



TRANSCRIPT OF DAY 8 – PUBLIC HEARINGS

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

MONDAY, 27 MARCH 2023 AT 10.19 AM (AEST)

DIRECTIONS HEARING

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MR TIMOTHY GOODWIN, Counsel Assisting

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LAW IN ORDER
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CHAIR: Good morning. Today Yoorrook has called a directions hearing in relation to the State of Victoria's non-compliance with the Commission's notices to produce evidence and implications for our proposed timetable. Before we start the hearing, I would like to invite
5 Commissioner Hunter to give a Welcome to Country and Acknowledgement of Country.

COMMISSIONER HUNTER: Thanks, Chair. I would like to acknowledge we are on ancestral lands of the Wurundjeri and pay my respects to Elders and ancestors, all those that have gone before us so we're able to give voice here today. I would also like to say
10 Wominjeka, which means to come with purpose, and I hope that's all what we come with today. Thanks, Chair.

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

15 MS FITZGERALD: Sarala Fitzgerald, Counsel Assisting, appearing with Tim Goodwin.

MS COGHLAN: Ms Coghlan. I appear with Ms Cafarella for the State of Victoria.

MS FITZGERALD: Thank you, Commissioner. Commissioners, today was scheduled to be
20 the first day on which government witnesses were to give evidence in relation to the two priority areas identified by the Commission: Child Protection and Criminal Justice. In fact, until earlier this month, this Hearing Block 5, which was to be the government hearing block, was scheduled to commence last Tuesday on 21 March.

25 In Hearing Block 3 in December and Hearing Block 4, held in late February and into this month, we heard from community members, Aboriginal community-controlled organisations and other key advocates and organisations working in the Child Protection and Criminal Justice sectors on urgent systemic issues for First Peoples and other informed priorities.

30 These hearings are a chance for the issues that they have raised, the suggestions they made and the questions that the Commissioners have to be put to government so that we can get answers and identify solutions. This is consistent with the Terms of Reference that the State has given Yoorrook, which includes inquiring into the causes of ongoing injustices.

35 Understanding why these injustices continue to repeat themselves is central to this task. This directions hearing has been called in order to raise serious compliance concerns with the Commissioners that mean we are unable to proceed with the hearings today, meant we were unable to proceed with the hearings last week, and put the hearings we have planned for this week and the week immediately following Easter in jeopardy.

40 To inform Yoorrook's critical work in Hearing Block 5, the Commission has sought information and documents from the government in two ways. Firstly, it requested the government through departmental secretaries and senior officials to answer a detailed set of approximately 180 specific questions about the Criminal Justice and Child Protection systems
45 and to provide it with detailed witness statements or written responses that answer these questions. Secondly, it has issued notices to produce compelling the production of specific documents using the powers given to the Commission under the Inquiries Act.

We asked for these two things so that we could have the State's response on key issues impacting Aboriginal Victorians in the Justice and Child Protection systems and obtain documents to get to the bottom of what the State knew and knows about key issues, about why things were done. And, of course, independently of Yoorrook's requests, the State was represented at Hearing Blocks 3 and 4 and on notice of the evidence, submissions, emerging themes and State documents which may be relevant to those themes.

In that context, the materials requested cannot have come as a surprise to the State. Solicitors Assisting confirm the topics for the State evidence in a letter dated 2 February this year and identified that Yoorrook would need written material addressing those questions by 27 February this year. On 12 February, the State received from the Solicitors Assisting the list of 178 questions that the Commission sought to have addressed and reiterated that it would need them by 27 February, given the commencement of hearings, at that stage, was scheduled for 21 March.

The State wrote back on 22 February to advise that it would not be possible to provide statements or outlines by Yoorrook's requested date. No alternative date was nominated. Yoorrook responded on 24 February requesting the material from the State in tranches by 3 March and 10 March. A week later, on 3 March, the State wrote back to say that this was not feasible and that it was likely that some statements may not be produced until after 10 March.

Almost two weeks later, on 15 March, Yoorrook received written material from the Department of Justice and Community Safety. Despite the provision of carefully drafted, detailed questions with respect to the many serious issues regarding the Criminal Justice system and its impact on First Nations people, informed by the evidence in the previous hearings, the material provided by the Department did not provide direct answers to any of the 71 questions asked that were within that Department's areas of responsibility.

An urgent request made by the Solicitor Assisting team on Tuesday, 21 March, for the Department to answer the detailed questions by last Friday, 23 March, was not complied with. As a result, Counsel Assisting are not able to call the Department of Justice and Community Safety witnesses to answer questions today or at all this week as planned.

On the same day, on 21 March, being the day originally scheduled for the hearings to start, the Commission received a witness statement from a senior official in the Department of Families, Fairness and Housing that did answer the questions asked in relation to Child Protection and a witness statement from the Secretary of the Department of Health.

On the timetable for the provision of material that was reluctantly accepted by Yoorrook in its letter of 8 March, no witness statement was - is to be provided by any of the four Ministers from whom Yoorrook had intended to hear in the week immediately following Easter, together with the Chief Commissioner of Police, was to be provided until this coming Friday, 31 March. And, indeed, that is - remains the current timetable.

It is obviously not ideal for Counsel Assisting to be cross-examining senior officials without yet knowing what their Ministers had to say on the relevant issues. It would prevent Counsel Assisting from asking senior officials about the claims that are made by their Ministers in the witness statements they provide and would remove a means of testing the veracity of those claims.

