



TRANSCRIPT OF DAY 3 – HEARING BLOCK 4

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

FRIDAY, 3 MARCH 2023 AT 10.03 AM (AEST)

DAY 3

MR TONY MCAVOY SC, Senior Counsel Assisting
MS SARALA FITZGERALD, Counsel Assisting

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T: 1300 004 667

W: www.lawinorder.com.au


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CHAIR: We are good, thank you. Good morning. Today the Commission continues the further session of hearings focused on the priority areas of Child Protection and criminal justice.

5 Before we start today's proceedings, could I ask Commissioner Hunter to do the Welcome to Country and Acknowledgement of Country.

COMMISSIONER HUNTER: Thanks, Chair Bourke. So I'd like to acknowledge that we are streaming from the lands of the Wurundjeri and pay my respects to Elders past and present,
10 acknowledge all of those that have come before us so we are able to have voice in this room today, and may Bunjil watch over us today as we conduct our Aboriginal business. Thanks, Chair.

CHAIR: Thank you. Counsel, appearances.

15 MR MCAVOY: Thank you, Chair. My name is McAvoy, Senior Counsel Assisting the Commission. The witnesses for today, Commissioners, are firstly the Aboriginal Justice Caucus, then Ms Dukakis will appear again on behalf of the Koorie Youth Council. Then we will be hearing evidence on behalf of WEStjustice and then later the evidence from Auntie
20 Sue Lovett and Jamaine Jones.

<BONNIE DUKAKIS, CALLED

<CHRISTOPHER HARRISON, CALLED

25 MR MCAVOY: The witnesses this morning are Ms Dukakis and Mr Chris Harrison, and they are sitting in the witness box on behalf of the Aboriginal Justice Caucus. And the Aboriginal Justice Caucus has provided a submission dated December 2022.

30 I'll just (indistinct) firstly, Mr Harrison, can you tell the Commission your name?

CHRIS HARRISON: Yeah, Christopher Harrison.

MR MCAVOY: And your position?

35 CHRIS HARRISON: I'm the co-chair of the Aboriginal Justice Caucus.

MR MCAVOY: You are about to give evidence to this Yoorrook Justice Commission. Is the evidence that you are about to give true and correct to the best of your knowledge?

40 CHRIS HARRISON: Yes, to the best of my knowledge.

MR MCAVOY: And, Ms Dukakis, can you tell the Commissioners your name?

45 BONNIE DUKAKIS: Bonnie Dukakis.

MR MCAVOY: And your position as regards the Caucus?

BONNIE DUKAKIS: Aboriginal Justice Caucus member.

Yoorrook Justice Commission

MR MCAVOY: And the evidence that you will give will be the truth to the best of your knowledge? Thank you, now Commissioners I understand that Mr Harrison would want to make an opening statement on behalf of Caucus, and I would invite him to do that now.

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CHAIR: Thank you.

CHRIS HARRISON: Thank you. So, firstly, I'd like to acknowledge the lands we meet on today and pay my respects to the Wurundjeri People and the Elders past, present and emerging. I'm Chris Harrison. I'm a proud Wotjobaluk man. I'm the co-chair of the Aboriginal Justice Caucus and also the state-wide chair of the ACJP, the Aboriginal Community Justice Panels. We would like to thank the Yoorrook Justice Commission for inviting us along to give evidence and also on behalf of the Justice Caucus, and also having a look at our submission that covers topics relevant to both the criminal justice system and the Child Protection system - Child Protection theme.

I begin by providing an overview of the Aboriginal Justice Caucus. So just - the Aboriginal Justice Caucus includes the Aboriginal community representatives that are signatories to the Victorian Aboriginal Justice Agreement. We acknowledge the enormous contribution of the Aboriginal leaders, Elders and knowledge holders who have gone before us as part of the Caucus over the past 23 years. They fought tirelessly for Aboriginal rights, and their efforts paved the way for us to continue to fight for justice for our people.

Caucus members include chairpersons from the nine Regional Aboriginal Justice Advisory Committees, better known as the RAJACs, and leaders of the Aboriginal organisations like the Koorie Youth Council, VALS, Djirra, VACCA, VACCHO, Aboriginal Housing Victoria and VALO from state-wide programs, and there is also state-wide programs like the Independent Prison Visitor and ACJP.

Caucus provides state-wide representation and leadership. We work with and listen to our communities, colleagues and clients to make sure their voices are heard by government, and the need for our mob are better met by police, Corrections, courts, police and other justice agencies. Caucus members are involved in a growing number of governance and advisory groups to change laws and develop policies, programs, services for Aboriginal people. These include the Aboriginal Justice Forums, the RAJACS, the Local Aboriginal Justice Action groups, the LAJACs, collaborative working groups and other groups established to progress significant projects.

There are a few ways that Caucus is supported to do this work, that's through an independent secretariat and two support staff. There is payment for sitting fees for members to come along. RAJAC executive officers and LAJAC project officers are employed by the Department of Justice and Community Safety. Funding for specific projects, currently the AJ - the Aboriginal Justice Caucus is working on the project to review the Victorian implementation of the Royal Commission, from the Royal Commission into Aboriginal Deaths in Custody, or better known as RCIADIC, and the coronial recommendations where our people have passed in custody.

Caucus has been involved in a huge amount of work to prevent the mob from coming into contact with the criminal legal system and to ensure that, for those who end up caught up in it, their needs are met and they remain connected to family, community and culture.

5 Aboriginal self-determination has always been central to the work that Caucus does and we continue to advocate for government to transfer power, control and resources to Aboriginal community, so that we can truly - we can have a truly Aboriginal-led justice system. I'll pass over to Bonnie.

10 **BONNIE DUKAKIS:** So we know that the Victorian justice system does not work for Aboriginal people. It's not fair, and doesn't deliver justice for mob. It works in ways that continue to harm and traumatise our people. In the face of a legal system that has always hurt us, Aboriginal and Torres Strait Islander communities in Victoria have always demanded self-determination. The need for governments to enable and support Aboriginal
15 self-determination was a key theme of the Royal Commission into Aboriginal Deaths in Custody.

Over the past 23 years, the Aboriginal Justice Caucus has been a consistent voice with greater self-determination through Victoria's Aboriginal Justice Commission. The agreements,
20 wide-reaching impacts, along with its strong partnerships are a great strength, but there are significant limitations to this partnership approach, where ultimate authority remains with the State. Urgently needed changes, long advocated for by the Aboriginal community, are frequently impeded by the lack of political will and law and order agendas designed to win votes rather than save our lives. Caucus's vision for the future is an Aboriginal
25 community-controlled justice system that is safe, fair and works for all Aboriginal people.

When we talk about an Aboriginal community-controlled justice system, we mean one that is designed and led by Aboriginal community, or the Aboriginal community, based on our ways of knowing, being and doing. A system where restorative and therapeutic approaches,
30 cultural, spiritual and physical healing and strengthening culture and community are central elements. Where community-based culturally safe services and supports are prioritised over police and prisons.

An Aboriginal community controlled justice system is one where Aboriginal community
35 determine priorities and set goals for the system, set policy and legislative agendas and draft legislation, determine the Aboriginal justice budget and allocate resources, set benchmarks to hold service providers accountable, establish justice institutions to exercise self-determination, and provide oversight. The Aboriginal Justice Caucus know the existing systems need to be transformed and this will take time.

40 As we outlined in Burra Lotjpa Dunguludja, AJA4, there is a desperate need for the progressive transfer of authority, resources and responsibilities until Aboriginal communities have oversight of all aspects of the justice system for Aboriginal people. Caucus recognise there is much further work to be done to realise an Aboriginal-led justice system. We
45 recommend that Aboriginal communities and organisations be properly funded to be involved in this transformational change.

CHRIS HARRISON: There are urgent reforms that must be implemented. Whilst the longer term work of transforming and change is underway, to prevent criminalisation of our people

and their entry into the system, the government must urgently raise the minimum age of criminal responsibility, invest in Aboriginal provision of services and support for children and adults who have been victims of crime or harm, resource regional Aboriginal legal service hubs across the State.

5

To ensure imprisonment is the sanction of last resort, as recommended over 30 years ago by the RCIADIC, government must reform the punitive bail system, reform sentencing legislation, invest in community-based alternatives that support diversion.

10 To end Aboriginal deaths in custody, the government must ensure independent investigation of Aboriginal deaths, provide culturally safe health care in custody. To support with the transition of out of the criminal legal system, government must provide housing, invest in culturally appropriate transition support programs.

15 To strengthen the accountability and oversight, the government must establish an Aboriginal Justice Commissioner, overhaul the police oversight system, ensure the independent oversight and places of detention.

20 Similar, the Child Protection system requires critical reform. Caucus has been shocked, in the report that we put up at our Werribee AJF, at the lack of attention and response to the number of Aboriginal children that have passed, that have been linked with the Child Protection system. There must be greater accountability and oversight.

25 As a member of the Aboriginal Justice Caucus, we had the privilege to yarn with yesterday, to hear from community members on country and in custody, but saddened the stories we hear repeated over and over again. So too do the recommendations of successive Royal Commissions, inquiries and reviews.

30 We urge Yoorrook to use the full extent of its powers to unearth the truth about Victoria's legal and Child Protection system and how it must fundamentally change to prevent further loss of Aboriginal lives.

The Aboriginal Justice Caucus also urge the Victorian Government and the Premier not to delay on urgent reforms. They're needed now. Thank you.

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MR MCAVOY: Thank you. Now, I propose to ask you some questions about the content of the written submissions you've provided to the Commission. Firstly, at page 9 of your written submissions, you talk about a colonial justice system, and you have inserted a quote from Nerita Waight that the current system is a colonial justice system. Can you just expand on that a little and tell the Commissioners that you intend to mean by that?

40

BONNIE DUKAKIS: So when we use the term "colonial legal system" it's been applied in English laws denying Aboriginal sovereignty and refuses to recognise the extents of Aboriginal lore, l-o-r-e, that continues to this day. Colonial laws did not protect our people. They were used to punish and reinforce racist policies amid disseminating our families, communities and our ways of life.

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MR MCAVOY: And the quote from Ms Waight refers to it as:

"The current justice system, being that same colonial justice system."

So is it Caucus's view that those things that you've just spoken of continue to the present day as the way in which the justice system operates?

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BONNIE DUKAKIS: Yeah, the way we see the impacts of Colonisation still occurring, like, we look at being the most incarcerated people in the world as one aspect of that.

MR MCAVOY: Thank you, and then on page 10, your submissions refer to a self-determined or self-determining criminal justice system, and I know that you've spoken about this in your opening statement, but can you just expand a little on the importance of self-determination in the criminal justice system?

CHRIS HARRISON: Yeah, it's making sure that we provide something where it's Aboriginal led and Aboriginal ran. We know what programs work for our people. We know what supports work for our people. We know how to care for our people. We've always used that philosophy that it takes a community to raise a child. It's the same with the justice services that are around. It takes all those to work together.

We try to stay clear of the silo mentality like most departments in government do. We try to make sure that we are all working together for that common goal of the betterment for our people, and that's what we're trying to do with the self-determination. It's led by Aboriginal people, it's ran by Aboriginal people, and it's for Aboriginal people.

MR MCAVOY: So one of the mechanisms to deliver that self-determination, if I understand your submission correctly, would be an Aboriginal community-controlled justice system. And can you just describe for the Commissioners how an Aboriginal community-controlled justice system might work in practice.

CHRIS HARRISON: Yes, so our aspirations with Caucus for the community-controlled justice system, designed by us is that we believe that Caucus would have a key role in the design and implementation of the Aboriginal justice system, given our collective experiences of decades of work across that justice sector. Aboriginal-led decision making is critical, and a self-determination model which is needed to be flexible and able to adapt in different places, according to Community's needs and resources.

Aboriginal communities must be empowered to make decisions on all matters that affect them. We know for - like, we have further work to be done to bring Aboriginal communities and organisations together and to work out details on an Aboriginal justice system, but there is also lessons that can be learnt from work that's currently underway.

MR MCAVOY: The Caucus membership is made up of a number of regional representatives.

CHRIS HARRISON: Yep.

MR MCAVOY: I understand that this is still in the development stage, but an Aboriginal community-controlled justice system, is it something that would operate differently in

different regions or would there be a single system that would be able to be applied across Victoria?

5 CHRIS HARRISON: Yeah, depending on the areas and the catchments of the areas. So some of our RAJACs have LAJACs which span across a vast area. Speaking from my own area in the Wimmera, like, our service area is - I think it is one of the largest in Victoria with how far we have to cover. So it's basically how do you make sure you capture the voice of all those people and how you can pull them all together to gather that information. And that's what we look at with the structures of our LAJACs and then to our RAJACs, to make sure that we
10 have Aboriginal representation at each level with community at the same time.

MR MCAVOY: In your submission you've referred to, as a case study, the Wirkara Kulpa project.

15 CHRIS HARRISON: Yep.

MR MCAVOY: Can you just explain that for the Commissioners? And, Commissioners, this is at, if you're following, page 13 and there is a diagram on that page of the submissions.

20 BONNIE DUKAKIS: So Wirkara Kulpa is the Aboriginal Youth Justice strategy. It's the first strategy of its kind. It's state-wide. The development was led and involved Aboriginal Justice Caucus, so as our role - I say our role, being Koorie Youth Council's role on there. Koorie Youth Council co-chaired the steering committee for the strategy and was part of a lot of work with that.

25 This came out of a response to the Armytage Ogloff review of the Youth Justice system, but also KYC's previous work on Ngaga-dji, which centred the voices of Aboriginal people in the system around what they wanted to see for change. We see it as a way forward, to be - like, the vision is that no Aboriginal children, young people in the justice system, and it sets out
30 some milestones for how to achieve that.

At the end of the day, though, it is still a Department that are leading the oversight of that project, and where it sits.

35 COMMISSIONER WALTER: Can I just - I've got that here, and I've admired - look, it's beautiful work and it sets it out very clearly. I'm interested in the accountability. How is the Victorian State, given that they are still the authority here, going to meter progress towards achieving these?

40 BONNIE DUKAKIS: So currently the progress is reported through the Youth Collaborative Working Group which is an arm of the part of Aboriginal Justice Caucus as part of the Aboriginal Justice Agreement. It's one of the mechanisms that I guess provides that overview. It's got membership of both Aboriginal Justice Caucus members, committee members as well as Department representatives that are responsible for some of those actions. It is one of those
45 longer-term strategies as well, so it's got - so it's just commenced launch last year in February, so I guess as it grows as well, we'll be looking at how we're tracking that and how it's -

COMMISSIONER WALTER: But there aren't tracking measures built in yet?

BONNIE DUKAKIS: There are, yes. It's been designed through the Youth Collaborative Working Group around what those measures look like.

5 COMMISSIONER WALTER: What happens in five years if the track is showing not - little progress? Is there any mechanism there for review?

10 CHRIS HARRISON: Yeah, that's where we have a report back to the Aboriginal Justice Forums. So we have a mechanism that will go through the Collaborative Working Group and then to the Aboriginal Justice Caucus and then to the Aboriginal Justice Forum, so if it ever falls over, or it's not tracking in the intended progress, it's straightaway how do we get back to review it? Yep.

15 MR MCAVOY: Thank you, Commissioner. I expect that there will be the opportunity to explore that particular program in the next session as well with Ms Fitzgerald and Ms Dukakis.

I've got a bit of a difficult question for you now, Mr Harrison. The Caucus received the report from a Professor Larissa Behrendt in 2017. That's correct?

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CHRIS HARRISON: My recollection, yes. Yes.

25 MR MCAVOY: And it set out in quite a lot of detail how Victoria might go about developing an Aboriginal community-controlled justice system to give effect to the aspirations of self-determination. There has only been sort of limited traction, if I can put it that way, with the government in terms of achieving that. Are there impediments to achieving an Aboriginal community-controlled justice system that you've noticed, that you can point to over the last sort of five years since that report's been received?

30 CHRIS HARRISON: Yeah, it's the government structures, basically. It's more around what their appetite is, compared to what the community's is, like we covered in our opening statement around basically that we're not here for the political gain of them getting votes. It's here to save lives of Aboriginal people, and that's what we've tried to push since the inception of the Aboriginal Justice Caucus back 23 years ago.

35

40 But it's more around how do we get the government to actually anticipate that. Like, we have had numerous meetings where we've raised it as topics with the Aboriginal Justice Forum, we've raised it through the Aboriginal Justice Caucus, we have also raised it through media releases from Caucus, so we have gone through all - like, we keep going through avenues. Even though - if we get told "No", we keep coming back. It's one of those things that we'd never let up on.

45 MR MCAVOY: I understand that Caucus has been diligent in its pursuit of it, and you've said in response to my question that it depends on the political will in government. Do I take it that there hasn't been any indication to Caucus of any political will to go down this path from the government? Or is it there has been but only in minor senses?

CHRIS HARRISON: It's probably more in minor senses, and that's where we're trying to make sure that it comes out in that major area. But that's the problem, is that it's only minor things where it's come out to -

5 MR MCAVOY: Are there parts of the things that you've been advocating for which have been picked up by government?

CHRIS HARRISON: Yes.

