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TRANSCRIPT OF DAY 5 – PUBLIC HEARINGS

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**PROFESSOR ELEANOR A BOURKE AM, Chair**  
**MS SUE-ANNE HUNTER, Commissioner**  
**DISTINGUISHED PROFESSOR MAGGIE WALTER, Commissioner**  
**PROFESSOR THE HON KEVIN BELL AM KC, Commissioner**  
**MR TRAVIS LOVETT, Commissioner**

**WEDNESDAY, 3 MAY 2023 AT 10.15 AM (AEST)**

**DAY 5**

**HEARING BLOCK 5**

**MR TONY McAVOY SC, Senior Counsel Assisting, with MR NICK BOYD-CAINE, Counsel Assisting**  
**MR RICHARD KNOWLES KC, with MS LUISA FREDERICO and MS SIOBHAN KELLY for State of Victoria**

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**LAW IN ORDER**  
Where work flows.

CHAIR: Good morning. Today we will be hearing from two panel sessions comprising representatives of the Department of Justice and Community Safety. Josh Smith and Andrea Davidson, welcome. And later in the day, Ryan Phillips and Larissa Strong.

This is the fifth day of hearings in Hearing Block 5 where we are primarily hearing from the government witnesses on the priority areas of child protection and criminal justice. Before we start today's hearings, I would like to invite Commissioner Hunter to give a Welcome to Country and Acknowledgement of Country.

COMMISSIONER HUNTER: Thank you, Chair. I would like to acknowledge that we are on my ancestral lands, the lands of the Wurundjeri, and pay respects to my Elders past and present. I also acknowledge those that have worked tirelessly to get us to this place where we are today so our voices can be heard. I would also like to acknowledge particularly today our youth that are lost in systems that aren't built for them, that are separated from their family, kin and culture.

I'd also like to go off a little bit off script, is those that are listening or those in the room who have been all week to check our socials. 1300 YARN is probably where I would direct people, but social wellbeing of our mob is highly important during these hearings and for those that are streaming everyday online, I encourage you to reach out to really look after yourselves. So Wominjeka. Come with purpose. And thank you, Chair.

CHAIR: Thank you. Thank you for that, Commissioner Hunter. May we have appearances, please, Counsel.

MR MCAVOY: Thank you, Chair, my name is McAvoy, co-Senior Counsel Assisting the Commission and I too acknowledge that we are here today on Wurundjeri country and I acknowledge Wurundjeri people's ancestors and spirits.

CHAIR: Thank you.

MR KNOWLES: Thank you, Chair. I appear for the state of Victoria with Ms Luisa Frederico for the first set of witnesses on the first panel and with Ms Siobhan Kelly for the second set of witnesses on the second panel. I'd also like to acknowledge the Traditional Owners of the land we gather on, the Wurundjeri people of the Kulin nation, and pay my respects to their Elders, past and present, and also pay my respects to all of the Aboriginal people who are here today.

CHAIR: Thank you.

MR MCAVOY: Thank you, Chair. I should also record that I'm assisted today by Junior Counsel, Mr Nick Boyd-Caine.

CHAIR: Thank you.

MR MCAVOY: Commissioners, today we have two witnesses on the morning panel, Joshua Smith and Andrea Davidson, in relation to Youth Justice, and then we will have another panel this afternoon in relation to Correctional Services. The witnesses are presently in the witness box and I propose to swear them in and commence evidence.

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**<JOSHUA SMITH, CALLED.**

**<ANDREA DAVIDSON, CALLED**

10 CHAIR: Thank you.

MR MCAVOY: Thank you. Starting with you, first, Mr Smith, could you just say your full name and position, please?

15 MR SMITH: Joshua Smith, Deputy Secretary of Youth Justice for the Department of Justice and Community Safety.

MR MCAVOY: And the evidence that you are about to give to this Commission is the truth - will be the truth?

20

MR SMITH: It will.

MR MCAVOY: Ms Davidson, you are the Acting Commissioner for Youth Justice.

25 MS DAVIDSON: The Commissioner for Youth Justice, recently confirmed.

MR MCAVOY: My apologies, Commissioner. Could I just confirm for the Commission your full name, please.

30 MS DAVIDSON: My name is Andrea Davidson.

MR MCAVOY: And you have just told us your position. Could you confirm that the evidence which you will give today will be the truth?

35 MS DAVIDSON: I can confirm, yes.

MR MCAVOY: Thank you. I might just invite Mr Smith first to make any opening statement he wishes to make.

40 MR SMITH: Thanks, Counsel. I want to thank Commissioner Hunter for her welcome to Wurundjeri country and in doing so I acknowledge your Elders, the spirit of your ancestors, your creation stories, and the ongoing unsevered connection to this place. I further acknowledge that Aboriginal sovereignty has never been ceded on this continent. I've heard the opening statement of Secretary Houghton yesterday and adopt that statement in its  
45 entirety.

I want to emphasise in particular, though, her acknowledgement of the Department of Justice and Community Safety for its part in the failure to address the shocking and unacceptable overrepresentation of Aboriginal people in the justice system and its failure to prevent Aboriginal deaths in custody.

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I want to express my deep sorrow and regret to those families and other loved ones that have been left behind. As someone who has lost to the justice system, I know too well about grief - sorry.

10 COMMISSIONER HUNTER: Take as long as you need.

MR SMITH: It's an unhealable grief for those that are left behind, that are left without answers and without justice. I also just want to take the opportunity to reflect on Commissioner Lovett's comments from the Directions Hearing in this place on 27 March in relation to Aboriginal public servants; in particular, I want to acknowledge the leadership of people like Uncle Andrew Jackomos PSM and Uncle Terry Garwood who opened doors and paved the way for other Aboriginal people to take on senior roles in the Victorian public service and make change from within the very institutions that were imposed on our people at the same time as excluding us.

20

Aboriginal public servants often find ourselves in situations where we are the sole voice for change in those settings. But with perseverance, Aboriginal excellence and personal dedication, we can continue to strive. It's a strength that's reflected in the tireless advocacy and the fight of our people - of our people for our people since the ships landed. It is in the spirit of that same fight and resolve that went before that I appear here today to assist the Commission in your endeavour to make historical change. Hopefully it is a change that sees a future where there are no Aboriginal children or young people in the criminal justice system, because they are strong in their culture, they are connected and they are loved within their communities and families.

30

This is an aspiration articulated in Wirkara Kulpa, Victoria's first Aboriginal Youth Justice Strategy, developed under Aboriginal leadership. It's a division that my Youth Justice leadership team and the department is committed to realising.

35 Last, can I echo Secretary Houghton's sentiment on the Commission's leadership in this ground-breaking work. I want to particularly acknowledge and thank the leadership and strength of the Aboriginal Commissioners for bearing the vicarious trauma that you carry from hearing the truth told throughout this Commission. Thank you for the opportunity to assist you today.

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CHAIR: Thank you and welcome.

MR MCAVOY: Thank you. Commissioner Davidson, is there anything you would like to say at the commencement of this evidence?

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MS DAVIDSON: I would also like to deeply acknowledge Traditional Owners of the lands on which we're meeting today, the Wurundjeri people of the Kulin nation, as well as peoples

across what we now call the State of Victoria and acknowledge that sovereignty was never ceded for Aboriginal people. I also would like to acknowledge the truth that has been told by many Aboriginal people and their courage and to wholeheartedly acknowledge the Commission for the landmark work that they're undertaking and commit fully to telling the truth through my lens.

MR MCAVOY: Thank you. Now, I will direct questions to each of you individually if I want you to answer directly. But if I don't address the question to one of you directly, it will be open to either of you to respond. Firstly, I just wanted to get a clear understanding of the strategic framework within which Youth Justice currently sits in Victoria. So is it fair to say that the Youth Justice review and strategy by Armytage and Ogloff in 2017 provides a launching point for the current raft of changes that have occurred. Is that correct?

MR SMITH: That's correct.

MR MCAVOY: It was a substantial review with far-reaching recommendations. From that document, we've seen a number of areas of reform within the Youth Justice section, and is it fair to say that overall, in overall terms, the Youth Justice Strategic Plan 2020 to 2030 provides a broad framework within which Youth Justice is now working? Or has that been superseded by something?

MR SMITH: No, that's right. The strategy sets in place the steps that Youth Justice is taking to implement the Armytage/Ogloff review. The subsequent development of Wirkara Kulpa, the Aboriginal Youth Justice strategy is a supporting strategy that helps realise the vision of the Aboriginal Justice Caucus, particularly the Aboriginal Youth Justice Collective Working Group, which is a subgroup of the Aboriginal Justice Caucus, and it articulates their aspirations for the Youth Justice system.

MR MCAVOY: So, Mr Smith, first, I would ask you to keep your voice up.

MR SMITH: Yep.

MR MCAVOY: Although, your answers will be captured on the microphone, we also have people in the gallery who will be interested in hearing your answers, and the Commissioners.

MR SMITH: Yes.

MR MCAVOY: In the 2020 to 2030 Youth Justice Strategic Plan, under the heading Improving Diversion, Supporting Early Intervention and Crime Prevention, within the section headed Furthering Aboriginal Self-Determination and Addressing Overrepresentation, there's a reference to the Koorie Youth Cautioning Program developed as part of the Burra Lotjpa Dunguludja program. Is that still in place?

MR SMITH: It's still in place, yes.

MR MCAVOY: And there's discussion - there is a reference in that section to an agreement, the Wungurilwil Gapgapduir Aboriginal Children and Families Agreement. Is that agreement still current or has been it been superseded?

5 MR SMITH: That's an agreement that was developed by the Aboriginal Children's Forum with the Department of Families, Fairness and Housing, and I understand that that strategy is still relevant to that department.

10 MR MCAVOY: But in terms of a more justice, or Youth Justice specific focus Wirkara Kulpa has a greater application?

MR SMITH: That's correct.

15 MR MCAVOY: So the other - there's four key areas of focus identified for Furthering Aboriginal Self-Determination and Addressing Overrepresentation in the Strategic Plan. Apart from improving diversion and supporting early intervention and crime prevention, the second is:

20 *"Reducing reoffending and promoting community safety by supporting children and young people to turn their lives around."*

Thirdly:

25 *"Strengthening partnerships with children and young people, families and all services and professionals who support rehabilitation and positive development."*

And fourthly:

30 *"Investing in a skilled, safe and stable Youth Justice system and safe systems of work."*

They still hold as the four primary areas of attention for this particular program?

MR SMITH: That's correct.

35 MR MCAVOY: Now, I want to take you straight to the topic of the moment, I suppose. We have heard through media release and also through evidence yesterday that there has been a decision by the Victorian Cabinet to raise the minimum age of criminal responsibility to 12 with a raise in 2027 to 14. You are familiar with that decision?

40 MR SMITH: I am.

MR MCAVOY: And is it correct to understand that some of the work in the lead-up to that decision and the work in terms of bringing that decision to fruition will come to the Youth Justice section of the Department of Justice and Community Safety?

45 MR SMITH: We'll have some role in, yes.

MR MCAVOY: Will it be something that you as the Deputy Secretary for Youth Justice lead on? Or will it be led from another section of the department?

5 MR SMITH: No, the announcement was made relatively recently, but it will sit predominantly with Ms Chapman who you heard from yesterday who is in charge of the legislative program, in collaboration with the Youth Justice section which I lead.

10 MR MCAVOY: And in terms of the that decision, you may be aware from questions raised yesterday that it's been understood that the Aboriginal Justice Caucus and many other advocacy bodies have recommended raising the age - minimum age of criminal responsibility to 14. What - are there consequences that you can observe in terms of raising the age to 12 at this point and not raising the age to 14 immediately?

15 MR SMITH: Consequences for?

MR MCAVOY: For the Aboriginal youth and children?

20 MR SMITH: I think - this is an area that, because of the very strong advocacy from the Aboriginal Justice Caucus and other partners, including the Aboriginal Legal Service, work has commenced preceding that announcement to address the numbers of Aboriginal children and young people in that cohort - in that age bracket between 10 and 14 coming into the Youth Justice system. And that is very much a piece of - well, it's a suite of programs that have been in design for some time, with the Youth Justice Collaborative Working Group, which is a group of Aboriginal people from the Aboriginal Justice Caucus that work with Youth Justice specifically focused on Aboriginal young people. And so there are - without the law being changed, there is already a focus, at least in the planning - and it's actually an endorsed plan now by the Caucus to start to run out those programs. There is funding that has already been committed to - by the government to support those alternatives.

30 MR MCAVOY: I'll come back to those programs in a moment because we heard some evidence about that yesterday. What I omitted to do at the outset, I'm sorry, in my eagerness to get into the issues, I didn't give you an opportunity to - just to explain to the Commissioners the nature of your role and your background, Mr Smith, and I'll turn to you in a moment, Commissioner Davidson.

35 MR SMITH: Certainly. So, Commissioners, the role of Deputy Secretary Youth Justice entails predominantly two arms of work. First is the policy strategy and performance setting for the Youth Justice system. And then the second arm is the operations of that system, which Commissioner Davidson oversees in her role as Commissioner.

40 Prior to this role, you would be familiar with one of the roles that I had, but in terms of what relevant experience I bring to bear in this role, I have a Bachelor of Law that majored in Australian Indigenous laws, a Graduate Certificate in Legal Practice and a Master's in Public Administration.

45 After being admitted to practice, I practised as a solicitor for the New South Wales Crown Solicitor's Office, here in Victoria for the Victorian Aboriginal Legal Service in their criminal

practice, and then in a range of leadership roles across both - well, across the Department of Justice and Community Safety, the Department of Health and Human Services as it then was in Aboriginal Health and Wellbeing, and I headed the Aboriginal Affairs portfolio in DPC before moving to the Department of Justice.

5

MR MCAVOY: Thank you, Commissioner Davidson.

MS DAVIDSON: As described by Mr Smith, my role as Commissioner for Youth Justice entails the oversight of the operations of Youth Justice, both in our currently two, soon to be three custodial facilities, as well as across our community Youth Justice services. So that role sees me closely connected with the operations across the full spectrum of the business, as well as very actively involved in the diversion and early intervention space, ensuring that we divert as many young people as we can away from the statutory involvement with the system.

15 In terms of my background, I've been with the Victorian public service now since 2018. The majority of my time with the Victorian public service has been spent in leadership within our custodial facilities. However, prior to that, the majority of my career has been based in therapeutic and forensic services within justice, including Youth Justice, in Queensland and New South Wales.

20

In terms of experience that I'm able to bring to bear today, I would say that those historical positions, particularly for me, have had a focus on understanding the stories of Aboriginal people, understanding the drivers of injustice, understanding individual circumstances, and working deeply with community, having had the opportunity to be embedded for a number of years in remote Aboriginal communities. So I have really seen first-hand the very detrimental impacts of overincarceration, and that's certainly something that I bring to bear in the evidence that I provide today.

25

MR MCAVOY: Thank you. Now, I did direct you, Mr Smith, to the evidence that was given yesterday. One of the pieces of evidence which was given yesterday was in relation to the number of young people in custody. And the Secretary expressed the view that as of Monday, I think, that there were no young people between 10 and 12 in custody, and I think she may have even extended that to 14.

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35 MR SMITH: Definitely 10 to 12 there are no Aboriginal young people in custody.

MR MCAVOY: And do you have with you some statistics that you can take the Commissioners to?

40 MR SMITH: We do. We provided that too.

MR MCAVOY: Yes. Can we have on the screen the document relating to statistics. Do we have that? Is that -

45 MR SMITH: That's it.



MR MCAVOY: That's it? Now, I might ask you - the writing is quite small on the screen as it stands. Are we able to zoom in at all? And centre it, please, the text. Thank you. Now, I might give you the opportunity now, Mr Smith, to speak to those figures so that they're on the record and the Commissioners can hear them from you.

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MR SMITH: Certainly. So I preface this by saying that there are - there has been incredible work done.

MR MCAVOY: I'd ask you to keep your voice up.

10

MR SMITH: Sorry, apologies. I preface this by saying that incredible work has been done to reduce these numbers, but more work needs to be done. What we can see from this presentation is that in '21-22, Aboriginal children and young people were eight times more likely to be in Youth Justice relative to their non-Aboriginal peers. In Victoria, the average daily number of Aboriginal people aged between 10 to 17 under Youth Justice supervision - so that's both in custody and in the community - reduced from 122 in 2016-2017, to 55 in 2021-22. From July 1 2022 to 31 December 2022, there were 42 Aboriginal children and young people aged 10 to 17 under Youth Justice supervision on an average day, which is a 24 per cent reduction compared to 2021.