Further, doing things in that order would allow the written evidence of Ministers and the Commissioner of Police to be adjusted prior to its finalisation to respond to the evidence given by the bureaucrats under cross-examination. Again, this is simply not the best way to get at the truth in its unaltered form.

It is not the way Counsel Assisting would normally cross-examine, with witnesses getting to adjust their evidence after seeing what other witnesses have said.

It is the role of Counsel Assisting to robustly test the government account and to ensure the Commissioners have an accurate and full understanding of the workings of the systems that they are examining to inform findings and recommendations and to ensure procedural fairness is afforded to interested parties, including the State.

More seriously a number of the Commission's notices to produce have not been complied with. Commissioners, a copy of the notices to produce issued to each of the Secretary of the Department of Justice and Community Safety, the Secretary of the Department of Families, Fairness and Housing, the Secretary of the Department of Premier and Cabinet, the Secretary of the Department of Health and the Chief Commissioner of Police have been provided with the Chair in the event that the Commissioners would like to review those notices. Their identifying numbers are NTP.002.007, NTP.002.009, NTP.002.010, NTP.002.011, and NTP.002.013. I understand that these notices will be uploaded to Yoorrook's website.

The notices that I'm referring to were each originally required to be complied with by 14 March, almost two weeks ago. I understand from Solicitors Assisting that they were first issued to the State's legal team for feedback in a draft form some five weeks ago, with the documents sought in those notices in the vast majority of cases being the same documents that were sought in the original draft. Notwithstanding the resources that we are told the State has committed to its response to Yoorrook, we have to date received very little under those notices.

We understand from correspondence with the State's representatives that although a large volume of documents have been identified as being required by those notices, most of them have not been provided to the Commission because they have not reviewed by lawyers, and the State claims that many of them are exceptionally sensitive. Over the weekend, we have for the first time being given an explanation of what that means.

The Solicitors Assisting undertook significant work to avoid problems of this precise kind at the outset of this Royal Commission by spending a significant time negotiating a protocol with the State for the production of documents. That protocol includes the following commitment from the State:

"In order to fulfil its Terms of Reference, the Commission requires access to documents and other things in the possession and control of the State of Victoria. The state acknowledges that the Commission requires timely and complete access to perform its truth-telling role, achieve its objectives and for other purposes, that is, to the broadest extent possible at law unrestricted. The State also acknowledges that truth-telling requires it to confront and reveal the truth of current and past practices and policies, even where this is uncomfortable, embarrassing, difficult or presents reputational risk, and that the Commission's role as a

truth-telling and healing process is best served by achieving an open dialogue and access to the information that it requires."

The protocol goes on:

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"To that end, the State's overriding objective is to provide the Commission with full and timely access to all relevant information, including information which is or would ordinarily be subject to a reasonable excuse claim under the Inquiries Act. Any restrictions on the provision or use of material should be as limited as possible."

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Yoorrook was encouraged by this commitment and was looking forward to this type of engagement. We are yet to see that.

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Now, these are not mere deadlines for the sake of them. We required the documents by the time specified in those notices in order to read those documents before the State witnesses came to give evidence, so we could ask the State witnesses sensible questions about those documents. Receiving those documents after the witnesses give evidence is, frankly, useless. It would deprive Yoorrook of the opportunity of examines the nominated senior officials and Ministers about those documents. Receiving those documents shortly before the witnesses

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give evidence is equally useless. We cannot read thousands of documents virtually overnight and competently cross-examine on them. As it stands we have not received the vast majority of those documents.

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Moving to the question of the witness statements and the failure of the Department of Justice and Community Safety to answer Yoorrook's specific questions in its response, that coupled with the failure to produce the vast majority of the documents called for in the notices has the effect of depriving Counsel Assisting the opportunity to examine Departmental and agency officials and Ministers in detail as to the basis upon which critical reforms such as the 2018 Bail Amendments were implemented, notwithstanding the potential for significant and

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disproportionate impacts on First Peoples.

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After the due date for production under the notices had already passed, the State made a proposal for the production of certain of the documents for inspection only, that is, we were allowed to look at the documents but not to use them. Yoorrook has not agreed to this proposal for the following reasons: Firstly, it was not consistent with the expedited processes contemplated under the agreed protocol; secondly, it would have the effect of pushing considerable work on to the Solicitor and Counsel teams on the eve of the hearings; thirdly, details regarding the documents characterised as exceptionally sensitive which were proposed to be excluded from the expedited arrangement were not provided at that time. And overall,

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there were concerns that the effect of the arrangement was that the most sensitive and, therefore, potentially the most important information would be provided last and possibly too late to be used to cross-examine any witnesses about them in these hearings.

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As matters stand, Commissioners, these heads of Department and agencies have failed to comply with the requirement of notices to produce under the Inquiries Act. The Act makes it an offence to fail to produce documents to the Commission without reasonable excuse. There are sanctions in the Act for noncompliance with notices to produce. It is not necessary today to go into those sanctions. However, you will hear submissions from the State today about the efforts that have been made.

