



TRANSCRIPT OF DAY 2 – HEARING BLOCK 4

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WEDNESDAY, 2 MARCH 2023 AT 10.03 AM (AEST)

DAY 2

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CHAIR: Good morning, today the Commission continues the round of hearings on the two priority areas of Child Protection and Criminal Justice. Before we start, however, I'd like to ask Commissioner Hunter to give the Welcome to Country and Acknowledgement of Country.

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COMMISSIONER HUNTER: Thanks, Chair Bourke. I'd like to acknowledge that we are on the lands of the Wurundjeri People and pay my respects to Elders past and present. And also acknowledge those who come to give evidence today, and also those that fought hard, way before us, to get our voices heard here today, so may Bunjil watch over us as we conduct Aboriginal business. Thank you, Chair.

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CHAIR: Thank you, Commissioner Hunter. Counsel.

MS FITZGERALD: I'll give my appearance, Chair, Sarala Fitzgerald, Counsel Assisting.

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MS CAFARELLA: Good morning, Commissioners. Gemma Cafarella on behalf of the State of Victoria.

CHAIR: Thank you.

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MS FITZGERALD: Before I call our first witness today, Chair, we would seek some orders that we wish to make under s.26 of the Inquiries Act for sensitive evidence, and those are that the outline of evidence made by the witness referred to as John, dated 1 March 2023, be published by Yoorrook only on a deidentified basis.

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Secondly, that any oral evidence given by the witness referred to as John at the closed hearing on 2 March 2023 to the extent captured in a transcript only be published on a deidentified basis, with appropriate redactions as required.

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And, thirdly, that any other material published by Yoorrook which references the evidence or participation at Yoorrook of the witness referred to as John be on a deidentified basis only with appropriate redactions as required.

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Fourthly, any publication by a third party, including media, which references the evidence or participation at Yoorrook of the witness referred to as John be on a deidentified basis only.

Fifthly, the publication of an image or other personal information which may lead to the identification of the witness referred to as John, in connection with his evidence to Yoorrook, is prohibited.

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And finally, that a copy of this order is to be published on Yoorrook's website.

CHAIR: Thank you. Those orders are made as sought, thank you.

MS FITZGERALD: Thank you, Chair. If the Commission pleases, I'll now call today's next witness, who is using the pseudonym John.

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<JOHN, CALLED

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

JOHN: Yes, I do

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MS FITZGERALD: Thank you, you've provided an outline of evidence which I will tender in due course, but if you could first introduce yourself to the Commissioners and let us know where you're from and who your mob are.

10 JOHN: Yeah. All right. So going under John today. I'm from Gunditjmara country from south-west Victoria, a little town called (REDACTED), grew up there. Yeah, that's a quick overview of that.

15 MS FITZGERALD: And if we could now go to the subject that you are going to address today in evidence, perhaps just to set the background for the evidence you're going to give about the operation of, in particular, the Family Court system, could you give us an outline of your current family situation and also explain the set-up. You also have kids from previous relationships and give us an idea of where they're living and what the arrangements are for those kids.

20

JOHN: Yeah, no worries. So I relocated to (REDACTED), - sorry, I'm going around all this privacy stuff in my head at the moment. So I've been in my current relationship -

25 MS FITZGERALD: I should say, you can speak freely and that will be someone else's job. You can say whatever you like. You can relax.

30 JOHN: Yeah, all right. So I'm a father of five. I have two children out of state, 13 and 11, and then I have another child who's been relocated from my current location, and then I have two with my wife at the moment. We been married - we been married a year but we been together 11 years, so that's my family dynamic at the moment. But my reason for being here is around the current family law system and how that system doesn't work for our mob and it hasn't worked for our mob for - since the start of, you know, the government taking over our affairs. So I'm here to discuss what I've been through with these - with this system and how it's made me feel as a - not only a man but an Aboriginal man as well. And, you know,

35 coming from a small community where you didn't have just your mother and your father, you had your aunties and uncles who would put you in line as well, you know. So you mucked up down there, you think an uncle come and pick you up, take you for a ride, but, really, there is a lesson in it, you know? We are being told what we're doing wrong. So I come from a community where my Elders, who are my mother's cousins, they were actually my parents at

40 the same time, and through this current system that I've been forced to go through, I know that my children are not going to be able to grow up the way that I've grown up, you know, and have that strong community connection, all because I've been deemed unsuitable in some sort of way to take care of my own children.

45 MS FITZGERALD: If we can take a few of the things that were in that, you've said in your witness statement that you don't think that the Family Court process is really set up for Aboriginal people, and in what you were saying, you were discussing, you know, really, different family structures, different parenting structures. How do you feel like the Family Court process didn't recognise how you would have preferred to sort things out as an

50 Aboriginal man?

JOHN: Yeah, that's it. First of all, I think there's an unconscious bias to walk - for judges who are judging me because of my appearance or because of my background, you know. So to be told to walk into a courtroom and have the same system that has put our kids in care, has taken our kids away, we know the history of this system, to sit there in front of a judge who doesn't know me and to be misrepresented on the day and to be told that, "You're not good enough as a father" it breaks you, you know. So the current system is judges making judgments on you who know nothing about you, nothing about your cultural heritage, nothing about the importance and values of Aboriginal people, making a judgment from somebody who you've spoken to who's clearly misrepresenting me right beside me while I'm being told, "Don't show any emotions, don't talk, don't do anything, you just sit there and be quiet and I'll represent you". And I've been to court three and four times over it, and every time I've left that courtroom a mess.

MS FITZGERALD: Did you feel, in that process, that you had a voice to speak up about what you wanted to happen with your kids?

JOHN: Not at all. My - if I could show my current court order, the orders are around me and what I'm doing and the restrictions on me. There was a point in the order when I couldn't take my son back to his home country until a certain age, and then even at that age, I have to give notice that I'm taking him so he could be provided with a phone to be able to contact. Like, some of the points - some of the in my current order don't reflect who I am. They've basically made me out to be the stereotypical black man who's always drinking and on drugs and all these stereotypes that automatically unconsciously match up to an individual, you know? So -

MS FITZGERALD: In your witness statement you say that you were required, as part of those orders, to undergo drug testing, despite not having any history of abuse.

JOHN: That, and also I'm the only - the only time I ever knew that there was an actual thing around it is that I was made to have a liver functioning test. So it's unheard of. I've never heard of that before anywhere. And now I go into a courtroom and be told - they - they obviously felt that my liver was gone because I'm this alcoholic, where in fact I went and got it done and there's nothing at all wrong with it. The other party was ordered to do it, but they just didn't do it. So there's no consequences on the other party. It's all mainly around me as a - I feel like as an Aboriginal man.

MS FITZGERALD: And the order for you both to have liver function tests, what was the genesis of that order? Where did it come from?

JOHN: Well, the other party involved sees our community in the south-west as a bunch of alcoholics, when, in fact, I feel we're the leaders in most of Victoria. We make things happen. We got World Heritage listing. We got native title. We got a lot of things in our community which they should be proud that they've got a - that their son's got a connection to and should be allowed to be a part of it at any cost. I shouldn't have to sit here and request or even let them know that an important cultural activity is coming up and, "Can I please take my son to do cultural activities?"

MS FITZGERALD: It's something you refer to in your witness statement, the fact that, as part of the orders that were imposed by the court, there's a requirement to give notice before

you go and do a cultural activity, and, as I understand it, some of those - many of those cultural activities are ad hoc, in the sense that -

JOHN: Yeah, for sure.

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MS FITZGERALD: - there is not a letter sent around with two months notice.

JOHN: Yep.

10 MS FITZGERALD: Can you describe some of those, the things that have been missed out on?

JOHN: There's everything, there's even to the World Heritage listing. We couldn't be a part of that unless we gave notice. There's - I'm a part of (REDACTED), dance group, something
15 that my son should be proud of and be part of. But it's demeaning, it's demoralising that I have to even take permission for him to take part in anything, you know. So this is what I mean about the system. It doesn't take into account our cultural matters, our cultural heritage and our cultural affairs. Our affairs, ourselves, like, do they deem us so incompetent that we can't take care of our own affairs? Especially around our children? Given our history of this
20 country, given the way that it's - I basically feel like I'm being forced alienation - a forced alienated parent here. It wasn't my decision to sit back and say, "No, I don't want to be a part of my son's life". I go into court fighting to be a part of my son's life where the other party's going in to fight for me not to be in his life. So how's that to the benefit of our son, you know? So -

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MS FITZGERALD: I wanted to unpack this idea about the - you said about the Family Court process just not understanding you, your life and what you needed. You've given some evidence about how workable it is, this idea that you give notice to go and do cultural things with your kid. In terms of some of the things that we've previously spoken about, can you talk
30 a bit to just the impromptu nature of some of these things that, you know, you might be woken up at 5 in the morning hearing a minibus pulling up with a stack of people going off to do something, you know.

JOHN: Yeah.