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It is my view, and the view of the Youth Justice leadership as well as the Department of Justice, that these numbers are grossly too high, despite that progress. Youth Justice is ahead of achieving its Aboriginal Justice Agreement 4 milestone to reduce the number of Aboriginal young people under youth supervision on an average day by 43 by 2022-2023. So that is to reach a target of 89 Aboriginal children and young people aged between 10 and 17 on an average day.

25

We are also on track to meet our *Closing the Gap* target 11, and this aims to, by 2031, reduce the rate of Aboriginal and Torres Strait Islander young people aged 10 to 17 in detention by at least 30 per cent.

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MR MCAVOY: If I can just ask you a question on that last point. In terms of being on track to meet the *Closing the Gap* target, in terms of the trajectory, on those figures, is it correct to say you are ahead of the trajectory?

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MR SMITH: We're ahead of the trajectory.

MR MCAVOY: So, is there any projections in terms of meeting that target in advance of the 2031 date? Do you know when - do you make any predictions as to when you might get there? Or is it too - are there too many variables to do that?

40

MR SMITH: So, Ms Davidson might be able to shed more light on this but I understand that we have met the *Closing the Gap* target, but 2031 is a long way away and we want to maintain the progress that we have made and exceed it so that there are no children, no Aboriginal children and young people. That's our aspiration and that's what we've committed to in Wirikara Kulpa.

45

MR MCAVOY: Thank you. Is there something you want to add, Commissioner Davidson?

MS DAVIDSON: Just in terms of the specifics of that data. So, the *Closing the Gap* target sees us aiming for 12.3 - so 12 young people per 10,000, and at the present time - sorry,  
 5 2021-2022 figures, we are sitting at 9.3 young people per 10,000. So, to Mr Smith's point, for us, the target is zero unashamedly and so whilst we are ahead of that target, we also acknowledge that it will be a power of ongoing work that will see us retain and better those figures and drive overrepresentation down to zero.

10 MR MCAVOY: If I can just explore that for a moment. A zero Aboriginal youth population in incarceration, is that premised on the current legislative settings or does that require some legislative reform to get to that point?

15 MS DAVIDSON: I would say it's an unashamed target, regardless of the legislative environment, that is, a target that, in partner with Caucus and Aboriginal community organisations and families and communities, we will maintain regardless of any changes to legislation.

20 MR MCAVOY: So, if we might just assume that the amendment to raise the minimum age of criminal responsibility to 12 next year, and then to 14 in 2027 occurs, then - and I accept that that cohort makes up a small component at this stage. What then does the department or the Commission to do in relation to the children in the 14 to 18 bracket? How then do you get to a zero population without legislative intervention?

25 MR SMITH: So, what I'd say to that, Mr McAvoy, is that the focus has been, in the current legislative settings, to invest in Aboriginal community leadership and programs, and we've seen a progressive investment in those services, which are better equipped to work with Aboriginal families and communities to maintain strong connection to culture and family,  
 30 which are preventive factors for coming into contact with the Youth Justice system. That's what's seen - in our view, that's what's seen the reduction in Aboriginal children and young people in our system and we would continue to do that.

Is there anything you want to add in relation to -

35 MS DAVIDSON: I think Wirkara Kulpa - what I would say to that, Mr McAvoy, is that Wirkara Kulpa was built with the vision that it would address overrepresentation for all Aboriginal children and young people. Whilst discussions around age obviously made part - have been had with Caucus and we do understand their very strong position on that,  
 40 Wirkara Kulpa is focused on all Aboriginal children and young people. So, it sets the vision and it also sets the foundation. But I think, really importantly, it's unashamedly a dynamic strategy as well. So the strategy itself talks to being one of a number of building blocks that will take us and help us and guide us towards that ultimate aim of zero Aboriginal children and young people in our Youth Justice system.

45 MR MCAVOY: I don't wish to give you the impression that the zero target is not a worthwhile pursuit, from my opinion. What I'm trying to understand and seeking from you so

the Commissioners can understand is, is it a real target and is it something that you have real intentions of trying to get to? Or is it just something that is a statement of principle?

MS DAVIDSON: It is a real target that we have all intention of getting to.

MR MCAVOY: So we know that when children, young children, are taken out of the system with the raising the minimum age of criminal responsibility, that that has a flow-on effect; that if you can keep them out at an early stage, the chances of them coming back later is reduced. Do you agree with that?

MS DAVIDSON: Yes.

MR MCAVOY: That's what the data tells us.

MR SMITH: Correct.

MR MCAVOY: And so when the age is raised to 14, that will have a flow-on effect to the older children; that's correct?

MR SMITH: Yes, in that once a young person has contacted with the Youth Justice system, their chances of reoffending and coming back into contact with the system is increased. So if we can stop contact with the criminal justice system in that early age, in that 10 to 14 age bracket, statistically, it tells us they are then less likely to come into contact with the Youth Justice system down the track, post 14.

MR MCAVOY: So, is it fair to say, then, that the work that's required - and I will ask you to try and elaborate on this - is focused on supporting the children and early intervention work and diversionary work?

MR SMITH: Correct.

MS DAVIDSON: Absolutely.

MR MCAVOY: And so, once they are diverted, are they outside your remit? Do they go to - does somebody else to look after them? Or is that diversionary category still part of the Department of Justice and Community Safety?

MR SMITH: The answer is both. So there are some programs and interventions that we are responsible for in Youth Justice that are directed at diverting young people away from - further diverting them away from the Youth Justice system, and that ranges from the programs that we run directly out of Youth Justice, as well as some of the funded programs that we run through community sector organisations.

Similarly, there are a number of other programs like the Police Cautioning Regime that is outside of the control of Youth Justice, which is in place to divert young people away from the criminal justice system at that contact with Victoria Police.

MR MCAVOY: So, in terms of the diversionary programs that are - seem to be working well and productive, can you just - are there any examples that you can speak of to the Commissioners to explain what's - what they're doing.

5 MR SMITH: I might pass to Commissioner Davidson for that question.

MS DAVIDSON: I'm happy to answer that question, Mr McAvoy. So I think in particular, I would highlight the achievements of the Aboriginal Youth Justice program. So the Aboriginal Youth Justice program is a program that is funded, provides funding to ACCO, so community  
10 based organisations. There's a total of 13 Aboriginal-based community organisations that Youth Justice funds through that program. And that work is really focused on providing a culturally safe and responsive service to Aboriginal children and young people within their own communities.

15 So those ACCOs are across the State, and certainly some of the work that we've been looking at in the 10 to 14-year-old space in terms of enhancing those opportunities for early intervention and diversion have been around strengthening those services and further funding those services. And that's based on the feedback from our Aboriginal stakeholders and community, that those services are working. That there needs to be more of them.

20 And one of the things, I think, that's particularly successful about that service is the continuity of care that it provides, the place-based response. So Aboriginal young people having Aboriginal workers that are there to walk alongside them from that first point of contact with the system, but also Aboriginal workers who can remain with them, no matter where their  
25 trajectory heads, so that if a young person becomes involved in the system, that they're not having to go through changes of workers and the like, which we know can be disruptive to the gains they're making.

30 So, those really place-based, child-centred approaches that focus on understanding the individual story of every young person and working through the drivers that have brought them into contact with the system is a really critical part of the Aboriginal Youth Justice program.

MR MCAVOY: So I ask you this question not to diminish the importance of the feedback  
35 you get from community members about the importance and workability of that program, but is there data to support the view that the program is successful?

MS DAVIDSON: I think the data that we would primarily talk to is particularly the success that we've seen in the diversion space so that the reduction in numbers that we've seen has  
40 arisen certainly has been contributed towards by the nature of those support services that are put in place from the earliest point with young people.

MR MCAVOY: So without referring to a specific case, might you just walk the  
45 Commissioners through an example of how a child might come into contact with the police and how this process works?

MS DAVIDSON: So when an Aboriginal young person comes in contact with the police, there may well be a referral at that point to the Aboriginal Youth Justice program, or, indeed, if the young person is to, for example, be subject to supervised bail, that that program would immediately be put in place in terms of connecting them with a worker within an Aboriginal  
 5 Community Controlled Organisation that can walk alongside them from the point of entry into the system.

So what that might look like is supporting them to attend court, supporting them to attend other appointments, supporting them to engage in cultural programs, starting to, on an  
 10 individual level but also with their family and community where there are - perhaps a young person is not as connected with their culture as they might be, looking at how those cultural connections can be enhanced and supported. And really responding in a way that considers individually what that child needs here and now.

15 MR MCAVOY: And is that pathway or those pathways well understood by the police involved or there is a need for further training in that area for police officers?

MS DAVIDSON: I couldn't comment specifically on police knowledge, Mr McAvoy, but what I would say is that in the Youth Collaborative Working Group which, as Mr Smith has  
 20 spoken about, really underpins the work that we do with our youth, that certainly police are involved in that space and actively involved in that space and attend those meetings and, therefore, have a broad understanding of the service offerings.

MR MCAVOY: Those meetings are at a high level? They're not conducted regionally or  
 25 locally.

MS DAVIDSON: No, they are conducted regionally as well, so certainly through the arms of Caucus I would say and the regional Justice Forums, etcetera. There would certainly be police  
 30 understanding and input. And at a local level those relationships between Youth Justice staff and local police.

COMMISSIONER LOVETT: Can I jump in sorry?

MR MCAVOY: Certainly.

35 COMMISSIONER LOVETT: So you have got the aspiration around zero Aboriginal young people or youth in the system, and Counsel has briefly touched upon raise the age. What are the other legislative barriers that are currently impeding on the department being able to work with community to achieve that objective?

40 MR SMITH: Look, it's hard to pinpoint any one legislative barrier. Obviously, changes to the bail laws have some impact on the number of young people, particularly Aboriginal young people, coming into custody. Commissioner Lovett, I would say that some of the barriers are probably more system-wide, not Youth Justice system-wide, but if you look at the numbers of  
 45 Aboriginal children and young people that come into our system that are the subject of a child protection, then that - I would say that they're some of the barriers I would see, and challenges that we would see, as a system having addressed - we have to address those upstream impacts,

because there are a number of interventions that can be put in place that are not justice system related before they come into contact with the justice system. That would be more effective, in my view.

- 5 MR MCAVOY: Just following on from that question, though, that's not to say that there wouldn't be some legislative assistance that could be given within the justice settings?

MR SMITH: No it wouldn't.

- 10 MR MCAVOY: So, for instance, would the achievement of that target be assisted by stronger legislative framework around cautions and warnings, for instance?

MR SMITH: Yes, indeed, it would. Pre-charge diversion - mandatory pre-charge diversion, for example, might be one of those legislative levers that could assist.

- 15 MR MCAVOY: And, indeed, in the consultations that you have with community, there are a number of areas that might be supported by legislative reform?

- 20 MR SMITH: Certainly, and I think - I'm not sure whether Mr Harrison from the Aboriginal Justice Caucus touched on it in his verbal evidence, but certainly the work that the Aboriginal Justice Caucus did in relation to the - sorry, the Youth Justice bill - I'm just being careful about how I talk to this because it is - some of this is subject to Cabinet deliberation, but certainly the consultation that was done with the Aboriginal Justice Caucus, they put forward very strongly some of those legislative amendments or levers that could assist in that regard.

- 25 And I think it's either in the Aboriginal Justice Caucus submission or it was in the evidence of Mr Harrison, but the way in which we approached that consultation was to fund independent legal advice for the Aboriginal Justice Caucus to draw upon to put together a submission to the department on what those levers might be in any legislation that might be introduced.

- 30 MR MCAVOY: And so where is - can you say whether all of those were picked up and whether some of those are still work-in-progress?

- 35 MR SMITH: What I can say is that the position of the Aboriginal Justice Caucus was put to the department, and that formed the basis of advice that we've given to government.

- 40 MR MCAVOY: In terms of the matters not within the Department of Justice's direct control, you have mentioned a few things. One of those is, of course, the education system and ensuring that young people get access to education. And you would be aware that, in some places, the alternative service model is an education-based model for children under the age of criminal responsibility. Are you aware of that?

MR SMITH: In other jurisdictions?

- 45 MR MCAVOY: In other jurisdictions.

MR SMITH: Yes.

MR MCAVOY: Can you speak about how you relate to the Education Department and ensuring that children get access to schooling through their experience with the criminal justice system.

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MR SMITH: Certainly. So it would depend on whether the young person is in the - is in a community setting, so under supervised bail or a community disposition, or whether they are in custody. In relation to the young people in community, there would be a care team in place. Part of that care team - regular convening of that care team, a plan would be put in place that ensure that that young person maintains engagement with their school or education facility. In custody, the Parkville College model is in place for all young people in both Malmsbury Youth Justice precinct as well as Parkville Youth Justice precinct. So that's a structured individualised education approach to each young person.

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MR MCAVOY: Are those education services on par with children in the regular school environment?

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MR SMITH: It's structured in a way - these programs are run by the Department of Education in our - the facilities that we run. The underpinning principle for those, for the Parkville College model is to meet the young person where they are in their education journey. So it recognises that a young person might have already disengaged from education and might need remedial work to re-engage. And so that assessment is done through the Parkville College to understand where they are at and what individualised or tailored education services they might need in that setting. And then that will form part of their structured day in custody.

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25

MR MCAVOY: Correct me if I'm wrong, but it is the case that there is degree of overlap between disengagement from the school environment and interaction with the Criminal Justice system?

30

MR SMITH: Yeah, that's absolutely right. And, Counsel, if I could draw attention to the Taskforce 1000 work that Commissioner Jackomos did in his former role as the Commissioner for Children and Young People, he did a review of the 1000 kids, as it then was, of Aboriginal children in child protection and out-of-home care. And what that taskforce found was that, of those kids in care, a large proportion of them had contact with the Youth Justice system and a large proportion of them had disengaged from educational settings.

35

MR MCAVOY: Thank you. I expect that, particularly following on from your previous responses in relation to your discussions with Victoria Police, that there are ongoing discussions with police about extending the diversionary systems to and cautioning to the older children and young people; is that correct?

40

MR SMITH: What I'd say, Mr McAvoy, in designing any new legislative levers that might be part of a new Youth Justice Bill or Act, we would engage with Victoria Police on the bits that are relevant to them.

45

MR MCAVOY: It's also well-known that there is a strong correlation between homelessness and housing difficulties and young people involved in the criminal justice system. Is there

something that you can say to the Commissioners about what your department is doing in order to address that particular issue?

MR SMITH: I might get Commissioner Davidson to speak about the priority housing program which I've forgotten the title of that program's name. But, Mr McAvoy, to - the proposition that - particularly for Aboriginal young people, but I think this applies to young people generally in contact with the Youth Justice system, stable accommodation and housing is an issue for those young people, and suitable placement options post-release is a continuing challenge for Youth Justice.

MS DAVIDSON: What I would talk to there is particularly - Mr Smith had referred to earlier the care teams that wraparound a young person. So there are many factors that young people that come in contact with the Youth Justice system, many vulnerabilities that we see: Housing, homelessness is certainly one of those, educational disengagement, mental health concerns, drug and alcohol issues, involvement with the child protection system. So the care team approach that we take once they have contact with our Youth Justice system is to, at the ground level, be bringing all of those different stakeholders together, including our staff, very importantly, from those Aboriginal Youth Justice programs that I mentioned earlier, or if the young person is in custody, from our Aboriginal liaison team, to ensure that each and every one of those individual factors is being considered and actions put in place specific to that young person to resolve those difficulties as much as is possible.

COMMISSIONER WALTER: Excuse me, Ms Davidson, can I just ask, that sounds wonderful. Do all young people that come into contact with the criminal justice system get that care team?

MS DAVIDSON: Yes.

COMMISSIONER WALTER: So it's 100 per cent applied?

MS DAVIDSON: Absolutely. So all young people who are under any form of statutory Youth Justice supervision, so, for example, if they were to come into custody, within one week, there is a care team facilitated for them whether we have prior knowledge of them or not.

MR SMITH: Sorry, Commissioner Walter, can I just clarify that, though, that if it's just an interaction with Victoria Police and they aren't charged or found guilty, then there will not be a care team convened by Youth Justice for those.