Yoorrook Justice Commission

Notwithstanding the difficulties that there may have been, it remains the case that the State is aware of the time frames within which the Commission is working and particularly the fast-approaching date for Yoorrook's criminal issues report of 30 June 2023. The State had
5 counsel in attendance at the hearings and was aware of the issues being focused on in the Commission, and we understand that the government has specifically resourced its Departments to respond to this Royal Commission.

Commissioners, it's now time for counsel for the state to be heard and to answer any
10 questions that the Commissioners have, and when listening to those submissions I do note that the Commissioners have a choice whether to vary time for compliance with the notices to produce that's currently been set under Section 18, subsection (4) of the Inquiries Act. Those notices may be varied by further notice in writing.

15 MS COGHLAN: Firstly, I would like to thank Ms Fitzgerald for those opening remarks, but, more importantly, thank you, Chair, and you, Commissioners, for the opportunity to address you today.

CHAIR: Thank you, Ms Coghlan.
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MS COGHLAN: The State accepts that the critical work of the Commission is assisted by, firstly, fulsome evidence from State witnesses and then, secondly, by production of useful documents. The examination that's to be conducted by Solicitors Assisting is, of course, assisted by those things, and they are hindered if those things aren't provided properly. That's
25 all accepted.

The State accepts there have been delays in providing those things. I take the opportunity to express the position on behalf of the State that that is not because of lack of genuine commitment to the Commission's work. It is not because the State is trying to be
30 uncooperative or not responsive. The State takes no issue at all with the opening remarks made by my learned friend, Ms Fitzgerald. We simply note that what they demonstrate is the sheer amount of work that has been needed and required of the State in a short amount of time. That is not a criticism at all of the Commission's work. It is a huge and important undertaking which the state absolutely accepts. We just haven't been able to do it in time.

35 As the State sees it, there are really two specific issues that it must address today. The first is concerning notices to produce and the second is around the sufficiency of some of the evidence that's been provided so far. And what follows from that is the implications that these issues have, particularly document production, and the implications they have on the
40 timetable and the Commission's work. Crucially, the State acknowledges the impact of the ability of the Commission to deliver its interim report and final report.

45 If I can start by addressing the notices to produce so that that relates to the documents that haven't been provided and firstly say this: That the State recognises that compliance dates for recent notices have passed, apologises to the Commission for the delay in responding to the in the notices. As I said earlier, the State is committed to being responsive and to being cooperative. And for context and in illustration of the State's commitment, we confirm that the State took immediate action to prepare for responding to the notices upon receipt of the

drafts - that was around mid-February - and has continued to work steadily with a view to producing documents at the earliest opportunity since that time.

5 Concurrently, the State has been preparing 15 senior State witnesses for the upcoming hearing block, including the preparation of witness statements and for oral evidence. The Commission has received, for example, the 200-page statement of the Associate Secretary to the Department of Families, Fairness and Housing, and we hope that that is received well by the Commission in the context that it does respond to the questions and adequately gives Solicitor Assisting notice of what's being said.

10 As to the delay in compliance with the notices to produce, we seek to explain that today and provide a reasonable excuse or otherwise provide an explanation which comes down to the simple practical impossibility that the State has faced. Despite the State's best efforts to maintain its commitment to being responsive, there are essentially three factors contributing to why it hasn't been able to deliver on time. The first factor being the expansive scope of the notices capturing a significant volume of documents. Secondly, the importance and complexity of the levels of review and authorisation involved. And then, thirdly, the timing for compliance with the notice in conjunction with the other work.

20 And I wish to make clear again that this is not sought to be critical. We understand the time frames involved. It's just made the work impossible to achieve. So if I can explain more, then, about the first reason, the expansive scope of the notices. As is necessary, given the breadth and systemic nature of what the Commission is inquiring into, the notices are expansive in scope. There are a very large number of documents responsive to the notices, and in the order of thousands. And at this point, we would estimate between two and three thousand documents amounting to around 30,000 pages of material. The searches, identification, collation, retrieval and transmission of documents by Departments has stretched staffing to its limits, particularly given their work with witness preparation.

30 To move to the second reason for delay, that being the importance and complexity of the levels of review and authorisation involved. Many of the documents and data sought by the Commission contain high levels of very sensitive information, and not just in relation to State operations, but personal and health information which relate to people in prison, children and families in Victoria who might be involved in the Criminal Justice and/or Child Protection systems. And it's therefore of crucial importance to the State and, no doubt, to the Commission that all documents the subject of notices undergo a thorough and proper legal review to protect sensitive information, personal information and to avoid inadvertent disclosure.

40 As to the legal review and what that involves, once documents have been transmitted to the Victorian Government Solicitor's Office by relevant agencies, they undertake a process in which claims and sensitivities are identified and marked on documents. And the documents are then sent for approvals. The level of government approvals required in advance of release depend on the nature of the claim or the request recommended, but can include approval at Secretary level or Ministerial level, or approval by Cabinet.

The relevant Departmental review and approval processes is in itself complex, requiring interdepartmental consultation where a document has multi-agency impact and noting that Departments often have complex internal structures which affect internal approval processes.

And these things take time. And this is particularly so where there might be documents that fall into a sensitive category, meaning that there may be additional levels of scrutiny, stringent review and further layers of approval.

5 Coming to the third reason for delay: The timing for compliance with the notices in conjunction with other work. Whilst it's entirely understandable in the context of the Commission's work, a number of notices were issued at the same time, which has made compliance difficult, particularly in the context of the other work.