10 MR MCAVOY: Can you just explain to the Commission what some of those might be?

CHRIS HARRISON: Around the Youth Justice Act or the Youth Act, we have engaged with the government in relation to that where Caucus worked a fair bit in relation to designing a lot of the recommendations that formalised in that report. We are currently in the process of the -

CHAIR: Was it sentencing reform?

CHRIS HARRISON: Yeah, the sentencing reform that we assisted with Caucus. It's more -

20 BONNIE DUKAKIS: Part of it's been providing advice and recommendations to go forward to inform the development of the Acts. So it's been probably one of the first times we have seen Caucus involvement at that front end rather than coming to us at the end, that this is what's been developed now.

25 MR MCAVOY: So this is the front end of development of which Act?

BONNIE DUKAKIS: The sentencing reform, as well as the development of the Youth Justice Act.

30 MR MCAVOY: Has Caucus been able to get access to the relevant Ministers in order to promote its strategy?

CHRIS HARRISON: We have been able to access some of Ministers. I won't say all. We are still waiting on a couple of replies back from a couple of Ministers in relation to where we have tried to reach out and have meetings as such. But we have had previous meetings with other Ministers as well.

40 MR MCAVOY: And I take it from your answers that there's been no, or no sufficient allocation of funding in the budgetary process over years to pursue this?

CHRIS HARRISON: There has been in some of the budgets, but the headache is it's around certain areas. So currently, like, with one of the budget releases was the review of the RCIADIC and the coronial findings, from the Coroners, which we funded that through, which was also through one of our partner organisations where we have a couple of staff in that area to help review that process.

But the problem is with the submission, or with the funding that we put up with all our submissions is that you've had programs that have been on the table since 2005 where we've

put what voice we have had from Caucus in relation to it, of around a Social Justice Commissioner. We have put the thing up around Aboriginal justice hubs or legal hubs that we've put up for years, where there seems to be no appetite in those areas for those two things.

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And that's where it keeps coming back down and it's always about budget process or there's other things that may squeeze in out of another field in the Aboriginal justice space. And that's where they overlook that sort of thing. Sorry, I wouldn't say overlook. I'd say that they've, yeah, rejected in the past. Or deferred.

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MR MCAVOY: And the conclusion that could be drawn from your evidence just now about the piecemeal approach with small parts of the overall reform that you're advocating for is that the Aboriginal justice reform, as a whole, doesn't have the sufficient priority within government. Is that -

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CHRIS HARRISON: Yeah, I'd probably say by looking at the last budget, or the last election, there was nothing around Aboriginal justice or Aboriginal people in the last election promises. We've had a little bit of traction where the Premier has come out and spoke about Raise the Age, spoke about bail reform. And as we've advocated for many years in relation to it, even when bail reform was given to us at the start, we spoke about how it would affect Aboriginal people, how it would lock up more, and it's only now being mentioned as an area of appetite by the Premier.

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And that's where - it's the same with Raise the Age. Like, Victoria's always been that place that's always led by example for many years, where they've always set the benchmark and gone out on their own. The question is what's happened to that process with the Victorian Government where they have stopped going out on their own to lead in that process. We are the only one to have an Aboriginal Justice Caucus which has an agreement which is bipartisan which has been around for 23 years, but it's how do we make sure we put that focus or that pressure back on government when it comes to Raise the Age, bail reforms and also, like, other programs like the Social Justice Commissioner.

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MR MCAVOY: Just to wrap up on this point of the Aboriginal community-controlled justice system, it's correct to say that there hasn't been any commitment from government to deliver on the whole of that strategy. Is that correct?

CHRIS HARRISON: Yeah.

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BONNIE DUKAKIS: I think part of it, as well, has been, like, if we're looking at a lot of the work that Caucus aims to do is in prevention and early intervention, and looking at the funding and allocation to those once you're involved in the system, whether that's custody or whether that's community, and how we can shift that response and I guess investment. So rather than looking at investments in the tail end of once you're in custody or once you're in the courts, how can we make sure we know - our communities know how to work with our mob and what we need? How can we put and prioritise those programs and those services that keep us strong and connected to culture, family and community? So we're not ending up in custody and we're not having more passings in custody.

45

MR MCAVOY: Thank you. I just want to move on now to page 15 of your submission, at item 2.4, your submission encourages the enshrinement of the right to self-determination in the *Charter of Human Rights and Responsibilities Act 2006*. Are there any changes in the community that you think might flow from recognition of self-determination in that Charter?

5

CHRIS HARRISON: Yeah. So Aboriginal self-determination is a right. It should be established in all relevant legislations, including the Victorian Charter of Human Rights. As an essential part of self-determination, it's free, prior and informed consent, which means our people are decision-makers not just the stakeholders and the tick the box consultations.

10

Enshrining self-determination provides much of a stronger basis for our communities, the whole government accountable in terms of how they go about their work and with us and where our outcomes are not achieved so we can hold them to account in that space. It may also mean that government must explore open and transparency with our community, that our data and information must be shared with us and inform our decision-making. And a big question is around that data sovereignty, that we own it, instead of handing it over for free.

15

Also Caucus has advocated for the government to include the right to self-determination in other laws to create a duty on the Victorian government to support progressive resilience to the right to self-determination as well as Aboriginal people's inheritance of cultural rights.

20

MR MCAVOY: Thank you. I just want to ask you a question now about something on page 19 of your submission. On that page, Caucus addresses racism and systemic racism and the connection between that systemic racism and over-incarceration. And you refer to a 2003 report on systemic racism and over-incarceration authored by Harry Blagg, Neil Morgan, Chris Cunneen and Anna Ferrante. That report made numerous recommendations, and are you able to comment on the implementation or lack of implementation of the recommendations from that report?

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CHRIS HARRISON: Yeah, we can just go straight to bail laws or the bail reform, of how it disadvantageously proportions Aboriginal people and how Aboriginality is used against them when it comes to access of bail. It's the understanding of how do we make sure that that's enshrined, but it's covered with most things in Victoria, or in the legal system, is that it is punitive against Aboriginal people.

30

MR MCAVOY: And so you're aware that the Royal Commission into Aboriginal Deaths in Custody report spoke about systemic racism, and then there is this 2003 report in relation to over-incarceration in Victoria, in particular. Can you offer any view as to whether the systemic racism that's reported upon in the 2003 report is something that is still prevalent today?

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BONNIE DUKAKIS: Yeah. When we look at - with the criminal legal system and something that came out of the Royal Commission into Aboriginal Deaths in Custody and consistent through the report was that unequal position in which Aboriginal people find themselves in custody, themselves in the society, socially, economically and culturally, and looking at how there will be factors outside of their own control that are impacting whether or not they will be picked up by police for something that a non-Aboriginal person might not receive a response and looking at how it contributes, either whether it's bias or unbiased conscious. And I think one thing Caucus has done a lot around is shifting that it's not

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necessarily unbiased, because there's so much reported, there's so much research that's been done into it that it starts to become biased, like, it's there in front of them.

CHRIS HARRISON: It's conscious bias.

5

BONNIE DUKAKIS: Yeah, that's the word.

CHRIS HARRISON: So we are saying unconscious bias just to make them feel comfortable.

10 MR MCAVOY: Yes. Do you wish to continue?

BONNIE DUKAKIS: Sorry, yeah, and I think, like, it can be - it's found in all parts, we've seen, in the justice and Child Protection systems, both from the laws and policies and practices and how they - instead of centring and privileging Aboriginal culture and their
15 background and connection, that it's actually a deficit and it's seen as a risk factor or something that needs to be addressed in another form.

MR MCAVOY: And I understand we're talking about systemic issues. Is your evidence that it's something that is throughout the system? Is it -

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CHRIS HARRISON: Yes, it's throughout the system, and the worst thing about it is that it's still there. It's a common experience for our mob on a daily basis.

MR MCAVOY: Are you aware of any attempts by the government or Victoria Police, in
25 particular, to deal with the systemic racism?

CHRIS HARRISON: You have policies, you have cultural awareness training, you have those things that come into organisations over unconscious bias training and stuff like that. The headache with the training is that it's pretty much a once done, that's all they have to
30 worry about. It's not one of those things that's enshrined that they have to keep undertaking that training. And when they are called out about it, it leads back to that other side when it comes to accountability, who is calling it out and why are they calling it out?

Because the simple actions of, say, staff in Departments or in organisations or the way they
35 speak to people is another way of how we actually feel that systemic racism is in that organisation. But it's also in that area of when it comes to pointing it out and following it up, it goes back to the organisation or the Department or to the government where they follow it up or with policing.

40 It doesn't actually come out in a report to us of what they have actually done to the person or how they have corrected it or how they have fixed it. It's basically, yep, it's their report, they own that property, it's not our information. So it's more of how do we get on that same wavelength and also that understanding of trying to eradicate racism where it's 2023 and people are still copping it today.

45

MR MCAVOY: You address the need for independent police oversight later in your submissions. But I just want to - whilst we're on this topic, I just want to ask you to express your opinion as to - or if you can, as to the confidence of the Aboriginal community members, generally speaking, in making complaints about police or government officials.

CHRIS HARRISON: We know the answer is that the confidence is it's very low when it comes to Aboriginal people making a statement to the police. It's in fear of how they actually speak or going into the station, if they are going to be heard. Some of the treatment that some people have had in the past where they have rocked up, they may be erratic, where they are raising their voice, they are being loud, but it's only because of the situation where it's heightened them, but the members haven't justified that area. They have turned around and said they are the issue and asked them to leave, where they have shunned them away and pushed them away from sides in that area.

We have had other incidents that have been reported, like, through our justice forums. We've had a person make a complaint against a police member, and then the following week that police member has rocked up at their house to take the complaint about themselves.

We've - like, the worst thing about it is that it's a - there needs to be independent oversight and there must be independent oversight, but at the same time it must be to the standard that we want it at. It's not the standard that is being offered to us by Victoria Police.

Like I know Commissioner Patton just come out just recently by sending an email out to all his members saying their standards - they have got rid of 37 police members last year. And it's around about keeping their standards high. How do we make sure those standard that he's talking about are our standards at the same time? How do we make it in that area that it's accountable to us, so when it comes to the confidence of Aboriginal people walking in, we want to turn around in years to come with our children that are growing up, if something ever happens to them, we want the confidence for them to actually walk into a police station, instead of having that fear that's put into us from a young age, like we always had our parents or cousins or aunties and uncles always joke around to us when we were in the car with them. "You put your seatbelt on or you're gonna get locked up by the coppers".

It's that area, that fear. We need to put the trust back into it, but the problem is, for that system to change, there needs to be Aboriginal oversight and it needs to be on the same accountability with their powers for that to change.

MR MCAVOY: Thank you. I just want to take you now to page 30 of your submissions. I can tell you that we've had evidence from other witnesses calling for an Aboriginal Social Justice Commissioner and we take it from your submissions that Caucus fully supports that reform. Is that correct?

CHRIS HARRISON: Yes.

MR MCAVOY: And the role that you propose for the Aboriginal Social Justice Commissioner is quite a broad role, and we see, at page 30, a number of dot points setting out what Caucus believes an Aboriginal Social Justice Commissioner should do. And it's largely a monitoring and advocacy role, but I notice at dot point 2, there's a recommendation that:

"The Aboriginal Social Justice Commissioner would conduct systemic discrimination investigations and independent reviews to further equality and strengthen human rights protections for Aboriginal people."

So that could be quite a substantial function. So I take it that Caucus's view is that the Aboriginal Social Justice Commissioner would be a big role, if I can put it that way?

5 CHRIS HARRISON: Yeah, the reason that we've put it into such a big role and to cover a gamut of areas is because it's around that area that if you go to - like, if we go to government and say, "We want a Commissioner in every one of these areas or we want an Aboriginal person at that same level", the thing they're going to come back to straightaway is that they are pretty tight with money at the moment with budget processes and stuff like that, and that's where we try to cover it by just asking for one.

10 MR MCAVOY: And it's suggested that the Aboriginal Social Justice Commissioner could work alongside the Ombudsman and add to the work of the Ombudsman. How would the Caucus then work with an Aboriginal Social Justice Commissioner? You're not suggesting the Social Justice Commissioner pick up Caucus's function, are you?

15 CHRIS HARRISON: No, so it would work separately. So it would have the powers that are enshrined with the Ombudsman that currently has more powers in that space where it actually has that oversight, that accountability, those mechanisms that are instilled in it. So then we can make sure that there is a clear pathway for Aboriginal people which they are comfortable to actually use an Aboriginal service or an Aboriginal Ombudsman to actually chase up and have those fears or those concerns heard or complaints.

20 Whereas, at the moment, their complaint levels are down. It doesn't matter what Ombudsman you put in front of them at the moment, or if it's IBAC or if it's police oversight. They're not using - they're not taking much buy in to those services. Whereas we are finding more complaints as we rock up to Aboriginal Justice Forums where we have our community sessions, even our community sessions with our RAJACs and LAJACs around those complaints and issues because they feel safer that they can raise it there where there is action that comes back around in relation to it.

30 MR MCAVOY: Yes. Is it something that Caucus sees as an urgent part of the reform process, establishing this position of Aboriginal Social Justice Commissioner?

35 CHRIS HARRISON: Yeah, like, we've been calling for the need for it since 2005 through the Aboriginal Justice Caucus. And the thing is that we've called to establish an independent oversight and adequate resource of powers to provide oversight to the Aboriginal justice system in Victoria. The Commissioner would be independent from government, have complaint and investigation powers and be able to iterate their own inquiries.

40 But also at the same time, we advocate that they provide high-level information or reports back of how they're actually targeting against it, so at the moment - there's other things we outline in our submission that that function could include with the Justice Commissioner is around monitoring the implementation of all recommendations, conducting the systemic discrimination investigations, education and community engagement, assessing whether proposed laws are unfairly impacting on Aboriginal people. Advocating for greater respect for Aboriginal rights and equality. Improving the justice services and outcomes for Aboriginal community. And supporting our people when things go wrong. So - or human rights are at risk by helping it to resolve complaints and intensive court cases.

MR MCAVOY: All very important functions. At page 31 of your submission, you then move to issues requiring urgent attention, and on that page you identify preventing criminalisation and entry into the system, ensuring imprisonment is a sanction of last resort, ending Aboriginal deaths in custody, supporting transition out of the criminal legal system, and strengthening accountability and oversight. One of the matters that I'd like to draw your attention to in your submission is at pages 37 and 38, where you comment on the need to ensure culturally safe services and supports for Aboriginal victims. Can you just expand on that for the Commissioners, please?

CHRIS HARRISON: Yeah, so it's making sure that - we want to make sure that when an Aboriginal person comes forward to talk about something or they're a victim of anything, that they're gonna be heard. We want to make sure that they've got the right to be heard, the basic right, but at the same time that things are going to be followed up for them, but also related back to them in a cultural way. Like, we know with most people that we work with that you have those people that you ring up and they don't follow up or they don't chase stuff up for you. You want to have that person that gets back to you to let you know the process. If something can't be done it's explaining what the process is, but going through that information with them.

And it's making it so it's in the area of - like, Aboriginal victims of crime, they're overrepresented as victims of crime, but there's significant underreporting of these experiences. Like a lot of people are too windy to come forward, like, they don't want to and there is a shame factor that comes with it as well of if they are coming forward, what protections are in place for them? Like I remember when the Commissioners come out to Horsham the other week, one of the questions I raised was around community members coming here today giving evidence and information.

What are the safeguards for those community members speaking up about the issues that they're having or what are the reprisals back from those agencies and services? That's the thing that - it's that area of trying to cover, is how do we make sure that - we try to eliminate that area of victimisation. How do we make sure we build that trust back into our community that if things aren't going right, they are actually speaking up about it?

Like, there is not a lot that is covered on victims of crime but we need to make sure we are there to support them through the process. We are not so heavily focused on the arse end of the justice system where people are going through the system and coming out. It's more at that preventive stage as well, but also at those early stages of support.

And that's where, like we talk about, preventative programs, supports, funding in regions, even services. Some don't have it. You've got communities where they have to travel over 300 kilometres just to access some of these services just so they can be heard. You've got areas where you've got communities that won't even go to their local police stations. They will go through members where they trust down in Melbourne to actually raise their issues to be heard. Or you've got people that are contacting through the Justice Caucus, they're sending it to the AJF and they are hanging on to things that have been brought up that have happened over six to eight months ago where they haven't felt comfortable enough to express it, but also feel safe enough to actually say it and have that cultural support at the same time.

And there's been cases, like we know, where we've had people that have been victims and also wind up in the area of being perpetrators. But it's the fine line of if they are there for that service, they are there for that service. It's not turn around and targeting them or using - like we talk about, systemic racism or basically saying, "Just because you've been a perpetrator, how can be a victim now?" It's eliminating that out of that system to turn around and say every victim has their right.

MR MCAVOY: We have heard a lot of evidence, Mr Harrison, about the trauma that people carry personally and in communities. Is the lack of culturally safe practice and procedures something that adds to the trauma of community members?

CHRIS HARRISON: Yeah, it's the lack of cultural understanding, and the cultural understanding can lead to racism, can lead to systemic racism, and that's what we need to make sure that we instil in the communities in the local levels, is that there is that accountability. But also you've got at the local levels of community, there's an imbalance of power. When we use that dirty word "fair", are things actually fair?