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MS FITZGERALD: That's not something you can give notice about and it's the way things are done in your community.

JOHN: Well, that's a part of my growing up within our community, is it wasn't - it wasn't a,
40 you know -

MS FITZGERALD: Not a scheduled activity that people (indistinct)

JOHN: Yeah, and it's not a surprise when it happens, you know, like - like, that was the story
45 that I told, that we hear the bus going around town tooting its horn picking up kids for activities. You poke your head out and say, "Where you going?", and they say (REDACTED), which is 1,000 km from where we are, and that's the community that we grew up in, that I said, "I'm coming", I just jump in and go, that's our cultural activities. Half of them - a good percentage of them are not planned, so I'm not able to give notice. So
50 everybody misses out. He misses out on his culture. The biggest thing is that if his mother

isn't teaching him culture then who is? Are we getting the current school system to teach our culture, where apparently we weren't here and Australia was discovered, you know? So they're getting another perspective of what culture is. So -

5 MS FITZGERALD: When you were going to court did your lawyer get you to provide evidence to the court about how impractical it is to give notice for those ad hoc?

JOHN: Not at all. There is nothing mentioned at all around his Aboriginal culture. There was no - there was nothing at all unless I mentioned it, you know? So the thing is that I walked
10 into that courtroom each time, the first time I went in there, I was under this impression that it's a fair process. So I actually encouraged it, I said, "Yes, okay, then, if we can't come together make an agreement", which agreements were made prior but ceased within 24 hours as well - if - sorry, I've gone off track now.

15 MS FITZGERALD: You were saying you initially engaged with it happily. You thought if we can't come to our own agreement -

JOHN: Yeah, then I thought I was going into a fair system, when that was quickly - I quickly realised that there is nothing in here for especially our Aboriginal men, and the only reason I
20 say Aboriginal men is because Aboriginal men are contacting me privately and sharing their same concerns and their disgrace within the current Family Court system. It's no - there - my biggest advice to people at the moment is, "Do what you can to stay out of that system, even if it's that you have to bite your tongue and bite your lip and do whatever the other party is doing", which is my own advice that I don't like giving because it shouldn't be this way. We
25 should have a current system - we've got - we've got a justice system where you have to plead guilty to be able to go in front of Elders. Like that doesn't make sense to me at all either. Where's our system around our family law where we can actually do it the way in which we've done it for million - thousands of years in a circle, sitting around a circle discussing each thing? They don't give you the opportunity to even allow them to see what type of
30 person you are. You're in a battle for your child with somebody who can't stand you who will say anything and everything they can without the need of evidence behind that either. I was made out to be an alcoholic, but then I got the liver functioning test and it was like, "Oh, no, he is not an alcoholic then", you know? So I'm going in a system that's done us no favours from the start.

35 MS FITZGERALD: In your witness statement, you say that there's a general assumption within that system, you felt, that Aboriginal men can't parent.

JOHN: Exactly.

40 MS FITZGERALD: And you were required to do some sort of training or something? Can you speak to -

JOHN: Well, there is a process for it, and there is a parenting order program. There's,
45 like - there's mediation prior, there's mediation after. There's these, you know, they're basically parenting programs that you have to go through, and even if you're not engaging in these and you're not saying anything at all, which I seen participants doing, there is no consequences around that. It was like if one party just goes and appears and doesn't take part in it, they've completed a parenting order program. It doesn't work. It's not working. It
50 certainly doesn't work for our mob. I mean, you look at it as a cultural perspective, our men

were hunters and gatherers and providing for our families. Now we're forced out of that. We're forced out of our roles as Aboriginal men. And I a hundred per cent know that there is a percentage of mothers who miss out as well, but I'm only speaking on my perspective and my dealings with the courts too, and through who has contacted me, men, fathers, cousins,
5 and it shouldn't have to rely on my financial status to allow me more time with my children.

MS FITZGERALD: Because your experience is the experience of someone who, in fact, you could afford a lawyer.

10 JOHN: Yeah.

MS FITZGERALD: And even in that process, your evidence is that you didn't feel heard or understood by the court.

15 JOHN: I feel like I was in the - in a grey area because I was just making over the amount to, you know, not be able to receive legal - you know, legal representation through that way but I was only just making enough to have to pay and represent myself, you know? So - and at that stage, I was forced to go on Centrelink because the father was my manager at the time and it was bringing in issues in work, so I was forced to leave my role. So at that time I was
20 scraping through. The amount of money that I spent during this court process adds up to a yearly wage. So over the course of five to six years I've been fighting, that's a yearly wage been taken away, not only from me, but from our son. That's his education right there, done, dusted, paid for. If we put both parties together paying this amount of money, that's his education. So I fear that our mob on the grass-roots level who are still struggling in society,
25 they have no chance at all. They've got no chance. The - and it goes back to that advice of try and sort it out, as much as you can, away from a system that's never been kind to us. We're still working out of a system that has handed out all these traumas, but we still go back to that same system seeking support. Doesn't make sense to me. They've caused the issue. But at the same time after it, they're acting a hero to say, "We're coming to save youse", the same
30 people who have put us in this mess, from the start. Part of our history, since the moment they stood their feet on this country.

MS FITZGERALD: So if your view is you shouldn't - those people are not going to be providing very useful solutions to you, given you think they created the problems.

35 JOHN: Yes.

MS FITZGERALD: You know, what is the solution that you see?

40 JOHN: I feel like that we have our - we have a foot in the doorway of our justice system. We've had our justice systems set up for a while now and it's been - other than our health, organisations being set up around our health, then organisations have been set up around the legal system. Where's our system within our family law where we can, we can take care of our own affairs, where we don't allow perpetrators in to our affairs to make decisions on our
45 behalf still? Like, we needed, like I was saying before, our symbol that we always paint and we always see in our Aboriginal art is the circle with the figures sitting around it. Why aren't we going back to that, how we've dealt with our lores, l-o-r-e as well, in this manner? Surely we're far enough into the history of this country to see that we've been - there's no favours done for us. Although the general public like to say that we receive all these things, how
50 about you look back and see what about the things that have been taken from us, pulled out

from us? I don't feel that we should continue - if this was a business partnership between the mob and government, we would have been out of this business partnership years ago, years and years ago. We would have left it and we wouldn't have looked back at all. So we need a system that's set up for us, that the very last option of it is to involve government, the very, very last option. Our families should be contacted prior to any organisations, whether it's a black organisation or not. Our families should be the first contact to say, "Have you got the capacity to care for your nephew or your little cousin", or everything. Our families should be the first people contacted. No organisations that have connection to a government that's forced all these - all this stuff on to us. One of my biggest messages today is why do we continue to fight over scraps given to us, as a mob? Why do we continue to fight over scraps and loose change? Why do we continue to fight over anything financial? That's not us as a people. We come from family structures and providing for family. We don't come from we're more wealthier than that mob over there or that mob over there so we're above them. We come from, "Let's sit in a circle, let's discuss it, let's get all points of view, let's get the whole perspective on things, let's hear it from your side, let's hear it from your side", the people who are making judgments and listening should be community members, including a judge if it has to be, should be community members of all ages, especially people who have been through it. Our Stolen Gen mob should be on that panel. We've got our own - and it's shameful that I have to say this, that we don't really have to fear the government stepping in and taking over when our own women are doing it to our own men, you know. Aboriginal men doing it to Aboriginal - Aboriginal women doing it to Aboriginal men and their children, especially when we know the past history of our kids. I shouldn't even have to say anything like that, but the more we involve outside, the more we are restricted and come under. And that falls under any subject within our Aboriginal culture. We try to get country back, we've got to make an agreement, an alignment with their - how they do it. We want our kids back, we've got to go through and then what's - and I'm going a bit off track around the Stolen Gen mob. I see people happy that they've received \$100,000. \$100,000 is nothing compared to what we've dealt with. Why are we so satisfied all the time with crumbs? We need to lead our own affairs. We need to take care of it. We need to stop letting outsider perpetrators telling us how we should run our own affairs.

MS FITZGERALD: And what you've just described, would it be fair to say that is your vision of what, really, the Family Court system for Aboriginal people in Victoria should be, the circle with everyone getting their say?

JOHN: One hundred per cent. The different genders, the different age groups, the people who have been within the system, people that have represented our people through Stolen Gen mob. Like, it has to reflect our culture as well and how we deal with things. We don't allow one person to make a judgment on us all, and we can't stand that. That's the reason why we march every year, the reason why we fight so much to do what's right, is because, yeah, it's not the - the current system is not set up to allow us to share our story and our background. The way that I felt walking out of that room, it's - sorry, but it's suicidal thoughts.

MS FITZGERALD: You do some work at the Men's Shed, and I understand from that work you know that your experience, particularly in terms of the mental health toll that that took on you, was not unusual, that other men shared that experience.