10 And if I could just explain that a bit further. Parallel to the document review and production, the State has been preparing State witnesses and witnesses to give evidence. And that includes responding to the 180 questions posed by the Commission, albeit there might be concern about the level of compliance with that, which I will address.

15 So that all being the case, what did the State do about it? There has been correspondence with the Solicitors Assisting in relation to compliance. However, the compliance dates for the notices have passed and extension hasn't been sought. The explanation for that is merely that, at the same time, the State was trying to work out how to achieve production ahead of the hearings.

20 So no decision was made not to communicate with the Commission. The State should have. No decision was made not to seek an extension. It was merely in the context of the work that was going on at the time which meant there wasn't that clear communication or that clear - the clear position put that the State needed more time and sought - and accordingly
25 would seek an extension.

As I said earlier, work started upon receiving the draft notices on 16 February. There was feedback on scope in relation to those notices, but work commenced and there was, in fact, a meeting held with Departments as early as 20 February. And work has steadily progressed
30 since then.

Ms Fitzgerald explained the expedited process that the State had put forward last week. That was a process that was contemplated by the State as early as 8 March. So there was thinking at that time that there would be difficulties with compliance and that a way through needed to
35 be established. That took time to arrive at an appropriate - acceptable process that had to go through authorisation, which led to it being communicated in the middle of last week, and it's understood that's not enough time for the Commission to receive the documents, read the documents, prepare for witness examination. But we approach that process in the spirit of cooperation and seeking to comply, but we accept that it's fallen short.

40 Over the weekend, there has been some further document production, but there are many documents still to be produced. In all of those circumstances, the State is seeking extensions of the various notices to produce, and we understand it is the preference of the Commission, understandably, that documents be produced before witnesses are called. That is, of course,
45 an understandable position to take.

Given the circumstances where the State is seeking an extension of the notices to produce, this would, of course, have an impact on the current hearing schedule. The State appreciates that delays in production of documents and the holding of hearings necessarily impact the

ability of the Commission to produce an interim report that appropriately grapples with the important issues that the Commission is investigating. And in recognition of this, the State is finalising approval or for an extension of time for the Commission to provide its interim and final reports.

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I'm about to move on to address the sufficiency of the agency response, and I - could I invite questions of the Commission in relation to any of the notices to produce or any of those matters before I move on?

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COMMISSIONER LOVETT: I would like to, as a custom of our people, acknowledge Country and I note that the State appearing before us today, I'm still yet to hear and Acknowledgment of Country and that's really important to our people. You know, we all recognise that our sovereignty is never ceded, and before you started today, I didn't hear any Acknowledgment of Country from the State. Now, so I would like to give you the opportunity now to be able to Acknowledge Country. I think it's incredibly important that we do that. And, in particular, you know, the importance of what it means to our people but also what it means to the State in the continued efforts in, you know, leading the nation in voice, treaty and truth. So just would, you know - I have some further remarks as we go through today.

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MS COGHLAN: Yes, may I take some time to provide some guidance on the words to express to the Commission? Shall I do that now and then come back to this other issue or?

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CHAIR: I think we should - in the interests of time, we should keep moving. But how much time do you need to?

MS COGHLAN: Five minutes.

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COMMISSIONER LOVETT: It is important.

MS COGHLAN: Yes, that's understood.

CHAIR: Yes.

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MS COGHLAN: Perhaps if I could take that time now.

CHAIR: Yes, for five minutes.

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MS COGHLAN: Thank you, Chair.

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MS COGHLAN: Thank you for the time, and, firstly, I apologise for not doing this earlier, and I appreciate the opportunity to do so. On behalf of the State, we acknowledge that we meet today on the lands of the Wurundjeri people, and we pay deep respects to the traditional owners of this land. We pay our respects to all traditional owners and First Nations people in the room today. We extend our deep respects to Wurundjeri Elders past, present and future.

Yoorrook Justice Commission

The State acknowledges the ongoing connection of First Peoples to the land, water, sky and community, and honours First People for their custodianship of the land on which we gather today and the lands across Victoria. The State acknowledges that sovereignty was never ceded. We come today with purpose.

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CHAIR: Thank you. Thank you very much.

MS COGHLAN: I was about to move on to address the sufficiency of some of the evidence that's been provided so far but before I do that, I just want to pick up on something that Ms Fitzgerald said about moving away from the State Protocol which was agreed about how documents would be produced. That is not the State's intention. The State is not trying to move away from that at all.

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In terms of the recent process that the State proposed for document production, that was just about trying to do things quickly. It was not trying to move away from the commitments made to genuine, open truth-telling.

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First of all, the State acknowledges that the agency response and other material that's been provided has not finally responded to the Commission's questions. We have received over 180 questions from the Commission, which has been mentioned. The State has been grappling with those and they have been allocated to various witnesses. And can I just communicate that the agency response, a lengthy document, whilst not answering the questions directly, which is the expectation of the Commission, did seek to provide supporting material or foundational material for the Commission's work.

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It had its limitations in that it was prepared by Departmental people rather than necessarily Ministers and other people who might have more to say about decision-making and the authority to have more to say. So the agency response was prepared knowing that the questions needed to be answered but trying to do it in a thematic way. It's accepted that hasn't necessarily worked.

