



TRANSCRIPT OF DAY 5 – PUBLIC HEARINGS

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TUESDAY, 7 MARCH 2023 AT 11.05 AM (AEST)

DAY 5

MR TIMOTHY GOODWIN, Counsel Assisting
MS GEMMA CAFARELLA, for the State of Victoria

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Yoorrook Justice Commission

CHAIR: Thank you, thank you. Tim, we good Tim? Yes.

Good morning. The Commission continues today a further round of hearings on the priority areas of Child Protection and Criminal Justice systems. But I would like to invite
5 Commissioner Hunter to do the Welcome to Country and acknowledgement before we start.

COMMISSIONER HUNTER: Thanks, Chair. I'd like to acknowledge that we are on the lands of the Wurundjeri, my ancestral lands, and pay respects to Elders and ancestors past and present. Also acknowledge all those that have come before us so we are able to have
10 voice and be in the position we are today and may Bunjil watch over us today as we conduct our Aboriginal business. Thank you.

CHAIR: Counsel, may I have appearances, please.

15 MR GOODWIN: Yes, thank you. If the Commission pleases, I appear as counsel assisting.

MS CAFARELLA: If the Commission pleases, Ms Cafarella on behalf of the State of Victoria, good morning.

20 MR GOODWIN: Commissioners, this morning we have Eathan, David and Anja Cruse to give evidence, so I call each of them to give evidence.

<EATHAN CRUSE, CALLED

<DAVID CRUSE, CALLED

25 <ANJA CRUSE, CALLED

MR GOODWIN: Eathan, David and Anja, do each of you promise to give truthful evidence before the Commission?

30 ANJA CRUSE: Yes.

DAVID CRUSE: Yes.

EATHAN CRUSE: Yep.

35 MR GOODWIN: I might ask each of you to introduce yourself in whatever way you want culturally to each of the Commissioners. Maybe if we start with you, David.

DAVID CRUSE: I'm David Cruse; I'm the father of Eathan and, yeah.

40 SPEAKER: Anja Cruse, mother.

MR GOODWIN: Eathan?

45 EATHAN CRUSE: My name is Eathan Cruse, I work for VACCA as a cultural support worker, yeah.

MR GOODWIN: And who are each of your mob as well?

DAVID CRUSE: Our mob is Yuin Monaro and I can't remember the rest.

MR GOODWIN: The Yuin mob are a pretty good mob, so I think that's all - (Laughter) and you, Anja?

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SPEAKER: From South Australia, Narungga, Kurna.

MR GOODWIN: How old are each of you now?

10 DAVID CRUSE: I'm 48 now.

SPEAKER: I'm going on 48 in a couple of months.

MR GOODWIN: Eathan?

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EATHAN CRUSE: I'm 27.

MR GOODWIN: Anja and David, how many children do you have?

20 DAVID CRUSE: We have five children, grand-kids.

MR GOODWIN: How old are each of them, each of your children?

ANJA CRUSE: Eldest is 29, so that was [REDACTED]. There is Eathan. 26? 26?

25

EATHAN CRUSE: 27.

ANJA CRUSE: And there's, [REDACTED] and my youngest, [REDACTED]

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MR GOODWIN: And today you're being supported by your lawyer, Ali, that's right? Ali did you want to introduce yourself?

MR BESIROGLU: If the Commission pleases, I seek leave to appear in support of the Cruse family. So Ali Besiroglu is my name and I supported the family initially in my capacity as a lawyer at VALS and then through Robinson Gill.

35

MR GOODWIN: Thank you. I just want to ask some questions about what happened during a raid of your family home in the early hours of 18 April 2015. The raid was the subject of findings of the Supreme Court of Victoria in a 2019 decision, that's *Cruse v State of Victoria* (2019) VSC 574. And, Chair, I tender that particular judgment and will go to it in the course of some of the questions I'll ask. But first of all, I just wanted to ask some general questions about what happened that morning.

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45 David, I might ask you some questions first. I know this is a long time ago, but on the 18th of April at the time of the raid, how many people were staying at the house on that night?

DAVID CRUSE: That night we had all the kids there that night, so it was early hours the morning, about 1 o'clock in the morning, about 3 in the morning, and yeah, so three of us are

up watching TV, me, Eathan and - because Eathan was down at his grandmother's at the time but he'd come across, come to watch a movie. He had a feeling someone was in his car, he was looking about it. All his stuff was on the floor and he was talking to us about it, and so yeah, once the movie ended we decided to go to bed. And that's when all the windows started
5 smashing.

MR GOODWIN: Can you tell the Commissioners what happened on that morning from your memory?

10 DAVID CRUSE: What happened was watched a movie. When the movie ended, we all decided to go to bed and so Anja and Eathan had walked through to where the toilet end and I've switched off the last light in the kitchen and that's when I heard the lounge room window
15 smashing out, the kitchen window smashing out, the door getting smashed, and they kept repeating banging, smashing and that, so I went to the door and yelled out, "Who is it? Who's out there?", and they just kept smashing. And I've stepped back and just as I stepped back, the door breached open and all these machine guns come through the door. As soon as I've seen the machine guns I've put my hand up, put me hand out and said "There's kids in here", just repeated myself, saying "Relax, kids in the house". And the biggest bloke that come through
20 hit me here, threw me back on me back, booted me over to my gut and then I could feel his knees into my back. And at the same time I just kept repeating "There's kids in the house, relax, there's kids", and not once was they said "Police, open the door" with a search warrant, nothing was said. Just repeatedly smashed everything.

And then I heard them all scream and that's when I yelled out, "There's f'ing bloody kids in
25 the house", and one of the cops grabbed me by my head and just repeatedly smashed my face into the floor, knocked me out. And that's when, when I come to, I've looked at the right where the hallway is and I've seen a figure come around and him smashed up on the fridge, and then I heard him drop on the floor. Then I heard them say "That's him, that's Eathan", and then that's when I heard them lay the boots in. Then I yelled out to them, "Leave my boy
30 alone, you dogs", and I know the butt of a gun or heel of a boot hit me right in the forehead and said, "I've told you to shut up, you black cunt", and I was called a black Abo as well, so yeah.

MR GOODWIN: And after you heard, or you realised that Eathan was in the kitchen, what
35 did you hear in relation to what was happening with Eathan in the kitchen while you were on the ground?

DAVID CRUSE: When I heard it, when I heard him hit the floor all I could hear was this
40 stomping and I could hear him, Eathan, you know, they were beating him, booting into him, you know, and I repeatedly yelled out "Leave me boy alone, you dogs", and there was nothing I could do because I had three guys in my back, you know, I was half knocked out. Could hear the kids screaming down the hallway, other kids screaming, and I could hear screaming everywhere and they had no considerations, kids or nothing in that house that
45 night. They were there to hurt, nothing more but to hurt who was in the house.

MR GOODWIN: And the people that came in during the raid, did they ever identify themselves as -

5 DAVID CRUSE: Not once did they identify themselves, they were all bellied up, machine guns waving around everywhere in your face, and yes, not once were we told, "This is the police, we've got a search warrant", not once, until they dragged us all out of the house, out in the cold in some - he was undressed, I was half undressed, you know, drove us all out in the front yard handcuffed and as we finally got in the backyard then they told us who they were.

MR GOODWIN: And how long did it take to - can you remember how long it was?

10 DAVID CRUSE: It felt like hours, how everything went through, because you know, but I'm not too sure how long it was, but it took a while for us to get outside. They repeatedly beat him for a while, I know that for a fact, and me.

15 MR GOODWIN: And the police that raided, what were they dressed in, what did they look like?

20 DAVID CRUSE: They were all in black, balaclava, they were in SWAT gear, so as soon as I saw the SWAT gear, I had a clue who they were, that's why I put my hands up and said "There's kids in the house", but I didn't know who they was until they breached that door. No-one told us who they was. All we knew, they was doing lots of home raids in that year, and we were thinking we was getting home raided, you know, who knows what was going. But not once did they tell us police. Because if they would have said police, I've got a warrant, I would have opened the door straight up, I've got no reason to not. I was working for Linfox, I had a good job, I was working, you know, doing a lot of, like, up the border and back every night, and then back to Bairnsdale on the second night, and yeah, I went through a lot of stress, ended up losing my job and everything over this.

25 MR GOODWIN: And you mentioned they were wearing balaclavas, could you see the faces of any of the police officers involved in the raid?

30 DAVID CRUSE: Proper ballies, yep, they were ballied right up.

MR GOODWIN: And you mentioned once you were dragged outside you see Eathan. What type of condition was Eathan in when you saw him?

35 DAVID CRUSE: Eathan was bruised, battered, could see bruising on him, you could see he was in pain. I had a lump that was about that big on my head, so I was bruised and battered. Blood, there was blood everywhere, on the kitchen fridge, on the kitchen floor, out where I was in the dining room floor. So when they ripped me up, dragging me out, because the blood went straight to me head, I started fainting towards the door and I've gone to my knees out in the lounge room, and the guy just come up and said "Stop faking, you black C", and kneed me in the face.

40 MR GOODWIN: So that's as you were exiting?

45 DAVID CRUSE: As we was exiting, yeah, we've copped it everywhere. So one of the stages there when I was dragged, bringing me daughter out, she was being brought up through the hallway and I could hear her, like, moaning like "Ow, ow" and she was on her tiptoes, this guy had her by the back of the hair on her tip toes, throwing her at me, she laid like that face

first, tried to say to her, "It's going to be okay, you'll be all right", I got a boot for saying "Relax, it's okay", he booted me, you know, saying "Don't talk".

MR GOODWIN: Did the person who booted you say anything to you at that time?

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DAVID CRUSE: Yes, said "Don't talk to no-one, I told you not to talk to no-one". So I was caught, so I don't know, can't really remember what time I was called the Abo, black cunt, all that type of stuff, don't remember exactly what point it was, it was that long ago, but I remember being called that.

10

MR GOODWIN: Do you know if it was multiple police officers that said those words, or only one?

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DAVID CRUSE: That's the problem, I was face down and they've had me like that, so I was getting booted from behind, so I could see over from this way to where Eathan was, because I was only concentrating on the screaming and Eathan, so I weren't really looking, didn't care where the boots came from, I was just, I was focused on the kids. My whole focus was, as soon as, like, I could hear screaming, my mind was set on them and them only. So most of the kicking, it did hurt, but I was more focused on the screams and hearing the boots going in him, so I couldn't tell you exactly who was doing what. That was the problem I had that night. Yeah.

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MR GOODWIN: And you've mentioned that you've had some awareness of what's happening with Eathan, and also eventually your daughter is thrown next to you. Did you know, in this period while you were still in the house, what was happening with Anja and the other kids?

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DAVID CRUSE: No, no. Yeah, so I could only see them two at the time, but I could hear the screaming, you know what I mean? I could hear them screaming clear as day. The whole house was screaming. They were terrified.

30

MR GOODWIN: And so eventually you're taken outside. Were you reunited as a family immediately as soon as you were outside?

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DAVID CRUSE: Yeah, they put us out in the garden, you know, and they put me down on the grass because I kept saying "Eathan, you right, you right?", and the guy knocked me down on the fence saying "Don't you, don't talk to him", so yeah.

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MR GOODWIN: And how were the other, how were the other kids doing once you finally -

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DAVID CRUSE: They were terrified, you could see them shaking, visibly shaken and everything, and they finally, dragged him down the street right, and these fellas were all high fiving each other like they done the best job ever, laughing, high fiving, and that really made me blood boil, and they finally brought us in and separated us. Made the kids go in the room themselves, sit there with guns at them, by themselves, and stuck us in another room by ourselves. And we didn't get to see our kids until 1 o'clock that next day. We were detained in the rooms, separately from the kids. For – from 5 o'clock, maybe about 5 or 6, until 1 o'clock that day. Before we could comfort our kids.

MR GOODWIN: That's about 5 or 6 in the morning, until 1pm the next day?

DAVID CRUSE: They would not let us come see our kids and tell them everything's ok. They just split them up, said you just sit there with armed guns in front of them.

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MR GOODWIN: Were you told why that was – why you were separated?

DAVID CRUSE: They finally going through everything with the warrant and all that. and saying why they were there. But, yeah.

10

MR GOODWIN: Did they tell you why they separated you from your other children?

DAVID CRUSE: No, they didn't tell us why. They just separated us.

15 MR GOODWIN: And, when was – can you remember when abouts Eathan was taken away?

DAVID CRUSE: Eathan was taken away at least 45 minutes to an hour after that initial breach. They took him away, and didn't tell us nothing. I went, I ended up going to the hospital at around 12 o'clock. Cos' I kept fainting. And I didn't know what was going on with him until they finally saw him, they tell us, he tells me that all they did was take him to hospital, question him for 20 minutes, then go. With no shirt on, no shoes on, here's a cab, go. They did all that to ask him 20 minutes of questioning for his friends. Of his friends. The whole thing.

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MR GOODWIN: And what injuries did you sustain as a result of the raid?

DAVID CRUSE: I had a lump about this big on the side of my head. A few bruising down the side of my neck. I think I had bruising down my back, where all the knees went.

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MR GOODWIN: Is there anything else you remember about that morning that you want to tell Commissioners?

DAVID CRUSE: That's the main things. They are the main points, that happened. There's nothing much else to say about it. What I just said is exact what happened.

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MR GOODWIN: Eathan, I might turn to you. You gave detailed evidence about what happened to the Supreme Court, which the Commissioners have and will have regard to. But what would you like to tell the Commissioners about that morning and what you remember?

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EATHAN CRUSE: So, yeah, they raided my house on the morning of 18 April 2015, me and mum, me and my parents just finished watching a movie. After the movie we went back to my room, was getting ready for bed and as I was getting undressed I heard a lot of banging, heard my mum screaming, heard my dad screaming, and then yeah, I thought someone was breaking into the house, didn't know who it was. I put on my pants and I just didn't think about putting on my shirt or anything, just went straight out. As I got into the hallway I just see a guy, dressed in all black, he had his firearm pointed at me so I just put my hands up, straight to the ground, wasn't resisting or anything.

45

Then cuffed me with the wire and he's asked for my name. I said "My name's Eathan Cruse", so "This is the one", then like copped it in the head a few times. After that, picked me up, took me to the kitchen, slammed me across the fridge and put me on the ground, and that's when the beating actually started. So it all started in the kitchen, you know, just copping it from left, right, in the back of my head, body. Yeah, just didn't know where it was coming from, I was just getting hit from all sides, felt like they were taking turns beating me up, because I can't see who's behind me, felt like a few of them were hitting me.

I ended up passing out as they were beating me and, yeah, was covered in, like, a pool of blood, there was a shitload of blood. Yeah, then what happened after?

MR GOODWIN: Did you hear anything the police officers were saying to you or your family while you were in the kitchen?

EATHAN CRUSE: Sorry, it was like eight years ago, I'm trying to remember. I do believe I heard them call my dad "Black Abo". They were saying, like, they were saying stuff to me, I can't remember what they were saying, but they were saying stuff to me. I just can't remember what they were saying.

MR GOODWIN: And do you remember what they did after you were handcuffed and then beaten in the kitchen? Do you remember what happened to you after that?

EATHAN CRUSE: Sorry, could you repeat the question?

MR GOODWIN: So after you're taken into the kitchen and beaten, do you remember what happened after that?

EATHAN CRUSE: Oh yeah, so I was just laying there for a while and after that, when it was time to go they picked me up, two of them picked me up, and, yeah, two of them picked me up, made our way to the front and then there was a guy waiting out the front of the house and he's like "You're under arrest", stated who he was, all that, and then yeah, I was taken into the car and escorted to the AFP station.

MR GOODWIN: And while you were still at the house, did you hear what was going on for the rest of your family at that time?

EATHAN CRUSE: Actually, now I remember. I saw, as I was there I saw my sister get dragged across the - through the house and they were pulling her by the hair. I remember them - I remember mum asking me if I'm okay, as I was walking to the car, and then they twisted my hand and then he said something along the lines of, you know, like, "Shut the fuck up, don't you dare say a word". I remember as I was getting beaten, after the beating, he said that there's more to come, something along those lines, I can't remember the exact words. Yeah, I never resisted. I was cuffed. The beating didn't start until I was cuffed. I was on my stomach, there was no way I could have, like, hurt them or anything. There was many of them and, yeah.

MR GOODWIN: Do you remember what was going through your head at the time?

EATHAN CRUSE: I was pretty scared. I thought they were going to kill me, by the way they were acting, the way he was threatening me, didn't know if he was going to do more later on. But yeah, I didn't know what was going on. I was confused. They didn't even state who they were when they got me, didn't hear any sign that there was police entering, I was
5 confused, yeah. I was only 19, didn't understand what was going on.

MR GOODWIN: And when did they identify themselves as police to you? Do you remember the first time they identified themselves?

10 EATHAN CRUSE: Yeah, once I got out of the house, then I met, not sure who it was, but he was there with torchlight checking my eyes and all that, and yeah, he just said "You're under arrest", and all that.

MR GOODWIN: And as you were leaving, do you remember seeing your brothers and
15 sisters or your mum and dad at that time?

EATHAN CRUSE: Yeah, I saw them. They were like at the front of the house and, yeah, I just saw my mum and she said "Are you okay?" That's when he twisted my hand.

20 MR GOODWIN: And what physical injuries did you sustain as a result of the raid?

EATHAN CRUSE: Yeah, cuts and bruises over my head. Had injuries to my head and body. I can't remember. So I had a cut of the front of my ear, bruising near the left eye, large swelling and bruising on my forehead as well as bruising and swelling on my neck and
25 right - so pretty much the base of my skull. I had, yeah, headaches during the following week as well and also on top of that, like mentally I was also diagnosed with post-traumatic stress disorder and major depression.

MR GOODWIN: And just in your own words - I understand that those physical and
30 psychological injuries, and a lot of that's also captured in the court judgment - but just in your own words could you tell the Commissioners the impact that the raid had on you?

EATHAN CRUSE: Yeah, well I lost a lot of, like, a lot of friends. I was pretty much outcasted to the community. Yeah, even like some members of my own family I was
35 considered an outcast to them. Ended up, like, taking drugs, I probably did for about three years, four years, and yeah, left a big impact on my life that's here to stay.

MR GOODWIN: And how did you get through some of those issues? So for example, in terms of addiction, how did you manage to get through some of those issues over the past five
40 or so years?

EATHAN CRUSE: Like, how did I overcome it?

MR GOODWIN: Yes, yes.
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EATHAN CRUSE: So I went to - I just started travelling, so I went to places where there was no drugs and that's how I got off it. So I stayed in another country for two months so I can - there was no access to any drugs. Yeah, that's how I got off.

MR GOODWIN: I might ask you now, Anja, what you'd like to tell the Commissioners about what you remember about the morning of the raid.

5 ANJA CRUSE: Yes. So I'll start off with how Eathan came over that night, we watched a movie. I remember it was a movie, a Madonna movie. Anyway, as soon as we turned - or were going to bed, as soon as the movie was finished, turned out the lights. I remember as soon as we turned out the lights, all the banging and smashing started happening, and then we must have turned the lights back on and just looking at each other like "What's going on?".

10 For some reason, I can't remember them actually entering the house. I don't know, it's like I must have lost a few seconds there somewhere, but then to notice that we were surrounded.

MR GOODWIN: Go on.

15 ANJA CRUSE: Sorry, I thought I'd be okay talking about it today, but - anyway, as I was saying, yeah, so I noticed that - and then to realise that all these people were - first of all - sorry, I'll go back. When they were smashing the windows kept yelling out "Who is it, who is it, who is it", got nothing, and yeah, that's when I must have lost a minute or so, because next minute I was, like, realised when they had entered the house that they were all

20 around and, yeah, I remember running - because Eathan was in the room, I was running to the room, looking at him, like what's - we didn't know what was going on. And yeah, because we thought, I thought it might have been home invasions because they were going around at that time, I thought maybe our house has been got that night, all these things were going through my head. And I remember one of the guys come up to me with a gun in my face saying, "Get

25 in the room there with your son", and then from that time on, I was just sat in there, just holding him, that was my youngest, [REDACTED], he would have been, like, a toddler, about three years old or something at the time, so I just sat there and held him the whole time to the point where I hear Eathan and David just pretty much getting beaten, hearing all these

30 name-calling. Yeah.