JOHN: Yeah, for sure, and even hearing it from community members. Fellas I grew up with, people - the mental health and the way you feel demoralised and put down and looked down

on through this system, it's shameful. The amount of - we, as Aboriginal people, constantly push for fairness. The victims are pushing for fairness. The perpetrators are sitting there making decisions on, "Oh, should we or shouldn't we?", you know, like, it's - like, I'm starting to repeat myself, but it doesn't work for us. We need that way of what we've done for thousands of years in communicating with each other and taking into account certain aspects of culture, of our culture. The way it is now - I honestly walked into the courtroom feeling proud Aboriginal man that's going to be listened to, that they're going to take into account what my son - what's best for him and everything like that. I was quickly snapped out of that mood and I sat there and I just was told to sit there, shut up, don't say anything, don't make any expressions, I know your story, I'll represent you. He sat there, mucked the whole story up, didn't go off our notes, didn't go off anything, and my representative come out like we'd won a gold medal.

MS FITZGERALD: And this is someone that you've paid for to represent you?

JOHN: Paid for. Like, I obviously went from being in the household as a family, left that, wasn't able to see my son up to four months, even though asking every day and every week, to an agreement that was developed by her through me, and it was, like - it was ridiculous, but as ridiculous as that was, I should have just agreed to that, because I come out much worse. I went from two hours on a Tuesday to a Thursday, two hours at a time, where I had to have him showered and dinner, went on that for a while. After that, I was lucky enough to have one night a week, a Thursday night. That lasted for at least two years. And now it's to the current situation where it's a Thursday to a Monday fortnight. But the issue is - there's a lot of issues with the order, and it's based around me and what I can and can't do, but, like, why am I having to get the raw end of the deal? What's the purpose of that? Like, how did they come up with something like that? If you are serious about it and there was no other involvement, and I hundred per cent understand that there are more issues at home in other people's dynamics and there is police involvement and everything like that, but in our situation, there was never. Only time I started having police involvement was when the police were called because I was two minutes late, or that I was sitting at home with my son and I've been accused of having a party at the time, so the police officer come and done a welfare check. I have to set up GoPros and videos to actually feel safe that I'm not going to come under any accusations that are false. That's the only time it stopped, was the fact that I said "Look, I film everything. I record everything for my safety". The accusations stopped. Everything else stopped.

MS FITZGERALD: In your witness statement, you gave some evidence that the police were effectively being used as a weapon - evidence-gathering weapon, and I understand you now just have a GoPro in your car.

JOHN: Yes, in the earlier stages of the orders, I one hundred per cent set up my GoPro every time we done a changeover, because a high percentage of the time after changeover, there'd be an accusation waiting in an email form. The only way we communicate is through email. So if anybody's out - would like to question me about it, it's all written there. It's all there. It's a shame factor that we were both employed into a role some time ago around Stolen Generation mob and linking them back with family and seeing the effects of forcibly being removed from family. Now I've been forced to go down a track where it's legally appropriate that I'll forcibly remove you anyway, and you can pay for your time. The wage - the amount of time - the amount of wage that I've wasted - wasted, I say wasted because it could have been dealt with an easier way, all that, it's - yeah.

MS FITZGERALD: In your witness statement, you put forward what you see as the proposals for reform, and you've really woven that through, I think.

5 JOHN: Yeah.

MS FITZGERALD: So I won't make you address them again, but one of the things that does come out in those proposals is the lack of - is your experience that cultural sensitivity is, in fact, taught in a lot of organisations now, but you didn't see any of that in the Family Court system. So what would that look like, in terms of, you know, would you like - what would you like judges to be getting? What would you like - obviously, your own lawyer doesn't seem to have really understood what was important to you as a father, so what they should be negotiating for on your behalf.

15 JOHN: Yeah, yep.

MS FITZGERALD: So what - where does that cultural sensitivity training need to go?

JOHN: Well, one of the - their process is going through the parenting order program and the (REDACTED), which we went through as well. (REDACTED), have the ability to develop, basically, an order which - where you mediate and come up with that order. Why would it be so difficult for us to have our own mediation similar to that where we have representative with mob around the table who understand our background and our history and it is a priority in our eyes? It's not a priority in their eyes to say - they could easily say "Well, what's so important about him going to dance?", or "What's so important about that or that?" We continually have to express ourselves and inform people, after so many years of us going through this all. But my biggest thing is that we need people who are fully aware of our past, who are fully aware of our everything, the trauma that goes with that, and the transgenerational trauma that continues to be handed down to our mob. We've got to be able to somehow break that, and it's up to us, community, it's up to us ourselves to do it. It's not - we - it's time now to stop seeking permission, to stop seeking to be allowed to do things by a government who - and I will keep saying it, who have put us here. I should be, and so should every single parent that goes into a Family Court, should feel confident that you can come out and the best result is for your children, you know. So they're basically telling me that the best result is, "Let's have him in the mother's care for the majority of the time and the father can be a babysitter for a weekend", you know? So walking out feeling like nothing. And it's interesting, because while I was going through it and I voiced my opinions very loudly on social media - and I have no issues doing that - but a man contacted me and he runs 21 Fathers, and I don't know if anybody knows this, but 21 fathers commit suicide weekly because of this system. Can you imagine our Aboriginal men going through this? We've already got our own barriers and then going to a system who's forced this on to us all, to be kicked in the guts again, demoralising. You don't - I honestly, with no word of a lie, suicidal thoughts and even saying to - when I said, look, I had visions of taking myself out, driving into a tree, you know, to see if that would say, "Yeah, right, let's start being fair". There is no fairness anywhere. And it disturbs me to say it, it's not just within the Aboriginal community. It's the wider community. I wish I could speak for every father, but I'm here speaking for our mob because we don't - we tend to sit back and complain about things and not push to make changes. So hopefully by me discussing my personal experiences and by me making some suggestions, that's our step in the right direction to say - make people question themselves to say, "Why are we still a part of this system? Why are we forced to be a part of this system?"

Yeah, you can have your organisations around our child protections but you still fall under what we say or we will remove your funding. There is always a catch with these fellas. These fellas meaning government. There is always a catch. They make the general population believe that Aboriginal people are gaining something, but they don't make it easily available the rights they're taking away at the same time. So why we continue to be a part of it is the main question I'd like to know. Is why don't we set up - let's get rid of tokenistic gestures that they continue to throw our way, let's say "No", let's take care of our own affairs first. If it comes to that, we can come up with our own agreements and then the very last step is that we get that stamp on it, we have our own stamp as well to say that's approved by our mob, we're taking it to you, you stamp it now too. We have got to start walking side-by-side, not - I'm sick of our mob being so happy over so little. That's not our structure. Our structure is family and caring for family. Out of everything in our history, they've taken away culture, they've taken away language, they've attempted to take away our family connections, our kinship connections. They forcibly removed our kids. But it hasn't broken us and that's one of the strongest things that remains in our culture, especially in the south-eastern Australia, is our family connection. They've tried to kill that, it didn't work, and it's made us stronger in that way as well, is that our main question to mob, who are you and where you from? That's our first questions to make that connections with everybody. So why we can't strengthen that through taking care of our own family affairs is - that's my question. Why can't we? Why don't we? Why haven't we? Why are we so quick to get others in, Child Protection? Why we so quick to get them in and say, "Look, this family is not functioning up to our level", which we all know there's different levels in our communities, financially. There's family structures. We are all on different levels. One blanket fix does not fix the whole State. We have got to come up with ways around how do we protect all of our kids? Not just the ones who need to be removed because of the - I won't deny that there is circumstances where our kids need to get out of that environment. That's - I'm a hundred per cent for that, but look to family first. We're so quick to bring in the outside world who have put us here to fix our problems that we could simply say, "Look, this is our - this is our domain. We make our own decisions around here. That child is suitable to live with their uncle or their aunty". It wasn't an uncommon thing growing up that we had cousins and - cousins and everybody living under one roof and the wider community are confused about it. That's our family structures. Why do we allow people in to ruin that? Because we go from having one bit of dust, missionary times, one bit of dust, your kids are gone. We've gone from all of these things that the system has put in place, we continue to appease that, but we continue to get the raw end of the deal throughout our history around every part of our society as well, not just family law, everything. So I think it's time for us to establish a new way of dealing with our people and our affairs. They've obviously deemed us so incapable of taking care of our own affairs that they won't allow it. But what's a silly part of it is that we continue to seek approval. We could just say, "Look, we're setting this up and this is going to be a part of it. You walk with us. We deal with everything. The only thing that you're dealing with is putting that stamp on it so it aligns with your structures and our structures." But the - yeah, it's disappointing that we know that our history hasn't been great at all but we've come to a stage where the family law court system works so much in favour for one gender - I'm going to say it - that it doesn't account for anything else. Doesn't account for - it just baffles me as to why we continue to rely on a structure that's done - caused nothing but grief and trauma. And our biggest thing at the moment is transgenerational trauma. We all know it and we all talk about it. I'm basically sick of talk. I want to see some action around our own affairs. And not these tokenistic gestures where we have to plead guilty to be able to sit in front of our Elders. Where is our system where we sit in front of our Elders first, get ripped in trouble by them? Their authority in our eyes - they're the ones that hold our greatest authority. I'm telling you, you know if

you're getting told by an Elder, a respected Elder who's been elected an Elder by the mob, if you're getting on the end of that, you know, by being told straight - that's your - that's what we go by. That's what we're saying. Our Elders are setting us straight, listen. I don't like the idea of going before a judge who doesn't know me, who doesn't know my history, doesn't

5 know anything who could be just - there could only just be a mention of alcohol, drugs, domestic violence, all these other stereotypes that we fall under, and I believe there is an unconscious decisions and it all marries up and it's like, "That's me. He's already put all of that on to me and I haven't said a word and I've been told not to say a word".