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What was contemplated is that the people who were part of that agency response - so there are about five or six people - would be able to give evidence to expand upon the questions, but that other questions would be directed to witnesses at a Ministerial level. And so it's - the agency response was prepared in that context. It was a tremendous amount of work for those people who produced it. The work was carried on persistently for months, and it was in the spirit of commitment that it was produced in that way, understanding it fell short in terms of answering the questions.

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Those are the submissions in relation to the agency response and I invite any questions of the Commission.

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COMMISSIONER HUNTER: Can I ask, are you saying the State did not commit sufficient resources to take the task of responding to the notices to produce, despite discussing the scope of the notices with the Commission before they were issued?

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MS COGHLAN: Not - not - no. I'm not saying that. I think the resources were thought to be sufficient but proved not to be in the context of doing the work with the notices alongside the witness preparation. So it's been those two things together that has challenged the resourcing.

COMMISSIONER HUNTER: But it was discussed with our counsel before, so there was discussions about what was coming before it came. Am I correct?

5 MS COGHLAN: In terms of the documentation or -

COMMISSIONER HUNTER: Yes.

MS COGHLAN: I'm not sure how to answer that in terms of discussions with counsel.

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COMMISSIONER HUNTER: My understanding is that we send the notices to produce or documents we want and then it's discussed between the Commission and the State beforehand. There is some negotiations done. Is that correct?

15 MS COGHLAN: Yes, and I understood that did occur yes.

COMMISSIONER HUNTER: So you would have known the amount of resources required. Is that correct?

20 MS COGHLAN: I can't necessarily answer that definitively because it might depend on what's actually responsive to the notice. That might not be understood at the time that the scope is discussed because it has to then go back to the Departments to carry out searches and understand how much it actually captures.

25 COMMISSIONER HUNTER: So if it's going back to then - I'm a bit confused in that there are those discussions and it goes back, the notices to produce, yet you didn't seek extensions prior once they were at those departments.

30 MS COGHLAN: No, that's right. Extensions weren't sought at that time. That's right. And I - in terms of why the extensions weren't sought, it's merely in the context of looking for other ways to try and meet the timelines. That's the first thing. And, secondly, not knowing when to extend to. There had to be some understanding of the documents and what could be achieved in order to usefully ask for some extension. So the first approach was to try and produce the documents as quickly as possible. That was thought to be the best option. But
35 that didn't come to fruition until last week, which it's accepted was too late.

COMMISSIONER HUNTER: Would this be the same as other Royal Commissions of how you respond?

40 MS COGHLAN: No. No. And it shouldn't be. No, this - and the context of the lack of response here is not a sign of disrespect. It is not a sign of lack of commitment. It is simply a sign of trying to produce but not being able to do that.

45 COMMISSIONER HUNTER: There was no thought, when you couldn't produce, then coming back for an extension at those times?

MS COGHLAN: There was thought given to that, but at that time the decision was made to try the expedited process to try and get the documents to the Commission.

COMMISSIONER LOVETT: With the resourcing constraints internally of the State, so we have got two incredibly important streams of work here, Criminal Justice and Child Protection. Two out of the, you know, 21 streams under our Letters Patent and our Terms of Reference. How can we be assured that, not only moving through Criminal Justice and Child
5 Protection but other terms of investigation of the ongoing and systemic injustice our people have faced, that there will be, you know, stronger response from the State in relation to our line of questioning?

10 MS COGHLAN: You can be assured because the State has to learn from what's happened here. We haven't delivered on time. We have caused delays. And that impacts, obviously, the Commission's work. So we - the State can learn from this experience and these failings in terms of how it can do better in assisting the Commission to deliver reports on time.

15 COMMISSIONER LOVETT: Are we saying the State can learn or will learn. Just to be clear?

MS COGHLAN: The State will learn.

20 COMMISSIONER LOVETT: Okay.

COMMISSIONER WALTER: Can I ask, who and why the decision was made to not answer the 71 questions from the Department of Justice but instead to give us a narrative multi-page document? Because that seems very odd.

25 MS COGHLAN: I don't know the answer to that, but I can take that on notice and provide the Commission with a response. Can I just indicate that I don't understand it was the intention that the agency response would respond to all 71 directed at Justice. There would be questions that would appropriately be addressed to the Attorney, for example. And there is a statement being prepared on her behalf.
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COMMISSIONER WALTER: We did ask those 71 questions because we wanted them answered.

35 MS COGHLAN: Of course. Yes. So I can't answer that question as to why that decision was made. I understand it was well-intentioned in the sense it was not trying to evade answering the questions, but I can - it's accepted that it doesn't necessarily assist the Commission that those questions weren't answered. And perhaps we can, from here, address how it is the State can better respond to the particular issues and explore the ways in which that can be done.

40 COMMISSIONER WALTER: If you can take that on notice, I would appreciate that. Thank you.

MS COGHLAN: I will take that on notice.

45 COMMISSIONER HUNTER: You mentioned the protocol between the State and the Yoorrook Justice Commission. So it's called 'The protocol between the Yoorrook Justice Commission and the Crown in light of the State of Victoria in relation to data and documents to be provided by the Crown in light of the State of Victoria'. So Yoorrook forwarded a final

copy on 3 February 2023 for signing. The State is yet to return a signed copy. Is that deliberate or is that -

5 MS COGHLAN: No. So I can't explain why that hasn't been signed but I understand all parties have been operating on the basis of its agreement. It hasn't - that hasn't held up any document production. But I can certainly take on notice why that hasn't happened. But it is not through any intention not to. It's being implemented. It's being - for all purposes it's being adhered to.