Like we need to make sure that we are on that same power balance, whereas if you - say, if you had someone, say, your chairperson of the RAJAC walk in, you've had your chair of the Dhelk Dja - Aboriginal Justice like that, the Dhelk Dja Caucus walk in and they go into the police station to have a conversation, you'd think they would be greeted with the highest person there, so right down to the super or the inspector, they would be greeting them in relation to it instead of just sending a sergeant to talk to them, but to hold it at that calibre.

MR MCAVOY: If you could now turn to page 47, there's comments in your submission about the opportunities to strengthen the coronial processes and the need to increase coronial powers. Can you just expand on that for the Commissioners, please.

CHRIS HARRISON: Yeah, so the coronial processes is - it usually takes two years for an inquest to be heard, and then it takes around about a year after for the findings and recommendations to be handed down. The headache is around - when those processes are actually delivered it's around who actually follows up and keeps that accountable, who keeps those organisations and those departments accountable? If they say "No" to one of the recommendations, how do you make sure that that's being accounted in that space? Because if they are turning around saying they need better strategies in place to improve Aboriginal relations or improve systemic racism which is coming to them, how do we make sure that's covered?

With the last inquest that's just been, the coronial inquest, like, we have got government that will be coming back and giving information back in that area but will they accept all those recommendations? We talk about Our Youth, Our Way reports and stuff that were sent out to government agencies, and there's areas where they ticked and said they would agree in certain areas, but they were picking and choosing what they delivered on. So how do we strengthen and give the Coroner more power in that space, that if there are those recommendations that are going forward, how do we make sure that those services are accountable to those recommendations?

BONNIE DUKAKIS: And I think just to add on that as well, it's not a mandate for a coronial inquest where a death is due to natural causes. So if it's even preventable, so there still could

be learnings that could be had from that passing, and it's only if there's concern or, I guess, question around the cause that they will do the inquest. And then I guess - and that would be part of what the Social Justice Commissioner would pick up as someone to have that oversight, to actually hold the different departments and services to account on what the recommendations come out. Because it's the same things we're hearing that we've heard through RCIADIC, that we heard through all of the reports since. It's just, I think, pretty straightforward.

MR MCAVOY: At page 49 of the submission, you've set out there five recommendations, recommendation 44 through to 48, but just looking at recommendation 47, the recommendation is that:

"Government ensure coronial investigations into Aboriginal deaths in custody are carried out by a specialist civilian investigation team that is independent from police and developed by the Aboriginal community."

That goes directly to the question you - the evidence that you've just given about the need for community confidence and that the investigation is being done properly. And it reflects - I suggest to you it reflects what you've said earlier about concerns about police investigating themselves.

Now, I just want to now take you on to page 57. You've made some recommendations there about independent police oversight and I know that we've already had some evidence about that. I would just invite you to make some - give some evidence to the Commission about Caucus's preferred location for an independent body. If there were an independent body to provide police oversight, where would that body be situated?

CHRIS HARRISON: We'd like it to either be - you'd look at anywhere that would take it, pretty much, is what would be the option. We would want it outside of Victoria Police. So there's other areas, if it's the Ombudsman, if it's IBAC, if it's all those areas, but it's making sure that it has those powers and that service, is that's what it's there for. We would be looking around having it where it's - being able to - it needs to have that investigation powers or meaningful involvement with IBAC. It needs to have that understanding, but also that level with the Ombudsman.

MR MCAVOY: Is it Caucus's position that there needs to be some Aboriginal specific body in relation to police complaints that deals with complaints by Aboriginal people? Or is it the view that, really, it needs to be a singular body that deals with all police complaints and represents the whole of the community?

CHRIS HARRISON: I'd love that it was a singular body, if we could. It would be great. We would still cover the function under the Social Justice Commissioner around budget and appointing. The thing is that it needs to be Aboriginal led and Aboriginal driven. Like, how is someone that's not Aboriginal going to talk on our cultural values, our cultural understanding and our experience? Do they live and breathe it? Like, we can't use - have someone in there that can sympathise with what comparative suffering. We need to be on that mindset that they need to know what they're talking about.

MR MCAVOY: Now -

Yoorrook Justice Commission

CHRIS HARRISON: That's no offence to the allies that support Aboriginal people. It's not having a dig at them, but when we talk about Aboriginal led, it's Aboriginal led.

5 BONNIE DUKAKIS: And I think part of what Chris touched on too before is that accountability and that trust, like, things that come through now and people are waiting six months or longer to make a complaint or a concern, because it's that accountability back. So whatever that looks like, there needs to be a process in being transparent in what happens with this process, where it goes and how it gets fed back to the individual? Because through
10 the previous report, we look at the 2020 and 2021, 94.3 per cent of complaints against police were investigated by Victoria Police, and there was no substantial findings in that. So -

MR MCAVOY: I want to take you to page 60 of your report, and from page 60 onwards, you deal with Child Protection issues, but there's an important aspect to these submissions in
15 respect of the observations you make about the deaths of Aboriginal children known to Child Protection services. Is it fair to say that the numbers of children who had contact with the Child Protection system and have died is astonishing?

CHRIS HARRISON: It's totally terrible, and that's the worst thing about it, is that you've
20 got - it come out in a report that we presented in Werribee in relation to working with the Coroner to go through the data and the information, and like we put in the submission, the numbers that are there, the numbers are going up crazily. That's just Victoria.

So from 2018 to early 2022, to have that many numbers, that's more children have passed that
25 have been linked to Child Protection that are either in care, out of home care or been released back from care that have passed than what we've had in - that have died in the justice system. And the worst thing is, are we going through that stage now of is that our new Stolen Generation? Or, as we're saying, the forgotten generation because they're only being referred to as baby X or child Y or child Z. And that's the scary thing of those numbers that we're
30 seeing on the paper.

CHAIR: I notice on page 60, you refer to numbers and you talk about reports and documents being provided on dump day. Is that a way of hiding these things?

35 CHRIS HARRISON: That's the thing, is like, as an Aboriginal Justice Forum, as Aboriginal Justice Caucus, for us to call it out at a justice forum, there are other structures and mechanisms where these things should be called out. Even down to the DFFH, like, themselves of what have they actually done, what are the strategies, what are you improving, where is the highlight of this accountability? Like, the amount of kids that are passing in
40 those areas, like, it should be front page on the news.

It's not one of those things where it's - yeah, like you're saying, like we talk about dump days where it's been hidden in the data and the information. It's highlighting it and bringing it to
45 the attention that it actually gets the report that it needs to. And, like, once we got that, the first recommendation of us as Caucus was that we said DFFH needs a Royal Commission around all their services, and we have been pretty adamant from Caucus's point of view around that they need a Royal Commission.

We understand we've got Child Protection as part of this process here as well, but there needs to be the deep dive right through their systems. Like, you've got services in Child - sorry, I'll harp on now. But you've got services in Child Protection now that when an Aboriginal kid is taken off a family, your Aboriginal units aren't even notified to say that kid's been taken off

5 them. You've got questions around kids that are being placed with families when they've been taken off, and they are waiting a week, two weeks for the worker to get back to them to let them know what's going on. Like, oh, yeah, this is what's happening with the young person, this is how things are going.

10 You've got supports where families are bending over backwards that maybe already overcrowding in the houses to accommodate just to make sure that family member or that child is safe, but you've got the Department that's holding the purse strings that won't let go or won't support the families until after three or four weeks, or if not a month or two months. You've got families where they are struggling to have them in their house or feed them. And

15 that's in that area, and that's what we're finding around the State.

Like, there may be some areas where Child Protection works great. There's other areas where it's terrible. Like, it's even the confusion of what they report on. Like, it needs to be highlighted, needs to be out there front and centre. But also needs to be questioned too, well,

20 what are they actually doing?

MR MCAVOY: In the second paragraph under the heading Deaths of Aboriginal Children Known to Child Protection Services, the submission says that:

25 *"In late 2021, the AJC, Aboriginal Justice Caucus, were shocked by media reports that, in a single year, 45 children died who had contact with Child Protection and 13 of the children were Aboriginal children."*

In response to that, in the last paragraph, you recommend that there be a stronger legislative

30 basis for the role of the Commissioner for Aboriginal Children and Young People to enable thorough investigations of the deaths of children that are in care.

You've just given evidence about the need for some deep dive into the system, but those individual deaths, you're recommending that the Commission for Children and Young People

35 have that function and have strong powers to conduct inquiries into those deaths.

CHRIS HARRISON: Yes, I say they need the appropriate resources so they can actually do the deep dive and go through every one of those 13 children, plus ones that have passed

40 since.

MR MCAVOY: Would it require additional resources?

CHRIS HARRISON: Yes, it would require additional resources, greater investigation powers, transparency and also the accountability and access to data and of information. They

45 will need that.

MR MCAVOY: The last matter I want to just ask you to discuss in this evidence today is in relation to the criminalisation of children in care. That, Commissioners, is dealt with on page 62 and over to page 63. I can tell you, Mr Harrison, we've received evidence from other

witnesses about the framework for the reduction of criminalisation of children in care. Can you make some observations about how that framework is being adopted or implemented or not?

5 CHRIS HARRISON: Yeah, you see kids too many times where once they go into the system, resi care houses and stuff, even foster care with non-Aboriginal people, they're coming out with charges. Like, the amount of kids that are coming out with charges in that system, like, they turn around and they might be playing around outside and they break a window or they have thrown a rock through a window or they've broken a window. It's a
10 window.

An everyday parent would just turn around, the kid would get in trouble, they would get told off or they might be told, "How did it happen if it was an accident?" They would talk to them about it as a parent, where they would go through that process and pay and fix it. Whereas
15 you are seeing with the Department, they are getting charged for it, for breaking a window so they can get the thing fixed up through their insurance and stuff like that.

You have other instances where kids are getting taken off country to other services, where there's - you've got services that are engaged with them in relation to it but there's times
20 where they are being taken off country where they are turning around and being in that area because their grandma lives in that area and that's the only closest relative they have got. They're from that area and that's their connection to home.

Then they are being taken to another community and that's where they turn around and they might flip out or they might get heightened and arc up and carry on in relation to it. But then
25 you're seeing police are getting brought in as that weapon to actually pull them back into line. So they end up with charges in relation to that.

Like, I remember we had a 12-year-old girl up our way that turned around - sorry, we had a
30 12-year-old girl that had that happen to her and they turned around - with the workers, rang the police, the police in come, they took her in, questioned her, charged her in relation to it and then released her back in the care of those workers to drive her outside of her community to another resi care house.

If they act up or they carry on, they get moved to other resi care homes, like, they get moved around the state. Like I know we have got our principles that we outlined, like VACCA's care principles that's covered in there, is keeping a kid on country, keeping a kid home. They have that basic right. And that's where it's scary in that criminalisation of the children that are
35 going into the system, the trauma that's getting pushed across them or put on them even by the processes that they have there, that they are ending up in the criminal justice system by just going into Child Protection.
40

Like, our numbers in Child Protection have grown. Like, they're shocking. And the headache is that we can't - we don't seem to have that grasp on it of the kids that are going into the
45 system - I think it's - what, it's 93% per cent, once in the system they are coming out with a criminal charge. And then they're ending up in the YJ system and then from the YJ system it's still in that high 90s that they are going to be coming in the criminal justice system.

That's why we say there has got to be a lot of work done at the preventative stage but also the accountability back to those agencies around what are they actually doing for our kids? Like, we don't want to be known as the largest criminalisation place in the world for locking our own mob up. We want to make sure that we're there giving them the power to actually
 5 succeed and be our future leaders.

MR MCAVOY: Thank you. That concludes the questions I have for these witnesses in their oral evidence, Commissioners. Are there any questions that the Commissioners have?

10 COMMISSIONER HUNTER: Yeah, just on that last point that you were talking about, are you aware of a strategy called the Decriminalisation of Kids in Residential Care that was signed in 2020, and have you got any response to that?

15 BONNIE DUKAKIS: We are aware of it, but I don't know how public - like, our staff that are meant to be following that are aware of it. I think is what we have seen and what we have heard -

CHRIS HARRISON: Ans what our mob has lived.

20 BONNIE DUKAKIS: Yeah, but many are unaware of its existence or even fail to abide by what it sets out. So, like, what that - I don't know what needs to be done around more greater awareness of it or training for the framework.

CHRIS HARRISON: And it's a bit - like, that process, it's severely - the implementation of it
 25 is severely lacking and that's where it needs to be pushed a lot greater with that agency, to make it aware, but make the framework and abide by that practice. And if they're not going to abide by that practice, what's it doing there?

30 COMMISSIONER HUNTER: Just in response to frameworks and strategies, I've got your framework here and it says that, you know - and excuse my pronunciation is probably wrong, but the Burra Lotjpa -

CHRIS HARRISON: AJA4, yep.

35 COMMISSIONER HUNTER: There you go, is in the middle, and there is all these frameworks around that we've got here. What are the accountability processes so that they're actually moving forward and not just -

CHRIS HARRISON: Yeah. So we have got our Collaborative Working Groups that we
 40 spoke about before to make sure that we implement and monitor at that stage. So that's the co-chair of one of the Aboriginal Justice Caucus members along with that representative from government that sit on that group. It's to make sure that they have that implementation coming back to us, so if it's not followed up and abided by, that's where we would take them to an Aboriginal Justice Forum and call them out for what they haven't done and is lacking.

45 COMMISSIONER HUNTER: So in these frameworks and strategies that's all around here, is it written into that, the accountability process, so that they're accountable for, you know, government is accountable, we are accountable -

CHRIS HARRISON: I think there is an accountability process but I think it needs to be strengthened a lot more, so then it gives Caucus more power to hold government accountable. If they rock up to the table and say, "We haven't done this" that's not good enough. Yeah, they need to be named and shamed and strengthened.

5

COMMISSIONER HUNTER: Great, thank you.

COMMISSIONER WALTER: Just a little - building on from Commissioner Hunter, again, the accountability and the lack of that writing in of what is success, what success looks like and the measures by which success is judged. Do you think there needs to be stronger accountability processes written into these frameworks?

10

CHRIS HARRISON: There needs to be those written in, but they need to be written in with a self-determination principle. The thing is that we need to make sure when they are talking about it, it has to be at the level of the community, is taken at the same level as them. It's not turning around and saying, "This is all we can add in here about - we will talk about culture - we will turn around and say we'll add a culture plan in, and be like oh yep, just to confirm your Aboriginality". We don't want that. It needs to be at that level where it enshrines where it actually talks about.

15

20

So that's just using one example that I could probably talk about for days, is just how they can enshrine that into some of their practices, but also, at the same time, it's making sure the playing field is fair. And that's - it's a dirty word to use, but it's making sure that playing field is fair. So when they talk about strategies, it's having that self-determination principle. It's not turning around to the tokenistic blackfella that works for the organisation and saying, "You come here and help write that for us. That's our self-determination model". That's not self-determination. They are paid by that organisation. Yes, they have insight, but they need to grab people in with expertise as well that don't work for them so you don't have that conflict.

25

30

COMMISSIONER WALTER: It's an Aboriginal definition of self-determination, not something written by the government, and it's a fair state of affairs, where fair is a dirty word.

CHRIS HARRISON: Yeah, or their tokenistic worker.

35

COMMISSIONER WALTER: Thank you.

COMMISSIONER BELL: Thank you for the extraordinarily detailed submission and your oral evidence, which deserves the closest consideration and will get it, but my question goes to the treaty-making process in which Victoria is engaged, and Yoorrook is expected to make recommendations for transformation of systems for inclusion in those treaty-making processes. Where do you see the fundamental recommendations for change that you're putting forward fitting into those treaty-making processes?

40

45

CHRIS HARRISON: You put me on the spot there, Kev - Commissioner Bell.

COMMISSIONER BELL: You can take it on notice, if you like.

CHRIS HARRISON: I'll take it on notice, if that's all right, so we can go back and talk with the Caucus.

5 COMMISSIONER BELL: Just bear in mind that's the framework within which we're required to operate.

CHRIS HARRISON: Yeah.

10 COMMISSIONER BELL: I say no more, but take it on notice.

CHRIS HARRISON: Happy to take on that notice and provide it back after we consult with the rest of our members.

15 CHAIR: Kevin, you are finished?

COMMISSIONER BELL: Yes, I have. Thank you very much, Chair.

20 CHAIR: That's a big question, of course, and I'd be interested to see how you respond, but it's very important, I think, if we're talking about self-determination and treaty-making, there is an opportunity also.

CHRIS HARRISON: Well, the hard thing is I can't say, as a co-chair, or Bonnie can't say as one member. We have to take it back to the collective and come back with an answer and -

25 COMMISSIONER BELL: Yeah, sure, yeah understood.

CHRIS HARRISON: - I can't provide, it wouldn't be true self-determination. I'd get probably stabbed if in the process, on my behalf at least.

30 COMMISSIONER HUNTER: Hope not.

CHRIS HARRISON: Just as a joke, I'm not saying -

35 COMMISSIONER BELL: Well, they're your self-determining processes.

CHRIS HARRISON: Yeah, we need the self-determining processes, yep.

CHAIR: Thanks. Well, I'm right.

40 MR MCAVOY: Thank you Commissioners. If there are no further questions I would simply then tender the Aboriginal Justice Commission nuther-mooyoop to the Yoorrook Justice Commission titled Systemic Justice in the Criminal Justice and Child Protection Systems, dated December '22. It's document 3.1. And the Aboriginal Justice Caucus cover letter to the Commissioners, dated 30 December 2022, which is document 3.1.1.