COMMISSIONER WALTER: Is that a gap, Mr Smith?

MR SMITH: Well, I would - it would depend on the circumstances of that young person, because a lot of children - and, you know, middle class white children come into contact with the police system, the police force, and don't need a care team. And for those Aboriginal children that do come into contact with the police system that also have a loving, caring, thriving home, then probably not. You would rely upon the family dynamic to help with putting in supports for that young person. But in terms of where there are more problematic



environments, I guess, for that young person at home, then more interventions around that family could assist.

5 MS DAVIDSON: I think one of the big challenges, Commissioner Walter, is we want to avoid bringing young people into that statutory element of the system, so absolutely appreciate it's getting them the right supports at the right time. It's about, I guess, the facilitation of supports.

10 COMMISSIONER HUNTER: Can I just ask, in that care team, if they've already had contact or are in care, is there someone from the agency that looks after them from out-of-home care within those care team meetings?

MS DAVIDSON: Yes, so child protection and also if they were, for example, in residential care, that provider would be a member of that care team.

15 COMMISSIONER HUNTER: Thank you.

MR MCAVOY: So the trigger for your involvement, though, is some interaction with police, is it?

20 MR SMITH: The trigger would be a - that would be one of the triggers, but it would be progression from interaction with the police to some kind of statutory - so whether it's supervised bail or a community - an imposition of a community disposition by a court, that's when they would come into the purview of Youth Justice.

25 MR MCAVOY: So, if a child, if a young person is given a caution and they're not dealt with by way of court proceedings, is there any service that picks up that person for that period?

30 MS DAVIDSON: So those young people could still be referred to the Aboriginal Youth Justice program. So that program is able to cover the full scope of a young person's potential contact with the system, and within that diversion and early intervention frame, those services can certainly - funded through Youth Justice, can certainly continue to remain involved in supporting the young person and their family.

35 MR MCAVOY: So one of the things that you referred to earlier was trying to ensure that there was some continuity of care and that once a worker was assigned to - or a team assigned to a young person, that they would then be able to stay, hopefully, with that person?

40 MS DAVIDSON: Yes, that's correct. So in the instance of a young person, perhaps, who doesn't have a statutory involvement with Youth Justice but is involved in the first instance with the Aboriginal Youth Justice program, if that young person then progressed to statutory involvement, that worker from - that has had that initial contact would retain that contact with them in terms of continuity of care.

45 MR MCAVOY: The Commission has heard evidence in relation to the child protection area, out-of-home care, and some of that evidence has suggested that there's a reasonably high turnover of staff and difficulties with continuity of care, and development of relationship with

workers in that environment. Is it different in Youth Justice? Are there community-based supports able to be providing a more continuous support?

5 MS DAVIDSON: What I would say is - I don't have the specific workforce data within those ACCOs themselves, but what I would say is that there is a stability of service within Youth Justice community in particular. I don't have the specifics of workforce within those ACCOs. But certainly the impression that I get from the Youth Justice case management review panels, as well as what I hear from community, is that there is - particularly with those workers and the depth of knowledge that they have around our young people, that there is stability within  
10 that broader ACCO service system in so much as I have view across.

MR MCAVOY: Mr Smith.

15 MR SMITH: To more directly answer around the Youth Justice workforce, so the community Youth Justice workforce in our employ, it is a more stable workforce than I would - than I heard Mr Alisandratos' evidence suggest with the child protection workforce.

MR MCAVOY: One of the objectives that's outlined in the strategic plan is to invest in a skilled, safe, stable Youth Justice system and safe systems at work. So, I mean, in formal  
20 terms, there's a recognition that a skilled, happy staff assist the outcomes. Am I overstating that?

MR SMITH: No, that's right. And in opening the Cherry Creek Youth Justice Facility later this year we are moving to a different workforce model with an uplifted workforce so a more  
25 qualified and more highly paid workforce that is trained. As a bare minimum, they will have a Certificate IV in Youth Justice and trained in our community as a practice model, which is also a recommendation out of Armytage/Ogloff, to ensure we have a more behaviour-based intervention approach that has a higher staff to young person ratio so we are better able to support a young people, address their offending behaviour, rehabilitate and re-enter back into  
30 community.

MR MCAVOY: The creation of a new centre, the employment of additional staff, that clearly has funding implications for the department. Is it the case that the programs and services that are being recommended to the department by the community, the Aboriginal Justice Forum, or  
35 the Aboriginal Justice Caucus, requires substantially more funding than is presently available in the Youth Justice area?

MR SMITH: I would think greater investment across the spectrum of Aboriginal services is needed, from family services across the spectrum, the Youth Justice services delivered by  
40 those Aboriginal Controlled Organisations, and if we are genuine about moving to Aboriginal Community Controlled as a means to address the issues that plague some of our community members, then I suggest greater investment in those services is the way to go.

COMMISSIONER WALTER: Can I just ask, just on funding: the Aboriginal Youth Justice  
45 program funding that you talked about before and the program, how is that funded and is it recurrent funding?

MR SMITH: So it's a mix of funding streams, Commissioner Walter. The Aboriginal Youth Justice program is backed in so it's recurrent funding, some components of it, in Youth Justice generally. So the Aboriginal Youth Justice team that sits within our central functions, headed by an Aboriginal Director of Youth Justice, that's part of our current funding. Some of the  
 5 program-specific money that we talked about earlier around that focus on earlier interventions for that cohort between 10 to 14, that's new money that was announced in a recent budget. It's either 20-21 or 21-22 budget, that specific for those additional services.

COMMISSIONER WALTER: I guess my point is do the ACCOs who are providing this  
 10 service, who are central to it being available and working, do they have surety of funding and is the funding adequate for them to provide the quality services that they need to provide?

MR SMITH: I would say - well, it's been consistent and ongoing funding for the Aboriginal Community Controlled Organisations that we fund. But I would acknowledge that not every  
 15 Aboriginal Controlled Community Organisation across the state is funded to run Youth Justice programs. So there are some organisations like MDAS and Mildura - Mallee District Aboriginal Service, for example, they receive more money on an ongoing way because of the recognition that they have a bigger population in that centre as opposed to somewhere in sort of, I don't know, far-east Gippsland, for example. We might fund those organisations  
 20 differently or fund one organisation, not another. It's based on need, efficacy and availability of resources.

COMMISSIONER HUNTER: So it's not a state-wide program? Like, do you have to be in  
 25 certain regions to get that support?

MR SMITH: Sorry, the Aboriginal Youth Justice program is a state-wide program. The funding of ACCOs is dependent on where the ACCO is and what services they deliver or want to deliver for that community. But, for example, in Ringwood, we have an  
 30 Aboriginal-focused team within Youth Justice that provides culturally specific supports to Aboriginal young people in contact with the Youth Justice system in community settings in that region. So they have access to culturally appropriate supports in that area, but it's not delivered by an ACCO. So the distinction is where does the funding go and who is it delivered by, and it depends on the location and the specifics of that community make-up.

COMMISSIONER HUNTER: Would you say it's a state-wide program, so wherever you are, you have access to it if you're an Aboriginal youth who needs access to it?

MR SMITH: You have a worker walk besides you.

COMMISSIONER HUNTER: Thank you.

COMMISSIONER LOVETT: Can I jump in. I come back to that, not to take away from the aspiration internally and the work that you are doing with the Justice Caucus on zero, but the new Cherry Creek Youth Justice centre. If the government is looking at to raise the age of  
 45 criminal responsibility to 14, why is it at the same time increasing the Youth Justice facilities under your responsibility, which presumably means greater capacity to incarcerate more of our people. The data says that our people are overrepresented, and yet they're investing in more

Youth Justice facilities, two to three. And I get that you're wanting to do more stronger care plans for people going into this new facility, but we're not doing that already in the current facilities to the level.

5 MR SMITH: Yeah, and, Commissioner Lovett, you're absolutely right, with the commissioning of the new Cherry Creek facility - so we are funded for 56 beds within that facility - will take the number of available beds across the three precincts to in excess of 300. We have 100 kids, both Aboriginal and non-Aboriginal, in our precincts today. So the configuration of the system is a matter for government, what facilities are funded.

10

But what I would say about the Cherry Creek facility is that it does allow the system to flex to better support kids that do come into custody, and what I would say about that, the cohort that does come into custody - and this is a general observation about all kids that come in, not just Aboriginal kids - is that we are getting better at keeping young people in community, whether 15 they are within the case management responsibilities of Youth Justice, but the ones that do come into custody are increasingly more complex. And so having a facility that is equipped and a workforce model that is equipped to deal with that complexity, as long as the kids are - as long as it's the position of the justice system that we have facilities to incarcerate children, it's, in my view, better to have a fit-for-purpose facility with a fit-for-purpose model 20 that is better focused on rehabilitation than older models.

20

COMMISSIONER LOVETT: You have got to understand our hesitancy around the ongoing systematic injustices our people have faced. I mean, the data is there.

25 MR SMITH: I absolutely agree with you.

COMMISSIONER LOVETT: At the same time, the level of optimistic is a little different on this side of the table.

30 COMMISSIONER HUNTER: Can I just add to Commissioner Lovett's point that it's very contradictory to say, "We are going to raise the age of responsibility, we've got these programs, we do early intervention", but then build a new facility. You agree?

MR SMITH: I agree.

35

MS DAVIDSON: We actively acknowledge that, Commissioner Hunter, and it certainly has been a view expressed, understandably, by Aboriginal stakeholders and community. I think further to Mr Smith's point around Cherry Creek in particular, the design of Cherry Creek is really in part about acknowledging the extreme vulnerability that young people experience 40 when they come into custody, and the facility itself has been designed in terms of both the built infrastructure, as well as the models of care, to be really attuned to that vulnerability and to be able to provide as much safety, both physically and culturally, and in terms of the programs that we provide in that space.

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45 So whilst we absolutely acknowledge on face value the comments that are made and it's certainly not cause for celebration to be opening a new Youth Justice facility, what Cherry Creek will be able to provide is a far more nuanced service that is able to be responsive to

young people and really wrap around them in a positive way when they come into custody to support them through that very difficult time.

5 COMMISSIONER HUNTER: So what about the kids that are currently at Malmsbury and the kids that are currently at Parkville? What happens?

10 MR SMITH: Yeah, so there's a pretty developed placement model for young people that are in custody. And so that goes to having some head room in the number of beds that we have so that we can appropriately place young people that are in custody so that they are receiving the services that they need, or should get, as well as ensuring their safety. So things like age group, whether they're sentenced, gang affiliation, for example, those are the considerations that we take into consideration when deciding where a young person should be placed in facility.

15 Malmsbury, for example, has the - I'm not sure whether the Commissioners went to Malmsbury? Yes. So, the - Malmsbury is unique in that it has the dual track program run out of that facility, which is the open site for 18-plus people - young people to participate in that unique program. So there are different offerings, I guess, from each of those precincts. For example, Parkville and its proximity to specialised health services, the children might be a more - for a young person that has complex health needs or the like, needs access to  
20 paediatricians, that might be a more relevant placement in that facility than Malmsbury, for example. So these are the considerations you take into account when placing a young person.

25 But, Commissioner Lovett, your point is not lost that custody is not a place for young people, and we openly acknowledge that.

MR MCAVOY: Just following on from Commissioner Hunter's question, Mr Smith, I understood Commissioner Hunter's question to be asking whether young people from the existing facilities will be housed in the new Cherry Creek facility, whether there's going to be  
30 any transfer to that facility when it's opened? Or the impression that we've - I've gotten from your answers so far is that it's about housing new people into the system with complex problems.

35 MR SMITH: No, that's - sorry, I didn't mean to give that impression, Counsel. So there will be some transfer of - in fact, it will be transfers from our existing facilities to Cherry Creek in at least the first instance. The numbers of young people that are in custody is maintained relatively steady at around 100 young people, and so the number of new people - young people coming into contact with the justice system wouldn't warrant just putting new people into Cherry Creek. So there will be a progressive transfer from the other facilities into Cherry  
40 Creek once it comes online, and the placements of those people will be based on their specific needs.

45 MS DAVIDSON: So the placement of young people within Youth Justice is facilitated through a placement panel, and that placement panel considers their individual risks and needs and circumstances. Consideration is also given to the mix of young people at any particular unit or location. So that placement panel is attended by Aboriginal liaison officers, by our manager of Aboriginal Youth Justice Operations, so the consideration is given in each and

every young person's case as to the most appropriate, safe placement for them. Cherry Creek will now be one of those options.

COMMISSIONER LOVETT: Can I ask, what kind of cultural programs will be provided to  
 5 Aboriginal people who - at this facility? Because we have heard from many people by going into prisons and Youth Justice facilities that they feel that they're rolled out at NAIDOC week to do a dance for everyone, but beyond, that there's no cultural plans happening for them and - you know, maybe a bit of an art class here and there. So can we just get an understanding from you around what programs, meaningful programs?

10 MS DAVIDSON: So - absolutely. I think at the heart of the services for Aboriginal young people at Cherry Creek will be our Aboriginal Liaison Officer team. So young people at Malmsbury and Parkville have access to that team, as will young people at Cherry Creek. In terms of the young person's cultural journey while they're with Youth Justice in custody and  
 15 particularly that place of vulnerability often dislocated on the whole from their families and communities, that Aboriginal Liaison Officer is the person that walks alongside them and that really looks at what programs, what research - when I say "research", what can we do to support Aboriginal young people in their cultural journey during that time, but also what are some of the risks around that? So, we know that, obviously, every young person is on their  
 20 own journey and we know that for some of our young people that come into custody, they can feel quite vulnerable in terms of looking at some of those matters while they're with us. However, it may be about, for example, introducing a connection in community that they're not aware of, and starting to build that connection with an ACCO or with the VACCA Youth Through Care initiative during that time.

25 In terms of dedicated programs through Parkville College, all Aboriginal people in custody are able to access a dedicated culture program where they can come together in a culturally safe space led by an Aboriginal teaching facilitator, as well as supported by those ALOs who walk with them throughout their time in the system. We do also have at Malmsbury at the moment,  
 30 for example, Uncle Ron Murray comes in and spends a lot of time with our young people, again, working with them where they're at on their journey.

In Youth Justice, having a cultural support plan is not mandatory in the same way as it is in  
 35 child protection however where particularly young people are with us in custody for a longer period of time.

COMMISSIONER LOVETT: What does that threshold mean? Longer period? Six months on? One year?

40 MS DAVIDSON: It's completely dependent on the individual young person. I can just reflect on my experience that certainly where young people have felt safe and are wanting to have a cultural support plan developed for them, it has generally been when they've been with us a bit longer, they are feeling safe in their relationship and they've built a relationship with our ALO, and they feel that sense of safety and understanding in terms of wanting to do that  
 45 work around developing a specific cultural support plan.

Where a cultural support plan is developed for a young person, for example, in custody, that is then transitioned with them back into community and will continue to be able to inform cultural support services that may be provided to them. But that is also done regardless of a cultural support plan through that care team process.

5

COMMISSIONER LOVETT: And you referred to - thanks for that. You referred to the Aboriginal Liaison Officer position. So what authority does that position have? Because we have also heard barriers from people around asking for things and then having to go to the Aboriginal Wellbeing Officer in prisons, for instance, and then them not be able to generate any kind of action or movement towards what they are after, within a reasonable ask, obviously.

10

MS DAVIDSON: Absolutely. So the Aboriginal Liaison Officer team is oversighted by a manager of Aboriginal Youth Justice in custody. So that position sits on the custodial executive. That position is front and centre of all of our meetings as an executive, and is the point of accountability within the custodial system as to the treatment, as well as the opportunities and services that are provided to those Aboriginal young people. So certainly reflected within our structure is the authority of that team and particularly that manager position.

20

COMMISSIONER LOVETT: Thanks. I'm really concerned because a lot of the time there's an Indigenous garden there and that's about all they get access to. Culture is deeper than just a garden.

25

MR SMITH: Commissioner Lovett, I would say that the seriousness in which we focus on Aboriginal connection for our young people in Youth Justice is reflected in our structures as well. So we have a dedicated - as I said before, an - we have elevated that portfolio to an executive portfolio within Youth Justice, so there is a dedicated executive officer, an Aboriginal executive officer, that oversees those programs, both from a community and custodial setting.