MR GOODWIN: Do you remember some of the name-calling that was happening?

ANJA CRUSE: Yeah, "Shut up, you black Abo". Yeah, it was pretty bad. They were very racial.

35 MR GOODWIN: And did you know what was happening with - so you're with your younger son and you hear what's happening to David and Eathan. Did you know where your other kids were and what was happening to them?

40 ANJA CRUSE: I didn't really know at the time where the girls were, because they went to bed first, [REDACTED] and [REDACTED] so they were up in the room together. I just assumed that they were there. [REDACTED] yeah, I remember [REDACTED], I think he was, like, only 15 or something at the time, 16, and he's a big boy and he pretty much sleeps through anything, and I saw that they

45 were going up my hallway, because I can see from my room, and I just yelled out, [REDACTED] asleep in the room, he's only a child", pretty much, "He's only 15 years old", because of his size and everything I thought maybe I just didn't want him to get hurt. And yeah, and

MR GOODWIN: And eventually you were brought outside. Was that the first time that you saw David and Eathan, when you come outside the house?

ANJA CRUSE: Yeah, I think it was.

MR GOODWIN: What condition were they in?

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ANJA CRUSE: Very bad, to the point where they were fainting, like, they couldn't walk properly, and when we were all lined up at the front near my gate there, I could see they put David on his knees, still handcuffed. Yeah, and then probably about half an hour later, I see them bringing Eathan out and that's when I said to him, "Are you okay". I didn't get no response, and they just kept walking him to the van, which was pretty much parked almost next door. And yeah, it was a very cold night that night, there was glass right through my house. One of them come up to me and says "We have to go outside", this is when we were inside, "We have to go outside now, make sure the kids have got shoes on" - no, my little one, "Put some shoes on him", because there was glass right through the house. So I did that and put something warm on him, then we all went outside. The house was pretty trashed.

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MR GOODWIN: What did you see in the house once you came back in?

ANJA CRUSE: Just glass windows smashed, small bits of glass in the house, it was, like, embedded in the carpets. Blood on the floor, on my fridge from where they were getting stuck into Eathan and then on the other side, in where we have the kitchen/dining table, blood on there from when they were getting stuck into David and, like, it was just horrifying. Yeah, it was really bad. I just don't wish it upon anybody, and no-one should go through that, you know. It's just a disgrace the way they did everything, you know.

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MR GOODWIN: What impact did the raid have on you?

ANJA CRUSE: I ended up from the trauma and everything, I just ended up started drinking a bit and got to a stage where it was too much. Yeah, I am doing a lot better these days with that, but I still have it in the back of my mind and, yeah, it's not - it's just - I went through a lot of depression to the point where I don't even want to clean my house, don't want to answer my phone, it's unknown caller, so all these silly things, you know? I don't feel like I used to be. And then it's just the way they come in and hurt my family, it shouldn't have been like that.

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MR GOODWIN: Is there anything else that you want to tell the Commissioners about what happened that morning?

ANJA CRUSE: Yeah, I asked them, the police, after everything calmed down, Eathan was gone, I just said to them, "I need to know where my son is, I want to know if he's okay", and they ended up calling them and they said he was in the hospital. Yeah, they put me on the phone to Eathan, he said he was handcuffed to the bed. I think he was in there for, like, five hours, something like that. And then he went to get questioned and that's - after that, and that's when they questioned him for, like, 20 minutes and sent him home in a cab.

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MR GOODWIN: And were you told when you could see him?

ANJA CRUSE: No, no. I was just I just wanted to know if he was okay and they weren't hurting him anymore. And from that time on, after that, a few days later, walking down the

street my young son, [REDACTED] he's terrified of police. He wanted to walk on the other side of the road, there's police coming, you know? Young child shouldn't have to feel afraid of police, you know? But of course, what happened, who wouldn't be?

5 MR GOODWIN: What has been some of the impact on your other kids?

ANJA CRUSE: [REDACTED]

10 [REDACTED] But yeah, [REDACTED], she doesn't talk about it at all. She just gets on with life, like, I don't know, I always try to say to her, "Do you need to talk?" "I'm good." She just gets on with her life. [REDACTED] he's, he seems good. He just does gym every day, works, so I always try to, you know, reassure him, "You know if you need to talk just come and talk because it's not good to not talk about it", he's just like "Yeah mum, I'm good, mum", that's pretty much all I get. But
15 yeah, Eathan, he's got a job now, he's doing really well with his family, young family. [REDACTED] he's okay, he's at school.

DAVID CRUSE: I think I'm the one that's copped it the most, I ended up with high blood pressure. So after that incident, my blood pressure went from 240 over 160. I was
20 hospitalised twice with high blood pressure, and now through all the high blood pressure, I'm losing me kidneys, I've got to go on dialysis in another three months. So from six to seven months ago, everything deteriorated on me, because I can't get that out of me head. I don't need to read this, it's there, it's stuck in my head forever, and I still hear the screams, see the bashing. It's there constantly. So yeah, my health has deteriorated badly. And yeah, they've
25 got away with it. To me, they got away with absolute atrocity and there was nothing done about it at all, at all. All we were told, even a judge said "We found you guilty", take you back to, what are they called, IBAC. IBAC says, go back to - and they, nup, we did no wrong, we don't do no wrong. Even with my settlement they said "We'll give you this little bit here but we're not pleading, we want nothing to do with it", as if to say take chump change and
30 piss off. And I'm the one stuck with shocking health now, because of these people.

I've got to go through kidney dialysis and everything because my blood pressure was through the roof all the time and I couldn't control it. And I believe it's all from them, because everything started deteriorating six years now, that's what the specialist told me, everything
35 was deteriorating six years now, and it's all from then. I was healthy before that, all this happened, going camping, going diving, doing everything. Now I don't even want to leave my home, you know. So yeah, I'm the one that's got the most affect out of this, I think, because it's just affected me.

40 ANJA CRUSE: So far, yes

DAVID CRUSE: Because I can tell you everything that happened from start to finish. You don't need to read me nothing because I know it's there, I can tell you the same storied over and over, and like I said, these fellas have got away with it. And I've done so many interviews
45 with these reporters and all of them people and it seems like it's going nowhere, seems like, you know, you talk, talk, talk about it and still nothing is going to be done. Because as far as I've been young, I've got so many scars in me head, scars from the police, I've been bashed that many times, you know, thrown out with a broken nose from the back of a paddy wagon and, to me, it hasn't changed from a kid to now.

MR GOODWIN: So this wasn't your first experience of police violence?

5 DAVID CRUSE: No, yeah, that's right. And to me, nothing's changed through this whole - from when I'm young to it's been like that, to now. And now my son says, you know, stuff like "This is where they killed my brother", when he was ill, but then he says "If I cross the red lights, will they shoot me". You know kids shouldn't say that, you know, six-year-olds shouldn't say that. That's where the hate is built in, it's always going to be built in, because they let them get away with it. The problem is, you've got white look after white
10 and it's always gonna be that way.

MR GOODWIN: And before I ask some questions about what happened after the raid, David, I believe you saw something when you came back into the house, when there was a mess in the house with broken glass and blood, you saw a police officer doing something?
15

DAVID CRUSE: Yeah, when we separated out of the room and he finally let us go because I told them "I want to make a phone call", kept repeating it in the room, "I want to call a solicitor, want to call somebody", someone give me a phone and as I was coming out the police officer is mopping my blood up, and I turned and said "What, you trying to hide evidence?", and then he's dropped the mop, like, and then at the same time he saw the blood on the hand, and he goes "Did you smash that window, did you?", asked did I put the hand through the window. And I'm "You're a smart arse, aren't you?", which is a natural reply, because all the glass is inside, but I somehow punched a window and put it out the window. So yeah, yeah, he was trying to mop my blood up, one of the police officers.
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MR GOODWIN: And then he saw the injury on your hand and said, "Did you" -

DAVID CRUSE: Yeah, and laughed at me after he said it. Yeah, smart arse.

30 MR GOODWIN: And what's going through your head at that time, about, you know, how you're feeling?

DAVID CRUSE: I just thought, you racist redneck dog. That's the first thing that went in my head. You're a smart arse, aren't you, you're a jerk. How would you like that done to you? I was, I was angry. From that period on, I just said - disrespected them all. I meant it when I started saying "Youse are nothing but racist dogs, youse are cunts", talking back to them, but I was angry at the time, you know, because that was before 1 o'clock before I could tell the kids everything's okay. By then, I was angry, you know, and I had to go to hospital as well and leave the kids there, so at that same time I was a bit hesitant to leave.
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MR GOODWIN: I want to ask some questions about the complaint that you then made and the Supreme Court case, but is there anything else that any of you want to tell the Commissioners about what happened on the morning during the raid?

45 DAVID CRUSE: That's pretty covered what happened in the raid, yeah.

EATHAN CRUSE: Just to add on, when I was in the interview room, as we were finishing up, he asked me "So how you getting home?". Like, covered in blood, I'm only wearing pants, no shoes, no socks, not even a shirt, it's a cold morning, been bashed, obviously had a

concussion, and the officer, like, being a smart arse, has asked me how am I getting home, how am I going to get home. They brought me there, they bashed me and brought me there and asked me how I'm getting home. That's all I said.

5 MR GOODWIN: How did you get home?

EATHAN CRUSE: I told them "You brought me here, you gotta get me home", and then they paid for the taxi.

10 MR GOODWIN: Eathan, while we're talking about that period, actually - this is from the Supreme Court case - there were some medical notes in evidence about the medical attention that you received while you were in custody and an ambulance was despatched to where you were being held at the AFP headquarters at around 5.15 am, and the case description in those records described your injuries at the time that Ambulance Victoria came to look at you. And
15 there was a note that said, from the ambulance officers, "Please note, extended time on scene as PT", patient, "Under heavy guard and unable to be moved instantly". Do you remember that environment at the time when the ambulance officers came to check you out?

EATHAN CRUSE: No, I don't really remember. All I know is it took a while, but can you
20 repeat the question?

MR GOODWIN: Yeah, I'm just wondering if you remember anything about when the ambulance officers came to initially check you out, just they noted that you were under heavy guard and unable to be moved instantly and that it took, you know, it was an extended time
25 on the scene. And I just wanted to see if you had any memory of -

EATHAN CRUSE: All I remember is just that it took a while and paramedics said I should be going to hospital and, yeah, that's when I went.

30 MR GOODWIN: And that's when the Supreme Court judgment notes that the ambulance then took you to St Vincent's Hospital and you arrived at the Emergency Department at about 6.30 am and then you were seen by a doctor within an hour, and the doctor's notes were in evidence, and the doctor summarised your description of events and noted that you were
35 essentially dazed and confused because you were orientated to the year, so you knew what year it was, but not the month or the day, even though that information had been provided to you just a few minutes before. So is that consistent with you being, you know, dazed and confused at that time and suffering from a concussion as the notes -

EATHAN CRUSE: Yeah, I was knocked out during my beating. I was, you know, I had a lot
40 of injuries, I sustained a lot of injuries. Yeah, I was confused. Even the whole time during the whole process, I was confused. I was even confused if I should have went to the hospital, because I didn't even know what was going on until the paramedic said, "You should be going to hospital". But yeah.

45 MR GOODWIN: So you eventually go back home, and within, I think, a few days you made an official complaint to police in April of 2015. What motivated you to make a complaint?

EATHAN CRUSE: Well, pretty much just got bashed and just left, like it was just wrong, it was the wrong thing to do. They didn't just bash me, they bashed my dad as well. Yeah, we

were just, we were just left, you know, helpless. We thought, you know, the right thing to do would be to make a complaint.

5 DAVID CRUSE: The complaint was brought on, my pop was part of all this stuff, you know, and I rang him that morning and he's adamant, was telling me, "You got to make complaint, start the complaint, you got to see someone", and that's when I rang VALS and met Ali, and from then on Ali has been with us right through.

10 EATHAN CRUSE: Yeah, Ali helped us make a complaint.

DAVID CRUSE: Everything started with Ali, the complaints, so we rang VALS, got Ali, they put us on to Ali's side, and that's when he made an appointment to go into the old casino here in Melbourne - it was police headquarters, there, yeah?

15 MR BESIROGLU: Professional Standards Command, old police headquarters.

DAVID CRUSE: Old casino, that's where I've gone, yeah.

20 MR GOODWIN: And what outcome were you looking for?

DAVID CRUSE: We got there, and when they separated us, I believe police took us in one room and I got, I think, second in charge in another room and Ali come with me, no you come with me, wasn't it, you come with me.

25 MR BESIROGLU: Eathan.

DAVID CRUSE: Who was with me?

30 MR BESIROGLU: It was my colleague.

DAVID CRUSE: Anyway, someone was with me, and yeah, when we was given the complaints and that the police officer's gone and, like, put his pen down, went back, said "Well, you know what, these police had video cameras so we're gonna see that and if we see you're lying, we're going to get you for perjury", and automatically I got excited, "Fucking great, I want that footage". Went to Ali going, "I want the footage".

9 o'clock that next morning, we get a phone call saying "No footage at the Cruse family's", when the officer tells me "we have footage there, if you're getting caught lying you're going to be done for perjury", but the way he said it, it was, like, smug. Put his pen down, leaned back in his chair, arms crossed, you know, these officers have got cameras, "You're lying, we're gonna get you on perjury". 9 o'clock the next morning, nup, no cameras in that house at all.

45 MR GOODWIN: And what were you hoping in terms of an outcome from the complaint?

DAVID CRUSE: All I wanted was someone to be made accountable for their actions. You can't take the law upon your own hands. What's the use of having the law there? They think they're above the law, you know. They work for the law, they're not the law, they can't just take it and say, "Here, we'll dish up what we feel", and then there's no accountability to them

just because they're wearing a badge. And that's the problem it's been all our lives with all our people. They think they can just pull you over, ask you questions whenever they feel like it, pull your car over it, "Oh, we want to search your car", you know, and all this stuff, for no reason at all, which has been done all our lives, as young people.

5

MR GOODWIN: Eathan, what were you hoping would happen as a result of the complaint?

EATHAN CRUSE: Yeah, just an apology would be good. We didn't even get that, even eight years later. Even, you know, yeah, even though, like, the judge was in our favour and they found that, you know, the police were in the wrong and they referred them back to IBAC, they did an internal investigation and they said, you know, "We've done nothing wrong", so yeah, eight years later, no apology, just nothing. Yeah.

10

DAVID CRUSE: I even told them that I'd drop my case as long as someone was charged. I was happy just to drop it and say, "I won't go any further, as long as you charge somebody for accountability". There was nothing, nothing at all. That's the only reason we went through it the way it was, so they didn't have any accountability for what they did, so the only way to do it was to sue.

15

MR GOODWIN: And before you both initiated court action for what happened did you find out the outcome of the investigation by the Professional Standards Command?

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COMMISSIONER BELL: Sorry counsel, both initiated court action?

MR GOODWIN: Yes.

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COMMISSIONER BELL: I thought it was just Eathan, but it's not, is it?

MR GOODWIN: David settled his case out of court.

30

COMMISSIONER BELL: Okay, thank you.

MR GOODWIN: So did you find out the outcome of the initial investigation by Professional Standards Command?

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DAVID CRUSE: Yes, Ali let us know what was happening all the way through.

MR GOODWIN: And what was the outcome?

EATHAN CRUSE: I think IBAC wrote back to VALS at the end of 2022 to say they found my complaint as substantiated, and they referred the complaint back to Victoria Police.

40

MR GOODWIN: So I think Professional Standards Command had found it unsubstantiated prior to the court case; is that right?

45

DAVID CRUSE: Yes, the first one, initial too.

MR GOODWIN: And apologies, Commissioners, I wasn't clear, so both of you commenced action against the State of Victoria for assault and battery associated with the raid, and, David, your case settled?

5 DAVID CRUSE: Yeah, I settled out of court.

MR GOODWIN: But, Eathan, there was a five day trial before the Supreme Court of Victoria in 2009 and then on 27 August 2019 - 2019 I should say, and then the court handed down its decision on 27 August 2019. And during that trial, you, Eathan, David, and one of
10 your sisters gave evidence in addition to a number of police officers. And having considered the evidence, the court found against the State and awarded you damages for the unjustified use of force against you, including aggravated and exemplary damages. Just by way of summary, the Supreme Court held that your evidence was credible and was to be preferred over the evidence of police officers, including the two arresting police officers. And Justice
15 Richards described the police conduct during the raid as a cowardly and brutal attack. What did it mean to you for the court to believe your side of the story?

EATHAN CRUSE: It was great, you know, finally got my point across and the truth was heard and the truth was believed. Yeah, just - yeah, no, yeah, it was great, it was good. I
20 thought they were going to get away with it, but they still got away, like, you know, no-one was disciplined, no apology was given, so it was still a loss in my view.

MR GOODWIN: And Justice Richards, in her judgment, criticised the State in terms of finding in your favour for aggravated damages, and noted that the State disputed your
25 account of what police did to you and accepted the false denials of the officers involved over the evidence of Mr Cruse and your family, and sought to minimise the force used against you, and then also noted that the complaint that you'd made in 2015 after that, that no action was taken against any of the officers involved, and that at no stage had the State acknowledged what occurred or expressed regret or contrition for the conduct of its police officers. Should it
30 have taken you to sue the State in the court to have someone, including a judge, to have pointed that out, to have highlighted that?

EATHAN CRUSE: Sorry, could you repeat?

35 MR GOODWIN: It was a bit long, sorry. I'm just wondering, I mean, how did you feel having to go to court and go through a five-day trial to be believed?

EATHAN CRUSE: At the start I was - I didn't enjoy it at all, but then when you started to watch their lies break down in front of you and it was just great, you know, to see the judge
40 that's working for their system, like, to watch her look at these lies herself. And yeah, I was happy with the outcome, I was happy that they - you know, that their lies were exposed, yeah. Like, I'm glad we went through the process because then nobody would have known.

MR BESIROGLU: If I could extrapolate on the lies aspect, the explanation for the blood on
45 the fridge was as Eathan was being carried out he slipped on his own blood and happened to fall on to the fridge, which became justification for the blood on the fridge. Her Honour found that that was categorically a lie and it was a cover-up story in how to justify the blood on the fridge, because Eathan and the family had said he had been slammed into the fridge

before being put to the floor. So all of this unraveled throughout the running of this proceeding.

5 DAVID CRUSE: Yeah, they went on each other's stories to pick that up.

MR BESIROGLU: Correct, and I'll probably let counsel -

10 MR GOODWIN: No, I was going to highlight some of those aspects of the findings that Justice Richards made around the conduct of the officers in terms of giving their evidence. Her Honour found at paragraph 68 that the arresting officers shared their statements with each other, and I think that's what you're referring to, David, and that one of the officers, in particular, had regard to the other statement in order to complete his own statement. And then at paragraph 92, Justice Richards found that critical parts of the evidence of certain officers was not credible, particularly regarding the type of force used on Eathan.

15 In fact, the court expressly concluded that a police officer had made up that you had slipped and fallen into the fridge only once he became aware that it had been photographed, and at paragraph 93B, the court also found the same officer wrote a note that he feared you, Eathan, might have a knife in an attempt to justify the force used during the raid, but that this was not a truthful or accurate record of what occurred.

20 How does it make you feel that not only did you go through what you went through, but then, as the court found, a number of the conduct after the event by officers involved a failure to be truthful or accurate in the record?