45 CHAIR: That will be allocated the next exhibit number.

**<EXHIBIT 3.1 ABORIGINAL JUSTICE CAUCUS NUTHER-MOOYOOP TITLED
SYSTEMIC INJUSTICE IN THE CRIMINAL JUSTICE AND CHILD PROTECTION
SYSTEMS DATED DECEMBER '22**

**5 <EXHIBIT 3.1.1 ABORIGINAL JUSTICE CAUCUS COVER LETTER TO THE
COMMISSIONERS DATED 30/12/2022**

MR MCAVOY: Commissioners, the next witness is Ms Dukakis appearing for the Koorie
Youth Council. Might I suggest that we have a short break to allow her to stretch her legs and
10 perhaps return at 11.30. Is that suitable?

CHAIR: We will adjourn until 11.30, thank you.

<THE WITNESSES WITHDREW

15

<ADJOURNED 11.15 AM.

<RESUMED 11.34 AM.

20 MS FITZGERALD: Thank you, Chair, if the Commission pleases, I now call Bonnie
Dukakis from the Koorie Youth Council.

<BONNIE DUKAKIS, CALLED

25 MS FITZGERALD: Ms Dukakis, you've already made a commitment to provide truthful
evidence to the Yoorrook Justice Commission today, and that commitment remains. The
Koorie Youth Council has made a submission which I'll tender at the end of your evidence.
To start with this aspect of your evidence on behalf of the Koorie Youth Council, would you
introduce yourself, your connection to the Victorian Aboriginal community and outline your
30 relevant professional roles relevant to your role at the Koorie Youth Council.

BONNIE DUKAKIS: Thank you. Just before I begin, I would also just like to acknowledge
country and pay my respects to traditional custodians on the lands on which we're calling in
from today on Wurundjeri country, but also extend my respect to every Aboriginal and
35 Torres Strait Islander person in the room today, to the young people and those that have
entrusted their stories not just with myself but with KYC and our works and extend that to
our Elders past and present and thank you for having me today.

40 My name is Bonnie Dukakis. I'm a proud Gunditjmara woman, so my ties are south-west of
Victoria but I grew up, I was born and raised on Gunaikurnai country down in Gippsland, and
that's also home, and now living and working on Wurundjeri country and had the privilege of
being here for the past five years, I think now.

45 Before going into, I guess, some of what we've put as our submission through Koorie Youth
Council, I just wanted to touch on some of my prior work experience, or work experience,
prior roles that I've had that are relevant to this work and noting, yeah, stepping into this role
as the Executive Officer for Koorie Youth Council.

5 So I also note that there's a number of individuals and organisations that I have previously worked in that were part of the previous round of hearings as well, so I guess I've held various roles across the justice space over the past nine years. My whole, effectively, adult working career, so starting in Community Corrections as a case manager down in Gippsland, across Bairnsdale, but also at Wulgunggo Ngalu Learning Place with Shaun Braybrook and the team down there, working with Aboriginal men on community-based Corrections orders.

10 From there going to the Ngarra Jarranounith Place, so the Dardi Munwurro Aboriginal men's healing residential program, and part of the establishment of that program and ensuring that families and the affected family members of men in the program were looking at supports. Across to the Commission for Children and Young People as a senior adviser on Youth Justice. So in the establishment of the Our Youth, Our Way inquiry, leading and working alongside the team in the youth engagement framework and what it looked like around the engagement with Aboriginal young people, with justice involvement but also their families and how we supported their stories to be heard.

15 Which then led me into working directly in custodial settings, working in - at Parkville College as Aboriginal education lead, working across Parkville Youth Justice and Malmsbury and the two secure welfare units, ensuring and looking at the education employment pathways, what it looks like for their time in custody, however long that might be, to what that transition looks like back to community, specifically around education and employment.

20 Which all kind of ties in to a bit of my work as well with Koorie Youth Council. So I've been involved with Koorie Youth Council probably since about 2014/2015, attending my first Koorie Youth Summit. I've facilitated a number of workshops with them, with young people across Victoria. Part of that has been with the Aboriginal youth engagement, or, sorry, youth participation framework which I touch on later, which we now know as Wayipunga.

25 I was an executive member on Koorie Youth Council. So as part of our Koorie Youth Council, we have 15 young people aged 16 to 27 that guide our work. So also making sure that what we focus on is relevant to young people. We have members that are from across the State as well. And then now coming on, about two years ago, as a staff member. So I first started at Koorie Youth Council as the Deputy Executive Officer, and in December was appointed the Executive Officer following Indi Clarke and a lot of the work we were talking about today under his leadership and those before him.

30 MS FITZGERALD: Thank you. So when the Koorie Youth Council gives advice and makes submissions to the government about the Youth Justice sector - I'm sure under Mr Clarke's guidance it was also true, but it's particularly true, now that you're at the helm, that the council speaks with the experience of someone who's worked in Community Corrections in Bairnsdale, has worked in residential men's care programs, has worked as a senior adviser to the Commission for Children and Young People and has worked within a juvenile justice centre.

45 BONNIE DUKAKIS: Yep.

MS FITZGERALD: So it is - if we're asking about where government should be looking for advice, the Koorie Youth Council is a voice that is very well educated on these things, and it's educated from the inside of these systems as well as the outside.

If you can speak now to how the Koorie Youth Council came to be, what need it was seen as filling, and what the need was and what it is doing now, what its role is.

5 BONNIE DUKAKIS: Yep, so it was established actually out of ATSIC, so the Aboriginal and Torres Strait Islander Commission in Victoria saw the need for a dedicated youth voice. So that was probably back in 2003, so also this year marks 20 years since the establishment of Koorie Youth Council. We had a strong support from our community, from the community and from Elders to have a space for young people to discuss issues important to young
10 people. So rather than having a group of adults sitting at a table discussing what they think is best for young people, how do we make space and support young people to be at that table and have their voices heard?

15 So we were established as the Victorian Indigenous Youth Advisory Council, so VIYAC and it was commenced with a State manager and an admin support role along with the establishment of what is now known as the executive as well, so our young people from both metro and regional areas.

20 In 2012, we were then changed to become, as now known, as Koorie Youth Council, which was reflective of the changes at the time in the term of what was being used across Victoria specifically from a lot of shifts in language from Indigenous to Koori, I guess now seeing a lot more Aboriginal and Torres Strait Islander specifically.

25 So in 2014 we had our first Koorie Youth Summit, which is now an annual gathering of Aboriginal and Torres Strait Islander young people living in Victoria and we use that term as well quite inclusively, knowing that we have quite diverse community here as well, and also, like, quite a young community. So we want to make sure that any Aboriginal and Torres Strait Islander young person living here has the opportunity to be involved with Koorie Youth Council.
30

In 2016, I guess the profile of KYC gained more traction and reputation. As an organisation, grew from having two staff to where we're at now, having a staffing structure of 12, always with, I guess, further room for growth and development.

35 The purpose was around having a voice for young people, so looking at the need to have a dedicated voice for Aboriginal young people on issues that impact them.

40 When we look at, I guess, the make-up of what - the Victorian Aboriginal population, it's quite a young population, where over 50 per cent are under 30, so - in comparison to non-Aboriginal population which is an older cohort.

45 Also quite a big role, and I guess quite an important one, where we also look at now, with our staffing structure, we have currently 10 staff. All but one identify as Aboriginal and Torres Strait Islander and all under 30. So we really hone in on being, like, for young people by young people and have other mechanisms and supports to support us as an organisation.

We've done some previous work - do you want me to -

MS FITZGERALD: I was going to say, just reflecting that the Aboriginal community is a very young community, so, in fact, the KYC represents, actually, a very large proportion of Victoria's Aboriginal community.

5 BONNIE DUKAKIS: Yep.

MS FITZGERALD: Yeah, if you would speak to some of the previous work you've done, and then I will ask you to focus on some of the current projects.

10 BONNIE DUKAKIS: I'd probably also say we - as an organisation, we - like, our primary focus is policy and advocacy, and for young people as well, it's not necessarily the most exciting work we do. So we also do a lot of work in working with Aboriginal organisations or communities that are more service delivery and how we can complement the work that they do and how we get to bring it into spaces like the Aboriginal Justice Caucus is quite unique.

15

In saying that, we also have done a lot of work in - probably relevant to this submission and this evidence around - particularly around the justice space. We say justice broadly and mainly looking at Youth Justice. So in 2015, we had our first Yarning Justice event which was an event that ran alongside concurrently with the Aboriginal Justice Forum at the time.

20

So what happened, we had the Aboriginal Justice Forum happening as normal and then concurrently we also ran workshops with Aboriginal young people, including those with justice involvement, around their views and aspirations for what the justice system could look like for young people.

25 That kind of sparked a lot of interest for KYC to explore that more, which then led us on to Ngaga-dji which I'll talk about later. In 2018, we came back, we were supported by Aboriginal Justice Caucus to lead another of the Aboriginal Justice Forums in 2018, and created the Yarning Justice report. So at the end of the workshops that day, we were able to present it back to the Justice Forum to talk about ways of improvement and what that could look like in the justice system.

30

Other one, Shape Our Future Youth Strategy report, and our contribution to that and What's Important to Youth report, and they're all attachments as part of the submission.

35 MS FITZGERALD: And, Ms Dukakis, those resources are currently available to government, if they have a question about how young Aboriginal people would like to be dealt with and treated in the justice system and what would help and work.

You were then going to go on to what's important to youth.

40

BONNIE DUKAKIS: Yeah, that's another report that is also available, and will be part of the submission as well.

45 MS FITZGERALD: I was going to ask you now to speak about one of the major most recent projects that the Council has been engaged with, which is the Ngaga-dji project.

BONNIE DUKAKIS: Yes.

MS FITZGERALD: As part of that, there is a website on which there is a lot of really moving video footage of people that engaged in the project. We'll just play one of those video excerpts which is entitled 'Murrenda' and 'The Slot', but I might just - having given that warning, I might just briefly get you to give a very high level view of what Ngaga-dji was and then we will play the video.

BONNIE DUKAKIS: So Ngaga-dji is a report that we developed specifically hearing the stories and voices of Aboriginal children in Victoria that had been involved in the justice system. The stories they share with you are from the heart. They are about love, trauma, strength, discrimination and healing. They are about justice and equality. The children and young people are telling their stories because we need to be in a State where Aboriginal children can thrive in their culture and communities.

These children and young people tell their stories because they trust us to listen and take action. And Ngaga-dji, translating Woiwurung language, to Hear Us. Following the stories, Ngaga-dji outlines the vision for Victoria that enables Aboriginal children, young people to thrive, and it's also really centring of young people that are involved in the space and it's not just hearing from someone that has researched or heard about it. It's directly those that have been in the space, so yeah, I'll leave it with that.

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MS FITZGERALD: Maybe we will play the video, which is 'Murrenda' and 'The Slot'.

(Video 'Murrenda' plays.)

SPEAKER: In lockup, I didn't feel alive, just like I was surviving. I didn't sleep. At night, I made my own scars next to the ones from the police dogs. I couldn't relax in a concrete box, scared of punches, rape, isolation. I got out a few times on parole, avoiding mum so I wasn't a bad influence on the younger ones. They put me in a house full of other people who offended and used, so I stayed on the streets to avoid all of that. Didn't take long until I was back inside again. Every time I went home I'd hear about another brother boy passing away. I felt like it was my fault. I wasn't there for him. To talk him out of it.

30

Life started to make more sense on the inside than the outside. I didn't have to worry about letting people down, getting food, paying bills, getting Centrelink. It got to a fucked up point where I loved it inside. I didn't have to worry about other stuff like on the outside. Other people were in control of my life.

35

Mum caught the train down to meet me at the gate on my release date. At first she didn't recognise me, skinny from the fear and sleep deprivation. Time for a different way, she said. Whatever you do, don't leave us. Mum started to pull me up from the deep where I'd been for so long. She saw the grief sitting on my chest, felt the emptiness that stopped me healing, heard the silence where I needed to talk up. She made me feel worthy of the life she gave me.

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My cultural healing and detox centre bought culture and country back into my life. I felt the pride in my identity that the world had taught me to reject. I hung out with an uncle who told me it's not weak for a man to talk up, care, or be vulnerable. I shared pain I'd buried inside myself because I was trapped in the idea that strong men were silent. I got a Youth Justice worker who would listen to me. We'd yarn and paint and fish together underneath the scar trees down the river. Without them I wouldn't be here today.

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5 The hate in my head, it's getting quiet, as culture and connection get loud and strong. Culture keeps me afloat. Keeps me alive. I want other young ones to feel that too, know the strength of who they are by feeling the life and the dirt under their feet and the breath through the trees above them.

(Video stopped.)

10 MS FITZGERALD: Ms Dukakis, could you tell us about how Ngaga-dji came about, really in a nuts and bolts way, who was involved, what you did, and how you developed these amazing pieces of art that came out of them?

15 BONNIE DUKAKIS: Yeah, so the idea for Ngaga-dji came out of execs, so out of our young people that guide our work around the need for some more voice and attention to young people in justice. As KYC - like, there's a lot of organisations that are there to work directly at, I guess, the pointy end, the crisis end, or they'll be working at the end with young people that are highly engaged and I guess highly competent and supported. And what we wanted to look at is how can we support those young people that might not have those opportunities, if it wasn't for someone sitting down to listen to them.

20 So for the privacy reasons and respect of - we had 42 children and young people that spoke with us and yarned with us around their stories and their experiences, that entrusted us with their stories and what they wanted to see. They were compiled, and we created three distinct stories, so that was just one of the three, and that was also, I guess, for the safety and privacy of the individuals involved, but also just more broadly to cover key themes that we were hearing consistently for young people.

30 I also just want to note that I say "we". I wasn't one of those that was part of the development of this. But I was working in similar spaces from my previous history, so there's - from this, this happened in 2017, so we're still seeing so many of these similar themes and similar experiences coming up even today with young people currently in custody.

35 So, yeah, we talk about these stories and the young people actually telling us what they want as a vision, what they wish they had access to and how they think that the system could shift. For anyone that's worked with a young person, we often talk about giving young people a voice. If you've worked with them you know that they have a voice and they're not afraid to tell you how to use it or what to do, but what we wanted to make sure with our work and with the resource that we created that it was something that young people would resonate with as well as something that had clear actions and vision.

40 Some of the stories that are touched on in it through the three composite stories, I guess, highlighting the importance of connection to culture and family and community. People that had various experiences in out of home care or homelessness, residential care, and those that had been through detox and cultural healing centres, but also the importance of some of the trauma and the scars that our young people carry, either from their own - their direct experiences or those of their family.

MS FITZGERALD: In your witness outline, you address the vision of the project and some of the solutions that came out of the project. And the vision of the project is described as:

Yoorrook Justice Commission

"All Aboriginal children and young people will be supported in their communities to thrive."

Can you speak to some of the solutions that came out of that project?

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BONNIE DUKAKIS: I think the first one is pretty straightforward. It's giving children services that work, and that can be in a whole host of ways, and I guess that can also feed into the self-determination and how systems look, so how we embed and prioritise connection to culture and family, not waiting until all the other requirements - so, for example, someone with justice, all the other requirements and risks are dealt with.

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It's around how we make that as the forefront. How we can keep children safe and strong in their culture, family and communities and how we support local organisations to do that work, not looking at recreating the wheel or establishing something else. What the responses and that story also touches on is the importance of an individual through a Youth Justice worker that has made that difference for that young person.

15

And we hear that quite a lot across the board around the importance of key trusted workers as well, and someone that can walk alongside them to share their story and support them how they need.

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Community-designed and led youth support services. So the importance of how communities' visions and how they want to work is at the forefront of the response and looking more broadly than just at the tail end once justice involvement is there. How do we work around early intervention and prevention, around strengthening connection to culture and family, but in the diversion space? And then for those that end up with justice involvement, how that response looks.

25

And the last part is around how we create just and equitable systems. So what does the systems that our young people are falling into, what does that look like for them? How their experiences are at all interactions and all points and how that more holistic and healing and family support as well as part of that.

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MS FITZGERALD: Now moving on from the specific Ngaga-dji project, one of the themes that was touched on earlier this morning in the evidence from the Aboriginal Justice Forum is the influence of prior contact with the Child Protection system on whether a child ends up in Youth Justice. And in your submission you refer to the cohort of kids who have both Child Protection and Youth Justice histories as crossover kids. I'll get you to speak to that, but first you also make some submissions about the importance of understanding history and the needs of Aboriginal children and young people with justice involvement. If you could first outline what you understand to be the common family histories of these crossover kids and then speak to what you call a pipeline from Child Protection to Youth Justice.

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40

BONNIE DUKAKIS: When I talk about this around the history and the needs of Aboriginal children with justice involvement, as touched on, I've had a vast range of experiences, either in the statutory form as a case manager through to community-led programs and design. And it's important to understand a child or a young person's experience and their own family history and their story, and particularly we hear a lot around intergenerational trauma. And I also extend that around the intergenerational incarceration and how involvement with the

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justice system is something that we've seen either directly in their family or more broadly as a normality for individuals and how we - it's not just working with the young person in front of you. It's the whole family that might have had previous involvement that has led this young person to where they're at. So needing to have more awareness and understanding of, more broadly, the family context and how that's come into play now.