30

So we want to ensure that at all levels of Youth Justice there is Aboriginal voice from our staffing cohort and that the Aboriginal young people themselves, their voice is heard as well. And certainly through the development of Wirkara Kulpa, we engaged the Koori Youth Council to engage with young people in - both in Youth Justice and more broadly around what they want to see in that strategy. So we are absolutely mindful and committed to hearing Aboriginal young people's voices in that.

35

In relation to cultural support plans, as Commissioner Davidson said, they aren't mandatory. They are offered to Aboriginal young people. There is recognition, though, that if you are a child in child protection, you also should have a cultural support plan, and there might be inconsistencies between a YJAC cultural support plan and a child protection cultural support plan, and the process around building those plans might be disjointed. So there is work underway that is funded. We have engaged an Aboriginal consultancy to do some work across both of those systems to design what a consistent cultural support plan across both of those systems might look like.

45

COMMISSIONER LOVETT: I agree. I get it's not mandatory but it should be seen as a minimum service level requirement for our people at a minimum that they get that service.

COMMISSIONER BELL: Mr McAvoy, can I just ask some questions about things we were told by young people in both prisons and in detention centres. Firstly, in relation to maintenance of staff numbers, while Cherry Creek is being established, we were told by a young person at Malmsbury that he, another young Aboriginal person that he and others were experiencing long periods of lockdown due to staff shortages, which he associated with the establishment of Cherry Creek. Could you give me some information about whether that's happening, what's being done about it and where to from here?

MS DAVIDSON: Absolutely. I would certainly acknowledge that we have had workforce challenges in Youth Justice that have been quite acute in recent times.

MR SMITH: In custody.

MS DAVIDSON: In custody, sorry. Acknowledging workforce challenges across the board, but particularly those have been acute for us, and we acknowledge that. As to the connection with Cherry Creek, I wouldn't make that connection, per se. However, I think the challenge of attracting staff to work in Youth Justice facilities and attracting skilled, capable, the best possible staff that we can, has certainly been enhanced at Cherry Creek through a workforce model that both, frankly, pays staff more for the very difficult job they do, but also that makes it very clear that their role is about truly being engaged and invested in a young person's journey in Youth Justice and in the case management of those young people in particular.

So, for example, the uplifted workforce model will see the key worker that's assigned to a young person in custody, along with the ALO for an Aboriginal child or young person, attends their care team meeting and be actively part of that in acknowledgement that those staff, working with those young people for more hours every day and week than any of us in the system. So investing in not only their capability and development, but really elevating their role within the system to be able to support young people in a particularly rehabilitative frame is a critical part of Cherry Creek.

We continue to look at all of the levers that we have from a workforce perspective to stabilise our workforce and to be able to avoid any isolation for young people in custody. We know it can have detrimental impacts. It is - we absolutely want to avoid it and wherever we have to, due to staffing pressures, engage in isolation practices, we do everything we can to ensure that we're wrapping around that young person and protecting their human rights in so much is possible within that setting.

So, for example, in every circumstance of isolation an Aboriginal Liaison Officer is advised of that isolation and is providing services to that young person, so coming and supporting them during that time, and particularly supporting them when they're coming out of isolation as well. The approach that we take to isolation also aims to minimise the period of time. So rather than young people, for example, spending four continuous hours in their room, if that's a requirement because of a staffing pressure on that day, we would look to split that isolation to different points in the day so that we are minimising the continuous isolation. But



throughout those times, consideration has to be given through our processes to the supports that are put in place, given the vulnerability of young people in those circumstances.

COMMISSIONER BELL: Thank you.

5

MR MCAVOY: Following from that question, are lockdowns occurring at the moment?

MS DAVIDSON: Yes, lockdowns have - are occurring at the moment. I'll acknowledge that.

10

MR MCAVOY: This week? Last week? Staff related.

MS DAVIDSON: Staff-related lockdowns, yes, they have been.

15

MR MCAVOY: I understand that the decision to construct a new facility is something that has - might have a relatively long lead time. Was the construction of the Cherry Creek facility, the decision made in response to other difficulties in the current youth detention facilities?

20

MS DAVIDSON: Not specifically. What I would say is that the Cherry Creek facility was built with having in mind a purpose-built - very contemporary purpose-built facility that's able to best - best meet the needs of young people.

25

MR MCAVOY: But it's not going to be a replacement for any of the existing facilities? It's not proposed to close Malmsbury or Parkville?

MS DAVIDSON: In terms of system configuration, that's obviously a matter for government. As Mr Smith has alluded to, there's certainly more beds than young people in custody at the moment.

30

MR MCAVOY: And reading between the lines of your evidence, the ability to pay more and attract a particular type of staff to Cherry Creek, that's tied to having an uplifted staffing model. So bringing in somebody with greater skills. Is that right?

35

MS DAVIDSON: Certainly what we've heard from staff that have been employed at Cherry Creek, that had also applied for Parkville and Malmsbury - so when someone is making an application for Youth Justice, they can be specific to a facility or they can put their application in across the board. For those staff at Cherry Creek that had applied across Cherry Creek and another facility, what they reflected to us is, yes, pay is an important part of the question but the nature of the role is also for them what was most appealing and why they selected Cherry Creek, often requiring a longer commute for them, but, for them, the nature of the role and that ability to be able to do their best work with young people on the floor and be actively involved in their case management care teams was highly appealing.

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45

MR SMITH: And I think the other thing that I add to that, Mr McAvoy, is the location of Cherry Creek. So it's in a growth corridor of Melbourne. It's based between Werribee and Geelong, two of the biggest, sort of the fastest growing areas in the state. So the pool upon which you can draw a workforce for that centre is far greater than a place like Malmsbury.

MR MCAVOY: Some of what you have learned in establishing Cherry Creek, is that being transferred back to the other facilities in terms of creating a better environment for the staff?

5 MS DAVIDSON: So the uplifted workforce model at Cherry Creek, Cherry Creek is obviously the flagship for that site at this point in time in terms of that workforce model. And what it looks like across the rest of the system, that is a matter for government that they are currently considering.

10 MR SMITH: Yes but in terms of what we can do, with the levers we have available, so things like the community practice we are trialling at Parkville - and Ms Davidson can talk more to that model more articulately than I can. But in terms of the practice, the elements that we can transfer over, putting aside the pay rate, we will transfer over to - we are transferring over to Parkville.

15 MS DAVIDSON: I think -

MR MCAVOY: Clearly, having regular lockdowns in a youth detention facility is unsatisfactory. You would agree with that.

20 MR SMITH: Yes.

MS DAVIDSON: Agree.

25 MR MCAVOY: So something has to be done. It's not a long-term solution to have ongoing lockdowns and isolation of young people.

MR SMITH: Yes.

30 MS DAVIDSON: We acknowledge that.

MR MCAVOY: How do you achieve that? If you are bound by awards in terms of what you pay and you've - if you can't employ enough staff to conduct the facility in a safe manner for staff and for the young people, what do you do?

35 MS DAVIDSON: It is a very complex and wicked issue. I think one of the keys for us is being able to recruit but also retain staff. I think what we have seen is that under the current settings at Parkville and Malmsbury, often working in our custodial facilities is a stepping stone for staff to other locations. I think to Mr Smith's point around ensuring that other reform activities are enhancing the service models but also the conditions for staff in our two  
40 facilities, that's a really important point. So particularly the communities and custody model will, regardless of pay scale, see our staff working in a far more individualised nuanced way with young people, and particularly with a focus on the least restrictive environment.

45 So considering how we're able to work with young people within our custodial system in a differentiated way and engage in things like, for example, leave programs to the street cafe at

Parkville, those sorts of activities that enhance outcomes for young people but actually enhance the experience and the role for staff themselves.

5 COMMISSIONER WALTER: Can I just ask how long has this been a problem? How long? Years?

10 MS DAVIDSON: So I would say it's been particularly acute in the last six to eight months. Prior to that, we absolutely had periods of stability where we had no lockdowns whatsoever across our system. So it's - I guess, the drivers of the acuteness of that problem are what we are working through at the moment, and that doesn't mean that we are sitting on our hands and waiting. We are pulling every lever.

15 COMMISSIONER WALTER: I understand that, but when in lockdown, do the young people get their educational programs?

MS DAVIDSON: So they have access to education. That's absolutely one of the considerations. What that access looks like -

20 COMMISSIONER WALTER: In lockdown, does it look the same or does it look different?

25 MS DAVIDSON: It certainly looks different. But it looks often like young people coming out of their rooms for a shorter period of face-to-face time with teachers. Often what it means is teachers on a young person's unit. So it may be that when a young person is in their room, even, that a teacher is interacting with them, and that interaction may be around just generally checking in with them, how they're going but also the provision of particular pieces of work.

Where young people were in lockdown for COVID, for example, which were particularly pointed lockdowns for young people, to ensure that we were able to, as much as possible -

30 COMMISSIONER WALTER: I'm more interested in right now.

35 MS DAVIDSON: Right now. So certainly we are continuing and we absolutely endeavour to provide them with not only education but other, I guess, developmental opportunities whilst they are in those circumstances.

COMMISSIONER WALTER: So to be clear, the high level of lockdowns right now are having an impact on the education that these young people are receiving.

40 MS DAVIDSON: I would accept that.

COMMISSIONER LOVETT: And what about their own human rights? Is there a breach of human rights here?

45 MS DAVIDSON: So we - through every element of our operations in Youth Justice, we give careful consideration to the Charter of Human Rights. So all of our custodial staff, as part of their Certificate IV in Youth Justice and their induction prior to that, were educated around the Charter. And certainly where there is circumstances such as lockdowns that impact or have

the potential to impact, we look at every entitlement that can be put in place to limit the impact of that. So, for example, when young people are locked down based on dynamic risk assessment, where it's for a staffing reason or otherwise, a plan is put in place to provide that young person with support whilst they are in there, in their bedroom. So, generally, isolation is also occurring to a young person's bedroom so they are within a familiar environment. But we're looking at to do everything we can to support them whilst they are experiencing that lockdown and to limit the period of time that that lockdown occurs for.

COMMISSIONER BELL: Would you accept that there are several human rights engaged? For example, the right to be treated with dignity when in custody? Would you accept that the right to be free of inhumane treatment at any time including when in custody is engaged?

MS DAVIDSON: The full Charter of Human Rights absolutely.

COMMISSIONER BELL: I want to be specific about it because I think it's necessary to understand the dimension of the problem.

MS DAVIDSON: Yep.

COMMISSIONER BELL: And the right of a child to be treated having regard to their best interests.

MS DAVIDSON: Yes.

COMMISSIONER BELL: And other rights.

MS DAVIDSON: Yes. I think the difficulty for us at times can be, Commissioner Bell, and I absolutely acknowledge those rights and it is our express job to ensure that we are giving young people the opportunity to exercise fully their rights as much as is feasibly possible.

COMMISSIONER BELL: Look, I accept the sincerity of your evidence, but what we were told by young people is that they were experiencing very extensive periods of lockdown, which prima facie, is a breach of all of the rights that I've just specified.

MS DAVIDSON: I think one of the elements of consideration that I would draw the Commission's attention to is obviously the right to safety, and that that is very much a consideration when we are looking at making a decision around lockdowns. So we do have to maintain the safety and security of our facilities and -

COMMISSIONER BELL: That's true. I understand that because of lack of staff, there may be an environment that's not sufficiently supervised within the detention environment. I understand that. But that's created by the staff shortage in itself. And I have to ask you the same question that I asked another witness in a similar situation the other day, which is how on earth staff shortages can be put forward as a reason for fundamental human rights violations?

MS DAVIDSON: I appreciate the point that you're making, Commissioner Bell, and I can only turn to the complex decision-making when it comes to considering how to ensure that a custodial environment is safe and secure.

5 COMMISSIONER LOVETT: You appreciate the comment. Sorry to jump in. You appreciate the comment or do you accept it? It's two different things.

MS DAVIDSON: I accept the comment.

10 COMMISSIONER LOVETT: Thank you.

COMMISSIONER BELL: One other subject and I will be brief, Counsel. We visited Malmsbury. We also visited Marngoneet and other prisons in the west of Melbourne. In both places, we spoke with young people who were old enough to be either in a youth detention  
15 centre or in prison.

MS DAVIDSON: Yes.

COMMISSIONER BELL: Concerningly, we were told the same thing at both ends. One  
20 young person at Malmsbury said he successfully sought a transfer from an adult prison because he thought he would be able to access programs at Malmsbury. He was bitterly disappointed that he was not, and he told us that he regretted making the decision and that he would be better off in an adult prison. At the other end, in Marngoneet or one of the prisons in that direction, we were told by a relatively young offender that he had decided not to seek a  
25 transfer into the youth detention system because he's heard that it was not possible to obtain access to the kind of services which he felt he could get in the adult environment. I wonder if you could comment about that?

MS DAVIDSON: What I would say in the first instance is that I accept those - that evidence,  
30 and I would say it's not good enough. We absolutely want to be in a position in Youth Justice to be able to provide services to, and support to young people across the spectrum of what it is to be a young person. So the dual track system in Youth Justice in Victoria is, in many ways, the jewel in the crown that we do have a State that recognises the vulnerabilities amongst young people up until sort of the age of their development which they - certainly science  
35 considers them to be an adult.

So I think it's very disappointing to hear that those views have been shared with the Commission, and I openly acknowledge that it's not good enough.

40 COMMISSIONER BELL: Thank you.

COMMISSIONER HUNTER: Mr McAvoy, just quickly, there was an inquiry called *The Same Four Walls* back in 2017, and that was inquiry into the use of isolation, separation and lockdown in Youth Justice. Now if I go down to one of the recommendations - this is from  
45 2017 - there is one particular one on lockdowns that:

*"DJR immediately review the Youth Justice staffing and recruitment model to ensure that sufficient, suitability trained staff are available to supervise children and young people to prevent frequent and extensive lockdowns.*

5 So I'm assuming that recommendation wasn't implemented?

MS DAVIDSON: Yeah, I was going to say so the -

10 COMMISSIONER HUNTER: Just so you know, I've just - because I already knew of this, so you can also take it on notice because I know Mr McAvoy may not have brought this up with you, if you want to -

15 MS DAVIDSON: No, that's fine, I'm very familiar with the *Same Four Walls* report, and I think it's a very important question that you ask, Commissioner Hunter. Youth Justice following on from *The Same Four Walls* but also the Armytage/Ogloff review have implemented - or we are in the process of implementing a workforce strategy.

20 Now, as I alluded to earlier, we have had periods of time at Malmsbury and Parkville where we've seen the benefits of the initiation of that workforce strategy. So, for example, the provision of a Certificate IV for all our staff and what we are seeing in terms of the uplift of capability, but I do acknowledge that we continue at this point in time to see lockdowns that are unacceptable and we need to do better.

25 COMMISSIONER HUNTER: This is 2017. It's now 2023. And as you appreciate, as Commissioner Bell pointed out, the kids are still saying they are being locked down. And we know from the research and information gathered that it's just not good enough.

30 MR MCAVOY: If I can take that one step further, thank you, Commissioner Hunter, experience tells us that extensive lockdowns are often precursor to disruption events, the rioting in youth facilities. You are aware of that, obviously.

MS DAVIDSON: Yes.

35 MR MCAVOY: That's something that's happened in many places around the country. And would you accept that continuous use of lockdowns as a safety measure, mechanism for managing youth detention facility raises the risk of that type of rioting event?

40 MS DAVIDSON: I do accept that risk, Mr McAvoy. I absolutely accept that risk, and that is the very challenging job that we face every day in looking at the decisions that we make around any isolation of young people. What I did want to put forward from a statistical perspective - and this is not to at all downplay the impact of isolation, because any isolation of young people from our perspective is not good enough and an area which we need to focus on improving, but the periods of isolation on average that young people are experiencing have gone down overall, and, certainly, we have seen fluctuations in that, and I acknowledge it, and  
45 I acknowledge at this point in time that we are seeing a fluctuation for the worst.

But we continue to strive to work hard and correct and get back to where we were at a point in time not too long after the implementation of the workforce strategy where we did see a level of stability, and we are very hopeful in particular that the uplifted workforce model at Cherry Creek is going to have an impact on that, and certainly in terms of the recruitment of our custodial staff to that facility, we are seeing some really promising results.

MR MCAVOY: At the moment, we have got issues at Malmsbury and Parkville, and in response to my question earlier, Mr Smith talked about providing a better workplace environment as a mechanism of encouraging more staff to take on those roles. But my appreciation of the better workplace environment really leaves me thinking that it's a chicken and egg type scenario, that you, in fact, need additional staff to be able to operate in a manner that makes it more conducive to people wanting to work there. Is that correct?