10 COMMISSIONER HUNTER: So then we could expect it signed soon?

MS COGHLAN: Yes.

15 COMMISSIONER HUNTER: Thank you.

COMMISSIONER BELL: Thank you. In relation to the point made by Commissioner Walter, can I say the State doesn't get to frame the issue? Yoorrook frames the issues. And can I say the State doesn't get to decide what questions it will answer. Yoorrook asks questions and the State answers questions.

20 But my concerns go to a different matter, which is the content of the State's submissions in relation to Criminal Justice issues and Child Protection issues. And those areas are of deep concern and the subject of this interim hearing process, because of the systemic injustices that are being experienced and the suffering and the trauma that is being experienced as a result.

25 The Premier's letter accepts this and calls for bold reforms to be suggested by the Commission, and reading that letter, which attached the submissions, I thought that we would be getting submissions that were bold and that met those expectations and met our expectations and met the expectations of the Letters Patent and met the expectations of the general community and met the expectations of First Peoples, in particular.

30 But I don't think that the submissions go anywhere near to meeting those expectations. They fall, essentially, into two parts: An acknowledgment of historical injustices and the cause in the colonial process. Those contents are welcome. And the second part which has already been accepted or mentioned is essentially descriptive of current government programs.

35 This is nowhere near sufficient to - for us to live up to the expectations that we have, which the community have and which I think the Premier has to address what should be done to address ongoing injustices. Ongoing suffering, ongoing distress.

40 I think I would summarise it this way: That individual families and individuals who have given evidence to the Commission have been bold about these matters. Indeed, they have been courageous. Organisations, particularly Aboriginal organisations, have been bold with far fewer resources than the State in relation to these matters.

45 But I don't think the State has been bold. And I would ask that the content of these submissions from the State's point of view in relation to these two areas be reconsidered. You said earlier that you come with purpose. I think the State should come with much more

purpose in submissions in relation to what should be done to address contemporary criminal injustice and Child Protection reform.

5 MS COGHLAN: Thank you, Commissioner Bell.

COMMISSIONER LOVETT: Echoing those sentiments quite strongly.

CHAIR: Counsel.

10 MS FITZGERALD: I think the State is still going.

CHAIR: Sorry, State, yes.

15 MS COGHLAN: I'm sorry, I can't hear.

COMMISSIONER HUNTER: Are you still -

MS COGHLAN: No, unless there's any further questions, those are my submissions.

20 CHAIR: Thank you. So thank you very much and thank you for responding so frankly to the questions we have put.

MS COGHLAN: Thank you, Chair.

25 CHAIR: I don't have any questions at this moment. I do have something to say a little bit later.

MS COGHLAN: Thank you.

30 MS FITZGERALD: Chair, if I might just have a very brief reply before the Commissioners consider the submissions that have been made today. As the Commissioners have heard, the State seeks further time to comply notices and has outlined why it needs that time. The Commissioners may wish to adjourn briefly to consider the very detailed submissions that you have heard today.

35

In my submission, in terms of the length of extensions that have been sought, if anything more than a very brief extension is provided, it will require the hearings to be delayed by a month, which is obviously undesirable. And it may be that a compromise option that the commissioners consider is extending time for production under all of the notices just for a short period until, for example, 6 April next week, and perhaps holding a further directions hearing in a week's time on 3 April, shortly before the expiry of those notices.

40

Now, I understand that is less time than has been indicated will be necessary for the State to comply, but our aim would be that in the week between now and the next directions hearing, 45 Yoorrook should have received the witness statements from the Ministers which have been promised on Friday this week, and further discussions can occur between Solicitors Assisting and VGSO about the possible claims to be made of the documents and will have a clearer view of whether those arguments are likely to be uncontentious or will require a hearing. And the parties can discuss the viability of producing a set of expedited documents that are needed

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to examine witnesses within a shorter timeframe than is currently proposed by the State in order to allow the hearings to commence soon.

5 And so we would say that although a longer time has been requested by the State it may be appropriate, particularly as my friend has very - my learned friend has very usefully foreshadowed that the State is finalising an extension of time and that may all - if information about that extension is available before the next directions hearing, it may simply provide a bit more structure to the decisions that the Commissioners are making. So, in my submission, it may be appropriate just to provide a smaller extension at this stage and keep - if I can be
10 frank, keep the Departments working hard, as hard as possible, in the meantime.

MS COGHLAN: Can I just comment in relation to the next directions hearing. If that could be on a Tuesday of next week rather than the Monday? It's just a request.

15 COMMISSIONER BELL: Should keep counsel involved, if we can.

CHAIR: Yes.

MS COGHLAN: Thank you, Chair.

20

MS FITZGERALD: I understand that 4 April would also be convenient for one or more of the members of the Counsel Assisting team. And, yes, desire is merely the date for the directions hearing will be before the next day for the notices because, obviously, there is - it would be undesirable for State to find itself back in default before we have a chance -

25

COMMISSIONER BELL: Yes, that is before the next date, though, isn't it?