25 EATHAN CRUSE: Yeah, I guess it was just standard, like, they're just a bunch of liars, that's what they are. Yeah, it's their job, you know, to - like, if we made a lie, perjury, but, you know, they can do it, they can make up stories and they get away with it. If we were to lie, we'd, you know, be sentenced, perjury, fined, but you know, they just get away with it. So like, yeah.

30 MR BESIROGLU: Sorry counsel, just one other thing to add to that, so those responses were not necessarily done in the furtherance of a criminal brief. Those responses, the collusion that her Honour found, was in direct response to the complaint that the family had lodged. So this was their way of trying to respond to the police complaint, which was - which her Honour found was collusion. I think that's a very important point as well, in terms of the submission. They were trying to get their stories straight in order to be able to excuse the complaint.

35 MR GOODWIN: Another important thing that the court found, Eathan, is that your arrest was not lawful because neither of the arresting officers - and I'm using some legal terms here just from the judgment, just to benefit the Commissioners - but her Honour found that the arrest was not lawful, because neither of the arresting officers had formed the necessary suspicion on reasonable grounds that were required by law, and in fact, her Honour went further and said that:

45 *"On the evidence before the court there were no reasonable grounds for anyone to suspect you of having committed or been in the process of committing an offence."*

That's at paragraph 132 of the judgment. What did it mean to you to have the judge find that the arrest wasn't lawful?

5 EATHAN CRUSE: Well, I did expect it, and I don't know how they could, you know, get a team and just run through my house, even though there's nothing - I've done nothing wrong. Like, I just - I find it really strange that police can actually do that. Yeah, I really don't understand it, I don't understand the way they work. But yeah, I find it disgusting.

10 MR GOODWIN: David and Anja, is there anything that you wanted to add about the Supreme Court judgment and about that process and about the court's findings that I've just discussed?

15 DAVID CRUSE: Yeah, no, it was exhilarating when she passed down the judgment. I ripped him out of his seat, cuddled him, I was happy, same as Ali, I could see he was very happy. But the actual fact where you're talking about there was no justification, to come in fully armed in a family home, you know, they treated us like we were bkie gangs or if we were armed robbers, you know what I mean? This is a family home, it's not somewhere where there's a heap of guns and armed robberies and all that stuff. They knew it was a family home and they knew we were Indigenous, because I wouldn't have been called an Abo. So they
20 come in full force with no, you know, feeling for any kids or anything.

ANJA CRUSE: Scared the living crap out of all of us, went right through our house to find nothing. It was just -

25 DAVID CRUSE: Yeah, the whole process was just wrong from the get go. So these kids were always together, every day, they would be all up at the pool together. You could have picked the kids up at the pool, knocked on the door civilly, and said "We need to search your kid's room", that's all they had to do. But instead they wanted to make a statement.

30 ANJA CRUSE: Big ruckus.

DAVID CRUSE: Yeah, come in full on and had no consequences to who's going to be up at all.

35 EATHAN CRUSE: On top of that, I have no criminal record. I've never assaulted anyone, I'm not a professional fighter, so I'm not a threat to them. Yeah, never been in trouble with the law, so doesn't make any sense that they could use that force against me, and they had nothing against me.

40 MR BESIROGLU: And you weren't charged.

EATHAN CRUSE: And I wasn't charged. And they had no reason to believe anything, so it was unnecessary force against me, so didn't make sense.

45 DAVID CRUSE: It wasn't just our house, it was other houses that were done too. They're left out of this too. You're talking about seven houses with kids in their houses, and they went through every one of them houses exactly the same way, just had no consideration for any kids at all, at all. There was not one consideration for one kid in this whole operation. They went there 3 in the morning and did to seven houses of other kids, they were only kids, they

were only 17, 18, 19 and they ran through their houses and they have got baby brothers and sisters, you know, and babies in the house. There was no consideration for any kids out of this, and there still hasn't been no considerations for the kids. They just ran through every house of the seven of these kids and their friends, all their houses, and destroyed their lives, really. These kids have got to live with this stuff and have it in their mind. Now, if I've got going through that, imagine what a kid is going through. You know, this whole thing was just an absolute ruckus and they got away with, you know, traumatising kids, you know. You got kids, people that harm kids and that, they'll go to gaol and that. These fellas destroyed these kids, you know, and there was nothing done. And that's seven houses that they did it to, not just our house, there's seven.

EATHAN CRUSE: We are just talking about ours.

DAVID CRUSE: I know, but the whole thing is, this whole thing was brought in, it was not just our house; it was seven houses they traumatised and got away with it.

MR GOODWIN: And Eathan, you mentioned that eventually IBAC sent a letter to your lawyers on 7 December 2020. And, Commissioners, at an appropriate time I'll tender this material. So this is five years after your initial complaint and after the decision from the Supreme Court, and I just want to summarise some of the major points in that letter. So the letter stated that IBAC regretted that their handling of your complaint, in terms of timeliness, was not what they would have liked and that they're working to improve response times. IBAC said they'd completed a comprehensive review of the Victoria Police investigation of your complaint. And they said, and I quote:

"As a result of this review, IBAC determined that, on the basis of the evidence available at the time, Victoria Police should have concluded that the complaint in relation to the excessive use of force against you was substantiated rather than not substantiated."

So IBAC's reviewed and said, on the basis of the evidence available at the time, that Victoria Police should have substantiated your complaint to them. IBAC told you that they'd written to Victoria Police regarding their review findings, outlining the deficiencies that IBAC had identified, including with the investigation findings into your complaint, and some procedural issues, including human rights considerations, so in terms of the investigations consideration of human rights and statement-taking practices, which I think is a reference to the sharing of statements in response to the complaint.

So IBAC's written to you. They've said they've conducted a review, that it should have been substantiated, based on the evidence, and that they'd written to Victoria Police to tell them that. What were you hoping would come out of receiving that letter from IBAC? I'll be more specific. What were you hoping Victoria Police would do when you'd received this letter?

EATHAN CRUSE: I was hoping that they would admit that they were wrong, maybe an apology. Yeah, just some acknowledgement, yeah.

MR GOODWIN: Did any of those things happen?

EATHAN CRUSE: Never, and I think, yeah, two years later, the Victorian Police, they told a journalist that they would not be changing their findings.

MR GOODWIN: Was that the first you'd heard that Victoria Police weren't going to change their findings?

5 EATHAN CRUSE: Yep.

MR GOODWIN: In the media?

EATHAN CRUSE: Yep.

10

MR GOODWIN: So had anyone written to you or your family to tell you that they weren't going to change their investigation findings?

EATHAN CRUSE: Did they wrote to us? They didn't? No.

15

MR GOODWIN: And so you found out that it was going to be no change on the basis of media reporting. I believe it was in The Guardian, is that right?

EATHAN CRUSE: Yep, yeah no-one contacted us; we just found out through a journalist, so -

20

MR GOODWIN: And the statement from Victoria Police that was made in that article noted that IBAC had recommended - had made recommendations to Victoria Police, which was described in their letter to you, and Victoria Police stated:

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"Following the IBAC recommendation, a review was conducted by Victoria Police. However, it was determined that insufficient evidence existed, and the findings of the initial investigation were not changed."

30 How do you feel about Victoria Police stating that?

EATHAN CRUSE: Well, you know, a Supreme Court Justice, if they can't convince police to change their position, like, no-one will. Yeah, I reckon the police complaints system is broken. I reckon we need an independent police complaints system and, yeah, just - we deserve our apology.

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MR GOODWIN: David and Anja, how did it make you feel when you read that the Victoria Police weren't changing their findings in the investigation into the complaint?

40 DAVID CRUSE: I knew they wouldn't, just been brought up with it, they just think they can get away with anything. They think they're above the law, they always have and always will.

MR GOODWIN: Eathan said what he'd like to see change in the future, particularly regarding police complaints and oversight. What would the both of you like to see change?

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DAVID CRUSE: I'd like to see them be held accountable for what they do. There has to be - if you work for the law, you got to be accountable for the law. Just can't put the law in your own hands. You think you can put the law in your own hands and dish it out, well then, you should be held accountable for your actions, like all the rest of us. They shouldn't be

especially treated just because they've got a badge. That's how I've always said, you know, if you work for the law, you obey the law, you know. They want us to obey the law; they got to do the same. But if they don't they need to be held accountable, they just can't keep getting away with it all their lives.

5

ANJA CRUSE: It has to change in that way, and if it doesn't change now, I can't even see it changing. I feel like there's no hope, you know?

10 MR GOODWIN: And what are you hoping? What are each of you hoping from sharing your story today at the Yoorrook Justice Commission? Why was it important to you to come here today to share your story?

DAVID CRUSE: Really, it's just -

15 EATHAN CRUSE: I think it's been really one-sided. Not many people know exactly what went on.

ANJA CRUSE: People need to hear the real truth, the real story and how it is.

20 EATHAN CRUSE: There are probably, you know, Indigenous folk out there who have been beaten by police and haven't come forward about it. I think the police have been doing it for too long.

25 DAVID CRUSE: You do tell the story to the reporters, and they change the story to the way they think they like to hear it, you know, but to have our people take your head on it, I'm quite happy to be involved with that, but our people are going to step in and try and make a change. That's where I'm proud to do this, with - our people are doing it together, to try and make a change. The way it should be.

30 ANJA CRUSE: If more people come forward and talk about their stories, maybe we can make a change, and hopefully we can, because it needs to, it needs to stop.

MR GOODWIN: Eathan, did you have anything else that you wanted to add?

35 EATHAN CRUSE: Yeah, like, it's probably happened one too many times, and the police just get away with it and they keep doing it, and no-one's held accountable. The system needs change. It's definitely broken. It suits the aggressor, and people like us can't defend ourself. We have no voice. Yeah, we need our own voice, we need someone that we can turn to, to be a part of the system, to use our voice. You know, I believe that, you know, us Indigenous
40 people, we are vulnerable, and we do need help from our own and, yep, that's it.

MR GOODWIN: Thank you. Commissioners, those were my questions, so I'll invite Commissioners to ask any questions they have.

45 CHAIR: Thank you, counsel.

COMMISSIONER BELL: I don't have any questions.

COMMISSIONER HUNTER: I don't have any questions, but I do want to thank you very much for coming forward and I'm sure you've told your story hundreds of times now, but, you know, thank you for sharing it once more and it's hard, so -

5 ANJA CRUSE: Thanks for having us.

EATHAN CRUSE: Thanks.

10 COMMISSIONER LOVETT: Just echoing sentiments there, it's a pretty traumatic time that youse have been through, and, again, thanks for coming forward. We have heard the word accountability from you mob a few times today, and I just wanted to give another opportunity, I know the independent complaints system was brought up. Is there anything else that comes to mind about accountability for, you know, Victoria Police? Them being more accountable.

15 DAVID CRUSE: They should be more accountable, yeah, they should be held accountable for, like I said, if you're gonna break the law, you should be charged by the law. Because of your badge you shouldn't be over that law, that's the main thing. Until that changes, you know, it's always going to be the same. But the problem is, you have got good police officers
20 out there that want to help the community and be involved, then you go a little small bunch that they protect. They should get rid of that small - once that happens, oh you're gone, like everything else.

25 ANJA CRUSE: Like in any sort of work, you know, do the right thing, you go.

COMMISSIONER LOVETT: Thank you.

30 COMMISSIONER WALTER: Line 62 of your statement says about your frustration and that if IBAC and a Supreme Court judge can't change the views of Victoria Police, what hope does anybody else have? It struck me you've got these two eminent bodies, with very high standards within this society, and yet still the Victorian Police Professional Standards Command still find that your complaint was unsubstantiated. We have heard earlier that Aboriginal people don't make many complaints about the police, and I guess this would indicate why (indistinct) complaint has ever been upheld.

35 And just finally, do you feel (indistinct).

40 EATHAN CRUSE: Yep, so here and there, I'd be pulled over by police and most of the time they'd be holding their gun, they'd be like that. They would search my car for no reason at all. I'd tell them "I don't want my car to be searched", they said "We will get the dogs, search it". Yeah, they just pat me down here and there and I'm still treated like a criminal, yeah. In terms of, like, accountability as well, you know, it's police investigating police, and they're always going to stick by their side. They'll try and find ways to, you know, get through it without being accountable, and that's why I believe, you know, like we actually do need an
45 independent police, like, complaints system. And from that, I guess they would think twice before bashing an innocent person, especially Indigenous, yeah.

COMMISSIONER HUNTER: Sorry, can I just - just going off that and knowing - understanding your story and the after-effects, is there any way that anybody's

reached out in any form of government to offer any support with the trauma that, not only your whole family face - and just to add to that, are you more heightened, are you all more heightened around police now and the level of mistrust?

5 DAVID CRUSE: Yep, yeah, always have been, yeah.

ANJA CRUSE: And I think within the Indigenous community, they don't have that trust with police and they just, I guess, don't deal with it, like, in this way because they feel like they're not gonna get anywhere in life anyway.

10

DAVID CRUSE: Yeah, but no-one's reached out to us at all.

ANJA CRUSE: I think by doing what we are doing today and more people coming forward -

15 EATHAN CRUSE: No-one has reached out.

DAVID CRUSE: Swept under the carpet.

EATHAN CRUSE: No-one has reached out to us, no supports, yeah, nothing.

20

DAVID CRUSE: So that's why I'm saying. We've been going through this on our own back, going through all this stress, my health has absolutely dropped. Now I'm not going to be able to work in three months, I'm out of work for good, for how long - who knows how long I'll be on dialysis, and yet there was -

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ANJA CRUSE: Sorry, the police offered us, after the raids, a couple of times of going to a counsellor, and that's pretty much all we got. That's nothing.

COMMISSIONER HUNTER: Thank you.

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CHAIR: I have no questions. All I can say to you is thank you for coming before us today, because you've shown great strength and bravery, despite this horrific, horrific story, and I can hear that it's going to be with you for time, and I do hope you find some solace in just speaking to us, because it was one of the reasons we're here. It only points to how hard our job is in this space, really, but I thank you from the bottom of my heart, Eathan, Anja and David. Thank you so much.

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ANJA CRUSE: Thank you.

40 MR GOODWIN: Thank you, Chair, those are the questions for Eathan, David and Anja.

<THE WITNESSES WITHDREW

MR GOODWIN: I believe there will be a short adjournment and then the playing of the video evidence of Dr Michael Maguire, and Emeritus Professor Jude McCulloch directly on the topic of police independent oversight of police, so timely.

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CHAIR: Thank you, thank you for pointing that out. So are we concluded?

MR GOODWIN: Yes. Thank you, Chair.

CHAIR: Thank you, thank you very much.

5 <ADJOURNED 12.37 PM.

<RESUMED 1.05 PM.

(Video played).

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DOCTOR MICHAEL MAGUIRE: My name is Dr Michael Maguire.

MS MCLEOD: Professor McCulloch and Dr Maguire, do each of you undertake to provide truthful evidence to the Yoorrook Justice Commission? First to you, Dr McCulloch?

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PROFESSOR JUDE MCCULLOCH: I do.

MS MCLEOD: Dr Maguire?

20

DOCTOR MICHAEL MAGUIRE: I do.

MS MCLEOD: Thank you. You've prepared a submission for the Yoorrook Justice Commission which is headed Submission on Systemic Injustice in the Criminal Justice system, focused on police oversight in Victoria as a joint submission.

25

PROFESSOR JUDE MCCULLOCH: Correct.

DOCTOR MICHAEL MAGUIRE: Yes.

30

MS MCLEOD: Dr Maguire, I might start with some introductions. Dr Maguire, if I could start with you, you were the Police Ombudsman for Northern Ireland between 2012 and 2019, responsible for misconduct and criminal investigations into police officers, including high profile investigations into contemporary policing and allegations of criminality and misconduct within the Royal Ulster Constabulary during the Northern Ireland conflict. Before

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that you were the Chief Inspector of Criminal Justice in Northern Ireland, you are a member of Yoorrook's expert advisory panel, and you recently gave evidence to the Queensland Commission of Inquiry into the policing of family and domestic violence. Are there other aspects of your work, or your work experience, that you'd like to highlight?

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DOCTOR MICHAEL MAGUIRE: I think those were the main ones. I was 18 years as a management consultant specialising in strategy and organisational design, and I'm in the public sector.

45

MS MCLEOD: And Professor McCulloch, you are an Emeritus Professor of criminology at Monash University, a Fellow of the Academy of Social Sciences in Australia, and you are internationally recognised as an expert on police militarisation and accountability. You are the author and editor of 13 books including Blue Army: Paramilitary Policing (2001) and more than 100 peer-reviewed articles and chapters relating to policing, crime and justice. You've been contracted to provide research to Victoria Police on topics including

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counter-terrorism policing, and culturally diverse communities, hate crime and the use of body-worn cameras and family violence matters. You've given evidence to the Coroner in Northern Territory in relation to the shooting of an Aboriginal man, and you were the co-author with Dr Maguire of a peer-reviewed journal article headed Reforming Police Oversight in Victoria, Lessons from Northern Ireland (2022). That article is attached to your submission. Are there other aspects of your qualifications or your work that you would like to highlight?

PROFESSOR JUDE MCCULLOCH: No, that covers it, thank you.

MS MCLEOD: Now, your submission calls for the establishment of a substantially independent, adequately resourced, appropriately empowered standalone body to respond to complaints against police and initiate investigations of specific events or systemic and thematic issues.

I'll come to consider the shortcomings of the existing systems of police oversight and your recommendations for the design of a new civilian-controlled oversight body for Victoria in a moment, but before we turn to that, I want to ask you about the history of police oversight in this State. So can I start with you, Professor McCulloch.

In your submission, you address the impact of policing and incarceration practices on First Nations Peoples. Can I ask you to speak to the connection between historic and continuing injustice in Victoria, based on your research and your expertise, to offer the Commission your insights into how it is that First Nations People are overrepresented and overpoliced in our Criminal Justice system?

PROFESSOR JUDE MCCULLOCH: I understand, Commissioners, you've got plenty of information, statistical information, about the overrepresentation of Victoria's First Nations People in the Criminal Justice system. It's my view, and backed up by the research, that policing and particularly the overpolicing of First Nations People as potential offenders or the targeting of them as potential offenders and criminals and the underserving of First Nations People, particularly women, as victims of crime is really critical to the outcomes, the very poor outcomes that we see for Victoria's First Nations People in the Criminal Justice system.

All the research shows that, as the gatekeepers of the Criminal Justice system, that police are highly influential on outcomes. So while there may be some checks and balances along the way, at least formally in the system, once First Nations people or people low on the social hierarchy are brought into the Criminal Justice system through the use of police discretion, targeting etcetera, then they're really quickly flushed through that system and can very much end up incarcerated, and other poor outcomes along the way.

My understanding and view, based on my research, is that police have been key players in colonisation and establishing colonial relations of power where Indigenous people are subjugated, coerced, punished summarily since settlement. So the first police in Port Phillip which, of course, has become Victoria, their role was basically to overcome Aboriginal or First Nations People's resistance to occupation, and there were many casual killings of Indigenous People, First Nations People, that police were involved in. There were many massacres that police were involved in, or part of. There was brutalisation and coercion and very little accountability for that.

While the role of the first police was formally to protect everyone, including First Nations People, in practice, police were very much at the front line of colonisation. And it's my view from my research that there's a direct line between that process of - violent process of
 5 colonisation, settlement, invasion, and the high rates of incarceration, and bad outcomes we see for Indigenous people today, and police play a very key role in that.

MS MCLEOD: You've used the language there of police being in the front line, and note in the submission the role of the laws themselves, the courts and prosecutors there. Could you
 10 just explain how it is that police are the gatekeepers or the front line to the Criminal Justice system and explain what you mean by police discretion and targeting?