MR SMITH: That's correct.

MR MCAVOY: Sorry?

MR SMITH: I would say generally that's correct, yes.

MR MCAVOY: Commissioners, we have been going for an hour and 50 - sorry, for some time. If we could take a short break now, I think we will then go through till a 1 o'clock lunch break.

COMMISSIONER HUNTER: Can I just quickly ask before we go, with *The Same Four Walls*, would you be able to supply us with what recommendations have been implemented from that? That would be great.

MS DAVIDSON: Absolutely.

CHAIR: 15 minutes?

MR MCAVOY: Thank you.

CHAIR: Thank you very much. We will adjourn for 15 minutes.

**<ADJOURNED 11:55 A.M.**

**<RESUMED 12:16 P.M.**

CHAIR: Shall we resume.

MR MCAVOY: Thank you, Chair. I have some questions following up before the break, but I wanted to confirm for the record, Mr Smith, that in terms of your prior experience and work, you were a CEO for the Yoorrook Justice Commission?

MR SMITH: I was, yes.

MR MCAVOY: Thank you. Now, following on in part from the discussions before the morning tea break, I ask what provisions are in place, or otherwise, for holding young people in adult facilities? Who can answer that?

5 MR SMITH: I think we both can. The broad provision from which a young person - so the power to transfer a young person from a Youth Justice facility to an adult prison rests with the Youth Parole Board, and that's a power that they exercise under section 467 of the *Children, Youth and Families Act* and there are a number of considerations that they are required to take into account to make such an order.

10 It might also be the case that the gravity of offending for a young person means that a court might sentence the court to an adult facility in the first instance.

15 MR MCAVOY: And what about in circumstances for where, in relation to the security of the facility, where we have seen in the past young people held in adult facilities? And you're aware that has been the subject of litigation. What circumstances might that arise in the future?

20 MR SMITH: The circumstances under which it arose - as I understand the litigation that you're referring to, Mr McAvoy, the decision to transfer in that case, as I understand it - it was before my time - was found to be improper and those kids were transferred back. So, accepting that, the circumstances under which - and so the circumstances which the Youth Parole Board are required to consider in transferring a young person to an adult custodial setting, one of the factors would be the security risk that that young person proposed to a  
25 Youth Justice facility.

MR MCAVOY: That's - the only path is through the Youth Parole. Correct?

30 MR SMITH: Yes.

MR MCAVOY: Now there is, before we leave the discussion which I think was sparked, in part, by your evidence related to the Cherry Creek facility, before we leave that, clearly, the cost of construction of a new facility and staffing is significant.

35 MR SMITH: Yes.

MR MCAVOY: As I understand your evidence, there presently are approximately 100 youth detainees in total.

40 MR SMITH: Today, there are exactly 100.

MR MCAVOY: And the addition of 56 beds at Cherry Creek - I think you said 56.

45 MR SMITH: Yes.

MR MCAVOY: That takes the total beds to 300 or -



MR SMITH: 330, approximately.

MS DAVIDSON: 333.

5 MR MCAVOY: So there's additional space in the system for additional detainees, if I can put  
it that way - very crude, I accept. But the expense that's been put to construction of Cherry  
Creek when we've got staff shortages, we've got rolling lockdowns, you've accepted earlier  
that there's always a need for more resources in the system to fund diversionary and other  
community-based activities, is the construction of a new facility consistent with all of those  
10 other needs in the system?

MR SMITH: Mr McAvoy, I would suggest those decisions are more decisions for  
government. Certainly, as an Aboriginal community member, I have some views on - on that  
proposition, which I won't offer in my role as a public servant.

15 MR MCAVOY: If I can put it this way: what view does the Aboriginal Justice Caucus have  
about that, the expenditure on a new facility?

MR SMITH: They've made it quite clear, the Aboriginal Justice Forum, and without sort of  
verballing Nerita Waight from the Aboriginal Legal Service, she has made it abundantly clear,  
20 her views in relation to the investment in new custodial facilities - not just Youth Justice  
facilities but other new custodial facilities, versus the investment in other services that might  
be based in community.

25 MR MCAVOY: If I can just take you back to some of the issues we covered this morning. It  
seems that some of the success in keeping very young people out of the system is a result of  
the exercise of discretion by police officers; is that correct?

MR SMITH: In some circumstances, yes.

30 MR MCAVOY: What other circumstances are there, apart from the use of cautions?

MR SMITH: Well, depends on how far up the spectrum you go. If, for example, there is a  
young person that might have some risk factors of coming into contact with the Youth Justice  
35 system and they are actively engaged with a local Aboriginal co-op or a community  
organisation, those - the interventions and supports that can be provided by those  
organisations and those individuals at that organisation might deter or prevent that young  
person from coming into contact with the Youth Justice system. But I accept your point that  
the discretion of a police officer in some circumstances does have an impact on where a young  
40 person might proceed to next in terms of contact with the justice system.

MR MCAVOY: Well, there's a range of discretions exercised by people within the system,  
including the police; is that correct?

45 MR SMITH: Correct.

MR MCAVOY: And we have heard evidence, including from your Secretary yesterday, about systemic racism within the system and, as we know, the exercise of discretion particularly with respect to Aboriginal people, often is affected by people's bias and racism. Would you accept that that's a part of the environment that your division has to deal with?

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MR SMITH: As in a by-product of that, the misapplication of discretion as a result of racism, we have to deal with the by-product of that? I would say that's a fair proposition.

MR MCAVOY: How much can your - the Youth Justice division - that's not the correct term, is it?

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MR SMITH: Youth Justice Group.

MR MCAVOY: Youth Justice Group influence the awareness and understanding of bias and racism within the other areas of government within which it deals?

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MR SMITH: I would say we don't have a formal capacity around the cultural awareness training for other parts of other agencies, including Victoria Police. That would be a matter for Victoria Police. But certainly, the interactions that our staff have and particularly our Aboriginal staff in those forums, whether it be the regional Aboriginal Justice Forums or the local care teams where there are interfaces with the court system or Victoria Police, our staff make it known, the cultural factors which must be considered in putting supports around a young person.

20

MR MCAVOY: And so for the Commissioners' benefit, can you explain how it is that your staff are made aware and trained in terms of dealing with the Aboriginal community and their clients?

25

MR SMITH: I might centre Commissioner Davidson for that answer, if that's okay with you, Mr McAvoy.

30

MR MCAVOY: Thank you.

MS DAVIDSON: So, Mr McAvoy, both our community and custody staff engage in mandatory cultural awareness training, and material around understanding subconscious bias, bias, and also sort of more broadly, obviously, the issues impacting our Aboriginal young people and staff, are certainly covered in that training. That training is delivered through an Aboriginal consultancy that specialises in cultural awareness training. So Tarina Fanning is the name of the trainer, and she is certainly well-known for her success in terms of cultural awareness training, and understanding cultural bias is very much part of that training.

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In addition to that, our custodial staff under the Certificate IV complete a national standard in a unit that's called Culturally Strong and Safe, and that sees them engaging in another day of mandatory training. And also really importantly, the trauma-informed practice element of our training particularly looks at the impacts of intergenerational trauma and understanding specifically in relation to Aboriginal young people and staff, cultural awareness around the

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impacts, but also the impacts in terms of how they may present, how young people may present within the system.

5 MR MCAVOY: And that training, is it something that's completed once or is there a mandatory refresher?

10 MS DAVIDSON: So there's not a refresher for that training, but what I would say is it's an ongoing process of learning, and I acknowledge the cultural load in many ways that is there for our staff - our Aboriginal staff, because a very critical element of their role is building capability and understanding when it comes, particularly, to working with individual young people in the custodial space. And equally in community, part of the training of our workers is understanding how to draw on the knowledge of those Aboriginal staff within ACCOs, and working in a way that really integrates their knowledge and understanding of that individual young person, their unique cultural journey, their unique story, in the work that they do.

15 COMMISSIONER WALTER: Ms Davidson, the formal training, how long is that?

20 MS DAVIDSON: So two days for our custodial staff. It's not two days in a row, though. What we do is, as our base level training for custody and community, we provide that base level training. Then our custodial staff actually have to come back and re-engage in that training, that further day of training within 12 months.

25 COMMISSIONER WALTER: Do you have good uptake of that and do you collect data on the uptake?

MS DAVIDSON: We do collect data on the uptake and I would be very happy to provide that to the Commission. I don't have it on hand at the present time.

30 MR MCAVOY: Has there been any consideration of requiring - making mandatory refresher courses?

35 MS DAVIDSON: I think it's certainly something we should look at and consider. I know we have had discussions with our Aboriginal team on the ground with our custodial facilities around that, and it's certainly something that, as I say, is part of ongoing discussions and at that individual care team level as well.

40 MR SMITH: Mr McAvoy, the other thing I would just add just from hearing other evidence from other witnesses in relation to cultural awareness training where there is a training of workforce, particularly we have had conversations since some comments made by Commissioner Walter in relation to evaluation of that cultural awareness training and an absolute need for us to ensure that there is a rigorous evaluation framework or process around cultural awareness training. So that is something that we will take away from these hearings, from this block of hearings, that we've already kind of identified as wanting in Youth Justice. So we heard that loud and clear in other evidence as well.

45

MR MCAVOY: In terms - sorry. Commissioner, you've given some evidence about, as I understood it just a moment ago, about the role that Aboriginal staff or custodial staff have in on-the-job training, so to speak, for other staff. That - did you say something to that effect?

5 MS DAVIDSON: I think you have to be very cautious and I certainly am very cautious in terms of saying their role in training. I think their role is a role that's always focused around building capability and understanding. But we very much acknowledge the cultural load that can come with that. And so we certainly don't place the onus upon Aboriginal liaison staff to be responsible for training Youth Justice.

10 MR MCAVOY: It's not the case that you pay them penalty rates for having to educate people every day, is it?

MS DAVIDSON: No, Mr McAvoy.

15 MR MCAVOY: But can I ask you this: what's the ratio of Indigenous custodial officers to non-Indigenous custodial officers?

20 MS DAVIDSON: So in the Youth Justice system at present, we have four Aboriginal Liaison Officers that will expand out to six Aboriginal Liaison Officers. Then we have a team leader that supervises and supports that team and the work that they do and, in turn, a manager that supports the team as well and also feeds in really importantly into our custodial and broader executive in Youth Justice.

25 COMMISSIONER LOVETT: What's the role of the Aboriginal Liaison Officer? Can you just briefly describe their responsibilities?

30 MS DAVIDSON: Yes, absolutely. So I think the absolute key to the Aboriginal Liaison Officer role is they are the staff that are walking alongside our Aboriginal young people from the moment that they enter our custodial system. So at the point that a young person is brought to Parkville by police, our Aboriginal Liaison Officer team, no matter what time of day or night it is, are alerted to that admission, and from that point, it is their role to walk alongside young people to particularly ensure that their cultural needs are being met, insofar as they can be, within that custodial environment while they are dislocated from family,  
35 community and the like.

And particularly importantly role in terms of ensuring that connection is maintained as much as possible, ensuring that young people are able to access cultural education and are also able to access their Aboriginal peers for support. And then also working alongside our educational  
40 providers, our care teams, our custodial staff to respond to the day-to-day needs of Aboriginal young person - Aboriginal young people. They're also a really, really critical part of those care teams that sit around Aboriginal young people when they are in custody and are really focused on transitioning them out from the moment they come into our facilities.

45 COMMISSIONER WALTER: But there's only four of them.

MS DAVIDSON: There's four at the moment. It will be expanded to six.

COMMISSIONER WALTER: What is the proportion of non-Aboriginal staff in these facilities?

5 MS DAVIDSON: So, we do have some - I should say we do also have some custodial staff that are Aboriginal, and we very much support those staff in a similar way to what we do  
 10 Aboriginal Liaison Officers in terms of appreciating the cultural load and providing them with that support. Just in terms of the ratios - and I do appreciate that you're looking at a broader ratio, which I don't have at hand but I'm certainly happy to get, that, at the present time, for  
 15 example, we have 11 young people in custody, 11 Aboriginal young people in custody. So whilst the ratio overall to our custodial staff, I appreciate, may be relatively low, those four staff are very, very actively working on the ground with those young people. And their aim is to ensure that every young person is in custody is able to access an Aboriginal Liaison Officer at any time that they certainly want to, and that is what we drive towards, is that we are able to  
 20 be as responsive as we possibly can to the needs of those Aboriginal young people through those staff.

COMMISSIONER WALTER: If you could provide that data on the actual ratios -

20 MS DAVIDSON: Yes.

COMMISSIONER WALTER: - that would be good, thanks.

25 MR MCAVOY: I just want to move in a slightly different direction now. In terms of research and monitoring of your own systems, I haven't been able to locate, but there may exist, some longitudinal studies setting out the impacts of youth detention on young people as they mature into adulthood and beyond. I ask this question in the context that the Commission has heard evidence from Aunty Geraldine Atkinson about a nephew who ended up going through the Youth Justice system and dying at a very young age, at 36. And it was her observation that  
 30 contact with the system dramatically affects Aboriginal people's trajectory in life. And can you tell the Commissioners whether that research is being undertaken by (indistinct) Commission at this stage?

35 MS DAVIDSON: What I would say, Mr McAvoy, is I think the - I know is the evidence is very clear on the impacts or potential impacts of incarceration on young people, and I absolutely acknowledge that research, and it is very clear to us and we acknowledge the potential deleterious impacts of any contact with the Youth Justice system, but particularly custodial or incarceration, which sees young people dislocated from their families and communities.

40 MR MCAVOY: It's not just the dislocation from family and community. It's also the new company that young people meet whilst they're in custody, and the adoption of different lifestyles, potentially.

45 MS DAVIDSON: Absolutely. There's a raft of factors that can contribute to the impacts of incarceration.

MR MCAVOY: So in answer to my question, there's not longitudinal studies but there's a ready acceptance that incarceration has a very dramatic effect on the life expectancy and trajectory for young people who come through the system.

5 MR SMITH: Yeah, Mr McAvoy, from a Victorian context, again, just referring to the work undertaken by former Commissioner Jackomos in the Taskforce 1000 review, I was involved in a limited capacity in some of that work. And a case file analysis of those 1000 young people that were in out-of-home care that had also contact with Youth Justice, quite often their parents were in contact with the adult justice system and had previously been either child protection kids or kids in Youth Justice. So you see a very clear trajectory and that cycle through some of that work.

15 MR MCAVOY: Thank you. Now, you have given some evidence about the numbers of people presently - young people presently in custody. But that doesn't represent the total throughput number of people, young people over the course of a year, for instance, where you've got people in custody for short stays as a result of having bail refused. That's correct?

MR SMITH: So as Commissioner Davidson said, there are currently nine - sorry, 11 young Aboriginal people in custody today. Nine of those are on remand and two are on sentence. The period of remand varies, and quite often it's a shorter period for those on remand. And we absolutely acknowledge that any contact with the Youth Justice system, let alone custody, is a problem. And absolutely the Caucus advocate quite strongly about that as well.

25 So there are a number of initiatives that we have undertaken to address that issue, including - so, for example, to your point about those short periods of remand, access to bail on a weekend when court isn't sitting, quite - what we found was young people would be picked up on a Friday night and remanded to the next available court, which is Monday. So they are spending a weekend on remand, which is absolutely unacceptable. So in partnership with the Children's Court, we have established the Weekend Online Remand Court. It's an online court. The Children's Court, Youth Justice supports the young person alongside their legal representative to ensure that they have suitable representation and access to a bail application on the weekend so that they're not spending unnecessary time on remand.

35 Youth Justice has also just taken on responsibility for the after-hours bail service from the Department of Families, Fairness and Housing, and we are re-enlivening, or bolstering that system, that service so that there is greater access to after-hours bail.

MR MCAVOY: Thank you. The Commission has heard evidence from a number of witnesses about the use of the Criminal Justice system for minor matters involving kids in care, children in their care placements, and the effect that that has on those children. Is that - you were nodding your head, Commissioner Davidson. Is it something of which you are aware?