And I guess when we look at the prior contact with out of home care involvement and Child Protection, and the term "crossover kids" that has come from previous reports is around the history of removal and link to now. So looking at young people with justice involvement, how far back they can trace their connections to family and community. And we often see that the connection might trace back to a mission or a reserve in Victoria, and it's often harder to trace back further than that, and I think that that plays an important part with where we're at now and what we see.

And then the correlation between out of home care and Youth Justice involvement. It's not saying that every young person that ends up in the out of home care system is going to end up in Youth Justice, but it's important to note that those that do end up in Youth Justice, the high number of involvement in out of home care and through what we've heard from our stories through Ngaga-dji but also through other work with KYC that often once justice involvement comes into play, that the Child Protection involvement would often dwindle off and they're not - so when you look at, say, for example, a young person in custody and that connection to family and community is so important, that sometimes the workers aren't even answering the phone or coming to see them while they're there but expecting them to go back into a placement where they haven't been for months and they're not sure what that looks like.

And I think the importance of understanding what role that they play and where, I think, is a little bit of crossover with the accountability of who's responsible for this young person whilst they've got that justice involvement is something that's come through quite strongly from young people. But also for those older cohort that are out of - like the over 18 - sorry over 17, so I guess the likelihood of Child Protection involvement is on the lower end as they'd be working on that leaving care arrangement, and then how they might be in that 18 to 25, had previous involvement, but it's not something that's picked up or something that they've looked at as needing those specialist supports.

MS FITZGERALD: In your report, I think in the earlier session with the Aboriginal Justice Forum there were some statistics given. Your report provides the information that at the end of 2019, amongst Aboriginal children and young people involved with the Youth Justice system, 72 per cent had been subject to a Child Protection report. So as you said, it's not all of them but it's a really large number of them.

And one of the issues that was raised this morning was - I think by Mr Harrison, was the issue of the criminalisation of kids in out of home care, in the sense that a child might do something in out of home care that a parent might find upsetting, annoying, and cause for some kind of ordinary family punishment, but because of the institutional setting, that misdemeanour by the child is treated as a crime. How have you seen - have you seen that happen and how have you seen that play into this, effectively, this pipeline from Child Protection to Youth Justice?

BONNIE DUKAKIS: So, firstly, yes, I have seen that, and you said in various ways. You look at, at the outset, a young person that's in out of home care involvement, it's not because of decisions that they've made. It's something that they've been placed in. And then it's a very fine line between that to the responses that they will get within the criminal justice space.

5 Because of maybe their circumstance and decisions that they've made, they've ended up at the attention of police or - and I guess needing those extra, I guess, supports in one aspect.

10 But what we see - what we see, what I've seen with young people that are coming into the justice system from particularly looking at your residential care units, is that involvement and interactions with police at such an earlier onset, or also I guess the behaviours and influences around them.

15 So they'll be coming in - like, I've seen their involvement starting a lot earlier. That's often been a lot of young people I've seen in Victoria in custody that have been under 14 have been those with out of home care involvement. And they've already experienced - they've had however long experiencing a system that hasn't worked with them and hasn't listened to them or supported them.

20 And it could be for matters that, yeah, has been touched on earlier, around how you think a response would happen in, I guess, you say a normal family home, an environment, and what you would expect. Like, if it's for a broken window or a broken item in the house, it's not generally the response - in my experience, it hasn't been for police to be called.

25 But what we see - we touched on the framework, that there is a framework there that's meant to be safeguarding young people in those spaces and holding the organisations to account, but then when you speak with the organisations or you hear that it's actually part of their policy to notify police so they get the insurance to pay for the damages that's been caused.

30 COMMISSIONER WALTER: Do they - I mean, I understand you want to get the money to pay for your window, but do you ever get any response from them as to the impact of doing that on the young person?

35 BONNIE DUKAKIS: Like, not directly from that, but we hear it from young people, that they know that that's going to be the response. Or you would see them, say, for example, if a young person's been removed from their family home or where they were and it's somewhere close by that they're often - what the term is absconding, from their placement to go back to somewhere that feels like safe for them. Might not be, but it's around, like, the importance of creating or reshaping what that safety can look like.

40 COMMISSIONER WALTER: Seems to be some duty of care issues there.

45 BONNIE DUKAKIS: Yeah, and I think the term that's used a lot is around "as a good parent would". It's like - I'm not sure if I'm quoting the legislation right, but we talk about if that was in - like, your own experience in growing up, is that what you would experience and I think particularly, like, yeah, it's often not.

But also if that is the case when police would be called to a situation, often it's not the first time for a young person to have those interactions with police. So it's not understanding their own history and experiences, that that's not necessarily - you don't know what involvement

they've had or what they've seen. And we often see that, rather than de-escalating that situation, it actually escalates it, and what the initial call for, what might have been a broken window or broken item in the house might end up being, in the extreme circumstances, a charge of assault on an individual.

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So you can see it go from what could be something that could be managed quite, I would say, easily to what blows out to being quite unmanageable and quite unsafe for everyone.

10 COMMISSIONER WALTER: Just another - so, really, it just involves a tweak to make sure that people - residential homes, don't need to have police involved to be able to claim insurance. It seems like something fairly straightforward to address that.

BONNIE DUKAKIS: You would think.

15 MS FITZGERALD: Do you consider it would make a difference, Commissioner Walters' question about a change in insurance arrangements, whether it be done by that avenue or a requirement that government have in its contracts with service providers that either they get a certain kind of insurance that doesn't require that, or they need to accept as part of the contract that they're not going to be able to claim on insurance for that kind of thing?

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BONNIE DUKAKIS: I think there's probably a couple of ways. Like, you could have that part there, but then what we know what's in policies and procedures and how that plays out in practice is quite different. So it's around what does the accountability mechanism look like for someone to, I guess, maybe question what might be happening in a specific - I shouldn't say closed, but they almost can be closed spaces with some of the residential care set-ups.

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And seeing, like, the - I guess what oversight that they have that's outside of the organisation. And how do we know that that's a safe space for young people to be and it's not just almost like a holding place? We see that often that it can be a holding place with whether it's - like, might be used by workers in the space on how they interact with the young people in those settings. And sometimes I've heard young people describe it as preparing them for custody. As that's where they've kind of benchmarked it to be.

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So it's also partly ingraining that whole trajectory for them or thinking that if they're not responding to whatever - and I'm not sure what requirements they might have at the residential care around maybe it's the attendance of education and what that looks like, and if they're not getting them up and supporting them to get to that space, then how are they expected to step into that space after they finish in the residential care unit?

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40 COMMISSIONER HUNTER: Can I just ask a question on that. So that framework has eight guiding principles. It also has all the organisations that have residential care signed up to it, and you - well, not you in particular, but Koorie Youth Council have been part of advising on that, I see, through the Ngaga-dji report. Do you know, just off the top of your head, what is the accountability because it's been in place since 2020 and you've just said everything that need to be done, which is part of the guiding principle?

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BONNIE DUKAKIS: I'm not too sure.

MS FITZGERALD: Going back to this idea of accountability that you were speaking of, and the harm, as you say, is caused by criminalising children in out of home care for things that in - not even a good family, an ordinary bad family would not result in a call to the police. Is it your understanding that residential care providers are required to report to government
5 when they call the police on someone in their care?

BONNIE DUKAKIS: I'm not sure of that.

MS FITZGERALD: You're not aware of that?
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BONNIE DUKAKIS: Yeah.

MS FITZGERALD: Do you think that would be useful, if there was a requirement to front up to how much they were using police?
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BONNIE DUKAKIS: I think it would be good to see that, like, oversight to know, I guess, what the callouts are for and why they're happening. And I know through Aboriginal Justice Caucus we've asked for some of that data from Victoria Police around understanding the callouts and how often and also, like, what it's for. Is it for - something that I've seen often
20 that, so, for example, if a young person were to abscond from their residential care unit, because of the privacy that you can't do warrants for any young person under 18 publicly, or, like, depending on what it is it's very unlikely to see that, but you would see for someone that's been in residential care involvement that often a safe custody warrant is issued as part of them absconding their placement.

25 And then on the other side of that you see that as soon as that's picked up, that there's outstanding charges or they're wanted to be spoken to about alleged offending. But the way that they get to that point is through using the safe custody warrant.

30 MS FITZGERALD: That might be done through requiring reports from the police? The police obviously have a lot of obligations. It might also be done through requiring those residential services who are using that tool to report on, "I did this. I asked the police to come. It was because of this specific incident. These are the other things that I tried first and this was the result of the police interaction". Do you think that kind of information, if it were
35 reported to a properly-resourced commissioner, Aboriginal Commissioner for Children and Young People - properly resourced - would that information - perhaps not in absolute real time, but regularly be useful for the State to have proper oversight of what's happening to Aboriginal kids in care?

40 BONNIE DUKAKIS: I know the Commission for Children and Young People has specific oversight and legislative requirements over the services and provisions to children and young people within residential care and out of home care and also within closed facilities, so within the Youth Justice centres. So there is an element in there but it's around how the reporting goes into those systems, that they also have some of the same challenges that more broadly
45 we have around access to police data or what that looks like and how the reporting goes in, so -

MS FITZGERALD: So if the services were required to provide this much more specific information about police interaction that's quite hard to get from police, would that augment the information that the Commissioner currently gets?

5 BONNIE DUKAKIS: I'm not sure on what their, like, I guess services they have at the moment and their resourcing to look directly into that.

MS FITZGERALD: Do you think that information would be useful to know?

10 BONNIE DUKAKIS: I think it would be, and I think to understand properly - it supports us to understand what's the need, and what need to be worked with. And we know that the current way that it's operating isn't working. So how do we look at shifting that?

MS FITZGERALD: In your outline of - in your submission, there's this phrase which you talk about of kids being at risk, but not at risk enough. Can you speak to that conundrum that you see in practice?

BONNIE DUKAKIS: Yeah, I wasn't sure the best language to, I guess, articulate that. But what I've seen and what we've heard from young people is they know what they need - it sounds - they know what would get them into, say, for example, a custodial setting. They know what specific - whether it's crimes or whatever it is. But then we've seen also young people that might be ending up on, like, at that pre-end, that intensive bail settings that are provided with a level of services and supports.

25 And what we've seen and what we've heard from young people is that they might be going so well that there's not really the requirement for the, I guess, the intensive interventions that they might be receiving. And even though they've reported that that's been something that's really helping them and it's something they've been enjoying, it's something that because of where they are falling on the risk setting about being from high risk to low risk, that they actually remove the resources that is keeping the young person, essentially, out of custody and in supporting community.

30 Which I think kind of - it isn't what we're trying to achieve, because then - and this is in the words of a young person saying, "So I've got to do A, B and C to get that support back". Which isn't what we're wanting them to do.

MS FITZGERALD: And is the A, B and C criminal?

BONNIE DUKAKIS: Yes.

40 MS FITZGERALD: "If I want those services that I found really useful I need to go do this kind of crime"?

BONNIE DUKAKIS: Yes, or, "What do I need to do to get access to that service or that support back?" Which is not what we're trying to achieve, which is keeping them out of the justice system.

COMMISSIONER BELL: Can I ask, is it only the bail-related services that are in the frame of reference here?

BONNIE DUKAKIS: I've also - it's also been at the other end of - particularly as well when you're looking at, like, a young person completing an order, and the supports that they've had access to whilst they've been on an order has been directly linked with the order. And some

5 of the challenges in accessing some of those services after, because there's been no requirement or no - like, as a better word, like, a case manager overseeing all the direct services, it just drops off. And especially - which I'll go into more detail later, but especially in that 18 to 25, it's at the end of that youth and into what becomes the adult criminal justice space.

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COMMISSIONER BELL: So your evidence is that services that are needed are only connected with the criminal justice system, and when the person goes out of that system, the service is no longer available?

15 BONNIE DUKAKIS: It shouldn't be the case, and we know that there's some of those that are still available, but the ones that I've heard really positive things from young people around engaging with has been directly those that have been linked with the justice space, whether that's been with an Aboriginal community org or a community - just a mainstream community service organisation.

20

COMMISSIONER HUNTER: Can I just ask a question on the back of supports. If you are in out of home care and then you cross over and you are, say, held in detention, where does your case - does it change? Do you change workers? Do you change supports?

25 BONNIE DUKAKIS: Between, like -

COMMISSIONER HUNTER: Between, say, you're in out of home care and you've got a case worker for out of home care and then you crossover into the system, what -

30 BONNIE DUKAKIS: There would be another worker added. So sometimes - it depends on where a young person's at. If it's - if they've - like, pre-charge is very different as well to post-charge and what the supports at that early onset would be. There's just a lot more workers being introduced. I think there's also some - what I've seen, some blurry lines with whose responsibility is it, who should be leading, who is going to be that key contact and support?

35

But the other thing is often as well, particularly with the statutory workers, whether it's out of home care or Youth Justice, the changeover and turnover of their case managers is something that young people report often being a barrier, a challenge, because they're having to retell

40 their story so many times.

So even, we've seen in some places where they might have a lead worker, so someone that's gonna be the point you go to and everyone else falls around that. Not everywhere has the same approach, and if you haven't got, I guess, that buy-in from the services to be at the table

45 for that, it's really hard to hold them to account.

COMMISSIONER HUNTER: Thank you.

MS FITZGERALD: You're just mentioning the 18-to-25-year-old cohort and your submission speaks to the problems with sentencing 18-to-25-year-olds to adult custody. Did you want to provide some more evidence about that?

5 BONNIE DUKAKIS: What we more wanted to highlight was around, like, the responses for that cohort, acknowledging in Victoria we have the dual-track system which gives a magistrate the powers to send, if a young person meets the threshold - which generally will be looking at previous history, their vulnerabilities within an adult custodial facility - to a Youth Justice facility aged up to - I believe it's around 21, but depending on what the
10 sentence outcome is.

There's also limitations on that. Part of that, and what often will happen is a young person who's - as soon as they're 18 will be - they're remanded into custody, will be remanded directly into adult custody. So they are spending that time in an adult custody facility. It could
15 be one month. It could be six months before that sentencing happens. And then the translation with what services would come with them across, if they were to be sentenced back to Youth Justice, is quite different to what they might have access to if they were to stay within the adult custodial setting.

20 But there seems to be a real lag with the supports and what a young person would have supports with. I've had times where I've had young people where there might be one or two years difference between themselves and maybe a co-accused, and so they get very different responses in if one were to stay within the Youth Justice setting and one were to go into the adult setting. And also what supports they would get in there. In the adults, it's a lot
25 more - well, I guess a lot less in some aspects where there's the consistency and what it looks like post a custodial sentence around what their workers will do.

Say, for example, a Youth Justice worker supervising a statutory order as opposed to a Community Corrections case manager looking at their order and what that is. And it might
30 only be one or two years difference. So it's depending on what the needs are.

There are also gaps, when we look at young people broadly, it's not just under 18, so there's - when a lot of the workers - Koorie Council as well is how do we ensure the young people in that 18 to 25 as well have the same level of access or supports and their voice,
35 because their experiences are quite unique as well. And the responses that a 40-year-old adult is quite different to what a 20-year-old, so making sure there's age-appropriate supports and services.

MS FITZGERALD: Your report also places a lot of emphasis on the importance of
40 recognising issues of intersectionality, if I can use that word, and you raise a number of different things. You discuss, in particular, the issue of young people with a disability, and you draw attention to what you say is the criminalisation of young people with a disability. And you highlight what you see as a connection between high rates of disability amongst the Aboriginal and Torres Strait Islander population and enduring processes of colonisation. Can
45 you address this issue that you see of the criminalisation of young people with a disability?

BONNIE DUKAKIS: When we look at - yeah, we look at intersectionality a lot with young people and it's something that young people tell us consistently that they don't want to be described by one individual identity marker, whether it's their culture, their age, their gender,

their status. And it's around how we make sure that we're looking at the individual as a whole. And when we look at young people that have justice involvement, there's a high correlation of young people with disability, and that's a mix of those that have been diagnosed but also those that have been undiagnosed. So there's a lot of work around understanding - and I know
 5 that there's a lot of assessments in what that looks like and what it might mean for a young person.

The other will be if, say, for example there might have been a diagnosis at an early age, either at, like, maybe 10 or 12, what that looks like when they're 20, 22 might be quite different and
 10 how it plays out, and making sure that that is looked at on its own accord, that it's not just something that's seen as a barrier or a deficit. It's around how we can support a young person to understand what living with that disability might look like for them and how it might impact their choices and their decisions.

And I think, yeah, around particularly there's services there, like you have the National First Nations Disability Network which focuses directly on outlining and understanding disability in First Nations communities. But what does that look like in a youth aspect or focusing on young people? And there's - it's a really, I'd almost say niche space in what the supports are and what it needs. And I know, as KYC, we are not the experts in that, but it's something that
 15 comes up quite often with young people in this space around, that often there will be something - or I see more often than not probably that a young person would have a diagnosed disability or something that would impact their capacity, but understanding what that means and how it works out is quite different.

MS FITZGERALD: And in your experience in dealing with young people in the criminal justice system who have disabilities, is it your view that the disability may have been related to the offending? The reasons for the offending may be linked to the disability?