PROFESSOR JUDE MCCULLOCH: Yes. So police are the first point of contact for people with the Criminal Justice system. Police create the first impression of the Criminal Justice
 15 system and police are very powerful in terms of who's pulled into the Criminal Justice system. Police discretion, for example, is broad enough so that they can target people based on the way they look, so that identity becomes quite central to who is policed, not necessarily what a person does, but how they're identified as a person or part of a community that is criminalised.
 20

So police can target areas where Indigenous People or First Nations People congregate, they can target the behaviours that First Nations People engage in, and they can target people based on how they look, so pull over cars driven by Indigenous People, frequent areas or police more heavily areas where Indigenous People live or congregate.
 25

And when linked to this idea of accountability too, when there is not a strong oversight of police, those things can happen without remedy. But also once someone's pulled into the Criminal Justice system through targeting by police, being overpoliced as a community or as people who identify as Indigenous or are identified, it's very hard to marshal the resources to
 30 contest what is seen as criminal or called criminal activity. So that's called criminalisation.

And laws like the public drunkenness laws, for example, that have recently been repealed can be used in a way that really criminalises Indigenous people. A lot of offences are what's called street offences where there's no victims and the only person who's the complainant is
 35 the police. So it can really be a system set into motion by the police, the criminalisation, and a system that's very hard to intervene in when the police are the subject.

MS MCLEOD: So I take it from your answer that it can be deliberate, in terms of the allocation of resources, so that certain areas or populations are policed more than other areas,
 40 it can be deliberate in terms of the way police exercise their discretion or it could also be unconscious, in terms of the biases operating within individual police officers as to who they target and how they exercise the discretion, whether to caution, charge or -

PROFESSOR JUDE MCCULLOCH: Exactly. So it can be systematic, and systematised, as you say, in targeting particular areas, for example, or - and it can be racism on the part of particular police. It can be the view that Indigenous identities equal criminality, the easy criminalisation, but it can also be unconscious bias.
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MS MCLEOD: What's the consequence of that practice, systemic and what we might call conscious or unconscious bias, as operating. What's the consequence for First Nations People in their dealings with police?

5 PROFESSOR JUDE MCCULLOCH: The consequences are the continuing violation of
human rights, the reproduction of Indigenous identities as criminal identities so that rather
than being seen as First Peoples who have a call on the Nation States in terms of human
rights and historic injustice, but simply being criminals. And we know that many of the
10 people - many First Nations People are dragged into the Criminal Justice system at a very
early age. So it really narrows the life choices of people, or the life - the ability to move
through life in a way that people can meet their aspirations. And it compounds trauma and it
compounds inequality, and we know there are underlying issues related to colonisation with
15 trauma around education, around poverty and unemployment, but all of those things are
either can be a product of the criminalisation, or they can be compounded by the
criminalisation. And also, of course, child removal issues or Child Protection issues can also
be brought into play, so it can impact on a whole family.

MS MCLEOD: Much of your life's work has been examining these issues. Do you have any
view about what motivates the persistence of these issues?

20 PROFESSOR JUDE MCCULLOCH: That's a really big question and a really good question.
I think in some ways - well, in many ways, it's historical and it's a continuation of
colonisation and those colonial relations of power. It's political. And I think that part of it,
and part of what we want to focus on, is the ability to get away with it, too. So the lack of
25 accountability, it won't solve the problem, but it's a necessary step, because if a police force
can treat a minority community in coercive, violent, racist, prejudiced ways without any
consequences or substantive consequences, then that's one of the things that perpetuates it.
And the criminalisation becomes a self-fulfilling prophecy. Once someone has a criminal
record, then people are started - if First Nations People are overrepresented in prisons and the
30 like, they start to be identified as criminals.

MS MCLEOD: So you're talking about impunity there of police. Does it also affect the trust
of First Nations People in policing and their ability to engage, or their willingness to engage
with police?

35 PROFESSOR JUDE MCCULLOCH: Absolutely. First Nations People have very low trust
in policing, but linked to that, very low trust in the accountability complaints mechanisms
that exist, a feeling like they're not independent and that there is very little hope of any justice
or redress. Both in terms of the systematic or systemic issues and for individual complainants.

40 MS MCLEOD: In page 6 of the submission - on page 6 of the submission, if I could just read
you this paragraph or the opening of this paragraph:

45 *"While Victorian First Peoples and Aboriginal and Torres Strait Islander people throughout
Australia are overpoliced as potential offenders or targeted by police based on their identity
as First Peoples, they are also under-serviced, punished and criminalised as victims."*

So do I take it that you are saying there is under-servicing on the one hand and then a response by police that assumes First People represent a risk of criminal behaviour warranting intervention on the other?

5 PROFESSOR JUDE MCCULLOCH: Yes, so Indigenous First Nations People are overpoliced as potential offenders or targeted, and they're under-policed as victims. When they look for services from police for protection, they don't get that. So it doesn't - so the lack of faith in police isn't just limited to people who might come into contact with police as potential offenders, but also people who - and particularly First Nations women who might
10 want to call police - might want their services to protect them from, particularly, sexual assaults and family violence.

MS MCLEOD: Is it your evidence that the State Police - the State, rather, through the police force, are essentially criminalising social and economic disadvantage of First Nations People?
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PROFESSOR JUDE MCCULLOCH: Yes, but I think it goes further than that, too, because while I think that that's part of it, I don't think that being - I think that being a First Nations person is a risk factor in relation to police, in relation to being targeted by police. I think if you're well off financially and you have all the trappings of respectability, white
20 respectability, then you're inoculated to some extent, but you're not - you can still be targeted based on your identity as an Aboriginal person, First Nations person.

MS MCLEOD: And finally, for this group of questions, I was going to ask you, what's the impact of that on the trust in police and police oversight in Victoria?
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PROFESSOR JUDE MCCULLOCH: Well, recent surveys have said that the trust in police in Victoria is declining and since records or surveys have been done, it's at a low, but there is an absolute connection between trust in police and trust in the oversight system. Everyone will accept that amongst 10,000, 20,000 police and thousands and hundreds of thousands of
30 interactions with the public, there is going to be some problems. No-one expects a system that involves humans to be perfect. But you do want a system where there's misconduct, serious misconduct, excessive use of force, violations of people's human rights, that to be rectified and minimised.

35 So when you have a system where people have enormous powers like the police do over individuals' rights, their human rights, and can use those powers up to and including deadly force, if there's no robust accountability, that's going to affect how you see the police and the whole system. If something happens, you want to know that that's really abhorrent within the organisation, it's not systemic. But what's happening, I would argue, is there's systemic
40 problems. They're not aberrations. And the systemic problems remain unmitigated because there isn't - one of the reasons is there is a lack of accountability.

COMMISSIONER WALTER: Professor McCulloch, are there any figures, are there any data that actually talk about First Nations levels of trust in police? Have there been any
45 surveys done to collect that sort of information?

PROFESSOR JUDE MCCULLOCH: I know that the Victorian Aboriginal Legal Service has done a submission on police accountability. I think that that has some figures in it and they

certainly say that the level of trust amongst Indigenous First Nations People is very low. My experience is it's extremely low, but I can't point to any figures offhand.

5 MS MCLEOD: Dr Maguire, if I can turn to you and jump around a little in the submission to around page 10, the development of the police Ombudsman model in Northern Ireland, could you share with Commissioners your views as to whether there are parallels in Northern Ireland and the situation in Victoria?

10 DOCTOR MICHAEL MAGUIRE: Well, I think one of the big issues driving the establishment of the Police Ombudsman's Office in Northern Ireland was a lack of confidence in policing. As we emerge from the conflict that's caused troubles and we entered into a police process of forum and moving towards the peace process, one of the key issues was in relation to policing and how to address the issue of a substantial segment of the population which had mistrust in policing from the Catholic Nationals' point of view who had
15 a kind of faith in the Royal Ulster Constabulary and the way it reached the community. So a part of the reform agenda, part of the peace process, there were two elements which were important to address this issue of community (indistinct).

20 MS MCLEOD: Sorry, you're cutting in and out a little bit, Doctor. I was just going to mention that the feed is not perfect, so sorry to interrupt.

DOCTOR MICHAEL MAGUIRE: Okay. As I was saying, one of the issues of reform was the (indistinct) Royal Ulster Constabulary to the police service in Northern Ireland, where the focus of the police service should be on community policing, and this was a direct attempt to
25 increase public confidence in the police service. The second related matter to that was establishment of much greater police accountability and that led to the setting up of the Police Ombudsman's Office in 2000, where a part of the change agenda of the office was to improve and develop police accountability and thereby generate greater community trust and greater community confidence in policing. So I think one of the big issues in terms of parallel is the
30 chance to improve community confidence which obviously is an issue in Victoria, but was one of the direct features which led to the establishment of -

MS MCLEOD: I think Dr Maguire's - sorry, if I'm pausing there just to make sure you are finished. Just so we understand, for those unfamiliar with the history of the Northern Ireland
35 conflict, could you just explain to us the role of the Royal Ulster Constabulary in that conflict and then the peace process that followed, the importance of police accountability to that peace process?

DOCTOR MICHAEL MAGUIRE: Well I mean, the police service was - police service in
40 Northern Ireland was a heavily contested space. There was a legitimate perception that the Royal Ulster Constabulary was a representative of the unionist state and that it policed, inadequately, the Catholic community. And in many cases parallel to what Jude was talking about, in relation to over-policing and underserving the Catholic Nationals community in Northern Ireland. And as part of the police agenda, it was important to establish much
45 greater confidence in policing. So the reform agenda of police, the transition from the Royal Ulster Constabulary to the police service in Northern Ireland, with a much greater focus on community policing, was a direct account to address that as an issue, but it was seen as an important part of the exercise was much greater accountability of policing as part of that agenda.

So the design components and one of the particular design components of the Police Ombudsman's Office was all public complaints against police, that this was to be an important dimension of improving community confidence in policing. So you had a policing as a (indistinct) base, you had a police reform agenda, but as part of that process, you had the desire to improve and to generate much greater police accountability so that many of the issues which, from a community point of view, were felt to be inadequate, had to be addressed as part of the police accountability agenda.

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10 MS MCLEOD: Okay, you touched there on lack of confidence in police and accountability, before the PONI was established, the Police Ombudsman was established, could you tell us what problems there were with complaints handling?

15 DOCTOR MICHAEL MAGUIRE: Well, there was a police complaints body in Northern Ireland, but its profile was pretty low, and when people did bring complaints to it, the substantiation rates, again, were pretty low, around about 2 per cent. So there was little faith in the police complaints process, and that basically led to people not bringing complaints against the police because they felt it wouldn't be adequately addressed. But it also dealt with the issue of accountability within policing, because in many cases, misdemeanours or
20 misconduct in policing weren't addressed properly, so there wasn't an adequate mechanism for bringing complaints against police.

MS MCLEOD: Do I understand from what you were saying there was a lack of faith in police and police oversight systems?
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DOCTOR MICHAEL MAGUIRE: Yes, absolutely. The Maurice Hayes report which led to the establishment of the Police Ombudsman's Office clearly highlights the problems with the existing police complaints mechanisms, and it had to do, as I said, with the low profile and failure to substantiate complaints on a substantive basis, and in relation to the extent to which
30 confidence would result in the police complaints process.

MS MCLEOD: Before the Police Ombudsman was established, were those review mechanisms independent of police?

35 DOCTOR MICHAEL MAGUIRE: They were independent on paper, but in reality they actually dealt with very few complaints against the police. The majority of complaints were dealt by the police themselves in what we call a hybrid model, where there was "oversight", in inverted commas, of police complaints but in actuality the extent to which there was independent investigation was very little.
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MS MCLEOD: I just want to touch on the key reports or catalysts that you mention in your submission. The first is the report of Maurice Hayes that's noted in the submission at page 10 of 1977. What was the importance of that report into inadequacies in the system at that time?

45 DOCTOR MICHAEL MAGUIRE: Maurice Hayes was a Public Service Ombudsman in Northern Ireland, he was asked to address specifically the issue of police accountability. And one of the key messages from this report when he spoke to politicians, he spoke to community representatives, he outreached a whole range of areas in relation to the reviews on policing and police accountability, the key thing that emerged was that of independence, in

fact he says specifically in the report, independence, independence, independence is the cornerstone and the bedrock against which police accountability should be addressed. And therefore, his recommendation was the establishment of a completely statutory independent organisation, independent of police and independent of the Department of Justice and all the justice organisations, whose job it would be to address complaints from the public in a manner which was (indistinct) with the policing service.

MS MCLEOD: The next report you mention is the Patten Commission report which endorsed, has proposal to establish a Police Ombudsman with a number of recommendations.

DOCTOR MICHAEL MAGUIRE: Yes, the Patten report (indistinct) a piecemeal approach to police reform. I think he says in the report that police reform wasn't something that could be bolted on to the existing policing organisation, but rather he called for hope of holistic reform of the police service that led to symbolic changes from the uniform and the cap badge, and also the change of name, but also substantial change in the nature of policing itself in terms of recommendations. And he recognised that as part of that change agenda, it was important to improve police accountability. So he endorsed the Maurice Hayes recommendations and the recommendations put forward by the need for independence that the complaints would be decided by Police Ombudsman's Office, that they would decide how to investigate those complaints, that they would generate information across the policing service which could be used to improve police operations, and therefore, it was a key element, a key piece of the jigsaw of overall police reform.

MS MCLEOD: In addition to independence, you've mentioned a number of other key design recommendations that Patten made, including that the body be proactive, resourced, able to analyse data and trends, dynamic, to have a dynamic cooperative relationship with key stakeholders, broad scope to enable it to address systemic issues, and the ability to look back at past reports and complaints. Were these features recommended by Patten ultimately found their way into the PONI?

DOCTOR MICHAEL MAGUIRE: Yes, he did. And I think one area - one issue of context, I should say, though, is that this was part of an overall change in the police accountability mechanisms. It established the police authority, which had politicians and lay members, to oversee the policing plan and implementation of the policing plan and appointing a chief constable independently of Department of Justice. It also established the Criminal Justice reform, established a Criminal Justice Inspectorate which had responsibilities into policing. And as part of that jigsaw the Police Ombudsman's Office of Northern Ireland was established as well. So the issues identified by Patten and by Maurice Hayes were baked into the design of the Police Ombudsman's Office so it dealt with all public complaints against the police, but the legislation said that the police must give information to the Police Ombudsman, that the Police Ombudsman could, on its own initiative, undertake investigations into policing, those reports could be published, and that information would be generated on police complaints which could be used from a customer service point of view to identify problem areas and to allow both the police and the police authority to make decisions about how to improve the nature of the relationship between the police and the community.

MS MCLEOD: Could you just explain how the authority, the Inspectorate and the Ombudsman work and how they interact?

DOCTOR MICHAEL MAGUIRE: Yeah, well, I was also the Chief Inspector of Criminal Justice, so I had different kinds of relationships with all three organisations.

5 Really, it was a triangle. As Chief Inspector of Criminal Justice, for example, in my four and
 a half year tenure, I produced around 70 reports across the Criminal Justice system, because
 my responsibilities weren't just policing, it was also the public prosecution service, courts
 admission, prisons, probation and some other bodies as well as the Police Ombudsman's
 Office. In relation to policing, I would have given my reports to the police authority, both
 10 strategic recommendations and operational recommendations. They then would have engaged
 with the police as part of the change program and to follow up on the implementation of
 those recommendations. I also did follow-up reports myself as Chief Inspector of Criminal
 Justice, and as Police Ombudsman, I would have also attended meetings on a regular basis of
 the policing authority. I would have given published profiles of the complaints process by
 15 district in Northern Ireland, by nature of complaints, plotted changes over time, and that
 would have fed into the police authorities' discretions about a complaints reduction strategy
 with the police service. And so the three organisations, when they worked together, was
 about (a) greater accountability, but it was also about performance improvement within
 policing to ensure that these recommendations were implemented.

20 MS MCLEOD: You mention in the submission that a relevant consideration was also the
 British Human Rights Act and obligations arising in Northern Ireland under the European
 Convention on Human Rights. How did that influence the design process and the
 considerations that were taken into account?

25 DOCTOR MICHAEL MAGUIRE: Well, in two dimensions for that. One was in relation to
 the Police Ombudsman's Office, when we were undertaking investigations into serious
 criminal activity, quite often where there was death after contact with the police, we would
 have tried to ensure that the process that we used met Article 2 in terms of the European
 Convention of Human Rights, the right to life. There was a set of issues which needed to be
 30 addressed in order to meet the Article 2 agenda, in terms of independent investigation of the
 State Reports which were public scrutiny, engaging with families and so on. So we tried to
 develop that as part of our own methodology.

35 In relation to policing, there was a much broader set where the human rights articles were
 baked into the nature of policing itself. So if we take custody situation, for example, Article
 8, the right to privacy, the need to avoid inhumane treatment in policing, Article 2 in terms of
 investigations, they were built into the policing code of ethics so that there was a human
 rights basis to the nature of policing and the way in which their activities were generated, and
 that was overseen by a human rights advisor to the police authority. We did a regular report
 40 to police authority on human rights within policing and the way in which it had been
 implemented within the organisation.

45 So it was part of the focus of the ethics of policing and the way in which that translated into
 operational activity, but then became part of the oversight mechanisms as well where the
 human rights advisor, who incidentally was Sir Keir Starmer for a period of six years, a
 former Labor leader of the UK. He was the human rights advisor to the police authority. So it
 was a central element to the nature of the policing and the design of the new police service in
 Northern Ireland.

MS MCLEOD: Could you share with the Commission some of your early experiences with the Police Ombudsman of Northern Ireland, the PONI, and how you overcame early challenges?

5 DOCTOR MICHAEL MAGUIRE: Well, when I was Chief Inspector Criminal Justice, I was asked to undertake an inspection into the Police Ombudsman's Office. The Chief Executive had resigned, and he said in his resignation letter that he felt the independence of the office had been compromised, particularly in relation to legacy work, that's investigations into troubles-related matters and policing. I did an inspection into the Office of the Police
10 Ombudsman, and my conclusions unfortunately were that the independence of the office had been compromised, that reports were buffeted between the police organisation themselves, between families, NGOs and lawyers, and that there was a kind of failure to maintain the independence of the office when it came to the production of sensitive investigations. That report was presented to the Police Ombudsman. What I recommended was, for example, that
15 legacy reports should cease until they were properly resourced and a change program had been implemented in relation to the design of those investigations.

A number of months later, completely coincidentally, I found myself in the role of Police Ombudsman and I had to implement my own recommendations in that regard. So part of that
20 was the development of a greater quality assurance process, both with legacy reports and current investigations, and also developing a different relationship with stakeholders, the Department of Justice, the police service, non-governmental organisations, families, lawyers and representatives and so on. So that became part of my change agenda when I became the Police Ombudsman in my early days.

25 MS MCLEOD: And so what was the most or the most important features of tackling those early challenges? How did you go about it?

DOCTOR MICHAEL MAGUIRE: Well, I think the - sure, well I think the issue which
30 obviously had led to my arrival in the office was that of independence, and therefore I had to - and the activities, the nature of my engagement with the various stakeholders, I had to be very clear that while I was there to listen to what they had to say, while I was there to obtain any information that they had, ultimate decisions around independence and the conclusions and investigations were my own, and that would be the case, and that they would not be able
35 to influence the conclusions that I came to. So establishing the independence of the office, independent of the Department of Justice, I developed protocol which made it very clear that while I was accountable to the Department of Justice for resourcing, that the Minister and the Department had absolutely no role whatsoever in relation to the investigations and the conclusions of those investigations. I established much more formal communications with the
40 police, both at a strategic and an operational level which made it very clear that they would be asked to, for example, factual accuracy check reports but that would be it; they weren't there to influence conclusions of the reports themselves. And also I said to families, I said, "Look, I will bring you with us in terms of the investigative process, but I will not in any way be influenced by your own particular narrative in relation to the conclusions of my reports",
45 so it was about establishing a new role for the office, establishing the fact that it was independent, of all of the range of stakeholders, and that was then subject to external review, the Criminal Justice Inspectorate did an inspection into the office while I was there. They said that the independence of the office had been restored. And also the reports from non-governmental organisations, like Amnesty International, they were confident that the

independence of the office had been restored in that regard. So it was about improving quality assurance, it was about developing a different relationship with stakeholders, it was about demonstrating that we, without fear or favour, would both criticise the police, but also necessary - and it would necessary to say, actually, there was no misconduct or criminality within the police itself, and make sure that those conclusions were published widely in order to reinforce the fact that this was an independent investigation into policing activity.