45 MS DAVIDSON: Yes, certainly, Mr McAvoy. And we do acknowledge the particularly difficult trajectory for what's commonly referred to crossover kids, so young people that are involved in the child protection system as well as Youth Justice. It's an issue that we do deal with every day and we do acknowledge that there is a particular overrepresentation amongst

our Aboriginal crossover kids. So for the year 2021, for example, Victoria had the overall lowest rate of 10 to 17 year old crossover kids. However, very sadly, we had the highest proportion of Aboriginal crossover kids. So we absolutely acknowledge that problem.

5 MR MCAVOY: And in terms of the way in which youth justice deals with offending by young people in facilities, knowing what you know about youth brain development, what policies exist, or practices exist, in respect of minor offending by young people in youth detention?

10 MS DAVIDSON: So the lens I would say that we take is that when we're considering behaviour in custody, we try as much as we possibly can to look at it through the lens of a home-like environment. So where a young person becomes distressed and may act out in a particular way, particularly where they may act out on the environment around them, we take that through a lens of challenging behaviour, and we particularly involve our Behaviour  
15 Support Team in Youth Justice in working with our Aboriginal Liaison Officers and others, where it's an Aboriginal young person, to try and address and focus on the behaviours and what has led to those behaviours, rather than focusing on taking charges against a young person. So we do have an incident management framework through which we manage those.

20 However, where offences occur in custody against the person, so where those offences do occur, for example, behaviour projected towards our staff, violent incidents towards our staff or young people, we do refer those matters to police.

25 COMMISSIONER WALTER: Can I just ask, how many incidents were there last year that were referred to police?

MS DAVIDSON: I would have to check that data for you. I'm very happy to get that, though.

30 COMMISSIONER HUNTER: Can I just ask, sorry, Mr McAvoy, if you are referring that to police, could that be more charges whilst they're in custody?

MS DAVIDSON: Indeed, it could.

35 COMMISSIONER HUNTER: Being of the age they are, is that under the care of the State? Who is the parent in those - particularly that age group. So who is the parent?

MS DAVIDSON: If they are with child protection, then child protection would be viewed as the guardian.

40 MR SMITH: In which case the Secretary of the Department of Families, Fairness and Housing would be the parent.

COMMISSIONER HUNTER: So if they are not in child protection, what then?

45 MR MCAVOY: I understood from the evidence yesterday from the Secretary, that the Secretary is in the position of a parent - the person with care and control of people in custody; is that correct?

MS DAVIDSON: So my understanding is - and certainly happy to check the fact on this, but my understanding is that their parents are still remaining their legal guardians. However, they are under, obviously, the care of the Secretary whilst they are within our facilities. So, for example, if a young person needs to undergo a medical procedure, in the same way as we would be seeking parental consent, those same rules in practicality apply. And certainly when a young person comes into our facilities, we maintain contact with parents so that where, for example, incidents occur that parents are made aware of those incidents and those behaviours.

COMMISSIONER HUNTER: I think by going to the medical, of course you want to meet their medical needs, and I hope you would, Commissioner. I really hope you would. But you're also saying they're in your custody if they are locked up and then you are still referring them to police. So -

MS DAVIDSON: I think the challenge for us, Commissioner Hunter, comes from the fact that where young people are in our facilities, if they are engaging in, as I say, particularly violent behaviour towards others, that is a matter under law that we have to continue to take very seriously, and it does proceed down a criminal justice line.

MR SMITH: And in practice, how it works, the framework to which Commissioner Davidson spoke to, so, for example, I think Ms Dukakis from the Koori Youth Council in her evidence gave evidence around a young person in a out-of-home care placement and in - what's it called, secure welfare?

MS DAVIDSON: Secure welfare.

MR SMITH: Secure welfare placement committing property damage, and then police being called around that incident. In Youth Justice, we wouldn't involve police where it's a property damage incident. Through the framework that Commissioner Davidson referred to, we would de-escalate the situation, have behaviour supports in place and then talk once the young person is once the situation has been de-escalated, then talk to that young person through a process of talking about and rectifying the behaviours.

Where it is a serious assault, for example, on a staff member or another young person, that's that obligation around calling the police. So that's the distinction on how the framework works. So I think the practice is different in Youth Justice, than it is in the evidence that you heard about.

MR MCAVOY: While I don't have an example to draw to your attention, it's safe to assume that, just as it happens in adult facilities, that there are some people who end up serving terms of incarceration for offences committed whilst in detention which are much longer than their original sentence.

MS DAVIDSON: I would say that that can occur, yes.

MR SMITH: Sorry, just to illustrate that point, Mr McAvoy, the slide deck that we provided at the beginning of the hearing, I think on slide 2, there are some statistics on time spent on



orders and return rates remand. If it's - that might illustrate your point around time on remand, being released, being longer than a custodial sentencing. That's absolutely the case.

5 MR MCAVOY: Is it fair to assume that the young people who are in custody are there in relation to what might be called serious offences? Generally?

MS DAVIDSON: I'd say it is.

10 MR MCAVOY: Sorry?

MS DAVIDSON: I'd say it's fair to say they are - they're in relation to more serious offences or a number of cumulative - a serious number of cumulative offences.

15 MR MCAVOY: Is the number of young people in detention in Victoria in any way able to be correlated with the level of offending generally in the community?

MR SMITH: I'd have to look at - that information would exist. I don't have it off the top of my head, but the Crime Statistics Agency would compile that data and I just - I can't remember it off the top of my head, sorry, Mr McAvoy, but we can get that. I seem to  
20 remember there is some correlation between the offending rates generally and Aboriginal youth offending rates, but I can't remember specifically.

MR MCAVOY: Do you have anything to add, Commissioner Davidson?

25 MS DAVIDSON: I think that is absolutely a question that we should take on notice and get that data from the Crimes Statistics Agency.

MR MCAVOY: Thank you.

30 MR SMITH: Mr McAvoy, can I just go back to your former question about remand. Sorry, I just found a stat that was on the slide deck that I wanted to illustrate that goes to your proposition. So, 88 per cent of episodes of remand were attributed to Aboriginal children and young people being released with no custodial sentence.

35 MR MCAVOY: Yes. And just as the Secretary gave evidence yesterday, that figure is an unsatisfactory figure, you would agree.

MS DAVIDSON: Yes.

40 MR SMITH: I would agree, absolutely.

MR MCAVOY: And it demonstrates that - it raises the possibility that young people are either not being convicted and released without sentence, or are pleading guilty for the purpose of getting released because their conviction will not result in any additional time. Is  
45 that possible, on those figures? Or is it more that people are being released without any sentence at all?

MR SMITH: I'd have to check and come back to you on that.

MS DAVIDSON: The other thing that we can say is that the vast majority of young people who do come into custody, Aboriginal young people that come into custody, are with us for one month or less, and as a subset of that, we know that 30 per cent of Aboriginal young people who are with us are actually with us for one week or less. So, quite brief stays, yet very impactful.

COMMISSIONER WALTER: Which does raise the question of why you are putting them there in the first place.

MR MCAVOY: You are nodding your head, Commissioner Davidson. Are you agreeing that's the proper question?

MS DAVIDSON: I do appreciate that the - any period of time for a young person spent in custody, I deeply appreciate the potential impacts of that.

COMMISSIONER WALTER: Going in for a week, it does seem to be very harsh thing that is obviously - they're not considered needing to be incarcerated before that week or after that week.

MS DAVIDSON: I agree with your point, Commissioner Walter.

MR MCAVOY: Just in terms of the rest of the question of the ability of Youth Justice to make use of the time that the young person is with them to figure out what systems they need, is there any - is there anything you can tell the Commissioners in relation to the assessments that are undertaken when a young person comes into custody in terms of their health or mental health needs?

MR SMITH: Certainly. So, when an Aboriginal - or when any child or person comes into custody, they are screened for health, general health and wellbeing and mental health needs within, I think it's 24 hours, but for Aboriginal children and young people it's within 12 hours, a screen, a health screen, mental health, drug and alcohol assessments are done, and that goes into our - the information obtained from that goes into our planning for what treatments or supports they might need while they're in our care.

MR MCAVOY: Are young people assessed for FASD or neurocognitive disabilities?

MS DAVIDSON: They can be. They are not specifically within that primary assessment phase, but we have specialised services which, if there is a - during that point of triage, as I will call it, if there are concerns raised, we then have the opportunity of specialist Aboriginal identified specialist disability advisor who is able to assist us to work through considerations such as FASD assessment, cognitive capability and then also consider referrals to NDIS, etcetera.

MR MCAVOY: In terms of the frequency of those types of referrals, is there anything you can say to how common it is that young people come in with those types of concerns?

MS DAVIDSON: Sadly common, Mr McAvoy, is what I would acknowledge. So we know we have a disproportionate number of young people more broadly, but Aboriginal young people specifically that come into Youth Justice that do have identified disabilities, or through  
 5 their time with us, those disabilities may, indeed, be assessed during that time.

MR MCAVOY: So are you able to put some sort of estimate as to the percentages?

MR SMITH: I could get you the data on this, Mr McAvoy, but in '21-22, Aboriginal young  
 10 people, there were - in the community setting, there were 67.9 per cent of Aboriginal young people under our supervision in community with an intellectual disability. That rate increases to 70.6 per cent of Aboriginal young people in custody over that time period. So  
 it's - intellectual disability is quite high. Language disorder - in custody, for example, close to  
 12 per cent had a language disorder. Six per cent had autism spectrum disorder. And another  
 15 six per cent had foetal alcohol syndrome. That's just for that period, for '21-22 before custody.

MR MCAVOY: Do - sorry. The Cherry Hill facility is more directed towards being able to provide support for people with those complex needs? Or not?

MR SMITH: Yes. Commissioner Davidson can go more into the specifics of this, but Cherry  
 20 Creek will move to - for healthcare, it moves to a public health model, and that will be provided by Barwon Health, which has a broad suite of health interventions for young people. As a requirement of commissioning that service, we require the public health provider to also partner with an Aboriginal health provider. So they have partnered with Wathaurong  
 25 Aboriginal Co-operative which has, again, a suite of Aboriginal-specific culturally safe health services that will be provided to our young people - to the young people that are in Cherry Creek.

And we also have in-house clinicians and disability specialists in Cherry Creek which are  
 30 currently under recruitment, that Commissioner Davidson could talk to in more depth around that model.

MR MCAVOY: Just before we go to that, just to be clear, those services - it's not the case that those services couldn't have been made available in the existing facilities. It wasn't necessary  
 35 to build Cherry Creek in order to provide those facilities to young people, was it?

MR SMITH: So Cherry Creek, as part of the build, has dedicated mental health beds. So at the moment, in the other facilities, we have access to mental health beds that are provided by Origin - I just need to check whether that was the provider?  
 40

MS DAVIDSON: Origin Youth Health, yes.

MR SMITH: Origin Youth Health. So they're run by an external. For Cherry Creek, those mental health beds are in-house to provide greater access.  
 45

MR MCAVOY: Did you want to add anything, Commissioner Davidson to Mr Smith's answer in relation -

COMMISSIONER LOVETT: Those services still could be provided in the current sort of settings. I don't think we need to establish a new facility for young people to get access to these intense services, I think, just going back to the question.

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MS DAVIDSON: Yeah, I agree with you, Commissioner Lovett, and what I would say as well under Wirkara Kulpa, one of the commitments that our colleagues in Justice Health are working through now is the establishment - working in very close partnership with the Collaborative Working Group and Caucus is the Aboriginal Youth Health and Wellbeing Strategy which will sit across all of our facilities.

10

I also think Cherry Creek is a point for emphasis and expansion. The mental health beds, for example, young people in the system are absolutely able to get mental health care at the present time, but what we feel is that, at the present time, a young person has to be in an acute state to be taken to a residential facility, so removed from that custodial environment and taken to the youth facility at Footscray Hospital.

15

By having in-house mental health beds, that will allow us, wherever a young person is in the system, to be able to bring them to Cherry Creek and to be able to get in early when we're seeing those mental health concerns, which we're hopeful will mean we will see less need to take them to off-site services and then reintegrate them back into the custodial environment. So, it's really about trying to get in earlier around the mental health concerns and ensure we are really able to comprehensively, as a system, have that dedicated facility for those young people to go.

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COMMISSIONER LOVETT: It seems to be you're advocating for the model in here, but earlier you were deflecting the earlier questions to, "It was a government decision". So I just want to make that comment.

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MS DAVIDSON: I meant - just to ensure, when I say that, I mean the configuration of the system ongoingly.

COMMISSIONER HUNTER: Would you say that most or nearly all the children, Aboriginal or not, that they would need some form of mental health coming into the system?

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MS DAVIDSON: Absolutely and that is provided. So young people at the moment - Origin Youth Health does provide our mental health services. Primary mental health provided at that front-end by CCA, but where young people have more significant mental health issues, Origin Youth Health is engaging them in our facilities currently.

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COMMISSIONER HUNTER: Would you say that most kids that come in have significant mental health issues?

MS DAVIDSON: I would say that most young people that come in have mental health issues, yes.

45

COMMISSIONER HUNTER: So those services should already -

MS DAVIDSON: They are available in our current facilities. The additional service that is available at Cherry Creek is a standalone mental health unit. At the present time - and often it's the preferable option for people to receive that treatment, as they do in the community, within the unit that they are residing in within custody. However, there are occasions where we feel that having dedicated mental health beds will allow us a step before the need to go to acute care.

COMMISSIONER LOVETT: I just want to make a comment about - and we would hate to see that our people engaging in the justice system to be able to get access to these services.

MR MCAVOY: I just want to take you back to the figures that you quoted from 2021-22, I think was -

MR SMITH: '21-22. The - an intellectual disability, those statistics, yeah?

MR MCAVOY: I understand you told the Commission there was approximately 70 per cent - is that the correct figure?

MR SMITH: In custody, yes, 70.6 per cent had it.

MR MCAVOY: 70.6 per cent of the young people in custody. And is that Aboriginal young people?

MR SMITH: Young people had an intellectual disability.

MR MCAVOY: An intellectual disability. So by intellectual disability, that takes in FASD and early childhood trauma and other trauma-related neurocognitive-type disability?

MR SMITH: Yeah. The other thing I'd say is that, in relation to mental health as separate from intellectual disability there are - to go to Commissioner Hunter's question, around the proportion of Aboriginal young people with an active mental health diagnosis, around 45 per cent have an active mental health diagnosis. And the common diagnoses - most common diagnoses are things around anxiety disorders, trauma and stress-related disorders and depressive orders so they're also picked up through the system as well.

MR MCAVOY: So if I can just - sorry for cutting you off. There's approximately 45 per cent of young Aboriginal people who present into the custodial system have a mental health issue of some type?

MS DAVIDSON: Diagnosis.

MR MCAVOY: Diagnosis of a mental health problem. And Commissioner Hunter was asking questions about significant mental health problems. And I noticed, Commissioner Davidson, that you were, I think, not characterising your observations around significant mental health but talking about acute mental health episodes and more generalised mental health conditions. Now, assuming that we've got the 45 per cent cohort - of the cohort have a

mental health issue and 70 per cent have some form of intellectual disability, it raises the question fairly and squarely as to whether these young people ought to be in a Youth Justice facility at all and whether they are more appropriately dealt with in a health setting. Would you agree with that?

5

MR SMITH: That's a fair question, yes. And I think, just to expand on that point, Mr McAvoy, we might look to the contribution those conditions make to the offending behaviour in the first place and if they were addressed in some other way, would it lead to offending. I think that's a fair line to follow.

10

MR MCAVOY: What it says is that society deals with young people with health problems by use of the blunt instrument of criminal justice. Would you agree with that?

MR SMITH: I think there are a high proportion of Aboriginal kids that are dealt with in that way that they enter - they do not get the supports that they require in community and the trajectory sadly is into the Youth Justice system and it's not where they should be.

15

MR MCAVOY: And the health conditions that these young people present with are complex; is that a fair -

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MR SMITH: Accept that.

MS DAVIDSON: Inherently. Agree.

MR MCAVOY: And how then does a detention facility that is holding people for an average of four weeks deal with complex mental health and intellectual disability issues?

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MS DAVIDSON: That is a very good question, and I think that's where, once a young person comes into custody, our focus is on transitioning them out and how we deal with those complexities once they're transitioned out to ensure that they - we're giving as much room as possible for them to not be returning to us.

30

MR MCAVOY: And so, as you've said before, there's strategies - I think you said strategies or a strategic approach involving the health organisations. But it seems to be fairly clear from your evidence that some of these young people will need significant health support upon their release. Is that - are you able to assure them or the Commissioners that they get that support on their release?