10 MS FITZGERALD: When you walked into that system, is that you were just pretty much a blank canvass. You felt that that was all projected on to you. Non-existent drug, non-existent alcohol, non-existent domestic violence issues were just projected. That is -

15 JOHN: Just throw it out there because that automatically unconsciously marries up with Aboriginal people, you know? So I've already been judged before I've even sat down. Because of what somebody said about me. And it leads into defamation of character. But, you know, like, I feel like I'm starting to repeat myself.

20 MS FITZGERALD: There was just one more thing that it would be really great if you would give a bit more detail about, which is your work at the Men's Shed.

JOHN: Yeah, yeah.

25 MS FITZGERALD: So if you could explain the work being done there.

JOHN: Well, I currently have three positions, you know. Like, three - I try and run my own business. I work with NDIS clients, so that in itself as well, if you marry that up, is like if he is such a bad person why is he working with NDIS clients, you know? Like, why would we allow that? And I'm also at the Men's Shed where I hear a lot of our men coming in broken because they're forced to go through the system, which is no favours to us, and they stupidly, like myself, go in thinking that we're going to come out with a fair go. So I listen to a lot of our men, and we're broken already. Our culture has been disturbed. There's a lot of us relearning our culture and the importance of having a man in that environment, in your home environment or in your community environment, as a leader or as someone there who can

30 relate to your - whatever you're going through. So I hear all these stories and it's around - it's basically around forced alienation, forced. Why do we force people to be out of their kids' lives? If there's no real issue why isn't it fifty-fifty straight up? If it's fifty-fifty straight up and then if there is an issue there, then say, "Well, that's why I'm here because the other party has a drug problem, has an alcohol problem. I can actually provide evidence for all this", but then

35 you get into negotiations. But the fact that I've got to go in and just fight to be in my son's lives, and all these other fellas. And the sad fact is these other fellas, because they don't earn enough, they are going to get the generic representation of, "Let's just go in and get this done and go". So - and also, yeah, like I said, our financial income should not define who we are as people in our community. My cousin is on a wealthy wicket in his position. He had no issues

40 getting a proper representation and getting what he wanted, and he got what he wanted. So that made me even, you know, more depressed because of my - so you're telling me if I earn a certain amount of money per year, I could have got more out of this? It doesn't work for us, doesn't work for our mob. Our mob aren't - our mob are probably struggling to get over 90K a year in the higher-level jobs within our orgs. So me, I was probably on just scraping through

45 being able to pay rent and I've got to come up with these sort of money to be represented. But

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yes, I hear a lot and a lot - people inbox me, people talk to me. I said, "Well, why don't - do you want to talk about it, like out in the open?" "No, no, not comfortable yet and I can't" because, as I've nearly, we break down, we cry, and that's not manly enough for people. So if I can be the start of a voice that says, "Yeah, look, we need real change in this system. We
 5 need change so our kids don't have to end up going into other family groups or whatever", we need our own system that protects our kids from the start, not from when there's trouble arising, not from when there's bitterness around. There's two parties who love one subject, you love them to death, you want best for them, but when there's just out of spite and everything else because you're still emotionally charged and hurt, there's gonna be back and
 10 forwards fighting still amongst that. So there's not going to be any real - there won't be any real settlement that everybody's - everybody's happy with. But if we had our own system, where, I've said it, full of Elders, full of people who have been through it, full of our Stolen Gen representatives, they know the trauma and the pain that we've been through. And please don't give me wrong by saying that this is the - like a modern-day Stolen Generation. That's
 15 not at all, never ever disrespect the Stolen Gen mob like that. This is around basically our own people doing it to our own people and we're supposed to raise young, proud Aboriginal people, when one party's Aboriginal and forcing you away from the other party. Doesn't make sense to me anymore. I don't have to fear government being involved. I don't have to fear court system being involved. I have to fear my own Aboriginal women doing it to our
 20 own men, and it's disgusting that I even have to raise that.

MS FITZGERALD: Thank you. Chair, those are all of my questions. Did the Commissioners have any questions?

25 CHAIR: Could I ask about the Men's Shed. What does the Men's Shed offer for men?

JOHN: Well, we basically set up like every other Men's Shed association, you know. So we come in - our shed is around cultural artefacts and making that and, you know, strengthening our cultural identity with our men. But we all sit there and discuss current issues that we like
 30 to discuss or anything else. And the lads who are there, some of them - not a high percentage, but some of them are there through a program that they've been allocated so. So they're basically forced to be there. But once they're in, once they get in there and start opening up, we all have the same issues. We are all fighting to be a part of our children's lives. Why? But it's all around mental health. It's all around strengthening culture. It's around strengthening
 35 our mental health. It's around what services are around for our men and how - you know, and directing them in that way. But it's the main thing that I think is successful about our shed is that we all get together and we discuss everything. We have solved the world's problems (Laughter), all of us, but that's what it's about. It's about that, and when I see a common theme arising, I'd like to be vocal about it to say, "Let's all stand up. Let's stop being
 40 individuals who aren't being listened to. Let's form a group with more strength in numbers", you know?

COMMISSIONER BELL: Yes, a couple. Thank you. Firstly, thank you for your evidence. You've given a lot of thought to this, and it's very serious stuff, and you've given me a lot to
 45 think about it and I will think about it. But my two questions are, you mentioned mediation and you mentioned that, I think, (REDACTED) or -

JOHN: (REDACTED).

COMMISSIONER BELL: (REDACTED). Now, that was not mediation directed at Aboriginal families, I do not think.

JOHN: No, no, no, it's their generic -

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COMMISSIONER BELL: Their generic service.

JOHN: It's the process you have to go through prior to court in the hopes that there can be an agreement made.

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COMMISSIONER BELL: I understand. What about arbitration? Do you know about arbitration?

JOHN: I'm not sure.

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COMMISSIONER BELL: About that one.

JOHN: I'm not sure.

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COMMISSIONER BELL: Outside the court.

JOHN: Yeah, I'm really not sure.

COMMISSIONER BELL: That's okay. Now, in relation to mediation, did you have a mediator there who was helping?

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JOHN: Yeah, yep.

COMMISSIONER BELL: And that obviously was not an Aboriginal person?

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JOHN: No, not at all. Nothing throughout the process, nothing at all was mentioned about Aboriginal culture.

COMMISSIONER BELL: So it's highly culturally uninformed?

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JOHN: A hundred per cent, nothing at all. The most cultural thing they've got is an acknowledgement on their door.

COMMISSIONER BELL: I understand.

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JOHN: That's where it stops.

COMMISSIONER BELL: Your partner, I think, is an Aboriginal person also?

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JOHN: Yes.

COMMISSIONER BELL: Do you know whether there is any mediation service which is culturally informed in the system as it is at the moment?

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JOHN: I don't - to my knowledge, I don't believe so.

COMMISSIONER BELL: You don't know of any?

5 JOHN: But that's another issue. Where are all our supports for family law? We've got
supports for health, we've got supports for justice, we've got supports for everything. Me, as
an individual seeking out what supports there are, nothing for us, especially men. Especially
men. And I keep saying men because that's the contact I've been through, so I don't want it to
10 sound like that I'm bitter towards anybody else. It's just my experience of what I've been
through. So there's a lot - like, you get in trouble with the law system every organisation has
got someone who can represent you or guide you to what you need to do next, until it's
around family law. Then there's like, "We can't do anything. You're best going down that
road".

15 COMMISSIONER BELL: Now, I think you will have been involved in the proceedings in
the Federal and Family Circuit Court of Australia.

JOHN: I'm pretty sure it is.

20 COMMISSIONER BELL: Okay. And did you have to come to Melbourne for the hearings?

JOHN: No, actually there's one in (REDACTED), so I had to (REDACTED).

COMMISSIONER BELL: I forgot, it's because of where the children are.

25 JOHN: (REDACTED), you know, so even to that.

COMMISSIONER BELL: Okay -

30 JOHN: I believe the only reason is because that's the closest Family Court to that region.

COMMISSIONER BELL: The children are located with your partner in (REDACTED), I
think?

35 JOHN: (REDACTED).

COMMISSIONER BELL: (REDACTED).