MS MCLEOD: Can I just ask, were you reporting to government? Were you reporting to the elected members of parliament?

DOCTOR MICHAEL MAGUIRE: My accountability relationship was with the Department of Justice. My Chief Executive was the accounting officer for the office who had responsibility for the management of the resources, so that was the direct line, as it was.

I held regular meetings with the Minister for Justice, but that was simply at a strategic level to talk about the issues in the office itself. There were times where I went public to criticise the Minister for the failure to resource adequately. I informed the office of the investigations we were doing. I didn't report directly to the Northern Ireland Assembly, although ultimately they were responsible for the work that we did, but at the same time, I could have easily been called - in fact, my Chief Executive was regularly in front of the Justice Committee to talk about the work that we did. Coincidentally, the current Ombudsman, one of the recommendations that she has made is that the Office of Police Ombudsman should not report to the Department of Justice for reasons of independence but, indeed, should report to the Assembly, in much the same way as the Ombudsman's office does.

MS MCLEOD: And in your time, at least, was there ever an issue with the Department of Justice or the appropriate minister seeking to suppress your reports or recommendations?

DOCTOR MICHAEL MAGUIRE: Absolutely not, absolutely not. No minister would have dared to influence the Ombudsman's office and the reports they did.

MS MCLEOD: If that had occurred, did you have power to speak publicly?

DOCTOR MICHAEL MAGUIRE: Oh absolutely, I would have done.

MS MCLEOD: Okay. Can you just share, before we leave this topic, how the PONI works with the Coroner and other parallel investigative bodies?

DOCTOR MICHAEL MAGUIRE: Going back to context, we had the establishment of a police reform agenda, which was about the transition to the police service of Northern Ireland. We had establishment of independent police oversight mechanisms, but there was a much wider Criminal Justice reform in Northern Ireland which established other independent organisations, not only the likes of the Criminal Justice Inspectorate, but also an independent public prosecution service. The Coroner's service was already independent.

So if we think about the Criminal Justice process, if we were dealing with criminality, for example, the Police Ombudsman's Office would have produced a report into the criminal activity of individual police officers. That report would have gone to public prosecution

service who decided independently whether or not to prosecute that officer. If there was prosecution, a decision was made, then it went through the Criminal Justice system.

5 If there was a death in custody, a Coroner's inquest, the Police Ombudsman's Office inquiry into that death in custody would have informed evidence to the Coroner's inquiry who would have also taken evidence from other stakeholders as well. So our investigation into that inquiry would have performed part of the Coroner's inquest.

10 MS MCLEOD: Thank you. Can I come back to the topic of police oversight in Victoria and ask you both to respond to these questions. You say in the submission:

"The history of inquiries into policing and police accountability in Victoria is one of scandal and conflict."

15 In your submission. Can I invite you both, or either of you, to expand on that?

PROFESSOR JUDE MCCULLOCH: Yes, well, there has been - the system that we've got for -

20 DOCTOR MICHAEL MAGUIRE: Jude, do you want to start first?

MS MCLEOD: I think there is just a lag.

25 PROFESSOR JUDE MCCULLOCH: I'll start, Michael, then. There's been a history, a long history, of there being scandals in policing and then reform to the oversight system responding to those scandals, but in a piecemeal way without any view to sustainable reform or reform that is substantive.

30 I won't go through all the scandals, but one or two recent ones. There's the Lawyer X scandal that led to the Royal Commission. If we'd had a robust, independent oversight mechanism, it's arguable that that would never have got to that stage where the High Court said that police had behaved reprehensibly, and there was subsequently the Royal Commission. And another incident that's particularly relevant here today, I think, is in 2018, the then head of The Professional Standards Command in Victoria Police, which is responsible for investigating complaints, was found to have used a pseudonym to make highly offensive, racist and homophobic posts about people.

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40 So this is the history that we've got of revelations of problems, scandals that are so big in some cases they can't be overlooked, and then there's some response, but it's not a systematic response.

MS MCLEOD: Dr Maguire?

45 DOCTOR MICHAEL MAGUIRE: Yes. I mean, I think that's not an unusual pattern which you look at police oversight across the world, what you see quite often is a crisis response approach where institutions or organisations are established in response to particular issues, rather than a more strategic view as to what we want in terms of police oversight and how that affects the policing. The point that Jude made in relation to Lawyer X is an interesting one, because it says something about, for example, when we look at the horrors of the Police

Ombudsman's Office in Northern Ireland where we had direct access to information concerning the informers and the use of informers and, in terms of the reports, a number of reports that I did, and indeed the office has done over the years, we looked directly at the use of police informers, the way in which they were engaged in criminality, in certain cases, the way they were protected from justice, and the way in which that led to some quite horrendous incidents of murder and so on.

So it was one of the tension points that I had with policing was that I was very clear that in relation to the public, there is no area of policing activity which was outside the remit of the office, because my team were vetted to top secret levels, we did have access to some very sensitive information, because it was important, as part of the investigations that we did, that we had full access. And there was one particular occasion where I had to threaten to judicially review the police because of their failure to give access to information, and I remember saying at the time that, you know, investigation by negotiation wasn't an option in that regard.

So looking at the powers of the office and thinking back to the situation that we have in Victoria, you not only have a limited oversight mechanism which deals with a wide range of complaints, but actually the access to information that you have does seem to be problematic.

MS MCLEOD: You identify a number of key reports in the submission, page 8 and onwards, including the Royal Commission into Aboriginal deaths in custody back in 1991, so more than 30 years ago, a couple of parliamentary inquiries in 2016 and '18 into external police oversight of police corruption and misconduct in Victoria, and an audit of complaints conducted by IBAC in 2022, and you mention, Professor, the Royal Commission into the management of police informants. We understand that there was a government review in 2021/2022 by the government to - a systemic review of police oversight as a result of that Royal Commission and the recommendation 61, particularly, of that Royal Commission. We don't have that published yet, I'm not aware that that's come to hand, and no doubt we will have an opportunity to ask government officials and ministers about that review in due course, but are there key findings of those reports that are relevant to the Commission today that you would like to emphasise?

PROFESSOR JUDE MCCULLOCH: Well, of the 2018 parliamentary inquiry, they made 69 recommendations about reform of the system. They said it was very complex system, it wasn't very transparent. They pointed out a lot of problems.

One key recommendation they made was that all serious misconduct cases be investigated by IBAC, the independent body, rather than the police. So at the moment the police investigate 98 per cent of cases of complaints. But we - and Michael and I have spoken about this, and we've spoken to key stakeholders - don't think that that goes far enough. And there are a few reasons for that. It would just be another reform, a tacking on of something in a system that we say is already too complex and not fit for purpose, broken. And the second one is, it's unlikely, I think, that that would address the problem of First Nations People. And the reason for that, one of the reasons for that is that probably excessive use of force, which is the major problem that First Nations People complain about, what they most often complain about, wouldn't necessarily be categorised as serious misconduct, because when you look at what the police - how the police and IBAC categorise complaints at the moment, excessive use of force is often not seen as a serious misconduct.

And also it appears from the work of particularly the Victorian Aboriginal Legal Service, and other research that's been done earlier, that First Nations People have more serious complaints in the way that VALS views them than non-Aboriginal people, but they're more likely to complain than non-Aboriginal people of being assaulted. There's more proportion of those complaints. So we say a corruption body is not appropriate as a police complaints mechanism, but particularly inappropriate when we're looking at use of force, excessive use of force, deaths after police contact. That's not what we understand as corruption. A corruption body isn't orientated towards that.

And I just wanted to say, I'm not sure if you want me to talk about it here, but the audit, the 2022 audit, I think that that's a really important piece of work that IBAC has done. And they looked into 41 complainants and 63 complaints that had been put in by First Nations People in Victoria that were closed in 2018. And it's actually quite stunning. They found that - well, they found there was, by reviewing the files, that there was bias on the part of the officers who were subject to the complaint against the complainants. They found that the officers who were investigating were not impartial. They found a really high level of conflict of interest, and by that I don't just mean police investigating police; police who worked together investigating each other or who were in the same service area.

And the thing that I found most alarming is, they found that in the majority of cases, most cases, that the investigation was inadequate; that is, that the police who were investigating did not look at CCTV footage, didn't take witness statements or didn't take them into account, and didn't look at the medical evidence, which is very important when assaults are involved.

And I think it's also important to take into account and to think about that all these problems that the audit that IBAC did find happened under the current system where IBAC is oversighting. So their system, the system we've got now, produced those problems. The audit doesn't address those problems, in that it doesn't say, "All right, justice for these individual complainants who didn't have their complaints properly investigated". It only makes recommendations.

And you can see by the way it's written, they've made these recommendations, or similar ones before, but they haven't been acted on, and too, some of the recommendations are, like, "Police haven't investigated these complaints properly; they need to be trained in investigations". Well aren't they investigators? And isn't the problem the lack of - isn't the problem bias, impartiality and conflict of interest? Isn't that lack of independence? And doesn't the very - in my opinion, and Michael shares it, the lack of robust independence of IBAC has allowed this to happen and cannot rectify it.

MS MCLEOD: Can I invite you both to comment on these findings of that 1922 report, Victoria Police handling of complaints made by Aboriginal Peoples conducted by IBAC. IBAC highlights that:

"Aboriginal young people and Aboriginal men are six times more likely than their non-Aboriginal peers to be processed by police as alleged offenders and 11 times more likely for Aboriginal women. High contact rates are recognised as being a consequence of colonisation and historic discriminatory laws and policies. Due to this experience of historic racial bias, many First Peoples continue to hold view that the police are interested in

controlling them rather than protecting and upholding their rights and interests, and the research shows Aboriginal people in Victoria believe they're subject to overpolicing and that constant police scrutiny and checks can lead to harassment and repeated house visits without explanation."

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So can I invite you both to reflect on those findings of the IBAC report.

PROFESSOR JUDE MCCULLOCH: I would say that reflects the perspective of people, particularly Indigenous people who make complaints, amongst lawyers, particularly criminal lawyers, and also particularly lawyers and community workers often who come in contact with Indigenous people.

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MS MCLEOD: Dr Maguire?

DOCTOR MICHAEL MAGUIRE: Well, I think it's a pretty good summary of the nature of the relationship between police and First Peoples. I mean, one of the things that strikes me about looking at the situation in Victoria and the way in which there have been numerous reports over the years is that I question where the appetite for change is. Powerless groups, vulnerable groups, people that have contact with the State, are citizens less powerful than those lobbies that want to maintain the status quo. Police by their very nature don't like change; police unions don't like change. I wonder whether there is political appetite for change itself. I always felt in my role as Police Ombudsman that I was a link between the citizen and much more powerful organisations, that I was able to ask questions on their behalf which they couldn't do because of their vulnerable status. I don't see an appetite for change in Victoria, police oversight change in Victoria, and that is borne out by the lack of implementation of recommendations over the years.

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You look at the IBAC and the excruciating report that IBAC did on how the police treat Aboriginal people. Where is the conclusions of that? What has happened? Whenever there is a death in custody and police officers are found to have behaved inappropriately, where are the sanctions that come out of that? How are they published?

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All of those things contribute to a lack of confidence in the police and how they deal with activities, and that was one of the reasons why, when I did do a report, it was very important that those reports were published. I investigated the Chief Constable and a senior team for criminal activity. It was very important when I came to the conclusion that there was nothing to see here that that report was published.

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When I investigated the allegation that an individual had been beaten to death while police officers stood by and watched it, it was very important that my investigations - conclusions that that didn't happen was published. At the same time, when I found that the police had acted inappropriately, where there were officers that needed to be disciplined, again, that needed to be published and officers were held accountable for their behaviour. You know, aside from whatever the motivation of bad behaviour is, one of the factors you need to consider is, people will behave badly if they can get away with it. And a lack of oversight, a lack of accountability, that does lead to people, officers behaving in ways that they shouldn't, irrespective of what their motivations are. So stronger accountability, as Jude said at the beginning, will not solve the problem but it is part of the jigsaw that you need to put in place

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to ensure that those who are vulnerable are treated in a way which is respectful of their human rights.

5 MS MCLEOD: Just to hone in on the current Victorian model, the two key institutions or bodies responsible for police oversight, are Victoria Police itself in terms of the police conduct unit, the Chief Commissioner has power to investigate police complaints, which works through a Professional Standards Command and chain of command through to the regions, and must refer a complaint of corruption to IBAC, and then we have the IBAC, which is a standalone body, as you mentioned, established to investigate corruption and
10 misconduct of police and protective services. But as you mentioned, Professor, the IBAC ends up referring matters back, so that I think you said 98 per cent of complaints are dealt with by police themselves, and IBAC is primarily established as a corruption body, although it also deals with misconduct of police. Then there are other bodies that might deal with unlawful discrimination on the basis of race, like our Equal Opportunity and Human Rights
15 Commission or the Australian Human Rights Commission, or other bodies dealing with misconduct of one sort or another. But they are the principal organs, being the police themselves and the IBAC.

20 Can I just mention to you from the website of IBAC, its powers to investigate - I'm summarising here - under the independent broad-based Anti-Corruption Act of 2011, IBAC has the power to investigate human rights breaches, use of force, discrimination, misuse of information, a range of specific offences and conflicts of interest. It can do so of its own motion, it has powers of examination, including some limited or exceptional powers of public examination, it can undertake research to consider thematic or systemic issues, as it did with
25 its audit in 2022, or in the case of Operation Ross, concerning Ballarat Police Station, for example, and it can pursue public education. And it can also refer complaints of serious misconduct back to Victoria Police. And as I understand what you were saying, it apparently does that in most cases, if the percentages are right.

30 PROFESSOR JUDE MCCULLOCH: Yes, according to the 2008 parliamentary - 2018 parliamentary inquiry, 98 per cent of complaints are investigated by police.

35 MS MCLEOD: So this is what we call a mixed civilian model. To cut to the chase, what is the problem with a body established to investigate corruption also investigating police misconduct that may or may not be corrupt in nature?

40 PROFESSOR JUDE MCCULLOCH: Well, I think there's another fundamental question, or issue, and that is the powers of this corruption body, anti-corruption body. It can investigate complaints against the police, but almost always it doesn't, because 98 per cent of them go back to police. It can review complaints, or it does review and monitor complaints that police investigate, but as we saw from the 2022 audit, it can't rectify or it doesn't rectify the problems that occurs, and a review won't tell the IBAC what hasn't been investigated necessarily or what's missing. There might be some indication of it, but it's clear from that
45 2022 review that all those things occur, even though IBAC is overwatching.

They can request information from the police, but they can't demand it, as in the case of PONI. They can recommend, but their recommendations are not necessarily taken up, and with PONI they often are. If there is criminal conduct too - it's a very complex system, and the 2018 parliamentary inquiry has got, like, a model of how it works that you'd need to be

some engineering genius to work through, it's so complex. They can publish reports but as Michael's pointing out, nowhere near to the extent that something like PONI does. They can collect data, but it's such a fragmented system, the data just isn't there, so it's quite opaque.

- 5 MS MCLEOD: Is it just a case of tweaking the powers of IBAC here? Would that be good enough to give them additional powers, additional resources to look at police misconduct, or is it your view that we need to move to the independent Ombudsman model?

10 PROFESSOR JUDE MCCULLOCH: I think we need to move to the independent Ombudsman model. It's recognised as the gold standard around the world. PONI is an example that's looked to as an ideal model. It's also a model that has assisted with the process of treaty - basically the peace process in Northern Ireland. It's achieved much more than anyone would have expected in term of building community confidence in a police force that was reviled by many in the Catholic community, and for good reasons in many cases.

15 The other - there's many reasons, but the other thing is that IBAC is part of the discredited system now in relation to investigating police complaints. We can tack something else on there, but it needs a fundamental reset, particularly for First Nations People where the confidence in police - it's not just the confidence in police. Let's face it, it's the experience
20 which leads to the confidence, the experience of colonialisation, the history of colonial violence which is continuing today with police on the front line.

So I would say that this is once in a generation - more than a generation; it's a real opportunity for real change. It will be costly financially, but the cost of doing nothing will be
25 higher. There's civil action, but it's more about democracy and civil actions against the police, which will no doubt continue diversion under this system where the State has to pay out money. But it's human rights and democracy. A change in the system is so important for First Nations People, but it's important for every citizen, every person living in Victoria. And as Michael's pointed out, it's important for police too. Because police need to be a professional
30 service and get the feedback from this complaints system, accurate feedback. They want - it should be that these things that happen are an aberration and they can be stopped, not that they become embedded.

35 MS MCLEOD: Dr Maguire, can I ask for your insight and reflections?

DOCTOR MICHAEL MAGUIRE: I think it is - and I endorse what Jude has said and the importance of independent oversight to improve and engage with greater community confidence in policing. I mean, the problem with IBAC, and this isn't to criticise individuals in IBAC, it isn't to criticise the work that we do, or indeed in any way question their integrity,
40 but it is about recognising that there are structural flaws in how they currently deal with police complaints, institutional flaws. If you have an organisation that in real terms is only investigating in their region, it doesn't matter whether it's 2 per cent or 6 per cent, the vast majority of complaints are investigated by the police themselves.

45 What that means is, you're giving false assurance of the independent investigations of complaints, because if you're an individual that's in Victoria and you want to make a complaint against the police, you have - in the vast, vast majority of cases, that complaint is going to be investigated by another police officer. If your starting point is a lack of

confidence in policing, how can you possibly have confidence in the police complaints process if it's going to be investigated by another police officer?

5 So the fact that you have an organisation, which on paper looks very similar to the Police
Ombudsman's Office in terms of publication of reports, the way in which it can get
information from the police and so on, but when you dig below that and you get to a different
level of analysis and you realise that in the vast majority of cases, the police will investigate
themselves, how can you, as a community, have confidence in that if you have mistrust in the
10 police, based on your lived experience? How can you possibly have confidence that that
conversation, or that investigation is going to be done independently?

15 And as we have seen with the IBAC report into looking into how complaints by First Peoples
are investigated, that lack of confidence and trust is actually born into reality, because you
have conflicts of interest, you have a failure to investigate, you have labelling people in a way
which mistrusts their evidence as part of the investigative process. All of those things lead to
an outcome which is inadequate for the individual making the complaint, and I think it's
inadequate for Victorian society, which believes that it has the independent investigation of
complaints, believes that that assurance is there, but in reality, when you get into the detail,
20 that is not the case, and there is false assurance that police complaints are investigated
independently.

In reality, when you look across the spectrum from the old time of internal affairs, that was
discredited. So you have a spectrum of hybrid models and different countries are placed
somewhere along that spectrum. The Police Ombudsman's model is at the other end of that
25 spectrum which deals with all public complaints against the police, they're independently
investigated, those reports are, in serious cases, are published widely. They have - PONI
officers have the powers of a police officer, we can arrest individual officers, we can search
their properties, we can search their homes, and we can publish the outcomes of those
investigations.

30 Those are the building blocks of design, I think, which are important in developing
community confidence, but it's not only that. It's about engagements, it's about outreach, it's
about showing that there is a different way of doing things, because if you don't have that,
then people will continue to have a lack of confidence in the system.

35 MS MCLEOD: I might ask you if we can step through the design features that you regard as
gold standard, and you've set out a number of features relevant to PONI at page 27, and just
to touch on each of these and then to invite, Dr McCulloch, you, particularly, to comment
from a Victorian perspective if we can go through this list. First, you identify institutional
40 independence from the police. So I take it, Dr McCulloch, you would say that a system that
involves referral back of a vast majority of complaints back to police does not achieve that
independence?