BONNIE DUKAKIS: It could be a mix of being linked or it being part of them not understanding what they're doing or to the extent of it, and we've seen - like, I've seen that
 30 play out in many ways in, like, a young person sitting there and understanding directly what it means when you set it out, and it might - "Oh, okay", when you take them through the process it might make sense. I wouldn't say - it's not saying - and again, it's being very cautious. It's not saying that every young Aboriginal person with a disability is going to
 35 offend. It's around what supports and what responses they might need that might be different for someone that would be having justice involvement. So I think it's - yeah.

MS FITZGERALD: The other issue you raise is the support services available for girls and young women. It is understood that boys and young men do make up a much greater
 40 proportion of the cohort in Youth Justice, so it in some ways makes sense that those support programs are more developed, there are more of them, but you see a real dearth in the support available for girls and women.

BONNIE DUKAKIS: And it's also quite a different response to what the needs are of young
 45 girls and young women to what young boys and men need. And also if we look at that in a cultural lens as well and how - what might be best appropriate and what the supports are. For anyone that's worked within the justice space as well, the reasons or the driving factors behind a young female ending up with justice involvement can be quite different or quite unique, and it's just making sure that the young women have access to something that's

specific for them, that meets their needs where they're at and can support them to be stronger and learn how to be and understand what it means to be strong Aboriginal women as they grow.

5 And I think, yeah, it just needs to be highlighted. We're not - we don't have a heap around that, and as the data says, the numbers are quite small, but it's just such a specific space that needs its own time and its own space.

10 MS FITZGERALD: Commissioners, those were the questions that I had. Do the Commissioners have any more questions?

15 COMMISSIONER WALTER: I've just got one. I guess it's an observation. Given - I understand why Aboriginal groups such as Justice Caucus and the youth sign up to help work with frameworks and develop frameworks, but given the plethora of frameworks, the enthusiasm with which they're announced by the State and organisations, and yet the lack of accountability in delivering what those frameworks promise, is it the risk that they're doing more harm than good as, really, a cloak for just continuing systemic injustice?

20 BONNIE DUKAKIS: I think so. I think I agree with that in that it sounds really great and there are a lot of frameworks out there that, in practice - like, on paper, look amazing.

COMMISSIONER WALTER: Yep.

25 BONNIE DUKAKIS: But we know in practice that it's not necessarily the same, and, like, through our involvement and what we try to see with Koorie Youth Council is that we do get invited in to be involved in a lot of these frameworks. And I think it's important we look at what self-determination looks like, in is it just being invited to have a voice at the development? But what happens around oversight and the accountability? So it needs to be at both ends.

30 And I think, yeah, citing that would be the first part, but I'm not sure what, like - because it's very broad at the moment with different frameworks that are involved. And, generally, a young person, they can actually be quite across what that means, if - depending on how long they've been involved in different systems and different settings they'll know that,
35 "According to this that it's my right to have access to cultural programs and to Elders from my community and I know you have to give me that".

40 But if - there might be workers that see that as them being smart. It's like, well, actually they are trying to understand what systems they're working in and how they need to respond because they see that's what gets the response that's required.

45 MS FITZGERALD: Chair, I'll now tender into evidence the following submission, the nuther-mooyoop to the Yoorrook Justice Commission on Systemic Injustice in the Criminal Justice System and Child Protection System by the Koorie Youth Council dated December 2022, which is Exhibit 3.2.

CHAIR: Thank you, they will be allocated the next exhibit numbers.

**<EXHIBIT 3.2 NUTHER-MOOYOOP ON SYSTEMIC INJUSTICE IN THE
CRIMINAL JUSTICE SYSTEM AND CHILD PROTECTION SYSTEM BY THE
KOOBIE YOUTH COUNCIL DATED DECEMBER 2022**

5 MS FITZGERALD: Thank you, Chair. That concludes the evidence before lunch. Shall we break until 2 pm?

CHAIR: Yes, I'd like to thank Bonnie for - it's a long session. Thank you very much.

10 BONNIE DUKAKIS: Thank you.

CHAIR: Really appreciate your input today.

<THE WITNESS WITHDREW

15

<ADJOURNED 12.32 PM

<RESUMED 2.00 PM.

20 CHAIR: Welcome back. The sitting of the Yoorrook Justice Commission has resumed.

MS FITZGERALD: Thank you, Chair. I'll now call Melissa Hardham and Anoushka Jeronimus, from WEstjustice.

25 **<ANOUSHKA JERONIMUS, CALLED**

<MELISSA HARDHAM, CALLED

30 MS FITZGERALD: I'll swear you in first. Anoushka Jeronimus, do you undertake to provide truthful evidence to the Yoorrook Justice Commission today?

ANOUSHKA JERONIMUS: I do.

35 MS FITZGERALD: And, Melissa Hardham, do you undertake to give truthful evidence to the Yoorrook Justice Commission today?

MELISSA HARDHAM: I do.

40 CHAIR: Can I welcome to you both? Welcome.

MS FITZGERALD: Thank you, Commissioner. WEstjustice has made a written submission to the Commission which I'll tender at the end of your evidence, but first I understand you'd like to make an opening statement on behalf of WEstjustice. Is that you, Ms Hardham?

45 MELISSA HARDHAM: That's right.

MS FITZGERALD: It would also be very useful for the Commissioners if you would introduce yourselves. In particular, you both have an extensive relevant professional history before starting with WEstjustice.

Yoorrook Justice Commission

MELISSA HARDHAM: Thank you. Thank you, Commissioners. WEstjustice is pleased and privileged to attend today to provide support and evidence through our submissions and oral testimony to the Yoorrook Justice Commission. We acknowledge the traditional custodians of the land on which we meet today, the Wurundjeri People of the Kulin Nations, and we pay our respect to Elders past and present and acknowledge the First Peoples Elders and leaders in the room today. I'm the Chief Executive of WEstjustice, and I'm joined by Anoushka Jeronimus.

10 My background is criminal law, since 1995. Since 2008 I've focused on addressing the causes of legal and related issues through multidisciplinary place-based initiatives. This led to the development of First Step Legal, a place-based community legal centre health justice partnership which addresses drug, alcohol and mental health issues in St Kilda, Victoria. I was fortunate to work with First People leaders and communities through Cape York Partnership from 2012 to 2018. Upon my return to Melbourne, I commenced working with WEstjustice in 2018 and have been there ever since.

20 Anoushka has over 15 years' experience representing children and young people and their parents in contact with criminal justice and Child Protection systems. She is an accredited criminal law and children's law specialist with the Law Institute of Victoria. Anoushka came across to WEstjustice in 2020 to lead our Youth Law Reform agenda with our Youth Law team. She is currently developing a ground-breaking project with the Centre for Multicultural Youth, Target Zero – a project which seeks to eradicate youth criminalisation and overrepresentation in the criminal justice system of First Nations youth, multicultural youth and those living with residential care in Brimbank, Melton and Wyndham.

30 Anoushka is also directing our youth crime prevention and early intervention project which aims to increase cautions and diversions for children and young people in Brimbank and Wyndham to prevent entry into our criminal justice system. She also oversees our school lawyer program, our out of home care legal clinics and our youth law clinics.

35 WEstjustice is a community legal centre in the western suburbs. We are a mainstream organisation with a focus on young people, people experiencing gender-based violence, people experiencing economic injustice, and culturally and linguistically diverse communities. Our clients are those who live in or are connected to the western suburbs and that includes First Peoples.

40 We are funded to provide these services to three western local government areas: Hobsons Bay, Wyndham and Maribyrnong, although the reality is we also serve Brimbank and Melton. We share this responsibility with Brimbank Melton Community Legal Centre. These five LGAs have a collective population of nearly a million people.

45 We are a team of just over 70 staff, and on any given day our lawyers, financial counsellors, social workers and community development workers are outreaching at place-based settings including schools, hospitals, settlement services, libraries, women's housing services and universities. We have learnt over the years that to reduce the referral merry-go-rounds and multiple story-telling, we need to be where our clients go to access other supports. It's through multi-partnering in multi-disciplinary settings that we can identify the causes and the

causes of the causes. That is, the social determinants that impact on health and well-being and our clients' contact with the civil and criminal legal systems.

5 Melbourne's west is thriving on many metrics. We have strong and inspiring collective
identity, rich in culture, linguistics and religious diversity and industry. We are the home to
the fastest growing First Peoples population in greater Melbourne according to the '21 census.
However, it is also in crisis in many other metrics. A large portion of our western suburbs
clients experience cyclic disadvantage and are overrepresented across many negative life
10 outcome measures, including the interface with the criminal justice system, financial
insecurity, housing insecurity, job insecurity, family violence and family breakdown, poor
and chronic health issues, including the highest COVID numbers in '21, mental unwellness
and heightened vulnerability to fast loans and scams.

15 Our approach, therefore, is to try and focus on the underlying causes of the legal and related
problems and create impactful, community-centred solutions. Whilst we reported in '21/22
financial year a large volume of clients - over 2,200 - we strive not to be simply transaction
based. Instead, we gather evidence from the clients' interactions to inform prevention and
early intervention strategies collectively with our partners.

20 This approach has a significant human benefit and avoids cost to government. We are acutely
aware of the shortage of opportunity for self-determination for First Peoples to lead the
necessary disruption and transformation of broken systems which directly or indirectly affect
them. In addition, the current deficit in funding of First Peoples organisations, programs and
services generally and then specifically in the west compromises positive life outcomes for
25 their families and the ability and availability of culturally safe and appropriate services.

Both self-determination and these deficits in funding must be addressed as a matter of
urgency, particularly given the significant and growing population of First Peoples across the
western suburbs and, in particular, Wyndham.

30 As such, we defer to and are led by the Victorian Aboriginal Legal Service, Djirra and other
First Peoples organisations and leaders in relation to the impact of cyclic disadvantage and
complex social and justice issues. Our presence here today is therefore based on our practical
experience in the west with young people and their families and our focus on addressing the
35 underlying causes of legal and related problems and their impacts. We are concerned to
ensure that business, the government and non-government sectors of which we are a part of
understand these issues so we don't just do bad a bit better.

40 We recommend against the over-resourcing of the sticks - the police, courts and jails - and
invest much more heavily in the carrots - interconnected and real health, housing, education,
and economic levers - to assist to break the cyclic nature of disadvantage. We know from the
Productivity Commission report 2021 that it costs Victorians \$5,000 or more a day to house a
kid in jail. Imagine what we could do with that money to support the family unit as a whole
and keep that child at home, where possible.

45 Even more staggering is the total recurrent Youth Justice expenditure on detention-based
supervision, community-based supervision and group conferencing, \$1.1 billion nationally in
2021. We urgently need to rethink how we choose - because it is a choice - to spend State
moneys, if not for the human benefit, then at least for the fiscal benefit. Most importantly,

those tasks with policy development, planning, implementation and evaluation ought to be our First Peoples’.

I have one case study that I would like to finish with before we take questions, if that's okay.

5

MS FITZGERALD: Thank you.

MELISSA HARDHAM: This is a case study that's come from one of our projects, Mortgage Stress Victoria. Zara, a single mother of eight children living in the western suburbs of Melbourne. She came to Australia with her husband from South Sudan and speaks English as a second language. Her marriage ended due to family violence and her ex-husband is now in jail. As a result, Zara's fallen into significant debt, owing over \$15,000 in arrears on her mortgage, \$3,000 in arrears on council rates and \$10,000 on a car loan.

Zara also had a personal credit card debt that she took out to support her children. Zara's local council referred her to the Mortgage Stress service when legal proceedings had been initiated by her bank and her house was in the process of being repossessed. Zara was told to go with her family to a homelessness service to seek crisis accommodation. The weight of this stress impacted Zara’s mental health and, sadly, she tried to step out into traffic to end her suffering. She survived and recovered.

20

At this time, Mortgage Stress Victoria successfully negotiated with the bank to put a three-month hold on her mortgage, and we secured withdrawal of a court proceedings, preventing repossession of her home. We also negotiated a hardship arrangement for the car loan and council rates. To prevent further risks of repossession of the home, Mortgage Stress Victoria was able to provide social work support for her mental health issues. It was the combined effect of the social, financial and legal assistance that has enabled us to assist Zara comprehensively. Thank you.

25

Thank you, Commissioners.

30

MS FITZGERALD: Thank you, Ms Hardham. Ms Jeronimus, WEstjustice is not a First Nations organisation. You’ve made that very clear. But the place-based focus of WEstjustice and its heavy focus on relationships are things that Aboriginal community-controlled organisations have been telling the Commission is important to their success in the Child Protection and the Youth Justice space. What do you think works for you, for WEstjustice, about the place-based focus of WEstjustice?

35

ANOUSHKA JERONIMUS: Thank you, Commissioners. I think in terms of working in place, there are three key benefits, as we see it, to working in that way.

40

The first one is that it allows us the time and space to understand what is going on for our clients and the problems that they may be experiencing behind the legal issues for which they come to see us.

45

It also allows us and with that time and space, it gives us the opportunity and the privilege, really, to gain an insight and a perspective that we otherwise would not have been able to obtain.

Secondly, it also allows us the opportunity, the time and the space, to work intimately with partners also working in place with our clients and their families and the communities, and through those interactions and working that closely, we're able to get insight into their perspectives. They tell us what they're seeing in relation to their day-to-day work and what clients are telling them.

And then suddenly we are given that opportunity to join some of the dots and make sense of what our clients are telling us and what they're telling us about what they're experiencing.

And in terms of, yes, the overall you know, the net effect of that benefit is that we are able to then start the conversations in place that need to be started, we are able to join the conversations that are already happening, and also link the conversations that are happening, because there are a lot of conversations going on, especially in the west, and we see one of the things that we see working in place is the importance of linking those conversations.

MS FITZGERALD: Thank you. One of the primary areas that your written submission addresses is the issue of the social determinants of health and its relationship to the law. It's unusual for a non-Aboriginal CLC to be concerned with health. We've heard about some Aboriginal community-controlled CLCs that do look beyond the legal problem, but it's quite unusual for a mainstream CLC to do that. And one of the things that's come out of the evidence is the success of some of those Aboriginal organisations is that they aren't too fussy about whether a problem's their job or not. Because, as you say, they are all connected. Can you speak to that as a lawyer, what it's like working in an organisation where suddenly, you know, the whole person is there in the picture?

MELISSA HARDHAM: Yes, thank you. Commissioners, social determinants of health and the impact and the flow-on effect for legal and justice issues is well researched and documented. Suffice to say that health is impacted by those social aspects. Those social aspects can have a flow-on effect to overrepresentation in the criminal justice system and other justice systems.

But the reverse is also true, that legal issues can significantly impact on people's mental health and overall health. So what we see is that It's very hard to sort of for a person to come to our service and isolate their problems and say, "Well, this is my specific legal issue". And within that context it might be that they have multi-faceted legal issues, so they have got a tenancy problem, a debt, fines, criminal law, housing, employment.

So to break that down and understand that as a person from the communities that we work with is quite difficult. But that in the context of other challenges, like health, mental health, housing, the more that we can see these as interrelated and interconnected issues and build teams around that person and that family to be able to support them coming in through that singular door, where possible, the much more effective the solutions are for that person and their family, but also the sooner they are able to be in a position to rebuild their lives.

So I think it's in that context that we think we see health as very important, but also those social determinants that impact on health, which we consider to be the causes of the causes.

COMMISSIONER WALTER: And do you see racism as one of those social determinants?

MELISSA HARDHAM: Absolutely.

COMMISSIONER WALTER: And is that different for First Nations Peoples and other non-white Australians?

5

MELISSA HARDHAM: I feel like there's others that would be better positioned to provide an expert opinion on that, but what I would say is that we see really complex and challenging issues both in terms our First Peoples and our clients from culturally and linguistically diverse communities. But what we certainly know from the research is that First Peoples are overrepresented across many of these challenges, health, housing, employment issues, exclusion from education, racism and overall social exclusion.

10

The challenge for us is, you know, how do you provide that service comprehensively with the current way in which services are underfunded or not funded at all, in that sort of comprehensive setting. And the impact that siloed government funding cycles affects the connectivity and the efficiency and the efficacy of the types of models that we choose to work with.

15

And I think that whilst the negative cyclic nature of compartmentalising these issues is clear, what we do see and what there is lots of evidence of, both in terms of work that's done by First Peoples organisations and the work that organisations like WEstjustice do, is that when you do get it right, it does have a profound effect.

20

MS FITZGERALD: It seems like this sort of approach, this whole person approach, is the sort of approach that is just naturally taken by people who care, and we've heard a lot about this in the context of kinship care. That there's something that kinship care can do that no-one else can, because they genuinely care. Is it possible to take this kind of approach if you don't have a special conviction, if it's just, you know, doing a good job but it is just a job, it's the way you pay your bills. Is it possible?

25

30

MELISSA HARDHAM: It's a really interesting question. I think there is always a role for specialised and centralised services that have, you know, over the years developed an expertise and a lens on a specific problem. However, what we know, what we realise and through the work that we do through WEstjustice in the western suburbs is the closer you are to the community and to the issues, the better understanding you have of the problems.

35

And that's largely because you are working with the clients, and with the people, and you're being - if you're sort of really listening and taking on board the challenges and the issues that they have, then you're going to be much more effectively client-led and community-led in the solutions that you create. So I think the more removed you are from that setting, the harder it is to get that understanding and that appreciation for the problems themselves.