40 JOHN: Yeah, it was at the time. We were both located in the same (REDACTED) until the
relocation, yeah, so -

COMMISSIONER BELL: Okay. Commissioner Hunter may have a question, but I've just
got one further question, and that is you mentioned access to the Koori Court and, of course,
under the current rules, you have to plead guilty to be able to access that court, and you are,
in effect - you are sentenced as a person pleading guilty. If you wish to contest the charge,
45 you have to plead guilty before a non-Koori Court. In other countries - and they're the only
two kinds of pleas you can make in Victoria at the moment, are guilty, which is an admission
of everything, and not guilty which fights the lot. In some countries there are three kinds of
pleas. There is guilty, not guilty, but no contest.

50 JOHN: Yeah.

5 COMMISSIONER BELL: No contest means not pleading guilty but not wishing to dispute the charges and put the system to the trouble of having to have a trial. You don't have to answer this, and I know that you've probably not thought about this before, but it might be possible for the Koori Court to be open to people who plead no contest.

JOHN: Yeah, exactly.

10 COMMISSIONER BELL: I'm just wondering what your reaction to that might be?

15 JOHN: I think anything other than pleading guilty is the way to go, because although the mob who have set it up and have backed it and are behind it are proud of their work, ask the mob sitting inside the jail cells how they feel about having to plead guilty to a crime and then being judged after that. Doesn't work for them. But apparently the people who have come up with this idea are celebrating it. So if there's a no contest and then in front of our Elders committee, better suit our mob for sure. For sure. I don't see why we need to plead guilty then to sit in front of our Elders.

20 COMMISSIONER BELL: Thank you.

JOHN: From an outsider, it doesn't make sense. To others it may make sense, but to the mob locked up, doesn't make sense to them either. They're pretty bitter, what I've been told, yes.

25 COMMISSIONER HUNTER: To my knowledge, there is no mediation (indistinct).

JOHN: Yeah.

30 COMMISSIONER HUNTER: Can I just ask a question about your experience in the Family Court. Did you have to go through a family system (indistinct)

JOHN: No, no, nothing at all.

COMMISSIONER HUNTER: Were you offered any supports within the system?

35 JOHN: No, not that specific, not -

COMMISSIONER HUNTER: And, as you say, the mediation wasn't culturally appropriate. Was the parenting program culturally appropriate?

40 JOHN: No, no.

COMMISSIONER HUNTER: So where was the parenting program, was that -

45 JOHN: That was just, yeah, just a part of the organisation, (REDACTED) where - like, I've been made out to be a monster, and I've got evidence to back that up, so the other party played on that and said I can't be present in the same room. So we had a mediator coming in and out of the room, you know, so in and out. But there's nothing - the only person who mentioned anything to do with Aboriginal culture was myself, to say, "Look at the importance, look at where we've been employed and what we know about the mental health issues that come with it. You're choosing to do this to your own son", you know, so there's

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nothing - and if there is anything in place, why isn't it advertised more? All of our orgs - like I say, there's different sectors that cover nearly everything -

COMMISSIONER HUNTER: But family law.

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JOHN: - but family law. The most important thing that we continue to say, protecting our kids and looking after our kids, and we've got nothing in place.

COMMISSIONER HUNTER: So correct me if I am wrong, so right through from the judge right through mediation, the parenting programs, your lawyer, the whole way, there was not culture mentioned?

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JOHN: Nothing at all, nothing at all. Like I said, the closest thing they come with an acknowledgement and a couple of paintings in the foyer, you know. Like, that's where it all ends, is that visual aspect, "Oh, I can see, I can see that there's Aboriginal paintings". That's supposed to make me feel culturally safe, you know? And then you walk through the doors and there's nothing at all in place. You're just another person or just another - what I described as well is that these fellas make money off of misery. They're making money off our misery, because the perpetrators - they're handing it out and then they're acting like the heroes of the world saying, "Look, we can help you this way or that way". Help us before we even have to go through this process. Give us our own process where - you know, (REDACTED) have the ability to turn what your mediation and the info that they have, they have the ability to turn that into your order. I went to a mediation the one day, no word of a lie, the very next day because I had to go somewhere else out of town, I couldn't, I couldn't, you know - I couldn't accept her request of taking my son because I was in Melbourne at my niece's baptism, you know. So as soon as I said that, "Orders are done. We're over. I'm not following that order. We'll go to court." I didn't even have enough time to take that bit of paper to court to get it stamped, and that's the only reason why that agreement, which was made between our mediation, that's the only reason why that didn't happen. Because the other party had no more control over me, which I feel, to say, "Well, no, get back here, do what I say", you know? So gets upset. We've been through all the hassles of mediation and making a - like, putting a hundred per cent into it to come with an order that's gonna benefit our son as much as it can and benefit us, but I didn't even have the time to go and get that stamp on it. And it means nothing now. So what if we had our own mediation, culturally appropriate, with our mob, who say whatever we come up with now, that's - you don't have the opportunity to leave and just because you get hurt say "No". We've come up with it. It should have been they should have had the ability to stamp it there and then and say, "This is it, then. All we're doing is filing it to the court so they've got it".

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COMMISSIONER HUNTER: Thank you. Thanks for giving your evidence too.

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CHAIR: Thank you very much, John.

JOHN: Thank you.

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MS FITZGERALD: Thank you. I'll now tender into evidence the outline of evidence of John dated 1 March 2023.

CHAIR: That will be allocated the next exhibit numbers, thank you.

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MS FITZGERALD: Thank you, Chair. We will now have a break until 11.30 a.m. You are free to go.

JOHN: Thank you, everybody. Thanks for listening, thank you.

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<THE WITNESS WITHDREW

<ADJOURNED AT 11.11 AM.

10 <RESUMED AT 11.51 AM.

MS FITZGERALD: Thank you, Chair. The next witness we will hear from today is Sissy Austin.

15 <SISSY AUSTIN, CALLED

CHAIR: Thank you, Ms Fitzgerald. Welcome Sissy. We're pleased to have you here to speak with us today.

20 SISSY AUSTIN: Thank you.

MS FITZGERALD: Now, I should say we're going to start the session in an open session, but at some point I will draw on the standing order that I understand was made yesterday to close the session, and I will be relying on the Solicitor Assisting to let me know if we're straying into any of that territory, because it is - there is some sensitive material that will be referred to and it might be hard to dodge in and out. And the microphone may need to be moved a little.

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SISSY AUSTIN: Thank you.

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MS FITZGERALD: Now, before I swear you in I'd just like to acknowledge that the witness today has had a recent injury and we're incredibly grateful that she was still wanting to come and give evidence today, but we may need to take a few more breaks and, Ms Austin, if you would make sure you let me know -

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SISSY AUSTIN: Yep.

MS FITZGERALD: - if you're getting tired and I might notice. We have got the lunch break after this so there is no one waiting outside.

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SISSY AUSTIN: Yeah, all good. Thanks.

MS FITZGERALD: Now, I should also say that issue is of no relevance for today's purposes, so I won't be asking you any questions about it.

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SISSY AUSTIN: Yes, thank you.

MS FITZGERALD: Now, I'll ask you to undertake - to take truthful evidence to the Yoorrook Justice Commission today, do you agree to do that?

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SISSY AUSTIN: Yep.

5 MS FITZGERALD: Now, you've provided an outline of evidence and a significant amount of material, which I will tender at the end of your evidence. It's very detailed, your outline of evidence, so if at any time you tire and you've had enough, you can rest assured that all of that evidence will be considered by the Commissioners, so don't push on.

SISSY AUSTIN: Yep.

10 MS FITZGERALD: It's very, very detailed.

SISSY AUSTIN: Yes, thank you.

15 MS FITZGERALD: Of course, hearing you provide the evidence today will be really beneficial for the Commission, but - and I will plan to build in some rest periods, if you're flagging.

20 Ms Austin, would you introduce yourself to the Commissioners, tell us where you're from and who your mob are.

SISSY AUSTIN: Hi, thank you for having me. My name's Sissy Eileen Austin and I'm very proud Gunditjmara Keerraay Woorroong DjabWurrung woman, and I currently live in Ballarat on Wadawurrung country.

25 MS FITZGERALD: Can you introduce your family, tell us about your direct family, whether you've got any brothers and sisters.

30 SISSY AUSTIN: Yeah, so I have an incredible family and, yeah, I'm the middle sibling. I have an older sister and a younger brother, and obviously very proud of my dad and his story which I've shared in my evidence. My incredible father, Neville Austin and, yeah, I just absolutely acknowledge him and, yeah, his strength is my strength today.

35 MS FITZGERALD: And your father was a member of the Stolen Generations who actually was the first member of that group of people to receive a letter of apology. Do you want to tell us a bit about that process?