45 PROFESSOR JUDE MCCULLOCH: I agree.

MS MCLEOD: Dr Maguire, do you want to say anything more about the requirement of
independence? I know you've emphasised that as being the basis of the Hayes
recommendation, and Patten subsequently, and your work, your own experience. Anything to
add to that?

DOCTOR MICHAEL MAGUIRE: Independence is crucial. Yeah, if (indistinct) the police complaints process they have (indistinct) and that means real independence both in terms of the organisation, how it's financed, the legislative base that underpins it, and the people that are doing the investigations themselves, and indeed what the outcomes are.

MS MCLEOD: You just mentioned, you just touched on the second, which is that they investigate all public complaints, so that's criminal and non-criminal behaviour, into police from the minor to the serious. Why is that important?

DOCTOR MICHAEL MAGUIRE: Well, it's important for a number of reasons. I think first of all, from what we talk about in relation to independence, it's important because people can have confidence that the police complaints organisation deals all aspects of policing in that regard, and that investigation will be carried out independently. It's important in relation to the information base that can be collected. Because you're dealing with all public complaints, you can develop quite a sophisticated understanding of the nature of complaints, the nature of where those complaints are being made, the district, down to individual officer level. There were occasions, for example, when I was able to show to senior police officers that certain response teams in Belfast had double and triple the number of complaints of other response teams in the same area, response team being the first responder in a way. Now, that doesn't necessarily mean there is a problem, but it does raise questions as to why that's the case.

And it's important because, as part of the rationale of the organisation that it deals with all public complaints, that doesn't mean - I mean, the police have their own internal corruption unit; they obviously dealt with internal disciplinary matters themselves, but public complaints were dealt with by the police. So if there was an incident involving police officers, the police themselves said, "This is now a matter for independent investigation", whether it be a death after a car chase, for example, where the police were pursuing a car and the car crashed and the individual was killed. That caused quite a lot of community issues in terms of the nature of the police response to that incident. The police were able to say, "Look, this is now subjected to an independent investigation", and that's the same with all serious cases. So the independent - investigated all aspects of complaints, yes, it is expensive, but it is important and was important in part of this dealing with the nature of independence. And there was quite a debate around this when Maurice Hayes did his report. And certainly they were very clear, PONI has to investigate all public complaints, because the issues of community confidence were so bad that that was the only way that we were able to move forward in policing and all public complaints would be investigated independently.

MS MCLEOD: The next issue is complete control over the complaints process, and you expand on that. Can I offer you this summary. Often in inquests in Victoria, a single department of government takes the lead responding to a Coroner for a death in custody, for example, to give a whole of government response, and this would appear to plainly create a process where a single body is acting as the gatekeeper for the government response, how they're to respond, what issues they're to respond to and which are to elevate in terms of their importance. And there is clearly a risk that's been identified that this is a way of potentially managing a response so that certain unpalatable features are downplayed and other features are emphasised.

In terms of the whole of government responding in this manner, is there an advantage to having an independent Ombudsman like the PONI taking control of that process so that there is not that ability to manage or downplay certain concerns by some groups of public servants and the preferencing of issues by the lead agency?

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DOCTOR MICHAEL MAGUIRE: Well, I think it's important to say that the remit of PONI was only to look at the police. So if there was a death in custody, we would have investigated the policing activity in relation to that individual and, indeed, in my time in office, we had - certainly we brought a custody sergeant that was prosecuted for manslaughter, and another custody individual pleaded guilty to misconduct in public office because of a death in custody, but we only did the police investigation. We didn't look at the other State agencies, we didn't look at other aspects of government. We only looked at police and their activities and their behaviours and in the context of death of an individual. It was the Coroner that took a much broader view as to what was important in relation to the coronial inquest and so on, but we only looked at the individual policing activities in relation to any death in custody, or indeed any death -

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MS MCLEOD: I understand, thank you. Professor McCulloch, do you have any view about how we establish a mechanism to get to the genuine root cause analysis of cause in cases that might involve police and others, Corrections officers, protective services officers, for example, and how we ensure transparency of the system?

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PROFESSOR JUDE MCCULLOCH: Well, I think I can't talk - I can only talk about the police accountability part of it and I do believe that, having an independent, robustly independent, substantially independent accountability mechanism is the way to address police conduct when it is police contact deaths, and perhaps police contact - perhaps when the police behaviour has led to the person being in non-police custody, that would be also something that would - that should be investigated by the independent body.

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MS MCLEOD: So do I take it from both of your answers that there needs to be a communication mechanism or a collaboration mechanism, so that other agencies like the Ombudsman, our Public Service Ombudsman, can be involved in a joint process or a collaborative process, so that those - if other agencies are involved, they can be properly examined?

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DOCTOR MICHAEL MAGUIRE: My own view would be, I think, when you look at, you know, serious incidents, how they occur, there is never one factor involved. Multiple State agencies can be involved; there can be multiple opportunities for somebody to change the direction of what happened. And I think any process which puts their arms around an incident and tries to unpick what happened as part of a series of steps I think would be beneficial, from a police accountability point of view, independent investigation of the police and the impact that they had is a critical part of that, but quite often there are other agencies involved as well, and if that's part of the bringing together of a complete understanding of an issue, then I think that would be beneficial.

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MS MCLEOD: The other gold standard that you've mentioned appears self-evident. Is there any other comment you wish to make about those powers of police, PONI having the powers of police, transparency, separate cultural identity and appointment by a royal warrant to generate statutory independence. Is there anything you want to add to those features?

DOCTOR MICHAEL MAGUIRE: Well, I'd just develop a minor one, the royal warrant is important, because - and I probably would say this, the Ombudsman' job is, I think, the most difficult, I think, Public Service jobs in Northern Ireland, and I always took the view in my

5 interview with Peter Robinson and Martin McGuinness, who were the First and Deputy First Minister at the time, I said to them, "There will be occasions where both of you do not like what I produce", and that's the nature of the office. So therefore, having an appointment under royal warrant which can be subject to the vagaries of any political influence or departmental influence, I think, is hugely important in that regard.

10 The transparency issue, I think, is also worth developing, because one of the things which PONI has done which does make it different from other oversight organisations is that we developed quite a sophisticated mechanism for getting external views on the work of the office. We regularly surveyed police officers, we surveyed complaints, we surveyed members

15 of the public about their views on PONI. We surveyed different categories within the population based on race, gender, and so on. So we had quite a sophisticated 360 view of PONI and the perceptions of it. Not all of them were favourable, but that's important to know in order to make operational changes.

20 And not only the transparency in the operations of the office in terms of what people think about us, transparency in relation to the work that we do, so complainants got an individual letter detailing their allegation, the approach that was taken and the conclusions, transparency in relation to publication of serious incidents and what our conclusions were, and I think transparency in relation to data, information.

25 If you want to improve something, you need the information to allow you to make decisions in relation to that, and so we had quite a sophisticated database which looked at complaints across Northern Ireland, and that information was given to police as part of their own performance improvement. So there is - transparency in the operation of the office, I think,

30 was quite important in that regard.

The powers of the office in terms of the powers of the police officer I think was hugely important, not only from the point of view of parity of esteem, that my officers had the same status as a police officer, but actually was critical in undertaking criminal investigations. If

35 there was an investigation into a serious police incident - excuse me - my staff took over the scene and we would say to families, we had a family liaison officer that said, "This is now subject to independent investigation". The police themselves welcomed this, because they knew that it would be subject to an independent investigation. And indeed, I remember when the Chief Constable was under investigation themselves, his comment was, we quote in our

40 submission, which is "I have confidence in the Police Ombudsman, let him get on and do his job", and I think that was welcomed by the police, because they knew there would be occasion whereby we would say there was nothing to see here, and in order for that to be accepted, they recognised that they would have to take it on the chin whenever we said there was serious misconduct issues involved.

45 So that transparency issue was part of that agenda.

MS MCLEOD: Professor McCulloch, our mechanisms include the inspector and parliamentary committee, which can, of course, examine the officers involved, that is, the

IBAC Commissioner and police, and the report of IBAC to Parliament on its investigations and processes. What would you say to the Commission about the efficacy of our oversight mechanisms here in Victoria?

5 PROFESSOR JUDE MCCULLOCH: I think the oversight mechanisms for police are very weak, substantially - formally independent, but substantially not so. The power base that IBAC has is weak compared to something like PONI, so here, we don't have - IBAC doesn't have the powers of a police officer. Here, they don't investigate a hundred per cent of complaints like they do in Northern Ireland. But importantly, criminality, if there's crimes to
10 be investigated, that will be sent back to the police generally. Am I answering your question?

MS MCLEOD: Yes, yes, thank you.

15 PROFESSOR JUDE MCCULLOCH: Yes.

MS MCLEOD: Can I turn now to your recommendations at page 31, and step through them and invite your additional comment on any that you wish to expand on.

20 The first is, plainly, the establishment of a new police oversight body that explicitly reflects the civilian control model, and is entirely independent of police. We've covered that in your evidence and in your submission.

25 The next is, given the ongoing history of colonialism and negative impacts of policing on Victorian First Peoples, the new police oversight body should ensure the culturally appropriate handling of complaints made by Victorian First Peoples. Now, presumably that would be something that Yoorrook may be interested in offering some recommendations on. In your work, do you have anything to share with them in terms of how this could be done in practice?

30 PROFESSOR JUDE MCCULLOCH: I think it would be very important for it to be done. I think there's enough community-controlled - Aboriginal community-controlled organisation and expertise, for example, at VALS. But you're talking about, yeah, just - well, if there's faith in the organisation that it's going to be truly independent from police, I think it would be possible to recruit First Nations investigators. It has been somewhat difficult to recruit
35 Aboriginal investigators to Victoria Police, for example, because of lack of confidence in the police. There's been some accounts of very difficult work relations of Aboriginal people working in the police.

40 COMMISSIONER WALTER: And I guess that raises the question, too, even if you did do a completely independent oversight, if you've only got Aboriginal people there as investigators but without any real power in the executive and in the way that the body operates -

PROFESSOR JUDE MCCULLOCH: Yep.

45 COMMISSIONER WALTER: The risk is that it just becomes, again, Aboriginal people working at the bottom of the pile with no real power to change anything. It's more window dressing than it is self-determination.

PROFESSOR JUDE MCCULLOCH: Yeah, I think that's a good point, Commissioner. I wouldn't argue against that.

5 MS MCLEOD: The next is that the new police oversight body should have complete control over what's considered a complaint, warrants investigation - so I understand that to mean not establishing some unduly technical threshold for investigation to proceed - and have the power to initiate investigations on its own motion, essentially, in the public interest. The new police oversight body should have powers of a police officer; we've touched on that. Required to provide information requested by the new police oversight body for the purposes
10 of investigation. So just to explain that, police can be compelled, essentially.

DOCTOR MICHAEL MAGUIRE: That's pretty - you can essentially compel them. My legislation said police must give information to the Ombudsman in conducting his investigations. Because otherwise, you have investigation by negotiation, and that's not
15 acceptable from an independence point of view. I, as I said earlier, had to threaten to judicially review the Chief Constable because of his failure to give me what I felt was information critical to the investigation that I was undertaking. In the end, it didn't go to court because there was a new Chief Constable and he, as he said himself, opened the books, as it were. But I couldn't have done that had I not had the legislation and the powers to underpin
20 what I was doing.

So it was critical to PONI, it was critical to confidence in its investigations that the community felt we could have access to all the information that we need.

25 Before we move on, can I just say something about the PONI initiative investigations, that was an important component of PONI's work, because quite often and on occasion, there would be an incident that received quite a great deal of public scrutiny through newspaper reports or whatever. There necessarily wouldn't have been a complaint arising from that, but certainly was something which I felt, as Ombudsman, had an impact on public confidence in
30 policing, and therefore, needed to be investigated and I opened up an investigation into that particular incident.

So it was an important part of the tool kit that I had, which I felt, again, demonstrated the independence of the office to be able to look at issues of which there were public concern.
35 So own initiate investigations I thought were important, there weren't many, but for those that I did open, I felt they were significant.

MS MCLEOD: The next is - seven is transparency; we've touched on. And you mention in eight, the need for the oversight or control of the organisation not being a police officer or
40 former police officer. Was the experience in Northern Ireland that police involvement affected the credibility of the organisation?

DOCTOR MICHAEL MAGUIRE: I think there's two dimensions to that. I mean, I am firmly of the view that whoever heads a police oversight body should not be a police officer.
45 That is about civilian control, civilian independence of police oversight. Because for me a civilian perspective is one which moves away from the group thing that can exist within policing. It can take a perspective on issues which is more from a community point of view to say, "Okay, I don't think that's acceptable. You might think it's acceptable from an operational point of view, but I don't think it's acceptable from a civilian perspective."

So the head of that organisation sets the tone, the culture, the ethos, and therefore I do think that it is important that an individual who does handle police oversight is not a police officer.

5 Having said that, it was absolutely critical to the success of the organisation when I was there, I felt, to have the experience and expert police officers as part of the organisation. It was critical when I investigated complaints of the troubles. I had some very experienced former
 10 detectives working in the office who had the technical skills to undertake quite complex cold case reviews. And that mix of civilian and former police officer staff, because I recruited
 15 civilian staff and the officer recruited civilian staff from a range of individuals, whether it be other Ombudsman's offices, other regulatory bodies, military and so on, that mixed with
 20 police in the context of our own culture of an independent oversight body was important.

So while the head of an organisation, in my opinion, should not be a police officer, I think it's
 15 critical that you get the right mix of technical skills, part of the operations within the organisation, to get the technical competence to do the work that you need to do.

MS MCLEOD: The next is your recommendation of a single Ombudsman who is an officer
 20 of parliament. Is that about accountability, as we've discussed before?

DOCTOR MICHAEL MAGUIRE: Yep, yep.

PROFESSOR JUDE MCCULLOCH: And visibility, would you say Michael?

25 DOCTOR MICHAEL MAGUIRE: I think visibility. I mean, there is quite a lot of confidence invested in the person who held the position of Police Ombudsman. It was hugely important that, as Ombudsman, I could make public statements, that the office was
 30 recognised in the context of an individual. And that helped, I think, to develop, certainly in the early days of the office, helped develop confidence in the work that it did and its independence from the police, yeah.

MS MCLEOD: And your final recommendation is around resourcing. We've seen in
 35 Australia, not just in this jurisdiction but in others, the unresourcing or the stripping of budgets of important public offices of accountability. Do you have an idea how you would establish that guarantee of adequate resourcing?

DOCTOR MICHAEL MAGUIRE: From my experience and looking across police oversight
 40 in different jurisdictions, what I've seen on occasion that the State can be very good at the architecture of oversight, can be very good at saying what we have in place is independent, is necessary and so on, but quite often where it fails is to follow that through in relation to the resources given to an organisation to allow it to undertake its work.

I think if there was to be a body established in Victoria, then there needs to be a very detailed
 45 implementation plan looking at what is required to deliver this organisation on the ground, and that means resources. And I'm involved in a piece of work in Queensland where there is a recommendation coming out of the Royal Commission where it is actually that, this is about putting together a very clear understanding of what the organisation looks like, what resources they need to make it work and what resources are adequate to undertake the business that it needs to do. So you can't enter into this blindly; you have to have a very clear

understanding of what is required to make this work. Otherwise, you will have the architecture, but you will have the false assurance because the resources or the organisation simply does not have the resources to do the work that it needs to do.

5 MS MCLEOD: You annex to your submission your article Reforming Police Oversight in Victoria, Lessons From Northern Ireland, published last year. Is there anything you would like to draw to the attention of Commissioners from that article?

PROFESSOR JUDE MCCULLOCH: I feel like we've covered it.

10

MS MCLEOD: Covered the key issues? Commissioners, do you have any questions of Professor McCulloch or Dr Maguire?

15

COMMISSIONER WALTER: I've got just a quick one. I guess it's more probably a comment than a question. You note in your article, and you've mentioned it here as well, that one of the key roles of the early colonial police was to clear the way for white settlement and to suppress resistance to dispossession. Why do you think that this different treatments and different approach to Aboriginal people has persisted in to these current times? I'm not asking you to come up with an answer, but -

20

PROFESSOR JUDE MCCULLOCH: It is a phenomenal familiar around the world, isn't it, that policing, overpolicing, policing that is of an entirely different type to other groups persist in relation to First Nations People. Perhaps it is because that we would be forced to recognise the enormous debt, the enormous State crimes that have been perpetrated against First Nations People, as I said, the enormous debt of the land, you know, everything is built on the back of that violent occupation, and coming to terms with that appears to be hard for the State and many people, what that really means. And that criminalising just blocks out that idea that First Nations People have human rights which extend to repatriate, to getting stolen wages back, a whole host of things that the State and the people would have to come to terms with. But criminalisation makes white people, in some ways, the victim.

30

So it's a comment, it's not really a specific answer, but I do think that it's systematic, systemic, and that there are structural things that can be done towards intervention. And one of those is changing policing, and that must involve accountability.

35

COMMISSIONER WALTER: Accountability to First Nations People?

PROFESSOR JUDE MCCULLOCH: Accountability to First Nations People which will benefit all citizens, all people living in Victoria. But because of the continuing history of colonial violence will make a big impact on First Nations People, in particular.

40

COMMISSIONER BELL: Yes. One quick question for Professor McCulloch and another for Dr Maguire. Professor McCulloch, you drew an analogy between the situation in Northern Ireland and the situation in Victoria. In Northern Ireland, two communities making up the one in serious political conflict with each other, one being overpoliced and under-serviced, and independent policing based on human rights being part of the solution. And I think you were making the point in the context of treaty negotiations that are happening here that the situation is something like that here. I wonder, could you explain that better than I have, what you meant by that remark?

45

PROFESSOR JUDE MCCULLOCH: I think you explained it quite well, but in Northern Ireland, there was a history of colonialism, British colonialism, and repression, coercion of Irish people, and the Catholic people in conflict around colonialism and occupation from 1969 when the British intervened, and the repression of a Civil Rights Movement, which is the Catholic Civil Rights Movement, led to an escalation of conflict between Catholics and Protestants, but with a partial military presence and a militarised police force.

And there are obvious differences between here and Northern Ireland, but the remarkable peace process, where the policing piece was seen as central, it had to change to end the conflict, needed a police force that wasn't seen as partisan, wasn't seen as above the law, but accountable to all the people and including all the people, was so important to ending that conflict, ending or partly healing that history of colonialism. There are still many echoes of it there now, but as I understand it, having my limited understanding from my networks in Northern Ireland, it's been good for everybody. Been painful in some ways, but that acknowledging the history, acknowledging the need for change, acknowledging the part of police in the violence, not as protectors but as oppressors, has been really important in bringing about that change.

And I know we're not in the same situation here, it's ridiculous to say we're like Northern Ireland, for all sorts of reasons, if only because of sheer numbers. Indigenous People make up 3 or 4 per cent of the population in Victoria, perhaps. So it's a different situation, but it's still the same issue of justice here, which is felt so intensely and appropriately, like, by people who have been colonised in such a violent manner and continue to experience the violence of colonisation through policing.

COMMISSIONER BELL: Thank you. Dr Maguire, you might like to make a follow-up remark, if you wish, on that same subject, but my question to you is different, and my question to you is, what was the initial attitude of the policing, of police as an institution and the police union as a workplace organisation to the changes, and did it change over time?

DOCTOR MICHAEL MAGUIRE: That's an exceptionally good question. I think the initial response of the senior management and the police to the establishment of PONI was one of probably reluctant acceptance initially by the then Chief Constable. He saw the political reality, that this was coming, and -

MS MCLEOD: We've gone. Got you back.

DOCTOR MICHAEL MAGUIRE: Sorry, Commissioner Bell, I assume you dropped out there. I'll start that again.