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MS DAVIDSON: So what I am able to assure the Commissioners is that the care team process and the reintegration process is focused on the whole child and looks very much in detail at their individual risks and needs, and that health is front and centre of the considerations around those risk and needs and what transition supports are required to ensure that young people are able to have those needs met.

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So from a Youth Justice perspective, that may be things such as the Aboriginal Youth Justice program worker that may be sitting in a local ACCO is walking alongside that young people - young person to ensure that any of the barriers to access to services, that they are able

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to work to break through. So, for some of our young people, it's about when they arrive in custody, it can be the first time that they have access to that level of services, and it's ensuring that whatever barriers may have been there in community, to Mr Smith's point, can be addressed as part of that reintegration into community.

5

COMMISSIONER HUNTER: Can I just ask, when they are released how do you assure they're still going to engage? Like, do you work with the family as well or just the child?

10 MS DAVIDSON: No, we work with the family as well, and many of our families are active parts of the care team and in some cases, and certainly we encourage, wherever young people feel safe and are supported to, to be part of that care team themselves to be able to articulate what those barriers are to them receiving those supports that they may not have received before they came into the Youth Justice system.

15 COMMISSIONER WALTER: So, what is the follow-up to make sure that is happening post release?

20 MS DAVIDSON: That is through our case management framework and through those funding of those Aboriginal Youth Justice programs that maintain that continuity of care with those people.

COMMISSIONER WALTER: ACCO people. Responsibility.

25 COMMISSIONER LOVETT: If there is reoffending and they end up back in the court system, do these reports provided to the court so the court is making - has an understanding of the offending behaviour but also the individual?

MS DAVIDSON: Yes.

30 COMMISSIONER LOVETT: You are confident of that?

MR SMITH: So where there is prior Youth Justice involvement, and in the case management of a young person, whether it be an Aboriginal young person not, Youth Justice will assist the court in its determination around the circumstances surrounding that young person.

35

MS DAVIDSON: And particularly their background and vulnerabilities.

COMMISSIONER LOVETT: But also Youth Justice will provide a recommendation to the court?

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MS DAVIDSON: In relation to certain matters.

COMMISSIONER LOVETT: In relation to offending behaviour but also what the sentence, you know, could look like.

45

MS DAVIDSON: I think particularly in relation to the nature of young people's engagement supports where they're at in the system, yes, and particularly when it comes to suitability for certain programs, yes, we do have a role there.

5 COMMISSIONER LOVETT: Yeah.

MR MCAVOY: Just following on from Commissioner Lovett's question, I'm not sure if you have got the capacity to answer this, but do you know whether the assessments that are done in relation to intellectual capacity are made available to the young person's lawyer for use in  
10 doli incapax applications?

MS DAVIDSON: Certainly it's very common for that to occur. As to whether that occurs across the board, I would have to check on that, but I know it is absolutely a very common occurrence.  
15

MR MCAVOY: Sorry, I think I cut across one of the Commissioners.

COMMISSIONER HUNTER: Yes, I'm just thinking about child protection, a child who's child protection and then criminal justice. They are two separate courts. Do they interact at all for these children? Is there any interaction?  
20

MS DAVIDSON: I would have to check, but my view is that not in a formal sense. I think what we do know is that when a young person is coming before the court for a criminal matter, that where they are involved in child protection, the court is aware of that, and for the best part, it's my understanding that the court requires child protection to be there or to be able to represent their involvement with the young person through that process.  
25

COMMISSIONER LOVETT: I worked in the courts for many years and I hardly ever saw child protection practitioners turn up, yeah.  
30

MR SMITH: The other interface, Commissioner Hunter, that there is with child protection and Youth Justice is, upon release, whether it's on bail or transitioning out on a sentence is, if that child is a - or young person is a child protection young person, they will be involved in where they are released to. And so that's the other point, I guess, where Youth Justice works with child protection around, okay, this kid is coming up. He or she is being released. Where are they going to? And that's another rub point, with child protection.  
35

COMMISSIONER HUNTER: Sometimes they probably wouldn't go back to the same carer or they wouldn't go to family.  
40

MR SMITH: That could be the case, yes.

COMMISSIONER HUNTER: So is there a risk of homelessness?

45 MR SMITH: I think, generally speaking, the court wants to be assured - where the court is involved, particularly on bail, they will want to be assured that the young person has somewhere to go. What we - what I would observe is that the stability of some of those



placements, particularly where the young person has other vulnerabilities, particularly where they are a young person that's involved in child protection, that might be very short-lived. It might not be a particularly stable placement for them, and we've seen that.

5 COMMISSIONER HUNTER: You agree they're really complex kids in both of those areas.

MR SMITH: Absolutely.

10 COMMISSIONER HUNTER: Do you think that there should be some - treated differently in some respects due to the complexities of being in out of home care as wellbeing in the Criminal Justice system?

MR SMITH: I think the level of complexity that those children and young people present with absolutely require a service that wraps around and meets the child where they are, and  
15 I'm not absolutely confident that will - that's done.

COMMISSIONER HUNTER: Thank you for your honesty. Thank you.

MR MCAVOY: I notice the time, Chair. I have a couple of more questions, and I note that  
20 Commissioner Bell has some questions.

COMMISSIONER BELL: No, I don't.

MR MCAVOY: I propose to ask the questions I have and then perhaps we can adjourn for  
25 lunch, but given the material that has been requested from these witnesses, it will be my suggestion that they may be called back at some point for further evidence. I notice the witnesses are nodding that - their willingness to come back at some stage and perhaps if not in this hearing block in future hearing blocks.

30 So the questions I have to ask are really probably more directed to you, Mr Smith. Are you aware of research that suggests that for Aboriginal children with mental health or intellectual disability issues, that access to and participation in cultural knowledge and cultural activities is very beneficial to them?

35 MR SMITH: I wouldn't be able to refer to any specific piece of research, but certainly what we've heard through our partners such as Dardi Munwurro, who we fund and partner with for some programs, that is absolutely critical in being more effective intervention for its young people that present with complex mental health issues.

40 MR MCAVOY: You may not be able to answer this. Of the children, young people, that come into custody who have anxiety issues, do you know whether any of that - the anxiety is attached to identity matters for Aboriginal young people?

MR SMITH: Look, I - I'm not sure whether any data exists on that. What I can speak to is  
45 some of the interaction I've had with young people - Aboriginal young people in particular, in custody, and I would say that knowing their identity or being embarrassed by their identity has been an issue that has been raised with me by those young people, and having conversations

and talking through with them the strength of their Aboriginality and what that brings to their identity is beneficial, and I've seen that firsthand.

5 MR MCAVOY: And I take it that that is something that the facilities are aware of, and can you just, in a very short form, tell the Commissioners how the cultural identity and participation in cultural businesses is provided for in the institutions?

10 MS DAVIDSON: So it is very centrally around our ALO team, and ensuring that that response, that cultural response, is individually tailored to young people where they're at. So it's really about wrapping our arms around Aboriginal young people when they come into custodial facilities, that that team is really looking at their individual circumstances and how they can draw on the power of culture to be able to provide some strength for our young people during that time.

15 So just as one example, one element of the work that our ALOs do when young people first come into custody is to talk to them about their connection to culture and to introduce to them certain cultural items that may support them and that they may be able to find some comfort in whilst they're in custody. So, for example, the wonderful possum skins that we see around here today, when Aboriginal young people come into custody part of the discussion that ALOs have with them is around the use of a possum skin as a sensory item.

20 And certainly having sat with Aboriginal young people in times of stress for them, I have seen them actively using and talk about how much strength they are able to draw from the introduction of those cultural items into their lives at that point in time. So that's just one example of how, from the outset, we're constantly thinking about how connect draw on the strength of culture to support our Aboriginal young people.

25 MR SMITH: And then access to Elders is the other really powerful element that in terms of - particularly in custody. So in Parkville, through the Parkville College, Aunty Joy Murphy, who is well-known to this Commission, I'm sure, a senior Wurundjeri Elder has, through the school council and her participation at Parkville College, Aboriginal young people have access to her and that is very moving and very powerful interaction.

30 And sometimes it's the first interaction that some of the Aboriginal young people have with an Elder, and we know that culture as protective factor for these young people and so we want to nurture that. And then in Malmsbury, Uncle Ron Murray, who I think we mentioned before, is our Elder in residence that visits and, again, the young men in Malmsbury take a lot from that, that interaction, in addition to some of the other programs that I mentioned, Dardi Munwurro and others.

35 40 MR MCAVOY: And, finally, access to those cultural supports, cultural education is affected by staff shortages, isn't it?

45 MS DAVIDSON: It can be and we certainly endeavour, wherever possible, to ensure that they're not, and along with education contact and - contact with and the ability for young people to exercise their culture regardless of their circumstances in custody is paramount for us.

MR MCAVOY: But if an Elder comes into a facility, they need to be escorted to wherever -

5 MS DAVIDSON: That's a good example, perhaps, Mr McAvoy, in terms of where the decisions that we make in custody will be oriented as much as possible towards the young person's wellbeing. So if we have an Elder coming into the site, that will be absolutely prioritised for a young person to be able to see that Elder.

10 MR MCAVOY: Even if it's in lockdown?

MS DAVIDSON: Yeah.

MR MCAVOY: Thank you. They're the questions of these witnesses from Counsel assisting.

15 CHAIR: Anyone else?

COMMISSIONER WALTER: Look, I just wanted a final statement. It worries me that for the department to provide even a vaguely suitable service, ACCOs and Elders and others are being relied upon, and I just think it's such a burden, and I'm just wondering why the  
20 department can't provide that service? I mean I think it's good that they are involved, but it seems that that's always the answer, that the department is incapable of providing what these young people need of itself.

MS DAVIDSON: I absolutely acknowledge the cultural load on our Aboriginal staff, and  
25 what I would say is that they are not the sole answer, and the progress that we've made in our case management framework on the whole and a number of the reforms that's have come in Youth Justice from Armytage and Ogloff, from the important work of *The Same Four Walls* and *'Our Youth, Our Way'* is really ensuring that we are, as a system, wrapping our arms around those young people, but I do acknowledge the cultural load on Aboriginal staff.  
30

MR SMITH: Just to approach that question in a different way, Commissioner Walter, certainly what we hear from the Aboriginal Justice Caucus is that they don't want Aboriginal culture to be in the purview of the department, and that's a matter for community, but they should be resourced appropriately to do so. So we make our best endeavours to do that. And  
35 the other just element of that, through the work that I referred to earlier around the engagement we undertook with the Caucus on developing the Youth Justice Bill, they've said very clearly that their aspiration down the track is that it is an Aboriginal-led and run Youth Justice system that's not run by the department. So it goes to those, to your point, I guess.

40 CHAIR: Commissioner Bell, are you okay for questions?

COMMISSIONER BELL: Thank you.

MR MCAVOY: I've nothing arising from those questions.  
45

COMMISSIONER HUNTER: I just have something to say. Firstly, I want to - even though it's low numbers still, I commend you for bringing them down. I also wonder if that's - you

have Aboriginal leadership in this space. But I also commend you, because we didn't hear it yesterday, that you are taking on board the Aboriginal voices. But in also saying that, one kid locked up in a prison is one too many, particularly our kids. We know this. Happened through Colonisation right up to now.

5

Taking our kids and not supplying them with what they need, particularly when they are traumatised - we know this stuff because of *The Same Four Walls*, '*Our Youth, Our Way*', *Always Was Always Will Be Koori Children*. You've also said you understand the impacts of intergenerational trauma. Yet we have still got rolling lockdowns. We are still having kids locked up, and we still have staffing shortages. These are recommendations from 2017. It's really unacceptable, I think, knowing how traumatised our kids are. And we retraumatise them. It's not acceptable, and you've both acknowledged that. We can't wait; yet putting money into a new facility is really contradictory and disappointing.

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15 MR MCAVOY: Thank you.

CHAIR: So this session is adjourned and we are resuming at 2 o'clock for the next session, Counsel.

20 MR MCAVOY: Yes, thank you, Commissioner.

CHAIR: Thank you. Thank you very much.

<THE WITNESSES WITHDREW

25

<ADJOURNED 1:27 P.M.

<RESUMED 2:04 p.m.

30

MR MCAVOY: Thank you, Chair. This afternoon's session we are hearing evidence from Mr Ryan Phillips and Commissioner Larissa Strong. There was a matter of housekeeping that we are attending to but we'll deal with that perhaps a little bit later this afternoon. So, Commissioners, I call Ryan Phillips and Commissioner Larissa Strong.

35

\*\*<RYAN PHILLIPS, CALLED.

\*\*<LARISSA STRONG, CALLED.

40 MR MCAVOY: They're in the witness box. I understand that the appearances are the same as this morning. Mr Knowles is appearing for both witnesses.

MR KNOWLES: Yes, Commissioners. I appear with Ms Siobhan Kelly for the State of Victoria and in particular for all the witnesses giving evidence this afternoon.

45

CHAIR: Thank you.

MR MCAVOY: As with this morning, I'm appearing with Mr Boyd-Caine.

CHAIR: Thank you.

5 MR MCAVOY: I will swear the witnesses in, if that's suitable, Chair? Mr Phillips, could you tell the Commissioners your full name please.

MR PHILLIPS: Ryan William Arthur Phillips.

10 MR MCAVOY: You are about to give evidence to this Yoorrook Justice Commission. Is the evidence that you will give today - will that be the truth?

MR PHILLIPS: It will be.

15 MR MCAVOY: Thank you. Commissioner Strong, could you tell the Commissioners your full name, please.

MS STRONG: Larissa Jane Strong.

20 MR MCAVOY: And will the evidence you give today to this Commission be the truth?

MS STRONG: Yes, it will be.

25 MR MCAVOY: Thank you. I invite you, as we do with all witnesses of the government - government witnesses to this Commission, to make any opening statements you wish to make. Is there anything that you wish to say before we commence?

30 MR PHILLIPS: Yes, I would like to make a statement. First, I would like to begin by acknowledging the Traditional Owners of the land on which we are meeting today, the Wurundjeri people of the Kulin nation, and pay my respects to their Elders past and present and all Aboriginal people in the room today. I would also like to acknowledge that sovereignty was never ceded and the strength of the continuing connection of Aboriginal people to their land and culture throughout Victoria and the nation.

35 I'm very grateful for the opportunity to give evidence today. I know that it's a privilege to be able to talk about our system, its failures, what we are seeking to do differently, and I wanted to acknowledge at the outset the Aboriginal people who passed in custody, and the compounded pain and trauma that every passing causes Aboriginal people in the community, their families, and Aboriginal staff who work with us.

40 I acknowledge that the Corrections system is a legacy of colonial structures that did damage and continue to do damage to Aboriginal people to this day. And I particularly acknowledge the five Aboriginal people who passed in custody since I commenced in the Deputy Secretary role for Corrections and Justice Services, Aboriginal people who were disconnected from their  
45 Country, families and community.

I also acknowledge Aboriginal people and members of the community who have family members in prison. We know that for many, having family members in custody is a deeply worrying and upsetting time. I've heard so many stories about that, and it's something that I don't take lightly in terms of the responsibility we have for the people in the custody of Corrections Victoria.

I've heard clearly from the Aboriginal Justice Caucus and community and also evidence presented here and in the cultural review into the Corrections system that racism is endemic in the justice system and equally so in the corrections system. And that we need to change.

The truth of Aboriginal people's experience is a source of great shame and regret in terms of experience with our system, and I apologise for the ongoing impact and suffering of people in custody, as well as their families and communities.

Finally, I would like to acknowledge the Aboriginal people who work with and in our system. So the Aboriginal Justice Caucus and all of the Aboriginal organisations that we engage with regularly. Our many staff who work within a system that was not designed for them but, nonetheless, are committed to working to achieve outcomes for their families and community. I know they carry a heavy burden and we need to do more to support them, but I look forward to talking to you more about that today.

MR MCAVOY: Thank you.

MS STRONG: I would like to acknowledge the Traditional Custodians of the land on which we are meeting, the Wurundjeri people of the Kulin nation, and pay my respects to their Elders past and present. I would like to pay my respects to all Aboriginal people in the room. I am here before the Commission humbly, I would like to acknowledge, because I have worked with Aboriginal Justice Caucus and Aboriginal staff for many years and acknowledge their tireless efforts in improving our system, and I commit to this process and to telling the truth. Thank you.