40 SISSY AUSTIN: Yeah, so when I was putting this evidence together with the team, I really wanted to ensure that I was telling my father's story from my perspective and not speak on behalf of my father. But I wanted to talk about how it was growing up knowing dad's story and learning of dad's story, like, different chapters of dad's life. As we became older, I guess, like, we've learnt more and more as we've become more mature and older as well. And, yeah, my father was - is a member of the Stolen Generation, and we grew up knowing that in a way, but also, like, in a way that our dad was so strong, like, and that was how we saw it. And we were really, we were so proud of dad, and I think we had this old video - sorry, I know this isn't part of my evidence, but we had an old videotape of dad. Dad and Aunty Lynn Austin, they organised a Sorry Day protest. I think it was, like, in the year 2000. They recently found the videotape two years ago and it's footage of, yeah, a rally that they organised as victim survivors of the Stolen Generation. As kids, we played that video that captured the rally of dad talking, and we just thought dad was incredible, seeing him up there telling his story and also, like, telling our grandmother's story, like, as well, and, like, always

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acknowledging her pain, like, of dad being removed from her. And yeah, so, like, yeah, I won't talk about, like, the details of dad's removal, but I acknowledge it deeply. And I guess when putting my - this together, it plays an important part of the beginning, because, you know, on reflection when dad received that and fought really hard for that letter of apology from the Victorian State Government we were so proud. And I, like, look back and think that, at that time, it almost felt like it was the end of the Stolen Generation, like, that - and that there was hope and, like, yeah, I guess - yeah, and I just acknowledge that feeling. And that I was in year 11 and on the school bus, and we still went to school that day, and it was on the radio in the school bus and it said, like, Neville Austin, like, the Stolen Generation receives first letter of apology from, yeah, the State Government. And it was emotional. It was incredible that, you know, dad fought for that and he did that for his mum, for our nanna, Eileen Austin, and, yeah, I acknowledge that fight, and I wish that that point was, you know, the end of the Stolen Generation.

15 MS FITZGERALD: We will hear from you today how that you don't think that was the end.

SISSY AUSTIN: Yeah.

20 MS FITZGERALD: If I can perhaps just jump the gun a little bit while we're talking about your dad, throughout the process that you're about to tell us about with your involvement with kids who are in Child Protection, it was particularly hard for your dad as well, wasn't it, because of his own experiences. Can you speak a bit about the impact of what happened to you?

25 SISSY AUSTIN: Yep, yeah, I just - I think, yeah, as we've experienced the Child Protection system, dad would say to us, like, "It breaks daddy's heart", and, like, yeah, for his kids to even, yeah, to come head on with the same system that removed him. And, yeah, there'd be - there would be points where it was just, like, too hard for dad, I guess, like, to support us in a whole way because it was - it's been quite traumatising for dad to see what - sorry, for dad to see in real time kind of, like, all over again, yeah.

30 MS FITZGERALD: Now, I should mention, Commissioners, that we will jump around a little bit because I'm planning on doing as much as we can in open session, and then there'll be some matters we do in closed session. And I should say to the witness that if we get to a point where you'd like to speak about some things in closed session, you can make a note that you'd like to return to it in the closed session.

SISSY AUSTIN: Yep, yep.

40 MS FITZGERALD: And on that, I will now move to another topic of what we can talk to in open session which is about your experience in becoming a carer for Tinjani. And the reason why we can speak about that is that Tinjani is now an adult and she's happy for you to talk about your journey with her. So if you could talk about becoming a carer.

45 SISSY AUSTIN: Yeah.

MS FITZGERALD: And in particular starting with how old you were at the time.

50 SISSY AUSTIN: Yeah, so it's interesting to, like, hear it as becoming a carer, because it was never like that. It was kind of just like, like looking after family, you know, but I was, yeah,

21 at the time where, yeah, Tinjani needed me and needed a carer in that chapter of her journey, and she was around 13 years old. Yeah, I'm not sure how much detail to let, like -

5 MS FITZGERALD: My understanding is that because Tinjani is now an adult and she is happy for you to tell the story, that you can speak freely about that.

10 SISSY AUSTIN: Okay, yeah, so Tinjani and I grew up together. We - Tinjani's nanna, a amazing, incredible respected Elder in our community who raised Tinjani until she passed away, Auntie Milly Austin, and it was at that point where I stepped in and cared for Tinjani, when Auntie Milly passed away. But, yeah, prior to me becoming Tinjani's carer, there's lots of, yeah, really beautiful memories that we have growing up together and with Auntie Milly there. And it was - it's helpful that Tinjani turned 21 last year, so I did put a bit of effort putting together a 14-minute 21st speech of our memories together, which I really loved doing, but, yeah, so there was that chapter. And then it was kind of like transitioning into, like, we were cousins. And then it kind of - I became this carer for Tinjani and it was both beautiful but challenging, because of - there was, like, these two kinds of contradicting ways of caring for our young ones. And I think, like, having that, the pressure, at times, from the Child Protection system to be a, like, quote definition of a kinship carer versus me just naturally caring for her as her older cousin. And it wasn't until a few years into caring for Tinjani that I even knew of the term "kinship carer", and so it was helpful, I guess, to have something to label it as in certain situations, but, yeah, I'm happy for you to ask about, like, specifics around that but we - she's, yeah, an incredible young woman, and it obviously came with challenges that we both faced.

25 MS FITZGERALD: So at the start, you're 21 years old. What supports do the Department put in place in terms of cash, advice, how to do it, enrolling her in school, all those things? What support were you given at the time?

30 SISSY AUSTIN: Yeah, there was no support. Tinjani had left an unsafe placement that the Department had placed her in and actually called up my sister and I at Southern Cross Station, and that was how she ended up with us. It was her seeking her family. And I do talk about how it was interesting that there was both, like, a real, like, casual approach from Child Protection with regards to Tinjani at this time, and it was almost like, like she was deciding where she wanted to be, but there was also - it was just like there was this non-existent protection and guidance from both, you know, VACCA and Child Protection of this child at 35 the time. And I thank Bunjil that she landed with us and with me who protected her, and we were a safe option for her to come to, but, yeah, there was no - there was no support at all. It wasn't until two years that I even learned that there was kinship carer payments, two years into the placement. We'd obviously experienced really significant challenges in those first 40 two years in, you know, housing. When putting this evidence together, I counted that over the, like, five years that Jani and I - you know, that we lived in over, like, 10 houses. I sat and counted the addresses, so there was no stability with housing. Like, getting Tinjani into school was, like, almost impossible, you know, like, because of there being this initial, like, no care approach from the Department, it made it hard to enrol her into school without there 45 being any formal carer while she was a child, yep.

MS FITZGERALD: Because you couldn't say you were her parent or there was a specific role.

50 SISSY AUSTIN: Yep.

MS FITZGERALD: The school let her in initially, but then when they realised -

SISSY AUSTIN: That the enrolment forms, yeah, that I wasn't an official guardian, yep.

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MS FITZGERALD: And made her leave.

SISSY AUSTIN: Yeah, so she was two weeks into school and then, yeah, she had to leave. And that's shame, you know. And then we just - I was 21. Like, and I've only realised I was
 10 21 when putting this together, but, like, I envisioned enrolment as a smooth process, and that's a privilege that someone - like, I didn't grow up in care. And anyone who does an enrolment process smoothly, like, that's a privilege, because getting a child who's in car enrolled into school is hard work. And, yeah, she had to leave. We tried for weeks and weeks to get a letter from the Department to say that she was in my care, and we couldn't get a
 15 letter. We were going round and round in circles, and I remember one day we were sitting at the Co-op with some community members trying to work it out, and it was actually ended up being a suggestion from the Family Violence Unit at a police station to contact a lawyer and that was how we ended up getting her into school, was to organise for her to enrol as an independent child, yep.

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MS FITZGERALD: Thanks. I also wanted to touch upon with Tinjani the cultural plan that was produced for her, and I think it was produced - do you remember if that was produced by VACCA or who that was produced by?

25 SISSY AUSTIN: It was produced by partnership with, (REDACTED) and the Department.

MS FITZGERALD: And your evidence is that it was a gammon case plan. Why do you say that?

30 SISSY AUSTIN: Because it was incorrect. It didn't reflect Tinjani and the incredible culturally strong young woman that she was at that time. And I know a provided a copy of it to Yoorrook, but we actually just received it in the mail, and the top of is, it says like "Mob" or "Country" and they wrote on it "Currently unknown". And I remember when we saw that and we were both like what? Like, I had been - like, everyone knows that the Austins are
 35 Gunditjmara, number one, but, like, she'd been with me for a couple of years now prior to that. She'd been - had workers from VACCA, from the Department, there'd been years of - and it would have just been asking us, like, just ask us, ask the child, like, ask her and she would have proudly said that she was a Gunditjmara woman. So, yeah, that was like - it's a kick in the guts, you know, "Currently unknown".

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MS FITZGERALD: That's attachment 1:

"Tinjani's mob is yet to be determined."

45 SISSY AUSTIN: Oh yeah, yeah.

MS FITZGERALD: And:

"Traditional country is currently not known."