COMMISSIONER BELL: Yes, start again, if you wouldn't mind.

DOCTOR MICHAEL MAGUIRE: Yeah, I think from a senior management point of view, I think the initial reaction from the police was one of reluctant acceptance. They understood the political realities of police reform, the political realities of the transition from the RUC to the PSNI, and the first Chief Constable was the Chief Constable of the RUC who became the first Chief Constable of the Police Service of Northern Ireland, so there was a political reality that police at the time just accepted.

The response of the police unions I think was more interesting - sorry, not more interesting, was different in the sense that they initially publicly accepted police oversight - independent police oversight - because they saw it as a benefit to police officers as well as the community. But I think their issues were more to do with implementation as to what that actually meant. I think it would be fair to say that neither, certainly senior ranks within the police or within the police unions welcomed the police oversight with open arms. They would have been unusual had that been the case. But it has changed and evolved over time and in my experience of working with senior police officers for seven years, they got police oversight, they understood it, they saw the benefits of it, they saw its importance in relation to community confidence, and they welcomed the fact that when there was a particular serious incident, that they would say, "This is subject to independent police oversight", and that was an important piece of building community confidence in policing, because they would be able to demonstrate it did or did not happen according to that investigation.

The police unions, I think, has been much more mixed and it had to do with the nature of recommendations coming from PONI and how they felt that impacted on their officers. I had my own issues with the head of the Police Federation, who felt that we were on a witch hunt against police officers, which I felt was absolute nonsense, given that in 70 per cent of the investigations that we did we found there was no misconduct by the police officer. If it was a witch hunt, it wasn't a particularly good one, in my regard. But what it demonstrated to me is that he didn't actually get independent police oversight, he didn't get what it was about. And so I had my own difficulties in that regard.

So it's fair to say from a police union point of view it was more mixed. We surveyed police officers as part of the process, and in the main, when you look at the survey results, officers felt that they had been treated fairly and independently, and they may have criticised us over - legitimately in some cases - the length of time it took to undertake an investigation.

MS MCLEOD: Commissioners, no further questions? It just remains to ask you - here, he is back, anything you wish to say in closing?

DOCTOR MICHAEL MAGUIRE: Sorry about that. (Indistinct) my - the wi-fi seems to be more unstable in my experience in the past. Yes, it has changed over time.

MS MCLEOD: Dr Maguire, we were just asking if there was anything you wished to say in closing, and we might be ahead of the technology in asking you to do that.

DOCTOR MICHAEL MAGUIRE: I think the one thought that occurred to me was that the issues in relation to police accountability, I think, are well documented. The overpolicing and under-servicing of First Peoples is well documented. This is an incredible opportunity to change the nature of police oversight in Victoria, and this would be to the benefit of all citizens, in particular, I think, First Peoples because of the nature of their interaction with the police. And I would urge Commissioners in their recommendations to look at the importance of police oversight, to look at the benefits that it can provide to all Victorians, but (audio drop).

MS MCLEOD: Professor McCulloch?

PROFESSOR JUDE MCCULLOCH: I think that Michael summed it up well. This is an incredible opportunity, really grateful to have this opportunity to speak here on this topic. I think that there is an appetite and some opportunity for real change, and I feel like this process can really contribute to it. And I agree totally with Michael; it will be important for all Victorians. But because of the normalisation of criminalisation of First Nations People, there needs to be an intervention in that, and this, to my mind, having practised law and been a criminologist, is one important necessary thing that could be done.

MS MCLEOD: Dr Maguire, I think we cut you off; you were finishing your answer. Did you finish or is there anything else you'd like to add? You were mentioning the opportunity.

DOCTOR MICHAEL MAGUIRE: No. Hopefully, I have made my point about the opportunity that this Commission inquiry presents to really and substantially change police oversight to the benefit of everybody, but particularly First Peoples.

MS MCLEOD: It remains to thank Professor McCulloch and Dr Maguire for joining us this evening. That concludes their evidence. I tender the submission and the annexed article, and they will be allocated the next number in the exhibit list.

CHAIR: Thank you, counsel. Thank you very much, Mr McCulloch, and thank you very much, Dr Maguire. We find your evidence very, very valuable and we are hoping that we can make some change, because it's well and truly overdue, as you well know. Thank you, thank you, and we'll adjourn until tomorrow, 10 a.m. Thank you.

MS MCLEOD: Thank you, Commissioners.

(Video stopped).

<ADJOURNED 2.57 PM.

<RESUMED 3.11 PM.

MR GOODWIN: I now call today's next witness, Aunty Doreen Lovett.

<AUNTY DOREEN LOVETT, CALLED

CHAIR: Welcome, welcome, aunty Doreen, thank you.

MR GOODWIN: Aunty Doreen, do you undertake to provide truthful evidence to the Yoorrook Justice Commission today?

AUNTY DOREEN LOVETT: Yes, I do.

MR GOODWIN: Could you please introduce yourself to the Commissioners?

AUNTY DOREEN LOVETT: My name is Doreen Lovett. My connection to country, I'm Kerrupmara Gunditjmara of Gunditjmara tribe and, on my mother's side, Bunurong of the Kulin Nations. I was born and raised in Fitzroy. My family moved to Fitzroy about 1941, we lived in the boarding rooms in Gertrude Street, Fitzroy. My family were actively involved in

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organisations, in the structure of setting up organisations in the Melbourne area and as well as around Victoria. Also I was working - at that time of my son's incident, I was drug and alcohol worker for Ngwala Willumbong, and I supported many people through the court systems and the gaol system as well as rehabs, and I'm currently retired at the moment, and I sit on the board of Ngwala and the Aboriginal Advancement League, and also Weeroona Trust.

MR GOODWIN: And you previously were on the board of the Victorian Aboriginal Health Services; is that right?

AUNTY DOREEN LOVETT: Yes, yes.

MR GOODWIN: And today, you've come to share the story of your son, Tommy Lovett Hudson, who was the victim of police brutality in 2016 when he was 18 years old; is that right?

AUNTY DOREEN LOVETT: Yes.

MR GOODWIN: And I know Tommy isn't up to speaking about his experience because of its ongoing effect, but he knows that you're here.

AUNTY DOREEN LOVETT: Yes.

MR GOODWIN: And he supports you sharing his story?

AUNTY DOREEN LOVETT: Yes, yes.

MR GOODWIN: You've provided a statement dated 6 March 2023 that sets out your story for Commissioners. Is that statement truthful and contains -

AUNTY DOREEN LOVETT: Yes.

MR GOODWIN: And contains true and correct information?

AUNTY DOREEN LOVETT: Yes.

MR GOODWIN: I tender that statement and the 16 exhibits that are attached to that statement, Chair.

CHAIR: Thank you. They will be allocated the next exhibit numbers, those documents.

MR GOODWIN: Thank you. So, Aunty Doreen, first I want to play for the Commission a story from the ABC's 7.30 Report that you participated in and provides a bit of background to the incident involving Tommy.

(Video played)

SPEAKER: Also in Melbourne, another case has emerged, an Aboriginal teen was psychologically and physically harmed. He'd done nothing wrong, police mistook him for an

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offender on the run. Daytime, April 5th, 2016, a police car has been rammed by a stolen black Nissan.

5 SPEAKER: Can I have a rego check, please.

SPEAKER: We have been rammed. We're in - what street are we in?

10 SPEAKER: The officers describe the man who rammed their car. This is who they were looking for.

SPEAKER: Do you have any description of the offender?

15 SPEAKER: Appeared Aboriginal, he is wearing, like - I believe it was a black jacket, possibly light coloured track pants and a red cap, looked about 40 years of age with a goatee.

20 SPEAKER: Armed with a description of a 40-year-old Aboriginal male with a goatee style beard and red hat, officers visited homes in the area where Aboriginal men known to authorities lived. This is police dashcam from the day. Here, an Aboriginal teen on a scooter goes past the car and stops just out of sight.

SPEAKER: You got facial hair?

SPEAKER: Doesn't have any facial hair.

25 SPEAKER: The teenager on the scooter is Tommy Lovett, an 18-year-old who had been charged before but never convicted.

SPEAKER: We got Tommy Lovett now. He probably isn't the male in the car.

30 SPEAKER: Does he have facial hair?

SPEAKER: No, negative, he is an 18-year-old Aboriginal male.

35 SPEAKER: Doesn't sound like him from what we see on the CCTV and descriptions from the CI.

SPEAKER: Tommy Lovett's mother, Doreen, said he had done nothing wrong that day.

40 AUNTY DOREEN LOVETT: Nothing, hasn't done nothing wrong.

SPEAKER: Tommy Lovett's mother, Doreen, is a local Indigenous leader who works as an Aboriginal organisation within the justice system. She says the police brutalised her son and then tried to cover it up.

45 SPEAKER: 4.20, all units are -

SPEAKER: This detective claimed Tommy Lovett was a suspect, even though he did not fit the description. He tells uniformed police to handcuff Tommy. According to this detective's

account, the handcuffed Tommy was violent and spat at police, so police had to use force to restrain him.

5 AUNTY DOREEN LOVETT: I went into Heidelberg and I called for the senior sergeant to come out, and I said, "You have my son in custody". He says "No, we didn't bring him into the police station; he's at the hospital", and I thought, well, what the heck? He was horrified. He'd never been slapped up like that. He had no human rights, and they took him into a neighbour's house, when they had him, and attempted to clean the capsicum spray off him because he could not breathe and they were cleaning him down with a dog's bowl.

10 TOMMY LOVETT: Hi, my name's Tommy Lovett (indistinct)

SPEAKER: Before the incident Tommy was an outgoing, happy teenager.

15 SPEAKER: (Indistinct).

SPEAKER: He was a talented athlete. Now, Tommy no longer rides a scooter, and is too traumatised to speak about the incident. His extended family member, Luke Edwards, works at the Victorian Aboriginal Legal Service and wants justice.

20 LUKE EDWARDS: A young age, a witness, something like that, not even witness to go through it, you know, to go through something like that, that's traumatic.

AUNTY DOREEN LOVETT: It's taken a couple of years for Tommy to get where he is today and still he's got a journey in front of him. You know, he should be finishing his apprenticeship, not still in the first year. When my son turned 18, he had to witness how racist the world is.

30 SPEAKER: 7.30 has obtained diary notes and statements from police who were there. The notes give conflicting accounts of what happened. Some detectives say Tommy was violent and spat at police, and played down the police response. But police officers at the scene wrote remarkably different accounts from the detectives about the treatment of the handcuffed 18-year-old.

35 SPEAKER: The male under arrest called the detective an idiot. The detective then picked up the male by his upper body, and with the aid of both other detectives, threw the male into a brown wooden fence.

40 SPEAKER: The male's head was pushed into the timber plank and then further down towards the ground. I did not see it necessary in any way to use force. He screamed about his head and that he was in pain. When some of the information about how the incident was handled sank in, it was disappointing and disturbing, to say the least.

45 SPEAKER: Tommy was charged with resisting arrest, but when his lawyers asked for the paperwork from all of the police at the scene, the charges were unexpectedly withdrawn. The police involved have faced no sanctions.

AUNTY DOREEN LOVETT: Psychologically, it's been difficult.

SPEAKER: What would justice look like for you in this case?

AUNTY DOREEN LOVETT: I would like to see my son smile, smile, say it's all over with.

5 (Video concluded).

MR GOODWIN: So the 7.30 Report provided a high-level explanation of what happened to Tommy. Your statement attaches a number of the notes and police statements that were referred to in the 7.30 Report that add to the picture of what happened. We know that, on the
10 5th of April 2016, a stolen vehicle rammed into a police car in Preston and headed towards Northland Shopping Centre, and it was mentioned in the story, but I just want to read out the exact description of the male driving the car that was reported over police radio, and it was:

15 *"Aboriginal, black jacket, light-coloured track pants, red cap, approximately 40 years old with a goatee."*

In 2016, how old was Tommy?

AUNTY DOREEN LOVETT: 18.
20

MR GOODWIN: And would the description that I read out in any way match what Tommy looked like at the time?

AUNTY DOREEN LOVETT: Yep.
25

MR GOODWIN: How would it match Tommy's description?

AUNTY DOREEN LOVETT: Can you repeat that, sorry?

30 MR GOODWIN: The description that the police gave -

AUNTY DOREEN LOVETT: Oh, yeah.

MR GOODWIN: About the man who was driving the car, being Aboriginal, black jacket,
35 light-coloured track pants, red cap, approximately 40 years old and with a goatee, I'm just asking, is that what Tommy looked like at the time?

AUNTY DOREEN LOVETT: No, Tommy didn't look like that, yeah. Yeah.

40 MR GOODWIN: Are there any of those descriptions that would match Tommy?

AUNTY DOREEN LOVETT: No, no. Probably a cap, but different colour.

MR GOODWIN: And other than him being Aboriginal as well?
45

AUNTY DOREEN LOVETT: Aboriginal, and the age group.

MR GOODWIN: So it's your understanding from your outline, you've mentioned that detectives came to your house looking for Tommy after that vehicle was stolen. Do you know why they were looking for Tommy?

5 AUNTY DOREEN LOVETT: He knew of an Aboriginal house, the car got dropped off one street away, the stolen car, and he just knew of Aboriginals living in Lancewood Avenue, West Heidelberg, the next street, which is my mother's house.

10 MR GOODWIN: And you understand from what Tommy's told you that he saw the detectives in plain clothes while he was travelling back home on his scooter?

AUNTY DOREEN LOVETT: Yep.

15 MR GOODWIN: And he got scared and scooted away, and saw a marked police vehicle coming towards him, and he asked the police for assistance, who were in that marked vehicle; is that right?

AUNTY DOREEN LOVETT: Yeah.

20 MR GOODWIN: And we could see that from the 7.30 Report footage that he's come towards the marked police vehicle?

AUNTY DOREEN LOVETT: Yeah.

25 MR GOODWIN: With detectives behind him. Do you know if the detectives identified themselves as police to Tommy?

30 AUNTY DOREEN LOVETT: Not at my mother's house they didn't, and that's why when Tommy was coming up the street on his scooter, pulled in the driveway and then Detective [REDACTED] went running at Tommy, didn't identify himself, and Tommy just seen a big man coming at him, and he turned the scooter around and headed back down the street and waved a police car down to take him back to his grandmother's house because he was in fear, didn't know who the fella was.

35 MR GOODWIN: And I know that a lot of it's contained in your statement and pieced together from some of the notes and police statements that are attached to your statement, but just in your own words, what's your understanding of what happened to Tommy next once he waved down the police car?

40 AUNTY DOREEN LOVETT: When the police had him, the marked police car, and then when [REDACTED] and the other detectives, they went to it and Tom was in that next street away from my mother's house, so noone at the house witnessed it, and that's when they got aggressive with him and capsicum sprayed him. He was telling him who he was, where he just come from, all that, and they just didn't want to hear it, they didn't believe him, didn't
45 want to know it.

And then it just started to get a bit rough with the handcuffing and throwing him to the ground and through the fence. When he wanted to go to the toilet they just took him into a

house and pulled down his pants, degrading him with a dog's bowl as well, wiping their capsicum spray off. They were there for some time.

5 I got a call on my phone and I was on Hoddle Street down here, Hoddle Street, heading towards Clifton Hill, and I got a phone call to say that the police have got Tommy and they're taking him to the police station. I also rang VALS to give them a heads-up that Tommy's been arrested, and I think it was Ali that I got on the phone, was it, Ali?

10 MR BESIROGLU: Yeah

AUNTY DOREEN LOVETT: At VALS. And VALS never received no call, and when I got to the police station, and they said they didn't have him there, he was at the hospital, they said they didn't take him into the building, which was a lie, they did. They took Tom inside into a room. It wasn't for a long time, it was very short time, because they were cleaning him up from the blood. I was concerned too about the ride from Heidelberg to the police station, too, because it was a day hotter than today and he was bleeding as well, and I was concerned about the length of time, as well as they had him in the back of the police station, and they took him to the hospital, Austin Hospital and I attended the Austin Hospital, and the nurses there were just as rude as the police.

20

MR GOODWIN: Had Tommy done anything wrong on that particular day?

AUNTY DOREEN LOVETT: Nothing, done nothing wrong. He was - two years before that, he got into trouble - kids do silly things - but he got put on a diversion program for a year with the Koori Courts at Heidelberg and Tommy complied and he had to demonstrate change, which he's done a barista course, linked into Charcoal Lane, was showing that he was trying to just make some changes within himself, and the Elders and the magistrate were very pleased with Tom, and they wanted to make sure everything was cleared up by the time he turned 18, so he goes in to that age group without a criminal record, and everything was going fine. And that's why Tommy couldn't even believe that this was even happening to him. And he's very shy, Tom, he's a very shy boy, and it just threw him all off balance that day. That day was just, it shouldn't have happened.

30

MR GOODWIN: And so it wasn't as though he was well-known to police at that time?

35

AUNTY DOREEN LOVETT: No.

MR GOODWIN: Or anything like that?

40 AUNTY DOREEN LOVETT: Detective [REDACTED] did meet Tommy a couple of years before, probably when he was about 13 or 14, as well as Tommy's friends, they all know [REDACTED] as well in the neighbourhood, but yeah, that was, that was it on that.

MR GOODWIN: And a majority of the police officers who either took notes or gave statements said that they didn't think that Tommy matched the description of the person who was the alleged offender and had stolen the vehicle. Why do you think there was - that a number of detectives, nonetheless, pursued Tommy on the basis that they suspected he had something to do with it?

45

AUNTY DOREEN LOVETT: I don't know where they got that from, but it was obvious that there was a helicopter up there, there was police cars everywhere; they were looking for somebody. My family even noticed that, but they just did not think that they were going to take away Tom.

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MR GOODWIN: And, for example, I think, even though Tommy was wearing a cap, he was wearing a black cap, even though the description described someone who was wearing a red cap, and the description of the person was also that the person had a goatee. Did Tommy have any facial hair at that time?

10

AUNTY DOREEN LOVETT: No, no.

MR GOODWIN: In terms of the treatment of Tommy that you've described, a number of the police statements, particularly of the uniformed officers, support that version of events. At paragraphs 28 and 29, you've extracted some of those statements made by police that describe Tommy being picked up off the ground and thrown to a brown wooden fence across a footpath and that Tommy hit the wooden fence with his back and then landed on the ground, and that an officer - that officers talked to each other and said that Tommy wasn't the offender and that they should leave and patrol for the offender, and another officer said that Tommy couldn't stand up, as one of the detectives was holding both of his legs in the air, and that he saw Tommy get picked up and thrown towards a wooden fence and then, at this stage, stood back with a number of other officers and stated:

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"We all believed the male was not the offending driver that rammed the police vehicle and that we should continue patrolling for the offender."

I know it's difficult to read those things when they're about your own son, but how does it make you feel when even a number of the police officers there were describing some of the behaviour and conduct against Tommy that matches Tommy's version of events?

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AUNTY DOREEN LOVETT: Yeah, yeah I was happy to hear that, you know, like there is some good police officers out there, and they stood up for what was right on that day. But the attitude - you know, I can understand, you know, adrenaline was going and they were on the hunt for someone, but how they just stopped at this and were settling for it is disturbing, and even Tom couldn't understand what was happening to him, why, and why was this happening?

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MR GOODWIN: And you've mentioned that you are happy that there were some police officers that were essentially standing up for Tommy.

40

AUNTY DOREEN LOVETT: Yeah.

MR GOODWIN: And in their description of the events. How does that make you feel that a number of the detectives who provided statements provided a very different version of events in terms of descriptions of gently placing Tommy on the ground or against the fence or sitting him up against the fence. How does it make you feel to then read those statements that paint a different picture?

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AUNTY DOREEN LOVETT: Well, I know there's good and bad in the world in, you know, especially in the police force. As I said, I was happy that there were some there that stood up and said the right thing, but as for the ones that were being cowboys - and for the life of me I can't understand what they'd get out of hurting a young kid that done nothing wrong, just
5 done nothing wrong to deserve that, you know - I'm just happy there was some police officers there that just done the right thing.

