of the - review of the whole of the curricula to make it consistent with the notions of a bijural legal system; is that something that also needs to occur in this country?

DR EDDIE CUBILLO: I mean, look, I've have had heaps of discussions with this and, like, I mean, the system that's currently in place, one could argue that it's here on a lie and if we go up home or go out remote, people are still practising their laws like they have ever. I got some family living in community that haven't seen a non-Indigenous person for several years, right. So, I mean, it obviously can happen. It's happened elsewhere in the world and we have had so many customary law reviews that don't see the light of day and we have people writing on it and there needs to be some serious consideration on where we go from here on.

I think if we're going to - we're talking about treaty and we are talking about a national voice and we are talking about a republic, which, you know, we need to consider First Nations laws, and we need to be adults about it, to understand that our peoples first thing is to their law and their culture in most of our lives and places. I'm not dispelling, like I said in the evidence, our urban people, I've got an urban nation that is on the peripheral of losing its language but also rejuvenating a lot of its practices as well. That's happening all around the world now and I think, as a nation going forward, these are some serious things that we need to consider.

I mean, the Tikanga case, and the case of Ellis, as I've put in the footnotes here, it's mindboggling when you think about it, you know, and we are just across the road from them and you just wonder what's - while we sound unlucky to end up with the form of colonialism that we had in comparison to what they have there - and I'm not saying it's perfect over there because their incarceration rates are similar - but turning around to 19 students two weeks ago and looking at Tikanga and speaking with the likes of Jo Williams and Judge Butta and others --

MR McAVOY: Are you referring to Justice Jo Williams of the Supreme Court of New Zealand?

DR EDDIE CUBILLO: Yes. And to see how they adjudicate but also walk in two worlds and be able to do that with the understanding of their Māori Tikanga and their Mana, and all that, it's really sad to see where we are currently situated in our country in regards to that. We are not even trying to teach it in our law schools to give hope to change the logic and thinking in our legal profession.

I was talking to our Dean on one of the trips when we were over there. He came and spent a few days with us. The legal system brags that the common law is flexible enough to move

and accommodate all circumstances and that's really confronting for an Indigenous person to think like that but the reality is the common law is basically customary law, right, and this is the thing with our law in Australia, we don't put importance on the history, and the history is that this law derives from customary law and that all we ask is that you accept our laws, you know?

For me it's an interesting discussion and one that this country needs to have and, I think, you know, some of the circles that we are involved with are very dismissive on the discussion. For me, that's a problem. We can't even have the chat. Then there's obviously - we are a long way off from making real change in the justice space.

MR McAVOY: Thank you, I have no other questions, Deputy Chair. I tender the witness outline of Dr Eddie Cubillo, which is document 8.5, and the documents following in the tender list, and referred to in Dr Cubillo's outline of his evidence.

COMMISSIONER HUNTER: Thank you, Mr McAvoy.

**<EXHIBIT 2.26 DR EDDIE CUBILLO OUTLINE OF EVIDENCE AND DOCUMENTATION IN THE TENDER LIST**

MR McAVOY: Dr Cubillo can be excused, Deputy Chair, and that concludes our evidence for today.

COMMISSIONER HUNTER: We will now adjourn until 10 am tomorrow morning. Thank you.

MR McAVOY: Thank you.

**<THE WITNESS WITHDREW**

**<ADJOURNED 4:27 PM**