50

SISSY AUSTIN: Yep.

MS FITZGERALD: And, in your view, was that true at the time?

5 SISSY AUSTIN: No way, and that's so untrue. And that is, like - like, you reflect back to like how Aunty Milly raised Tinjani in those years, you know, prior to her passing away, like, our - she knew - she knows, she knew then who she was. They just needed to ask her, you know, talk to her, meet her.

10 MS FITZGERALD: There are some parts of the evidence about Tinjani that we will do in closed session, but I thought it would be great to talk about you established a Facebook group out of a need, you saw, to help people connect with their siblings.

SISSY AUSTIN: Mm-hm.

15 MS FITZGERALD: Do you want to just talk in the open session about just the general problems you've seen with siblings who are in different placements being connected, problems you had connecting them just at a general level and what the Facebook group does and how you've seen it work well?

20 SISSY AUSTIN: Yes. Yeah, I think - I don't know -

MS FITZGERALD: I am testing your ability to tightrope walk there.

25 SISSY AUSTIN: Yeah, I'll get there. It's kind of -

MS FITZGERALD: We can do it all in closed session if that's easier.

30 SISSY AUSTIN: Like, I can talk in general that there are young Koori kids in our community who are placed in separate placements, who have been separated and, yeah, I've been a part of a group where we've filled the gap of where the services don't keep our kids connected, where we've seen that gap, and rather than waste time, you know, complaining about it all, you know, we just took it upon, yeah, ourselves to find where, I don't know, kids were, siblings were and - and connected with carers, both Indigenous and non-Indigenous.
35 Some kids were placed with non-Indigenous carers, others with Indigenous carers, and we created this casual-type group of bringing all the carers together of a sibling group, where we would, you know, share things and - yeah, I probably will stop.

40 MS FITZGERALD: At that general level, why do you think it's important for siblings who are placed in different placements to continue to have contact with each other?

45 SISSY AUSTIN: Keeping connected to family is our right as Aboriginal people, and our children have a right to know, you know, who their siblings are, who their family is, where they belong. Our kinship is who we are. Like. Without knowing who we are, where we belong, there's a sense of, you know, unknown, a sense of, like, loss. Like, there's - I've witnessed there being, you know, grief of someone who hasn't passed away but - you know they're there, but where are they? And I've heard those stories, like, from our Elders. But what we don't realise is this is happening right now. There's children, Koori kids in our communities, who know they've got a sibling somewhere, they just don't know where they
50 are because they don't have a voice. And that's what I've witnessed and experienced, and I

just, yeah, absolutely acknowledge that, particularly, when our Koori kids growing up in care are becoming older and trying to work out where they belong.

5 MS FITZGERALD: And what's your view of how much work the Department does to make sure that siblings retain contact with each other?

10 SISSY AUSTIN: Yeah, look, I can only speak from my experience and what I've witnessed, and I think that it depends on the worker of the day. And I do acknowledge that maybe you might be lucky to one day get a deadly worker who might put together a plan, but then they
15 leave and then the plan gets lost and the new worker asks the carers, like, "Do you have a copy of that plan?" So, like, it's - there's no consistency in it. Like, a hundred per cent say that, in my experience, have seen it not happening at all and it not being a priority, and you almost feel like - they kind of make you feel like you're hassling for something that isn't important or that, you know, they're busy, you know. Everyone's busy, too busy to keep
20 Koori kids connected to their siblings. And then -and then there's that first initial, like, creating those connections, but then it's about maintaining them, and that's where the challenges lie as well. Like, where there's siblings that are placed all over the State in multiple different placements who, you know, go to different schools, have different, you know, sporting commitments, all those types of logistics that aren't thought about because, you know, the privileged ones working in the space wouldn't even take a moment to put
25 themselves in our kids' shoes. And so I, like, have only learnt this from experience and an incredible carer that has been, like, my rock throughout my nine years in caring for kids is like - like, we've gotten through together, like, over years but also just, like, it doesn't - it's not happening consistently, like, and it's - I just, like, again, like, thank Bunjil that the kids that I've - and my rock - have cared for, yeah, we've had the energy to try and fight these systems to make things like keeping kids connected, keeping that connection maintained over the years and not just surface-level, you know, like, stuff. Yeah.

30 MS FITZGERALD: I might take you - you've mentioned a person who's been incredibly supportive to you but also has been a rock, you described her as.

SISSY AUSTIN: Yep.

35 MS FITZGERALD: In your witness statement, you give evidence and it's really about the journey that - of three women, you, your sister and Jodie.

SISSY AUSTIN: Yep.

40 MS FITZGERALD: And just before we go into closed session, I thought it would be good to do as much of this as we can in open session.

SISSY AUSTIN: Yep.

45 MS FITZGERALD: Do you want to - to the extent you can without talking about individual kids - talk about the journey that the three of you went on? There's a particular sibling group that you were very - you, all three of you, fought really hard to keep together and connected, so if you can just talk about sort of how that came to be, how the three of you worked to support each other with that sibling group in a general way, and sort of what happened with Child Protection along that journey.

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SISSY AUSTIN: Yep, yeah. Yeah, I guess, like, how it came to be, I don't know. I was - sorry, I was feeling really nervous coming in here today, and just as we drove in, me and my best friend put on in the car Uncle Archie's song Let Love Rule. And over the last, like, year or so that song has really made sense to me, in that, like, everything that we do is for love and, like, although there's days where you feel like so frustrated at the system and services that aren't doing what they say that they're supposed to be doing, like, trying to always bring it back to the love of the kids. And I think, like, when I reflect on the journey that us three women have been on in being involved in the Child Protection system as carers and, yeah, as family members advocating tirelessly for our kids, like, we've just - yeah, it's - I think, like, the key to it is that, like, I can't imagine doing it alone. And I absolutely take my hat off to kinship carers out there who are advocating alone. And I think, like, having Jodie, I wish that we could somehow track the amount of minutes that we've spent in meetings with the Department advocating for kids. But it doesn't - like, it's not, like, warm and fuzzy and it's not, like, pretty. It's actually like - it's exhausting and it's, like, tears once the meeting's finished and it's like, "How are we going to keep on going?" And it's like, "Sissy, you have a break. I've got this meeting". And it's about, like, we've kind of always said that when one of us falls down or needs a break, the other one of us steps up, and that's kind of how we've balanced caring for a sibling group is, yeah, just carrying each other through. And culturally as well, like, having, like, a deadly staunch blak woman and - as well as my sister, like, having us together was just solid. And I love that we've been able to do what we've done even though it's had its, like, other side of the coin where it's been so hard. And I love that we've been able to create such beautiful memories and connections for kids in our community. And I know that we've hundred per cent done that. And, like, yeah, and I think, like, I reflect back on, like, Uncle Archie's song and that we've done that, like, for the love of the kids. But yeah, we shouldn't have to do that, though, because there are services that are paid millions of dollars to do what we do in our spare time, being carers, working full-time, being community members. We've picked up the weight, and we've picked up the work that there's people that are paid to do, but we've decided to, rather than - although, obviously, you've seen in the evidence, there's lots of complaints, we were good at that and we were good at emails, and I'll give us that too. But, yeah - yeah. I've lost my train of thought, but, like, yeah, it needs to be acknowledged that we're doing work that we shouldn't have to do. Yeah.

MS FITZGERALD: The other aspect of your evidence that really comes through is the amount of time you've also spent supporting someone who's having their kids removed in the context of experiencing family violence, and to the extent that we can discuss that without identifying anyone, can you speak to the particular difficulties that women face when they're having to engage with the Child Protection, or having Child Protection in their lives at that acute time when they're experiencing family violence?

SISSY AUSTIN: Yes.

MS FITZGERALD: Really, I'm interested in the extent to which you felt there's any recognition by the Department that perhaps they could look at the family - if the concern by the Department is the family violence issue, whether there's any work done by the Department to address the family violence issue or whether they just look at the result and, yeah, whether those underlying issues are being considered by the Department.

SISSY AUSTIN: Yeah, look, I guess I can talk to the context of, you know, being a community member and having, you know, witnessed Aboriginal women in our community

experiencing family violence and where there's kids involved and - I don't know. It's hard for me to do justice to this story without telling it properly.

MS FITZGERALD: Maybe we will do that in closed session.