MS FITZGERALD: That's - as I understand, yes. I think we would extend - the Commissioners - my submission is we extend to 6 April, and we have the directions hearing
30 before that.

CHAIR: Thank you. So, counsel -

MS FITZGERALD: Chair, would you like to adjourn for a brief time to consider?

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COMMISSIONER LOVETT: Chair hasn't made her remarks.

MS FITZGERALD: Commissioner Lovett has observed, Chair, did you want to make some remarks before adjourning for consideration?

40

CHAIR: Well, I could make them now, I think, and then it's done and then we can finish. As I say, it's more a statement but - but I sit here today before you as a Wergaia/Wamba Wamba Elder. This is the most important thing that I will ever do in my life. And, of course, we remember those who go before.

45

But we also remember the people that have spoken to us already on this journey, whether they have heard us in the millions, in terms of speaking engagements over the period of time we have been in existence, or whether they have spoken to us on country whether we have

been out. And we have heard the pain, anguish and the hope - the hope that the Yoorrook Justice Commission can make a difference.

5 So the State's response over the past few weeks to Yoorrook's request for documents to me demonstrates a fundamental misunderstanding of the truth-telling process. It is more business as usual rather than engaging with First Peoples in the spirit of openness required for Victoria to truly reckon with the injustice perpetrated against its First Peoples.

10 To date, the Yoorrook Justice Commission has accommodated many of the State's requests for extensions, and I won't repeat what's already been said. But the time for rolling extensions has now passed. Yoorrook is at a critical phase. On the current timetable, the Commission must report on the urgent reforms that are needed in Criminal Justice and Child Protection for First Peoples by 30 June, and we have spoken about that earlier.

15 But it is a timeframe required by the government and written into the Yoorrook's amended Letters Patent. Yoorrook is in a very difficult position where the government has asked it to provide bold and transformative recommendations on urgent, systemic reform in Criminal Justice and Child Protection. And yet - and yet information has not been provided allowing
20 timely access to the material. This is a truth and justice Commission. It's not a typical Royal Commission, and it is not typical because there are three of us First Nations of Victoria sitting here, plus our colleague from Tasmania, as well as a former judge.

25 Truth-telling does not mean asking First Peoples just to tell their stories. Their truths bring the pain to them once again and the heartache around what has happened in their lives. The State must also engage in truth-telling. This means not using the legal process to avoid the truth about the treatment of First Peoples under key policies and programs. It does not mean focusing solely on historic injustices.

30 Indeed, the job Yoorrook is charged especially with is inquiring into ongoing - ongoing continuous systemic injustices perpetrated by State entities and non-entities against First Peoples. The State must be willing to provide the materials required for a proper accounting of current laws, and we do need an accounting of current laws, the policies and practices in a timely manner. It is impossible for Yoorrook to make recommendations to address ongoing
35 injustices without this information.

40 Yoorrook understands that working cooperatively is the best way forward. Working with the government is the best way forward so that we can meet our reporting obligations. Also, so that the State may be afforded procedural fairness as the Commission makes its findings and recommendations.

45 It is understood that there a large number of documents that would ordinarily require legal review, but this is not a surprise to me. It is not a surprise to me. The documentation started more than 100 years ago, so there is no surprise about the volume of material written about us. So Yoorrook calls on the State to expedite this process in accordance with the protocol that we are yet to finalise. Thank you.

MS FITZGERALD: Thank you, Chair. Now, if the Commissioners would like some consideration time?

CHAIR: Yes.

COMMISSIONER HUNTER: I also have some remarks to make. So I sit here before you as a proud Wurundjeri/Ngurai illum Wurrung woman, Deputy Chair of the Yoorrook Justice Commission. So as the Commissioners, we have heard from Elders, have visited first peoples in a number of prisons and youth detention centres. We have also heard from grieving families, frustrated carers, and often underresourced organisations.

We have heard of unnecessary child removals, brutality, death of our people, destruction of our culture, our land, and our spirit. Yet as hard as it has been to tell, all have generously engaged with Yoorrook to share their experiences, observations and insights in the hope of contributing to truth, understanding and transformation in the State of Victoria.

The Commission has consistently heard in evidence that many previous inquiries and reports have failed First Peoples. Lengthy reports gather dust on shelves. The recommendations go unimplemented, or ineffectively implemented. We have had to work hard to gain the trust of our people to tell their truth and so we can hold the State to account. We cannot sensibly make recommendations without the truth. We need to properly understand when and how the system failed and keeps failing First Peoples in this State.

Given the history, community expectations of Yoorrook, a Truth-Telling Royal Commission, are understandably high, and to say we are extremely disappointed in the response so far from the State is an understatement. We expect more for our people and the respect that is deserved of First Peoples in this State so that we can seek justice. Thanks, Chair.

COMMISSIONER LOVETT: (Speaks Dhauwurd Wurrung language). I just acknowledged Country as our old people used to do. It's really important that we send messages to our old people as we are engaging in this truth-telling process about, you know, their strengths, their advocacy, you know, the traumas they have been through, and it's on this Commission to bring justice for our people but also raise, you know, the true history of Victoria that our people have been subjected to the continual and ongoing - as the Chairperson, ongoing. Let's not lose sight of that word. Ongoing injustices that our people have faced.

As counsel have noted, a protocol was developed - and I will go over some of the stuff we have already talked about, but it is incredibly important to me and this Commission that we do get these processes right. Because community do have expectations on us and so do our ancestors.