MR GOODWIN: And I just want to note one of the other statements made by a police officer, one of the uniformed police officers that engaged with Tommy - this is attachment 4
10 to your statement - mentioned that they started talking to Tommy, that he immediately noticed the young male did not exactly match the known description of the suspect that they were looking for at the time. Then this police officer notes that he heard one of the senior constables direct Tommy to sit down on the nature strip to the right of our police car:

15 *"The male followed the direction and sat on the grass of the nature strip."*

And then Tommy was handcuffed, and it's at that point that Tommy asked why he was getting cuffed. The police officer stated:

20 *"When the handcuffs were being placed on Tommy, he wasn't aggressive, but he started twisting and shrugging police hands off him and he was getting more agitated due to the handcuffs."*

And the statement goes on to say that Tommy was essentially becoming more verbally
25 aggressive because he was experiencing pain from the way that he was being restrained by detectives and by the tightness of the handcuffs. You know, knowing Tommy as you do as his mother, does that description of how things progressed for Tommy, does that make sense to you?

AUNTY DOREEN LOVETT: I think Tommy might have panicked, he might have panicked
30 and he might have wrestled a little bit there, but the handcuffs, he was very uncomfortable, but when they tightened it and it cut him - he had to get a stitch - one or two stitches in his wrist, I think that his behaviour was normal, really. He was trying to explain to them he's done nothing, "You've obviously got the wrong person, because I've done nothing" and he
35 was trying to explain it to them and they just wouldn't have it.

MR BESIROGLU: If I may, I think the evidence shows that when the two uniformed
members first detained Tommy, there was no remonstrations from Tommy at the time. It
40 appears that subsequently when the detectives have arrived that there's then an escalation with respect to the force, or the cuffs that were used, or tightened to such an extent that it just created a laceration in his wrist.

If I can also just add one more point, you touched on other officers coming to Tommy's aid, what the evidence showed was that a sergeant was present at the time, witnessing this
45 incident. This is a Detective Senior Constable who's dealing directly with Tommy, and a sergeant present at the scene who says the following, this is from another officer's statement:

"I then saw the sergeant run from the north side of Ebony Parade and say to this CIU member to calm down or take it easy. The CIU member then turned towards the sergeant and said don't tell me what to do X. He just spat at me."

5 So this is a Detective Senior Constable telling his superior what to do, or that he shouldn't be told what to do. That was the extent of that interaction at the time, so notwithstanding people coming to Tommy's aid, couldn't get them to desist.

10 MR GOODWIN: And I think in the statement that I was reading from as well, there's similar, but slightly different evidence in terms of detectives looking at present police officers, including the particular police officer, the particular constable, and yelling at them and saying that they were standing around doing jack all with their hands in their pockets. So I don't know if you have any reaction to that particular - to what Ali said, Aunty Doreen, if you want to say anything.

15 AUNTY DOREEN LOVETT: The part where Tommy spat, he spat blood out of his mouth and his mouth was bleeding and he had capsicum spray as well, as well as blood, and he spat out blood that went on the officer's shoe, and that entailed them to charge him for assault.

20 MR GOODWIN: I want to turn to what Tommy was eventually charged with in a moment. I just want to ensure, if there was anything else about the incident that Tommy has told you, that you wanted to tell the Commissioners as well.

25 AUNTY DOREEN LOVETT: The fence paling. Yeah, because we still live in the house, my family still live in, like, it's an Aboriginal house, been for 50 years, and every time we go around the corner there in the car, we always look at that paling, because you can see the white paling that's been put on the black fence. And he never looks at it, Tom. For Tom to get through this, he has to forget, and it's taken - he still hasn't forgotten, and the trauma of it all has been just an ongoing journey. He's getting better now, even though it's been several
30 years. That's only because he's got a little baby now and he's got his family, and he's trying to just look after himself and his family.

35 MR GOODWIN: You mention in paragraph 39 of your statement that even though he was the victim that day, Tommy was charged with assault police indictable, resist police indictable, assault police summary, and common law assault, and this was because he spot on an officer's foot when he was on the ground. He said he was trying to spit blood out of his mouth. What happened in relation to those charges?

40 AUNTY DOREEN LOVETT: We attended court; it got adjourned. Then we went back to court and it got thrown out, yeah. But that was all over a couple of months, yeah.

MR GOODWIN: And you mention in your statement that you found it hard to get information out of police that was relevant to Tommy being charged.

45 AUNTY DOREEN LOVETT: Yeah.

MR GOODWIN: And the incident involved with Tommy but managed to get access through Freedom of Information requests. Do you know why the charges were thrown out or -

AUNTY DOREEN LOVETT: No.

MR GOODWIN: Ali, are you able to assist in terms of why the charges were thrown out?

5 MR BESIROGLU: So there was a concerted effort by the then criminal lawyer in trying to
get all of the evidence, because they had seen that there was conflicting evidence with respect
to police conduct. The most damning of the statements - sorry, not a statement but the notes,
were held back. VALS appeared and sought an order from the magistrate for the release of
those materials and got an order, as opposed to going by way of subpoena, and upon the
10 arrival of that evidence, police decided that they would withdraw the charges against Tommy.

Can I make one further observation? I think what is also telling is that Tommy was taken to a
police station - initially transported to a police station where he was assessed, where it was
determined that he was still under the effects of the OC spray, and it was determined that he
15 should then be taken to the hospital. He is taken to the hospital and released without
interview. I think that that's important here that they didn't interview Tommy at the time, or
upon his release, which in one way could be interpreted as that the police did not intend to
bring charges against Tommy. One may be able to interpret that as saying once the gravity of
the incident then hit home, that maybe the decision subsequent was made that they would
20 pursue prosecution against Tommy.

MR GOODWIN: Aunty Doreen, I just want to ask some questions about how you found out
that Tommy had been arrested, and what you did subsequently. You mentioned briefly that
you went to the police station first and then were told that he was at the hospital. How did
25 you find out that Tommy had been arrested?

AUNTY DOREEN LOVETT: Phone call. And even at the time I was working with Sober
Up Centre of a night-time so I was familiar with the police station and who to ask for and
that, because I'd gone in there many a times. But I received a phone call from my family on
30 me way home from St Kilda.

MR GOODWIN: And how did they know that he'd been arrested?

35 AUNTY DOREEN LOVETT: My niece was there and her children. My niece went over to
Northland and mum, my mother was there, just minding their great granddaughter. I think it
was just through the kids; there was other teenagers, not teenagers, but little kids at my
mother's house, and they seen it. And because the corner - my mum's house isn't far from the
corner and they walked to the corner. My mother took a turn, too. She has a bad heart and she
was on the angina spray and that after, it had sent her into an attack because she was just
40 horrified. So everything was just, "Call Doreen", and that's what the kids done.

MR GOODWIN: This happened very close to her house, didn't it?

45 AUNTY DOREEN LOVETT: Yeah, yeah.

MR GOODWIN: And so I presume that would have been quite distressing for them to have
realised that -

AUNTY DOREEN LOVETT: Yeah.

MR GOODWIN: Tommy's been arrested so close to home and for your mother and for nieces and nephews to see that.

5 AUNTY DOREEN LOVETT: Yeah, yep.

MR GOODWIN: So what did you do once you found out that he'd been arrested?

10 AUNTY DOREEN LOVETT: That's when I got on to VALS; I rang VALS. Ali just happened to be there. And I headed to the police station and VALS told me to call them back when I get there. And when I got there, Tommy wasn't there, he was at the hospital, so I just headed to the hospital. I took him out of the hospital, like - he could hear me asking for him, and they let me through and Tom was very agitated. He didn't want them to treat him because they were being disrespectful, the nurses, assuming he was the worst kind of person. So I
15 took him from the police station, the police officers put something in his bag. I don't know if it was a summons for court or whatever, but it was put in his bag without him even knowing, and I took Tom from the Austin Hospital home to get changed and took him into the Victorian Aboriginal Health Service, and that's where the doctor there stitched him up.

20 MR GOODWIN: And what physical injuries had Tommy suffered as a result of -

AUNTY DOREEN LOVETT: Some grazes to the side of the face, the arm, the elbows, the ankles where they were standing on his ankles, and the wrists, yeah.

25 MR GOODWIN: And so are you, a person who's been a board member of the Victorian Aboriginal Health Service, and then to arrive at the hospital where Tommy's been treated and, in your words, have the people there being horrible to Tommy, I mean, how did that make you feel?

30 AUNTY DOREEN LOVETT: I wasn't too happy about it and just in - just my adrenaline was going too, I just wanted to remove Tommy, get him away from the police and that environment at the health service - at the hospital, and just to get him to the health service where he could get proper treatment.

35 MR GOODWIN: And eventually, Tommy was subsequently charged and we've discussed that and those charges were withdrawn, upon the evidence becoming available to Tommy's legal team. Tommy filed a personal injuries claim against the State of Victoria for the injuries suffered at the hands of Victoria Police, and Tommy settled that claim; is that right?

40 AUNTY DOREEN LOVETT: Yep.

MR GOODWIN: Soon after the incident, you mention in your statement that either you or someone on your behalf made a complaint to the Professional Standards Command in Victoria Police, and you attach to your statement a letter dated July 2016, acknowledging the
45 complaint, that it's been filed, and stating that it had been assessed as warranting a formal investigation. You've also attached a complaint form that noted that the complaint had been raised a number of times, including at the Aboriginal Justice Forum in Victoria with the Acting Chief Commissioner. Were you at the Aboriginal Justice Forum where that was raised?

AUNTY DOREEN LOVETT: Yes.

5 MR GOODWIN: And do you remember raising the complaint with the Acting Chief Commissioner at the time?

AUNTY DOREEN LOVETT: Yes.

10 MR GOODWIN: What did you say?

AUNTY DOREEN LOVETT: Oh jeez.

MR GOODWIN: I know it's a long time ago.

15 AUNTY DOREEN LOVETT: Yeah, it's a long time ago. After the State-wide conference, the forum opens it up for community, and so I took the floor and it was like this, but it was downstairs at the Advancement League, and I took the floor and just told them about what's just happened with my son, Tom, and my mother. And my brother, Darren, was there as well, and yeah, I just told the story, just like how I'm telling it now. And Tom came in, he
20 came there after training, and he got the train down, and so he met the Acting Commissioner. They just had a few words, they didn't talk much, just shook his hand and told him that they would look into this, and yeah. And because, you know, you just don't know what doors to go through, the doors were just opening for me as I was just going there. We don't know what to do to take up something like this in the community.

25 MR GOODWIN: And what were you hoping would happen as a result of your complaint?

AUNTY DOREEN LOVETT: Accountability for the police, for accountability. Like, the issue was just too big for me. I was just worrying about Tom's mental health and where he
30 was at, at his stage of his life. Like, I forgot to mention earlier on when he was looking for work, trying bits and pieces and that, when he was on his diversion program, and then our neighbour, he is a retired CFMEU member, and when they retire they can hand their position over and Tom got granted training through the union. That was two or three weeks after the incident happened, so he had to hit the classroom with low education, low self-esteem,
35 stitches in his hand, or the stitch in his wrist. And so we were already on that journey of what we were doing, you know, life gets in the way of everything, you know, we've all got a life to live and we're trying to do the best we can. Yeah, I've gone all off track now. Just happened so long ago.

40 MR GOODWIN: And the notes do record that the Commissioner gave an undertaking that the matter would be investigated, and it appears that's why you receive a letter acknowledging your complaint and saying it's been assessed as warranting a formal investigation.

45 AUNTY DOREEN LOVETT: Mm-hm.

MR GOODWIN: What happened to your complaint?

AUNTY DOREEN LOVETT: Had an appointment at VALS, where I met - was it that, Ali?

MR BESIROGLU: This is when they came to the house.

AUNTY DOREEN LOVETT: Oh, for the statement.

5

MR BESIROGLU: Yep.

AUNTY DOREEN LOVETT: The Acting Commissioner rang me up and said that he would be sending someone around to get a statement from Tom, and so we were waiting for that to happen, and then we had a knock at the door, and it was I don't know if he is a detective or what his ranking [REDACTED], [REDACTED] and he's part of that unit as well, and he was on holidays when all this went down.

10
15 So we've come in and he's got about he was there for about 45 minutes and he's writing down his statement about the events about what happened and then he said he was going to come back to finish it, and then the next day or the day after, I get a phone call from the Commissioner and saying how [REDACTED] had no rights to come to the house to write that, because his unit was under investigation, and he had no rights to come in to do the statement.

20 MR GOODWIN: So someone from the very unit that was involved in what Tommy was saying had happened to him -

AUNTY DOREEN LOVETT: Yeah.

25 MR GOODWIN: Had come to take his statement for the purposes of the complaint.

AUNTY DOREEN LOVETT: Yes.

30 MR GOODWIN: And the Commissioner called you and said that was inappropriate.

AUNTY DOREEN LOVETT: Yes.

MR GOODWIN: So did he offer to send someone else out?

35 AUNTY DOREEN LOVETT: No, I don't - I can't remember, but I don't think so.

40 MR BESIROGLU: If I can just add in there, I think VALS intervened at that point, once we were also - back then, VALS intervened or took issue with the fact that it was an officer of the same unit and then subsequent communications could have then been made. So it's not that it's been done by their own accord; I think VALS took issue with the fact that it was the same - an officer from the same unit investigating.

45 MR GOODWIN: And you mention in your statement that, essentially, you were told that a condition of the complaint was that Tommy make a statement in support of the complaint, but Tommy decided that he didn't want to, because of the impact that the incident had had on him. Did you want to pursue the complaint even though Tommy himself didn't want to give a statement?

5 AUNTY DOREEN LOVETT: Because this was all on what Tommy wanted, even though he didn't do the complaint, but Tom was the one who asked for this. Like, as I said before, we don't know what to do in situations like that, we just do our best and we fight the fight as it comes along, and not many get through, and we know that. But Tommy was very persistent on accountability for him; he was very upset.

MR GOODWIN: And do you think that should have been enough for Victoria Police -

10 AUNTY DOREEN LOVETT: Yes.

MR GOODWIN: - to investigate the complaint, the fact that he wanted it to be made even though he didn't want to provide a detailed statement?

15 AUNTY DOREEN LOVETT: Yes.

MR GOODWIN: So has that complaint ever been dealt with by Victoria Police?

AUNTY DOREEN LOVETT: No, not as far as I know.

20 MR GOODWIN: And other than talking to the Acting Chief Commissioner at the Aboriginal Justice Forum and some of the interactions about the complaint that was made, have you ever had any formal response from Victoria Police about the complaint or any -

25 COMMISSIONER BELL: Counsel, I'm not sure what complaint we're talking about. It may be I've missed a critical question, but could you just clarify for me?

MR GOODWIN: It's probably me, Commissioner. In terms of the complaint that was made at the Aboriginal Justice Forum.

30 COMMISSIONER BELL: Yes, thank you.

MR GOODWIN: That then was said was going to be investigated.

35 COMMISSIONER BELL: Yes, thank you.

MR GOODWIN: Has there been any formal response by Victoria Police to that complaint? I'll just ask some questions now about what you'd like to see in terms of reform, and then just so the Commissioners are aware, we'll go into a closed session so that Aunty Doreen can speak to the impact of the incident on Tommy himself, and do that off the live stream.

40 But perhaps first, I'll just ask some questions about what you'd like to see change. I suppose I'll ask the same question that was asked to you in the 7.30 Report. What would justice look like for you for Tommy?

45 AUNTY DOREEN LOVETT: That's a hard one for me because we still kind of - we're not over the mental health side of it, even though we've moved through it. But as for reforms, police shouldn't investigate their own, you know, for starters. I would like to see an independent body to cut out their corruption and the violence that is being set upon our youth, you know, like yeah, that'd be it. That'd be my reform.

MR GOODWIN: And what would you like to see Victoria Police do regarding what happened with Tommy?

5 AUNTY DOREEN LOVETT: Stay away, leave him alone. But, like, as I was sharing earlier on, like Tom crossed paths with that officer that came into our house to get the statement, and he crossed paths with him last week. And Tom it just so happens he was at his inlaws' place and the police come there for his inlaw, and he just happened to see Tom and they noticed each other, but they didn't say a word to each other. He knew. [REDACTED] knew who Tom was and Tom knew who [REDACTED] was. It scared Tom. He was really protective of his little baby, because, you know, when the police come in, they come in very, very early, you know, and he was worried about his little daughter.

10 MR GOODWIN: And why was it important for you to share Tommy's story to Yoorrook today?

AUNTY DOREEN LOVETT: For him to stand up for himself when things like this happen. We have - well we have more these days than what we did in my day growing up, and for him to have a voice and to speak up. It's unacceptable behaviour, and, like, they go on and they live their lives and we're left picking up the pieces, and when you're dealing with, you know, social injustices among the Aboriginal community with the police, you don't feel like you have a voice. You feel powerless. And I just wanted him to get strength from that, to stand up for the wrongs, and for, you know, his young friends too. If this happens to them, to stand up and speak up.

25 And, like, I know Tom would never have gotten through this if I hadn't have been probably working and was able to support him through all this, you know, because it takes resources and knowing people, networking with people, like even turning up at the RAJAC Forum, you know, just knowing that was on, and I've seen it play out once before where it opens up to community, and I seen the power that came from that. And that's good. We never had that before, voice, in this part, police part. Yeah.

30 MR GOODWIN: Before we move to the closed sessions, I might just see if there are any questions that the Commissioners wanted to raise.

35 COMMISSIONER BELL: Not I.

COMMISSIONER WALTER: I just did have one. I'm gob smacked really, I guess, that you can be charged with assault police and resist police without having actually been arrested for anything or actually you've been pulled over for any offence.

40 AUNTY DOREEN LOVETT: Yeah.

COMMISSIONER WALTER: Doesn't seem to make any sense that the only charges that is actually resisting arrest, resisting police who are pulling you up without reason, and I guess it just really goes to that idea of impunity. And to me, it sort of, it's not more about just getting away with it, it's the harm that is done.

AUNTY DOREEN LOVETT: Yes, yes.

COMMISSIONER WALTER: For years afterwards to those who are its victims. It's not just police getting away with it; it's the trauma that they leave.

5 AUNTY DOREEN LOVETT: And how many other 18 year olds have they done it to, you know, and it creates that wheel that keeps on going on and they end up in the system, you know, traumatised.

10 MR BESIROGLU: If I can respond too, Commissioner, if it's okay, what was interesting to see is that Victoria Police deemed Tommy's case as being no complaint. What was glaringly obvious was that there was a lot to substantiate a complaint in the statements themselves that sat within the police brief, and that, even if it wasn't actioned by virtue of a prosecution against police, what it could have done at the very least was disciplinary action within Victoria Police's own ranks. But you've used that word "impunity", and I think that that's
15 absolutely right. We're not seeing a prosecution against police but we're also not seeing any disciplinary proceedings against police, especially in the First Nations dispute settings, you know, or First Nations People's interactions with police.

20 MR GOODWIN: Thank you. If there are no other questions we might move into the closed session. That might take a few minutes, it will take one minute, so we will just pause while that occurs. Thank you Chair.

<ADJOURNED 4.03 PM.

25 <RESUMED 4.04 PM.

COMMISSIONER BELL: If I'm not mistaken, the personal matters in paragraphs 51 to 56 are currently open?

30 MR GOODWIN: They will be redacted for the purposes of the public of what's put up on the website, Commissioner.

COMMISSIONER BELL: Thank you.

35 MR GOODWIN: Thank you, Chair, that's this afternoon's session finished.

CHAIR: Thank you. So thanks for that, Kevin, by the way. So we adjourn until tomorrow morning. Thank you, thank you all.

40 <ADJOURNED 4.10 PM