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SISSY AUSTIN: Yes, but, like, I guess, like, the main things are that, like, Child Protection and their minion services that act as though they're independent from this vicious cycle that's treating Aboriginal women like they're nothing, particularly our mothers. And I've been in situations where I'm constantly reminding the Department that this is an Aboriginal mum that you are talking about. Like, this isn't - like, I guess what I'm trying to say is that Child Protection, what I've seen, is them strip Aboriginal women of their - I guess their motherhood in a way, and it's like - and I know that we've heard from other hearings that where there's fear to report family violence and domestic violence where there's children involved, and the fear and the reality of your kids being removed is very real, we've all seen it, and it's - yeah, I guess, like, I just - the dehumanisation of Aboriginal mums is quite frankly disgusting and the language needs to change. The daily - the way that our mums are treated, the conditions that are placed on Aboriginal mums from the courts are unrealistic. I'd love to see one of those, you know, non-Indigenous, like, white women who you see walking round the city rushing from tram to tram, I'd love to see them rushing and having to, like - you know, rushing to, like, a service to do the one of three urine tests that you've had to do in that day, but also, like, you're expected to be at Child Protection at this time to visit or else that's a big red flag with the upcoming court date. I'd love to see them attending court, the most culturally unsafe, dehumanising place to enter into. You know, you feel like the villain of the story and yet you're the victim of family violence here.

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MS FITZGERALD: Or the hero of the story.

SISSY AUSTIN: Yeah, no, and I just think that if - and that's also, like, trying to, you know, paint the strength of our women who do fight these systems. And there are some who understandably give up, because it is so hard. But, like, the hoops that our mums are made to go through in order to even get an unsupervised visit with their child is significant. And - but it's not a battle that our women aren't facing daily and waking up and being like, "Okay, I've got to do this because I've got to try and get my kid back", you know? And obviously I'm - in a closed session, it's a very personal story and it's a beautiful story, and it's one of many that I would love for Yoorrook to hear, particularly from women who have lived it and fought it. And, like, hear from the women themselves, not the services. Hear from the women who are experiencing it cold hard face, because that's where the solutions and where the pain and the hurt is, and that's where our women have - like, deserve to have those stories told in order to heal and maybe close that chapter in order to move on. Yeah.

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MS FITZGERALD: Before we go into closed session, I thought we would just go to the recommendations for reform. You've lived through this system and you have a lot of clarity about what needs to change. And I will just - there's - each of them has a heading and I thought I'd just ask you, we will just go through them in turn. They start on page 16 of your witness statement. And the first of them relates to you think reform needs to happen around contact arrangements between siblings in out of home care. What do you think needs to happen in that space?

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SISSY AUSTIN: Yeah, like, what I've talked about around there being contact plans, but plans that reflect that sibling group. Like, there can't just be - like, not one thing fits all,

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whatever that saying is. And my recommendation is, like, for there to be accountability and - accountability, yeah, to that contact plan. And I'd love for, where there are Elders to that sibling group, they be who you're accountable to.

5 MS FITZGERALD: You also make recommendations in relation to funding for kinship carers.

10 SISSY AUSTIN: Yeah, like we've - I've you know tried for years to get funding off the Department and VACCA and to help with just - even just travel costs with keeping, you know, kids who are separated across the State, yeah. That seems, like, so minor, but it's really important to highlight that it isn't happening and it's like - you almost feel like someone who's begging for change when you're like, "Can you help us fund keeping these kids connected?", yep.

15 MS FITZGERALD: You also make some observations and recommendations about the attitude of the Department towards Aboriginal mothers.

SISSY AUSTIN: Yeah, I think I've just talked a little bit about that.

20 MS FITZGERALD: Yeah, yeah, the view of them as mothers, not as drug addicts or, you know, that they are a mum.

25 SISSY AUSTIN: Yeah, and - yeah, I've made pretty clear there that every single child I've cared for has loved and expressed their love for their mother deeply, and it's interesting how, as a carer - and many other carers that I've connected with over the years, the Department try and get you on side with them and create, like, this us and them with, like, us being the carer and the Department verse the mum, and, like, really trying to, like, yeah, create this us and them. And we all talk about it and it's hard to put words to the experience of it, but it's, yeah, there's no us and them. Like, we want our kids back with their mums and, yeah, just
30 continuously reminding in these meetings, like, "This child has a mother. This child has a mother", yeah.

35 MS FITZGERALD: The other aspect you make recommendation about is the lack of guidance and education for non-Indigenous carers. In your witness statement there are some stories in there about some non-Indigenous carers that you found to be really great, who were really making efforts to keep cultural connection, and then some that you found to be openly racist.

40 SISSY AUSTIN: Yep.

MS FITZGERALD: Now, obviously - but these recommendations are about the lack of guidance and education that are provided for non-Indigenous carers.

45 SISSY AUSTIN: Yeah, and I have some positive relationships with some non-Indigenous carers of, yeah, kids that I know and, like, who are incredible people, like, desperately seeking, like, information and, you know, stuff on the child that they're caring for. And, yeah, there needs to be more out there because it shouldn't be up to, like, people like me to be, yeah, doing - yeah, there's only so much one person can do, and there's services out there that should be, you know, educating non-Indigenous carers. And also, like, the way that it
50 happens backwards as well is, like, questionable. Like, where - I'm also in this carer's group

in Melbourne where so many white carers in the group get Aboriginal kids and they'll post in it and be like, "What can I do with my Aboriginal child that I've got in my care today?" And heaps will comment like, "Take them to Bunjilaka. Take them to the museum." And then I'm just like - you know, it happens backwards, where people who are, like, good people get an

5 Aboriginal child and the fact that they're even having an Aboriginal child placed with them in the first place and they're taking them to Bunjilaka to connect them with their culture, like, as a first reference, that shouldn't be happening. And it's, like, 2023, you know, like, and it's a disservice to that young child that's been placed with well-meaning carers who have absolutely no idea about our culture. Yeah.

10

MS FITZGERALD: The last recommendation relates to the issue of lateral violence, relying on lateral violence as a reason for refusing services. What's your experience with that and what are your recommendations?

15 SISSY AUSTIN: What number was that, sorry?

MS FITZGERALD: The very bottom of the page 221.

SISSY AUSTIN: Okay. Yeah, so this is open - is this the open session? Yeah, so I think that

20 when using the term "lateral violence" you need to use it if you truly know what it is, and there's some really incredible people in our communities across the country who are very knowledgeable on what lateral violence is and how to identify it. That's number one. And I guess, from my experience, is that I'm obviously a very - like, I'm a vocal community member and I do it for the love of our children, and it's hard, and I'm very grateful that there

25 is Yoorrook now for accountability, but it's almost like you're hitting your head against a wall trying to - I don't know what my thought process is here, but back to lateral violence, is that I've -

MS FITZGERALD: You've made a complaint about things.

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SISSY AUSTIN: I've made complaints, yes, about a service refusing to buy a three-year-old a bed, and I made that complaint to the Ombudsman, and that service was an ACCO, like, one of our own services, like, you know, an Aboriginal community-controlled organisation that can't buy a three-year-old Aboriginal child a bed. And lateral violence through that

35 Ombudsman complaint, it hit a dead-end because the CEO of that service provided whatever to the Ombudsman that my service was denied by that ACCO because of a status that I'd posted on Facebook about that child not getting - that service not buying the three-year-old a bed.

40 MS FITZGERALD: You complained -

SISSY AUSTIN: And so their reasoning for not providing the bed was because of lateral violence based on that status, and then the Ombudsman, who are white, then said to me that it's not their place to be deciding what is and isn't lateral violence so they're gonna close my

45 complaint from there and there's nothing further they can do. And I guess so, like, my thing from here was that lateral violence is a hundred per cent a thing, I'm not denying that -

MS FITZGERALD: But you need to be able to make a complaint.

SISSY AUSTIN: But it's been thrown around in a way that is silencing our people. It makes us look like - it makes you feel, like, not good as well, to be accused of lateral violence. And I think that it should be - like, an accusation of lateral violence is serious and I don't think that people see it as seriously as, like, accusing someone of, you know, a violent crime, you know.

5 But it's serious because it silences you. And where am I as an Aboriginal woman to go from there, where, understandably, the Ombudsman back - they were being culturally sensitive. They were like, "We can't decide this". So I just think that our community in, like, you know, self-determination, we need to have yarns with the ones who have done lots of research into lateral violence and decide on our terms of reference based on lateral violence

10 and how is it committed and, like, how do we work through someone who has experienced lateral violence or someone who is perpetuating - is that the word - lateral violence on another community member? Because I also don't have anger towards those that perpetuate it, because I think it's hundred per cent a symptom of colonisation and the genocide that we are currently experiencing and the hurt and pain that exists beneath the surface of our

15 existence in this, like, State and this colony. But, yeah, I think, like, where there would be - where there's, like, clear definitions and stuff based on our communities, like in Victoria, we can be like, "No, actually, it wasn't lateral violence". Or if we had like a committee of Elders that decided whether or not it was lateral violence based on, you know, the research on that. It's just - it's very bad in our community. It's being - like, it's thrown around everywhere

20 and it's - yeah, it's not good. Yep.

MS FITZGERALD: Now, I think we might be ready to move into closed session, and if the Commissioners are content, we might just have a brief lull, perhaps not a break, but just a moment while the link is taken down. We would seek to close the court in reliance on the

25 standing orders that were made yesterday.

CHAIR: Thank you.

<ADJOURNED AT 12.46 PM.