40

And over the years what we've tried to do is not see it as sort of an us and them, but try and build in opportunities for people with expert knowledge to be a part of steering committees, advisory groups, or they might have a role, if it's a specialist legal service, private practitioners, the Bar, to be able to give input into responding to some of the more nuanced issues that we might not be able to do at WEstjustice.

45

So it's really trying to sort of work out as a collective what our roles are and what our best effect and use of our time is to get the best possible outcomes for clients. And then to survey the clients, hear from the people that we work with, to understand what their experience was. Did we get it right? If not, then we have got to feed it back and continue to improve.

5

But I think where we need to - particularly in the western suburbs with the work we do steer away from service-led centric projects and program delivery and really try and see the human-centred, client-led perspective, because that's going to improve our outcomes for our clients and certainly make sure that our services are being delivered to the best possible effect.

10

COMMISSIONER BELL: Can I ask if there are any Aboriginal-led organisations in the western suburbs with whom you're connected?

MELISSA HARDHAM: I might just defer to Anoushka for that answer, because Anoushka has been doing a lot of work through one of our projects, so we built up a lot of relationships. But in terms of - if I can just answer the legal sense of the services aspect of that question and hand over for the organisational collective that we've been working with, I would say not. And that's something that we've certainly been talking to Victoria - to VALS about, because, in an ideal world, there would be a lot more presence of VALS and Djirra and other Aboriginal legal services in the west.

15

20

If you've got a large, growing population - and I would suggest it's going to continue to grow - the ideal result would be a much heavier presence of VALS and Djirra and other organisations that can service First Peoples. And the role of an organisation like WEstjustice would be, when we're invited and required to participate, that we support those services and be led by those services in the way that we can contribute.

25

COMMISSIONER BELL: You're giving me the impression that, at the moment, you're filling a need that would not otherwise be filled or met, but that you accept the desirability of Aboriginal-led and controlled organisations performing the role, if possible.

30

MELISSA HARDHAM: That's right. And that, I'd suggest, is the best possible framework for First Peoples in the west. In addition to that, if I can just add and then hand over, is that the challenge is that we've - as I mentioned, with the five LGAs, it's nearly a million people. And there's 70 staff, just over 70 staff at WEstjustice and a smaller group from Brimbank Melton community legal centre. So between the two legal centres, in theory, we're the only legal centres in the west, other than the centralised services being asked to stretch and service the community.

35

40

So, yes, a much greater presence with place-based offices, settings, opportunities is definitely the way forward. And we hope that that comes sooner rather than later. And we certainly supported VALS' budget bids in the past to come to the west and will continue to do so.

45

ANOUSHKA JERONIMUS: And added to Ms Hardham's evidence, Commissioner, is we have been working closely with Western RAJAC and one of the fantastic pieces of work that they did last year was enable a community forum which resulted in a statement - like a series of asks being made to key Departments and resulted in a cross-Departmental statement back

to the community responding to the asks and setting out a plan in terms of how that would be progressed.

5 That's - it's quite a significant piece of work. It's a real - it's to be commended. And one of the - almost two, I think, of the asks in that statement go to that point about there was a need to do a legal needs map, like a service mapping.

COMMISSIONER BELL: Yes.

10 ANOUSHKA JERONIMUS: As well as a mapping of legal needs, and then also to properly resource ACCOs to be able to meet the needs of the First People community in the west of Melbourne.

15 COMMISSIONER BELL: I should record that the famous protest by Uncle William Cooper in 1938 against Kristallnacht at the German Embassy in Melbourne was begun at his home in Footscray, from which he walked to carry out that protest in the company of others.

20 MS FITZGERALD: I might just move now to a topic that you touched upon briefly in the opening statement, about justice reinvestment, and you opened with the staggering figure that it costs \$5,000 a day to keep a child in jail. Can you outline what the justice reinvestment approach is and why you recommend it in the areas that you service?

25 MELISSA HARDHAM: Commissioners, what we see, and what is really clear, particularly in areas like Wyndham, is there's a heavy investment in courts and policing and jails. Obviously, Wyndham is home to a very large children's prison, which is in the process of becoming operational, and when you look at that collective cost, it's enormous for those three initiatives alone.

30 And then there's the running costs, you know, the \$5,000 a day, which, as Counsel has indicated, is something that's become very well-known and I've heard it mentioned, you know, throughout the hearings here.

35 So our proposition is if we know that those costs are significant and we know from information, from government, like the Early Intervention and Investment Framework where the cost of investing in early intervention is about 3 per cent in the '22/23 budget compared with about 30 per cent invested in crisis and acute services and emergency services, which includes jails, Child Protection and Emergency Services such as policing and the like, then is there a business case for reinvesting in early intervention and using those justice moneys? And we would say that there is and it's a very strong argument.

40 Because what we do know is the earlier you intervene, and by preventing a lot of these issues that we see, it saves enormous pain and suffering for people, and so there's a very compelling human benefit case. But if it's not - if that alone is not enough to convince government, there's certainly a cost avoidance and cost benefit case. And, therefore, what we're suggesting
45 is that the more government invests in early intervention and prevention programs led by, in this particular circumstance, First Peoples organisations and leaders and communities, then what we will be able to evidence - and we're confident - is the not only the benefit to the people involved, but the financial benefit to government or cost avoidance. And that in turn can be reinvested back into those programs, initiatives and opportunities.

ANOUSHKA JERONIMUS: I might add to Ms Hardham's evidence that there is evidence already about justice reinvestment, or like approaches occurring in the west. So the Governments Empowering Communities initiative in Wyndham, for example, and Brimbank is their first attempt. It's a pilot, inaugural, but it is providing the community with an opportunity to understand collectively what issues need addressing and what the solution might be.

MELISSA HARDHAM: And can I just add a perspective that we were recently grappling with as a service. We have over 90,000 children in Wyndham alone. We have a number of schools being built in preparation, and there's obviously a large amount of schools already in existence. And then alongside that we have the Wyndham Law Courts, a very large police station and Cherry Creek. And as an organisation, we are anxious about ensuring that those children go through the right door, which is the educational door, and not the justice, policing and jail doors.

And that visual image for us is very powerful and it's creating a lot of the basis for our advocacy that there really needs to be smart and effective investment in a number of services in the west. And given that point earlier about the fastest-growing population in greater Melbourne, there's a very real and necessary place for First Peoples organisations to help with that planning and those responses.

MS FITZGERALD: Ms Hardham, just speaking about getting kids going through the school door and not the jail room door, some of the projects you've done, just incredibly simple, practical projects which give the lie to this notion that this is a wicked, unsolvable problem. Can you speak to the travel - you know, the issue of kids not going to school because they can't afford the tram ticket and then getting fines and, yeah, so the travel initiative?

MELISSA HARDHAM: Thank you. Commissioners, there is a project that we started on a very small scale in 2018 which was - came about through a study that Shorna Moore commenced, looking at the impact of the fines system and, in particular, travel infringements from train travel to and from school. It's called - it was originally 40 children, you know, small amount of schools, very small pilot. In 2019, with a grant, we were able to expand that out, and that then involved 12 schools in the western suburbs, involving over 260 children.

And what we were looking at is instead of dealing with the problem at the back end, you know, when the young people have got fines and they're having to go to court or having to deal with those matters through, effectively, the criminal justice system what happens if you were to provide that young person with a ticket? What would it do? What impact would it have?

And what we found was that it increased compliance, you know, on public transport. So it removes that criminological mindset of fare evasion at a young age, which is obviously what you want to avoid. It decreased stress. It increased engagement and school attendance. And it improved well-being, amongst other things. And we know that because we surveyed the clients as part of the study, and we also surveyed those that were working at the schools with the young people.

So a really simple concept. If you give a kid a ticket to travel to and from school, they'll travel to and from school.

5 But I think one of the other interesting secondary learnings from that project was that you really need to prepare those working with young people, particularly young people from disadvantaged backgrounds, so that they're well-trained to respond. We did have a few issues with misinterpretation by authorised officers and PSOs about the project, and their misunderstanding of the travel pass itself.

10 So what we were finding is that kids were getting - and this is in our report, Travel Assistance Program report - that if they weren't trained properly and aware of the project itself and how to be around people, young people from disadvantaged backgrounds, then they could actually traumatise young people that were already traumatised. So what would happen - or increase trauma to that's already traumatised.

15 So we had some instances where children would be removed from transport because there was a misunderstanding of the date on which the ticket commenced and completed. Even though the child was in the right, there was a misunderstanding by the PSO or the AO. And on other occasions where young people were inappropriately questioned about that product and the reason why they had it.

20 So what we learnt from that was not only the primary objectives, which were that it's a really useful way to approach a problem and to encourage and support kids getting to and from school, but also that there's a whole ecosystem around that that has to be addressed when you roll out a project or an initiative, and a lot of training and awareness.

25 ANOUSHKA JERONIMUS: I think, added to Ms Hardham's - I was going to say Mel - Ms Hardham's evidence is the point about the project. So one of the - what came about was that you were realising that parents are keeping their kids home from school because they can't afford to top up their mykis. Which is astounding, like fancy that, really. That's a simple problem that - imagine the simple problems all along the spectrum and imagine if we were all working together to try and work on the simple problems, the impact.

30 MS FITZGERALD: Yes, and another thing that strikes me about that story is all things that are in control of the State Government, and if the State Government wants kids to be going to school should they not be speaking to PSOs and saying, "Don't take kids off the tram if they are on their way to school"?

35 MELISSA HARDHAM: Can I add that the Victorian Government responded positively to this initiative and announced, in the last State budget, that this program would be rolled out across the State, and is in the process of being so.

COMMISSIONER WALTER: Thank you. But it's not rocket science, is it?

40 MS FITZGERALD: Tricky issues. A trickier issue, bail laws. Not a special ticket for this one. Bail laws are featured heavily in the evidence we've heard, and you've noted particular effects of the bail law amendments on young people. Can you explain what's been the overall effect on young people that you've seen in your area?

ANOUSHKA JERONIMUS: Thank you, Counsel. The - as you've heard, as Counsel has already introduced, the 2018 changes to bail laws were intended for violent serious adult male offenders. They have, unfortunately, unintentionally resulted in unjust outcomes for young people and an increase in the youth remand rates.

5

I think it is important to bear in mind is that there were actually changes that occurred in 2013, under the then Baillieu government which criminalised breach of bail. And so it's our submission that the 2018 bail changes in some respects compounded the 2013 changes.

10 There was actually a change in 2016 to actually remove the criminalisation of bail breaches for young people. Unfortunately, that then coincided, or not too long after, with the advent of the really quite public youth crime crisis. And so the changes which were intended to do good, in our submission, didn't have much time to do the good that was intended.

15 And so what has happened, from our observations, what we've seen, what we've heard, what we know, is that the net effect of the 2018 changes were that you're seeing young people propelled into the higher exceptional circumstance category of bail, even where there's no likelihood of a custodial sentence or evidence of serious offending, increasing the number of short sentences that young people were spending as a result of lengthy periods on remand.

20

You had children telling us at the point of a bail application that they didn't want to go for bail because it's easier for them to stay in custody than it is to be on the outside, even though they're gonna try really hard to follow their bail conditions, which actually more often than not was really quite a difficult instruction to receive, because what kind of situation are we creating where a young person prefers to be in custody than outside with their friends and family and at school doing things to help them stay out of custody.

25

And another important point is that, from experience, there was the phenomenon that young people who are charged with serious youth offences be staying in custody for a lengthy period of time whilst their charges were being dealt with, and then they resolved to less serious offences and what then means that they're not looking at a custodial sentence; they're in a position to then get bail or be released from custody, but by that point the damage is done.

30

35 The issue about short sentences as well is that it's difficult to access offence-specific rehabilitation whilst on remand, whilst there have been efforts to try and address that issue, and also, ultimately, if you are then sentenced to a custodial sentence, if it's short, then it may well be that the rehabilitation you needed to do, you don't actually have the time to do it because your sentence is short. And so they're some of the kind of effects of the cumulative bail changes.

40

I think the other thing to know, in terms of - that's the what. Then we're talking about the why it's important. The Youth Parole Board report was released at the end of last year, the 2021 report. Talked about 81 per cent of young people being in custody on remand and that the youth remand population had increased, doubled actually, between - over an eight-year period to 2019.

45

So why that is significant is because the evidence about the criminogenic effect of remand is established. The Sentencing Advisory Council report most recently has talked about it.

There's been a couple of - so in addition to the bail changes, there's a couple of other legislative and kind of other impacts - policy impacts which need to be on the record, because the bail changes didn't occur in a vacuum.

5 So you've got, for example, the introduction of the Serious Youth Offender Provisions in the Children, Youth and Families Act in 2018. You've got residual impacts, as I've said, about the youth crime crisis and the tough on crime policy responses. You've got the criminogenic conditions in custody. It's intended to be rehabilitative but because of, for example, rolling lockdowns and staff shortages, it simply hasn't been possible.

10 You've got a lack of awareness and consistency in bail - police bail decision-making because there is discretion available to police members at the station level. Non-adherence - in the Children, Youth and Families Act, you may have heard evidence about this already, there is a presumption in favour of summons, s.345 of the Children, Youth and Families Act. In our
15 submission, that's not always complied with.

MS FITZGERALD: And if there is a presumption in favour of summons does that mean a child is not arrested at the start of this process? They're summonsed rather than arrested?

20 ANOUSHKA JERONIMUS: Exactly, exactly, and then you've also got an increase in the youth policing tactics, increased surveillance and offender management. This is all happening at the same time. And then, as Ms Hardham has pointed out, you've got in the backdrop the dearth of services and infrastructure in Melbourne's western suburbs.

25 So you've got all of those factors happening at the same time, which has, in our submission - and most probably others before this Commission - led to quite a significant problem with young people a significant proportion of young people in Youth Justice, in the custodial setting being on remand.

30 MS FITZGERALD: 81 per cent, you say.

ANOUSHKA JERONIMUS: And, Commissioner, going to your point, there is that systemic discrimination going on. What we know is that First Peoples - multicultural, First Peoples, children and young people - multicultural young people and youth in residential care, as well
35 as girls with complex needs, are overrepresented in Youth Justice, particularly detention.

What is also important to set out for the Commission is that a significant proportion of the youth remand population are from Melbourne's west. And so the Youth Parole Board conducts an annual survey. You'd be well familiar, most likely, with that survey, but it really
40 gives you a clear snapshot of what young people in custody are experiencing prior to their entry.

And this, obviously, is in addition to the evidence that you've heard and the devastating impacts of the bail changes specifically in 2018 on First Peoples women and Coroner
45 McGregor's findings in the Veronica Nelson inquiry.

And we do welcome recent announcements by the Victorian government in relation to its desire to make change.

MS FITZGERALD: When you say young people, particularly some your submission, you include the 18 to 25 cohort and we heard a bit about that from the Koorie Youth Council who, in fact, represent people up to the age of 30, that is, they really see adulthood not as something that starts at the age of 18. Can you give some evidence about what your
5 submission says about that cohort and why it's important that they not immediately be treated as adults?

ANOUSHKA JERONIMUS: Yes, so we've talked about who's overrepresented in the Youth Justice system. There is evidence from the Sentencing Advisory Council that young adults, so
10 the 18-to-25-year-old cohort, are overrepresented in the adult system. For example, 15 per cent of Victoria's adult population, so young adults make up 15 per cent of Victoria's adult population, but constituted 22 per cent of the sentenced population. Which - and also, there is a higher rate of re-offending amongst this young adult population, which suggests that the current approach may not be meeting the needs of the young population of 18-to-25-year-olds
15 and a differential approach is required.

It would also then make sense from a community sector perspective, for example, because most youth services actually go up to 25, and as Counsel has just set out, the KYC look after young people up to 30. For example, the Victorian Youth Strategy is 12 to 25, and so there's
20 lots of public policy sense and also strong neurobiological and medical evidence about the needs of the 18-to-25-year-olds, which would support the need to treat the 18-to-25-year-olds distinctly from adult offenders.

MELISSA HARDHAM: Can I just add to that, that some of our other youth projects that sit
25 outside of the work that Anoushka does, like the Youth Employment Justice Program, spotlight the overrepresentation of young people in workplace exploitation, you know, health and safety, risk of harassment, discrimination. So it's, you know, a particular group of people that are overrepresented in the criminal justice system but also overrepresented in other areas of law.
30

MS FITZGERALD: Before we run out of time, I would really like you to address a couple of projects that Westjustice have been doing which feature in your submission. The first - I think you call it YCPEIP, which is Y-C-P-E-I-P, which I like the E before the I, and Target Zero. Can you tell the Commissioners about these projects, where they're at and whether - if
35 you've had any early results from them?

ANOUSHKA JERONIMUS: So we will start with Youth Crime Prevention and Early Intervention Project, which is YCPEIP. Since about 2020 or thereabouts, Westjustice has been working with Victoria Police in the Brimbank and Wyndham police service areas along
40 with key partners, Victoria Legal Aid, Youth Now, Youth Junction, YSAS and the Centre for Multicultural Youth to conceive of and deliver YCPEIP. YCPEIP is a project that has been designed to increase the number of cautions and diversions to young people processed in those two police service areas. It came about -

MS FITZGERALD: We should say, caution is a good thing, strangely. It's a good thing, because it's an alternative to something worse.