A protocol was developed between Yoorrook and the State over a period of many months in an effort to avoid this precise situation. The State committed to providing Yoorrook with full and timely access to the relevant information that we have asked for, including information that would ordinarily be withheld under the exceptions in the inquiries Act. The State agreed to avoid relying on legal mechanisms to withhold documents, except in very limited circumstances, and yet we find ourselves here having to have this conversation and this meeting and hearing today.

We now see that of the 1,860 outstanding documents that have been identified or referred to under the NTP from counsel, approximately one-third are under review for possible claims

through which they may ultimately be proposed to be withheld in part or full. This is even before Victoria Police have advised how many documents they may propose to withhold.

5 The task in which we have been charged as Yoorrook, a Royal Commission, demands - demands - that we have access to the documents that reveal the truth. Yoorrook: Truth. We have asked and received - we have asked for and received this openness from our First Peoples who have come before us. Again, notwithstanding the trauma that they all bring, the strength of their ancestors as well.

10 As Commissioners and Victorian traditional owners, we carry the expectations of our community, along with the strength of our ancestors, and we will continue to come back to that. The Aboriginal community have long advocated for a truth-telling process to document our truths, the real truth, of the State of Victoria. Not just our truth in a sense; it's the truth of Victoria.

15 And we have heard many people, including the Premier and Ministers, that there can be no treaty without truth. We hear that Victoria is leading the way in voice, treaty and truth-telling. We need to be confident that this process, Yoorrook, is respected.

20 This truth-telling process has been constructed in a fairly formal manner. This is not our way our people usually operate and go about our business. But we participated in the structure with the expectation that transparency - transparency - and openness will be reciprocated by the State. This has not happened to date. This process is not a nice thing to do. It's the right thing to do. And we have heard that from the Premier and Ministers.

25 We need to be extremely confident moving forward and expect that this would change as we continue into other areas of truth-telling and ensure that our peoples voices are not only heard but respected, and the State engages in good faith. Thank you.

30 CHAIR: Thank you. Shall we adjourn, then, for 15 minutes? Yes. Thank you.

<ADJOURNED 11:31 AM

<RESUMED 11:56 AM

35 CHAIR: I wish to make a statement, and Commissioner Lovett will make a statement, and then we will adjourn.

40 I have decided to exercise the power in section 18, subsection (4) to vary the notices under consideration today to amend the date for compliance to 6 April 2023. We will resume this directions hearing on Tuesday, 4 April 2023 at 10 am to consider the timetable for the resumption of the hearings. Thank you. Commissioner Lovett?

45 COMMISSIONER LOVETT: (Speaks Dhauwurd Wurrung language) I would like to circle back to comments - a statement from Commissioner Bell about the Department's submission. They need to be stronger. Stronger commitment and expectation from the State to be bolder and lean into this process. Not just tell us about policies and programs you are currently funding.

They are not working. We have heard that time and time again from community before us, but also the data, the data that - Closing the Gap data, for instance. All publicly available. It's not working.

- 5 Our people are still overrepresented in the Criminal Justice system. Our people are still dying in custody. Even within the last 48 hours. Our children are overrepresented in the Child Protection system. I ask the State to have a heart. Have a heart and be honest about it.

- 10 Not everything can wait for treaty. We need to be clear on that. Not everything can wait for treaty. Whilst treaty is important and we are all committed to treaty, but not everything can wait. As I said, our people are dying in custody and our children are being taken away. How many I wonder, even just in the last few hours this morning?

- 15 Self-determination. We hear that a lot. Self-determination is what we expect and what we have long advocated for. I ask the State to have respect for that principle as set out in the principles of the United Nations *Declarations of the Rights of Indigenous People*, UNDRIP. It's really important. Self-determination. It's not just a framework. It's not a reform framework. It's what our people have long advocated for.

- 20 We are really asking the State here to come in good faith, to paraphrase, in good faith. Be transparent, be open. The data and the sensitivity around the data, that's our families. That's our people. We understand. We understand the importance of the sensitivities. That's humans, that's our lives. That's people connected to this country here in Victoria and across Australia. Again, that's our people, that's our community. It's not just a number on a page. We need to
25 be really clear on that.

- All of us here will be connected to some form of people coming before us. We have heard the stories continually. And, again, this opportunity and the expectations of our community is certainly not lost on us on this side, and we hope that after today's hearing that the State will
30 come forward and be more transparent and be more responsive - we have heard that word "responsive" from the State today - and commitment.

- I hope that we can really be able to move forward together in this process, a truth-telling process. And we have heard it's different. It's not like any other Royal Commission.
35 Truth-telling process. Also needs to be some truth sharing. Home truth sharing from the State to this Commission to bring to light the stories of our ancestors and our people still, again, being taken away, dying in custody, and overrepresented in the Child Protection system.

- We can't make systemic reforms if we don't know and understand from the State around them
40 being transparent with the information. That's how we make systemic reforms, recommendations, to the State on how they can do better, be better and have that heart, as I was respecting to earlier. Thank you.

- CHAIR: Thank you. Thank you very much. I will now adjourn this session. This session, an
45 historic moment in itself for Aboriginal people in this State. We now adjourn. Thank you all very much for your contribution today. Thank you.

<ADJOURNED 12:02 PM