ANOUSHKA JERONIMUS: Well, yes, it is an alternative to something worse, ie, custody, and the kind of the rationale for the project came about - there is, for example, a 2017 Crime

Stats Agency report which talked about the benefits of cautions and that if you divert young people - and I'm using diversion in a small D sense, not specific -

MS FITZGERALD: Specific order.

5

ANOUSHKA JERONIMUS: Specific position. That if you divert early, then you reduce the likelihood of re-offending. And so that has been one of the key bases for the Youth Crime Prevention and Early Intervention Project. But what is also important and relevant, in our submission, to the project is that we've also specifically committed to increasing the number of cautions and diversions to young people who are overrepresented in the justice system and underrepresented when it comes to cautions and diversions.

10

And so we've actually named in our project documentation First Peoples children and young people, children in residential care and multicultural young people and girls and young women with complex needs as those who we specifically want to increase the number of cautions and diversions.

15

MS FITZGERALD: And is that because they were not getting the benefit of that discretionary choice in the past?

20

ANOUSHKA JERONIMUS: There was evidence to suggest that they were - they were being under-cautioned and under-diverted and also then you've got the other fact that they are overrepresented in custody. We're not suggesting that it's a linear equation, but certainly there's enough of a link there to seek to do more. And in terms of where the project's at, we commenced stage 1 of the project in November of 2021. Stage 1 is focused on the 10-to-17-year-olds. And stage 2, which we are still in the throes of working out and hoping to deliver, relates to the 18-to-24-year-olds.

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MS FITZGERALD: And Target Zero?

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ANOUSHKA JERONIMUS: Target Zero. Target Zero, if you can imagine, is a project that sits on top of, not just YCPEIP but everything that WEStjustice does in terms of its delivery to young people, but also what everybody does in Brimbank, Melton and Wyndham in relation to children, young people and their families.

35

The aim is to end the criminalisation of young people ten to 25 in Brimbank, Melton and Wyndham and the overrepresentation of First Peoples children and young people, multicultural youth, children in residential care, in the three LGAs. They are interrelated but distinct ambitions. To succeed, we need everybody in the three LGAs working together towards that target. No one organisation can do it alone.

40

The project has adopted a collective impact approach. We have borrowed from Maranguka in terms of how we would like to set up the kind of project and how we've been conceiving of the idea. The Centre for Multicultural Youth here was an initial concept founder, because we both shared this deep concern about the overrepresentation of Melbourne's western suburb kids in custody and really kind of came to the conclusion that the status quo simply cannot continue. We must do something. And then what we have done is collect like-minded partners along the way who share that same worry and who are also working simultaneously on the problem, and what we all realised is imagine if we were all working together on it.

45

So where we are at now is we celebrated our first birthday at the end of last year and we now have 19 partners, including, for example, Victoria University, Western RAJAC, Anglicare Victoria, first school, Wyndham Central College and the intention, the objective is to commit
 5 to that target, that Target Zero, but then also figure out mini targets. So for example, zero young people being excluded from school. Zero young people experiencing family violence in the three LGAs. Zero young people entering into homelessness. Zero young people developing chronic AOD issues.

10 MS FITZGERALD: And those mini targets are things that you know relate to the macro target of a child being in prison.

ANOUSHKA JERONIMUS: We've used that snapshot that we talked about, that survey in the Youth Parole Board, as a bit of an indicator of where the problems may lay, and now it's
 15 about setting about figuring out the - you know, diagnosing the extent of the problem, the causes, both indirect and direct, and then the solution. And what is really important to make clear is that collective impact to actually be true you to our word, it requires a common agenda. And when it comes to, for example, First Peoples in Brimbank, Melton and
 20 Wyndham, that is an agenda that needs to be determined by First Peoples, likewise in relation to the activity that's already going on in the space that may directly or indirectly contribute to that Target Zero objective.

We are not saying down tools, stop doing what you're doing. We're simply saying imagine if you reimagine your work through that Target Zero lens and then, where there is a need,
 25 developing with community, because that's another key feature of the project. It must be co-designed with the communities who are most impacted by overrepresentation and over-criminalisation, because this is a system issue that we are trying to address. It is not one service, one program, one initiative, one pilot. That, in our submission, is what is contributing to the status quo prevailing.

30 MS FITZGERALD: I just move now to the issue of policing which comes up also, which we haven't really spent much time on. In your submission, you make some quite specific recommendations about policing, one of which is a rethink about how police and young people - or how young people are policed. If you could give some evidence about the issues,
 35 what the issues are now and what you think should change.

ANOUSHKA JERONIMUS: I think, Commissioners, the starting point is to recognise the really quite impressive and hard, well-meaning efforts of police in the west. We're working -

40 COMMISSIONER WALTER: The words "well-meaning" always give us pause, unfortunately. "Well-meaning" and good outcomes don't go together.

ANOUSHKA JERONIMUS: This is genuine. YCPEIP would not have come about if it wasn't for the efforts of police in Wyndham and Brimbank. So that is something that has to
 45 be recognised, because when we're talking about what the problem is and what the solutions need to be, you've got to get people to lean in. And I've been in stakeholder meetings where you raise issues and you can immediately see people leaning out, but, ultimately, if we want to achieve the best for our clients, their communities and their families, experience tells us that getting people to lean in is potentially the pathway towards solutions.

5 And what we can say is that, in the west, at the local level, there is genuine effort to try and address youth crime prevention, crime prevention more broadly and, in relation to YCPEIP, achieve the goals that we've collectively set out. It's being independently evaluated. There is an interim evaluation report as well as a final one.

10 What we think, in our submission, is that those efforts at a local level - we're talking about the west. They may well be going on, and we know they are going on across other LGAs. It would be best supported if there was support from the top. You know, and imagine if there was an explicit framework or a commitment by Victoria Police to end the overrepresentation of First Peoples, multicultural youth, children in residential care in the justice system and over-criminalisation.

15 That, in our submission, would actually potentially yield quite significant results. The other point to make is that it's not just the actions of Victoria Police that are leading to the overrepresentation and over-criminalisation, hence why Target Zero, for example, is important, because it involves us looking at all of the institutional players and our role in what the state of overrepresentation might be.

20 The other thing too, in terms of our submission and what we're highlighting, is, for example, the commitment to proactive policing. So Victoria Police does have a commitment. You see the PPU units all around. They have been really active in YCPEIP. So there is a question about whether that should be the dominant kind of approach when it comes to policing young people, where it's about engagement and supports.

25 The other question that we are posing, or kind of querying, is whether actually part of the role of the PPU is better served by members of the community, for example, or other essential service providers. One of the things we say in our submission is that police aren't youth workers and aren't social workers or counsellors, and so it might be confusing for young people, when police are trying to engage with them, to then talk to them in a way that they would be with youth workers and counsellors, because, at the end of the day, they are law enforcement, and that is a confusion in role.

30 Similarly, lawyers aren't youth workers or social workers and counsellors, and so I think it's important in the discussion, in when you're kind of contemplating all of the recommendations and the information that's been put before you that, as something worth further exploring.

40 And the last thing, and it goes to, Commissioner, your point, your query again about the systemic discrimination. We do have real concerns about the predictive and pre-emptive policing methodologies that are used, because whilst it may be intended to be proactive and reduce crime and -

COMMISSIONER WALTER: These are the ones using AI?

45 ANOUSHKA JERONIMUS: Yes, but we do have concerns about it having discriminatory effects.

MELISSA HARDHAM: And can I just add, certainly during COVID, as all the health services and the other services were withdrawing when we were in lockdown, the police

presence was greater and it was really obvious, particularly in the western suburbs where we work. So we question whether or not, or pose the question that, you know, it's becoming increasingly more common for police to be the first responders and, you know, do we really need to look at how we respond to crises and have we got the right model?

5

And we'd suggest that there needs to be a lot more youth services, mental health services, health services approaching these problems and addressing these issues as first responders, and not always having police presence in those situations. And in fact, that it can be counterproductive and compound trauma.

10

MS FITZGERALD: Just keeping with this theme of racial profiling, in the submission, you suggest there needs to be a trial of a racial profiling monitoring scheme. Do you say there is racial profiling by Vic Pol and what evidence do you have, if you say that?

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ANOUSHKA JERONIMUS: We will start with that last point first. In terms of is there evidence, the first point to make is that there is actually very little data collected. So it's not clear (a) is there a problem, and (b) the nature and extent of it. Hence why we are recommending the three-year trial, and that was also a recommendation of the Criminal Justice Inquiry report.

20

From what little evidence there is, there has been analysis, and what it has found, and Dr Hopkins is probably - we put, in our submission, an expert in this area both in Victoria and probably across the State and across the country in terms of racial profiling, that from the data that they were able to extract there is evidence that there was over-policing in terms of First Peoples and people of colour.

25

And so why we are now recommending the more formal trial is so that we can properly diagnose the issue, understand, if there is an issue, the nature and extent of that issue of profiling, and then set about trying to figure out the solution.

30

And to be fair to Victoria Police, this is not - the discussion has kind of centred around them because they do have quite significant powers and, when wielded, have really quite immense ramifications. But there's also suggestions or indications that other institutions equally profile - not intentionally, but certainly, again, that's the net effect of it.

35

And, for example, in the education space, schooling, you'll see in one of our attachments the Smart Justice for Young People Election Priorities we are also recommending data be collected by the Department of Education, because (a) it's not collected right now, and what we are asking for is the collection of data that talks about kids who disengage, kids who detach and kids who are asked to leave and kids who are formally, informally suspended and then formally and informally expelled as well.

40

So this is important, again, to understand the nature and extent because it will reveal - it may reveal patterns. Because from what we see, there are potentially patterns there to understand in greater detail.

45

MS FITZGERALD: We will be having the Chief Commissioner of Police at some stage to give evidence. If you got to write a question, what should we be asking to get to the bottom

of whether there is racial profiling occurring? There's obviously a lack of data available to community orgs. Do you have a need to know, what should we be asking him?

5 ANOUSHKA JERONIMUS: If it was me, my submission is that we ought to start with
 10 inquiring about whether there is a problem and what they think about it. Again, I think it's
 important to recognise the important role that Vic Pol play in the community, the
 hardworking efforts of members at a local level to engage, and yet - and also, with that in
 mind, acknowledge that some members of our community think that they are being profiled.
 That is members of the community that Vic Pol are there to serve. So I imagine that that's
 quite a confronting, you know, thing to be told. I imagine that the Commissioner might say,
 "Look, I don't think so", but because members of our community are saying that, I think it's
 important for us to look into it.

15 And that's what I think, if you framed it rather than a question, invite the leaning in rather
 than the leaning out, then maybe hopefully that would lead to an understanding of why it's
 important to the community, communities of colour, First Peoples, the First Peoples of
 Victoria and also other multicultural communities who say, you know, regularly that they're
 stopped and they don't know what for. That's something that we need to listen to.

20 And you have options, right? You then can either say, "No, nothing to see here" and that's
 end of the discussion -

COMMISSIONER WALTER: Can you tell me, I'm particularly interested in the predictive
 25 policing and the use of AI, and we haven't discussed that yet but I know from literature I've
 read from the US and New Zealand that there is a strong racial profile to presumably
 objective and neutral AI technology. The results, it comes along quite racialised lines. So is
 there anything being done here in Victoria to monitor how AI is actually - the AI used in
 predictive policing is actually impacting on the grounds?

30 COMMISSIONER BELL: Can I just ask a follow-up question or make a follow-up
 comment, if we're using existing statistics to inform AI, because existing statistics are
 themselves racialised, it reproduces the same problem.

35 ANOUSHKA JERONIMUS: My first, in response, Commissioner, to your question and,
 Commissioner, your comment, the starting point is WEstjustice are not the experts.

COMMISSIONER WALTER: No, I appreciate that.

40 ANOUSHKA JERONIMUS: So we need to take it on notice, but there is the work of the
 Police Accountability Project that we commend the Commission. Also the work of
 Dr Hopkins and others in relation to this issue that may well be worth exploring in further
 detail and inviting to give evidence to the Commission. There was a report that was released
 by PAP last year which did talk based - or kind of find - and I'm summarising here - that it is
 based on racialised assumptions, because it's based on offending and re-offending, which has
 45 a racial aspect to it.

COMMISSIONER WALTER: That's right. The algorithm will constantly reproduce, as
 Commissioner Bell said, constantly reproduce racialised - yes.

ANOUSHKA JERONIMUS: That's right. So it may well be - and there is the opportunity, when we're talking about this monitoring scheme, about also starting to collect and report on data in relation to how these technologies are used and who they're used on, as a starting point so then we can have an understanding of the base from which we can then start to have the conversations that clearly need to be had.

MS FITZGERALD: Thank you. I didn't have any further questions, Commissioners. Were there any other questions that you had for WEstjustice?

10 COMMISSIONER WALTER: No, I'm good.

CHAIR: Commissioner Bell?

15 COMMISSIONER BELL: How can I put this? As a non-Aboriginal organisation, you've got an impressive grasp of the way in which general patterns of policing impact upon Indigenous people in the western region to produce unjust results for them, particularly. And your submission and the oral evidence today illustrates - to me, at least - an absolute command of those issues and I'm, for one, really grateful that you've brought, on behalf of the place in which you are based, that perspective.

20 But I can't help but reflect on the way in which that knowledge is possessed by you, as non-Indigenous people, when the people that it affects aren't here, the people from the place having that status aren't here to share that story, from that place perspective. So I'm reacting to your submissions and your comments within the place-based framework that you bring to the table. And we in the Commission have visited in Victoria many particular places, particularly in the regions where Aboriginal-controlled-owned organisations speak extremely eloquently from their own particular point of view about very similar things.

30 So I come back to the question that I asked you earlier about the significance of developing organisations owned and controlled by those actually affected, Indigenous people in the west, which obviously involves really important questions of power as between you and them, your future, where you're going with all this, how you interact with other agencies and so on and so forth.

35 Obviously, this Commission is very much guided by self-determination, the people's right, as a fundamentally guiding consideration. So that's - you know, I'm not really asking a question, am I? I'm kind of making a comment. But I'm asking you to engage with the issue as a non-Indigenous organisation in the place where there doesn't appear to be good support for Indigenous organisations.

40 MELISSA HARDHAM: If I can respond to that by saying I completely agree. I think that we highlighted that at the start of our evidence, that there is a significant absence of funding and presence, and it needs to be corrected and we need to have that space in every level of this development, right from the decisions made at the highest level right through to the service delivery to have true and effective representation. Because it is missing in the western suburbs.

Now, we can't talk to what it's like across the rest of Victoria, but we do see a significant absence in the west of First Peoples' services in general and certainly First Peoples' legal

services. And I think there is a great opportunity with the new Law Courts with the intended Koori Court and Koori Children's Court to do a lot more, but I would suggest the time is now, not when that building's built.

5 COMMISSIONER BELL: That's the one in Werribee, yeah.

MELISSA HARDHAM: That's right.

10 ANOUSHKA JERONIMUS: Adding, Commissioner, to Ms Hardham's point also is to, again, emphasise we are a mainstream organisation. We have a small number of First Peoples clients, and so there is a question, as you have posed, or a comment in terms of who is best served - placed to kind of meet the needs and service that growing, you know, population of First Peoples in Wyndham. And that is a conversation for us to, you know, using the phrase - I feel like I've overused it - leaning in. We must lean into. And we see ourselves, really, as there to serve, you know, the communities in the west and our partners.

The other thing about our evidence, really, is that these are issues that impact everybody in the west.

20 COMMISSIONER BELL: Yeah.

25 ANOUSHKA JERONIMUS: And so that is also something that we will need to - we, like, in relation to the other communities, you know, that live in the west, they - those issues, we want them to - you know, they will prevail unless we get this collective action that we are asking for. And why we thought, really, it's of import to this Commission is because you also have that significantly and rapidly growing population of First Peoples. So, really, they're issues that need to be factored into, particularly from that social and economic, health and infrastructure perspective, because they will compound the issues that First Peoples are already experiencing because of colonisation and its aftermath, and if we were talking about true success and self-determination they must be part of the demands, really.

30 COMMISSIONER HUNTER: There is actually one worker out your way, that works with Kirrip, there's one worker to do youth and adult, one Aboriginal worker through Kirrip, so he's to do all that area, a single worker.

35 MELISSA HARDHAM: I think that's the challenge, that there's an absence and that needs to be corrected, but it's not just across legal. I'd suggest it's also across a whole lot of other services, and yeah, I guess we can't add any more to that other than to say we're fully supportive of any submission, budget submission, to suggest that there should be a lot more resources and opportunity.

40 ANOUSHKA JERONIMUS: And also really do stand behind those asks made by the community.

45 COMMISSIONER BELL: Yes, yes, I've noted the support that you've given in the past to be continued. Thank you. That's very helpful.

MS FITZGERALD: Thank you Chair, I will now tender into evidence the submission of WEstjustice dated 1 March 2023.

CHAIR: That will be entered into the next exhibit numbers, thank you very much.

<EXHIBIT 3.3 SUBMISSION OF WESTJUSTICE DATED 01/03/2023

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MS FITZGERALD: Thank you, Chair. If it pleases the Commissioners, that is all of the evidence for today. We can adjourn until next week.

CHAIR: Thank you. We will conclude.

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<THE WITNESSES WITHDREW

<ADJOURNED 3.17 PM