CHAIR: Thank you.

MR MCAVOY: Thank you. Now, Mr Phillips, your position as Deputy Secretary in the - in Corrections and Justice Services within the Department of Justice and Community Safety?

MR PHILLIPS: That's right. I'm - subject to one caveat. I'm currently acting as Associate Secretary.

MR MCAVOY: And could you explain both the Deputy Secretary position and its remit for the Commissioners, and also your acting role?

MR PHILLIPS: Yes. So I've been employed in the Department of Justice since May 2017 as a Deputy Secretary but most recently as the Deputy Secretary for Corrections and Justice Services. So I commenced in that role in the second half of 2019. In the role I'm substantively employed in, I have responsibility for Corrections Victoria. So with Larissa Strong reporting to me, I have responsibility for Justice Health, which provides health services

to adults and young people in custody, and for Justice Services which oversees the State's regional service delivery footprint, so that's most relevantly Community Corrections. I also have responsibility for key related policy functions in respect of those operational areas.

5 As Associate Secretary, it's a role I've been asked to perform by the secretary for six months. I continue to have responsibility for Corrections and Justice Services. I also have responsibility for the department's corporate functions, so that's finance, HR and the like, and I've also - also have Josh Smith, who you met earlier today, reporting to me. So I've been in that role for about two months.

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MR MCAVOY: Thank you. Now, could you also describe for the Commissioners your professional background and experience.

15 MR PHILLIPS: My professional background is as a lawyer. So I was legally trained. Before working at the Department of Justice, I was employed at the Department of Premier and Cabinet where I performed a range of roles across social policy, governance and the legal branch, and included as general counsel of the Department of Premier and Cabinet. Prior to that, I worked at the Kimberley Land Council in Broome for two and a half years, so have some direct service delivery experience of working for Aboriginal people in the Kimberley, and then prior to that more junior legal roles in the private sector.

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MR MCAVOY: Thank you. Commissioner Strong, could you describe for the Commissioners your present role?

25 MS STRONG: I'm Commissioner for Corrections Victoria. Corrections Victoria is responsible for the adult custodial system, running the public prisons and also oversight and monitoring of the private prisons and the programs and services in the adult system as well.

MR MCAVOY: And your professional background?

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MS STRONG: I'm a career public servant. I have an Arts degree. I'm not a lawyer. I commenced in the Department of Justice about 20 years ago and I have been working primarily in the Corrections portfolio for most of that time.

35 MR MCAVOY: And it's correct that you were working in the Justice portfolio prior to being appointed as Commissioner?

MS STRONG: Yes, I'm sorry. Yes, I was Deputy Commissioner for Corrections Victoria from around, I think, 2016. I started to act as Commissioner in mid-2020 and became appointed in an ongoing capacity in early 2022.

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MR MCAVOY: Thank you. Now, just so that we're clear, Commissioner Strong, do you have up-to-date figures of the prisoner population in Victoria?

45 MS STRONG: From Monday, yes, I do.

MR MCAVOY: Could you just share those with us, please.

MS STRONG: On Monday, which I think was 1 May, we had 822 Aboriginal people in the adult custodial system which represented - I just need to put my glasses on - which represented 12.5 per cent of the prison population. Of those 822 Aboriginal men and women, 48 per cent were unsentenced. On Monday, the breakdown was 783 Aboriginal men in the adult system, which was 13 per cent of the total male population, and of those Aboriginal men, 49 per cent were unsentenced. And on 1 May in the system, we had 38 Aboriginal women, which comprised 12 per cent of the total female population, and of those Aboriginal women, 44 per cent were unsentenced as of Monday.

MR MCAVOY: And with respect to the male population, do those figures, as of 1 May, represent a decrease in numbers of Aboriginal inmates.

MS STRONG: From when, sorry?

MR MCAVOY: Over this present year.

MS STRONG: I think it would be an increase over the 12-month period.

MR MCAVOY: And with respect to the female population?

MS STRONG: I would have to double-check, but I think that would be a decrease from 12 months ago.

MR MCAVOY: And over the period of the last decade, there has been a substantial increase in both men and women Aboriginal prisoner populations. That's correct?

MS STRONG: That's correct, yes.

MR MCAVOY: And that has increased at a rate higher than the general prison population. That's correct?

MS STRONG: That's correct, yes.

MR MCAVOY: And, in particular, there has been an increase in both the men and women's prison population with respect to the percentage of unsentenced prisoners?

MS STRONG: That is correct as well.

MR MCAVOY: And this issue of the increase in the unsentenced population was covered in some detail in the inquest and the coronial report into the death of Veronica Nelson?

MS STRONG: Yes, it was.

MR MCAVOY: And you are aware that that report was highly critical of the 2018 amendments to the Victorian *Bail Act*?



MS STRONG: Yes, I am.

MR MCAVOY: You are aware that there have been some announcements about proposed reforms to the *Bail Act* in response to that coronial inquest?

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MS STRONG: Yes, I am aware.

MR MCAVOY: Have you had a chance to consider how that how those reforms might affect the numbers coming into the prison population?

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MS STRONG: Yes, we have. So there is an area within the Department of Justice that does modelling, if you like, on impact in terms of numbers. So that is a different area, but, obviously, we were consulted on the modelling in terms of what that might mean in terms of prisoner numbers and also translation to prisoner beds as well.

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MR MCAVOY: And that modelling is important to management of the facilities and prisoner numbers and staff; is that the case?

MS STRONG: It's important, I guess, in terms of advice to government about the decisions and the decision that they make so they understand what those decisions mean and also then how we address and take appropriate action.

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MR MCAVOY: So can the Commissioners assume that that sort of information is also useful in determining whether new facilities need to be built?

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MS STRONG: That is correct. So exactly the same scenario, where there was a proposal about changing legislation which maybe made legislation more strict, for want of a better word, that same process would be underway by the modelling people in terms of what that meant. And it is a projection. It's a forecast. It's obviously not a complete science. It's a forecast, but absolutely that work is done.

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MR MCAVOY: So can you share with the Commissioners what the forecast is in respect of the last announcement in terms of a reform to the *Bail Act*?

MS STRONG: I would have to take that on notice. I don't know off the top of my head the forecast of those numbers. But we can get them to the Commission.

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MR MCAVOY: Do you know in general terms what the projected effect will be?

MS STRONG: No, I am sorry, I don't.

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MR MCAVOY: So you can't say here today that you have been informed that it is likely to bring about a decrease in numbers of unsentenced -

MS STRONG: I can say that. You know, that is certainly - it will bring down a decrease in the number of people coming into the system unsentenced, a decrease in the number of people

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in prison who are unsentenced. I just - that is true but I guess the volume by how much is something that I don't know to tell you right now.

5 MR MCAVOY: And we heard evidence this morning that there were proposed to be constructed some new facilities in Victoria.

MS STRONG: Yes, that's correct.

10 MR MCAVOY: Corrections facilities. Can you just tell the Commissioners how many facilities are proposed and where they're at?

15 MS STRONG: So there was a decision taken some years ago. It predates COVID and it was at a time when we did have an increase - a significant increase and historical increase in the prison population. And a new prison called Western Plains Correctional Centre was - a decision to build that prison in response to increasing numbers. That prison has now been built, but it's not operating. We don't have money to operate that prison, because our demand has dropped. So we don't need to use those beds. But the decision was taken a long -

20 COMMISSIONER LOVETT: How much money was invested -

MS STRONG: I'm trying to - sorry? It takes maybe about four years, so I guess a decision might have been taken about five years ago. I would have to confirm that. And the prison got handed over to Corrections to maintain its integrity towards the end of last year.

25 COMMISSIONER WALTER: Was there a correlation between the bail reforms and the decision to build that prison? It seems that they're around about the same time period.

30 MS STRONG: The decision was very much based on the fact that we had an increase in prison population and increasing prison population of remandees, so, yes.

COMMISSIONER BELL: Commissioner, have you been involved in the proposed amendments to the *Bail Act*?

35 MS STRONG: No, I haven't.

COMMISSIONER BELL: You haven't been asked what the impact of the changes might be on population numbers in prisons?

40 MS STRONG: Corrections has been asked about what the modelling that the Crimes Statistical Agency has done in terms of numbers would mean in terms of translation to beds. So, yes, we have been asked about that. So not every person diverted translates to a whole bed, because the whole bed is 360 days. So that what's we have contributed to that impact in terms of bed population.

45 COMMISSIONER LOVETT: Can I ask how much it cost to build that prison?

MS STRONG: Around 1 billion, 1.1 billion is capital cost.

MR MCAVOY: Sorry, Commissioner Lovett, I didn't quite hear the question.

COMMISSIONER LOVETT: How much did it cost to build that prison?

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MR MCAVOY: And the answer was around 1 billion.

MS STRONG: 1.1 billion, around, yeah.

10 MR MCAVOY: And it's yet to be commissioned as a -

MS STRONG: Correct. It does not have operational funding to take any men into it.

15 COMMISSIONER LOVETT: You made a comment before about maintaining its integrity, I think it was. What is the cost of that, as it's sitting idle?

MS STRONG: I think we got funding - I might need to double-check, but I think it's around \$36 million. It's a very large footprint. It has a number of security features. We need someone to be able to respond to alarms such as fire alarms, to make sure even things like  
20 showers and the water membrane doesn't crack so we do need a small staffing contingent so that that facility is maintained.

MR MCAVOY: You don't have a problem with people breaking into it, though, I don't suppose.

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MS STRONG: Well, no, but one of the things about the integrity is you do want to know that someone hasn't broken into it and built a tunnel, should you ever want to use it in the future, so -

30 MR MCAVOY: Is it the case that it may come into operation as other facilities reach the end of their useful life? Is that being discussed?

MS STRONG: Certainly, yes. So certainly, I guess, options around, which we'll need to, what are your numbers, what are your projections of your numbers, what is the state of your  
35 existing facilities? You know, options to close old infrastructure. Absolutely. You know, discussions have taken place.

MR MCAVOY: I take it it's a government owned and run facility. It's not a private -

40 MS STRONG: Yes, it's a public prison, yes.

MR MCAVOY: So at the moment, the expectation is that perhaps the prison population will level out for a period; is that -

45 MS STRONG: At the moment - traditionally, our forecasting has been quite reliable. The impact, I guess, of COVID-related pandemics really had a disruption to criminal justice activity and to court activity which then flowed on to our prisoner numbers. We are obviously

getting out of COVID restrictions, but it's probably a little bit too soon, from a trend perspective, for our projections to be quite as reliable as they used to be.

5 We have had a - it's pretty level at the moment actually, our numbers, in terms over the last 12 months. They have not been - they've been quite level. So we had a dramatic drop during the COVID-related pandemic. When we started to get out of lockdown, our numbers did go up a little bit but they are quite level at the moment.

10 MR MCAVOY: I'm sorry, you might have answered this already: the Western Plains facility, was that intended to be a remand facility or a mixed facility?

MS STRONG: Mostly remand.

15 MR MCAVOY: Now, I've got some questions for you, Mr Phillips. There was a strategy within government in terms of reducing prison population labelled the Demand Reduction Targets. DRTs.

20 MR PHILLIPS: Yes, the reducing reoffending and keeping people out of prison, otherwise known as the ROKPOP strategy.

MR MCAVOY: That's the current one.

MR PHILLIPS: The current one, yes.

25 MR MCAVOY: Prior to that, was there the use of a strategic target system called Demand Reduction Targets? Do you have that -

30 MR PHILLIPS: I think Demand Reduction Targets were embedded in the ROKPOP strategy, the elements of that.

MR MCAVOY: Are they still then relevant?

35 MR PHILLIPS: They are. So to be clear, I - the responsibility for that strategy was led by a different part of the department so I didn't lead that. We were consulted in its - I was consulted in its development but that certainly wasn't something (indistinct).

MR MCAVOY: Which - which part of the department had the responsibility for ROKPOPS?

40 MR PHILLIPS: It was in the former Secretary's office.

COMMISSIONER LOVETT: Can I ask you to elaborate on the word you were consulted. Was it just a phone call or email?

45 MR PHILLIPS: So the teams - so there was a strategy team that sat within the former Secretary's office and that team was responsible for undertaking a lot of the strategic policy thinking and advice to government. I have a Corrections policy team that reports to me. Our teams - the ROKPOP strategy team and the Corrections policy team worked together at officer

level to make sure we were comfortable with the strategy that was being developed and actual information input, etcetera, to support the develop.

5 COMMISSIONER LOVETT: Quite a depth of knowledge about it. It wasn't just an email.

MR PHILLIPS: No, no.

COMMISSIONER LOVETT: I just wanted to clarify that, thank you.

10 MR MCAVOY: Just for the record, ROKPOPS is a reference to the strategy which is named Reduce Offending and Keep People Out of Prison Strategy. That's correct?

MR PHILLIPS: That's right.

15 MR MCAVOY: So do you now have, within your area of operation, any role with respect to the programs or the ongoing strategies around the ROKPOPS?

MR PHILLIPS: The reason I'm pausing is I believe that there was some government funding for particular initiatives under the ROKPOP strategy, and I'd need to follow that up to take that  
20 on notice about which programs were funded. Larissa may be able to talk in more detail.

MS STRONG: We do have programs that we are delivering under that strategy within Corrections Victoria. And Ryan is correct. We got funding for some of those programs. So one was the Maribyrnong Community Residential Facility, which is a secure and stable - I  
25 should say sustainable safe housing for people, for men exiting the prison system. We also got funding for a disability service across the prison system, Prison Disability Support Initiative, and we got funding for some pre and post release services for people exiting prison either on remand or after a very short period in custody through that program.

30 MR MCAVOY: Was there any funding or work in relation to the provision of high-risk beds in relation to perhaps managing bed shortages?

MS STRONG: In relation to that particular strategy?

35 MR MCAVOY: That came from the ROKPOPS strategy.

MR PHILLIPS: I don't believe so.

MS STRONG: I don't think so.  
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MR MCAVOY: And does it still have - is there still funding coming from that strategy to the operation of facilities?

MS STRONG: Those programs, yes, are still existing and have funding.

45 MR MCAVOY: But that's not the only source of program funding for operation facilities?

MS STRONG: That's right. So, yes, correct.

MR MCAVOY: And so can you just assist by telling us what other sources of funding there are for programs?

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MS STRONG: So our base budget, we would fund a lot of our programs out of our base budget, ones that are delivered either internally and some that are delivered by other agencies that we fund to provide those services. And there are other programs that we would get new initiative funding through the budget process as well. So we probably have two main sources. It's either in our base funding or it's a new budget decision and it's under the initiative funding component, and I'm not sure - your question was on the programs that are funded through that?

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So we have an internal group of clinicians, psychologists, forensic intervention services who deliver offending behaviour programs, so they're sex offender programs and violence intervention programs. They're our employees. That's funded through our base component of funding. We have reintegration programs, so for people to support their transition from leaving custody back into the community. We tend to fund non-government agencies to deliver those programs.

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MR MCAVOY: Are there any Aboriginal-specific programs that are funded from those -

MS STRONG: For reintegration in the women's system, Drummond Street have an agreement with Elizabeth Morgan House to support the women - the Aboriginal women exiting the women's system. Elizabeth Morgan House is an Aboriginal community-controlled organisation. We also do fund Baggarrook, which is a - again, it's transitional housing, up to six units. Victorian Aboriginal Legal Service provide the services and the case management support for that service, and that's for Aboriginal women. We fund family violence -

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MR MCAVOY: Sorry, just on that program, is that a program that's subject to recurrent funding or is it on a -

MS STRONG: It's fixed-term funding. We fund - sorry the other programs that we have available are some family violence programs and we also do have programs in cultural programs as well for Aboriginal men and women in custody, which are primarily delivered through Aboriginal organisations with support of our own staff, Aboriginal wellbeing officers.

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COMMISSIONER HUNTER: Can I just ask, Counsel, if I can, because we have heard internally from - directly from people that are incarcerated that they are only getting programs for art. That's the only cultural program they are getting. So I would like to hear -

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MS STRONG: We can certainly provide data on, I guess, the programs and program access. When I - so the different programs that we have - cultural programs, so one is The Torch, it does have a big uptake across the prison system, and that's an art program. TAFE also deliver art programs for Aboriginal people as well. We have a Kaka Wangity, Wangin-Mirrie cultural strength and resilience program, and that has Djirra for example, through that program deliver dilly bags and I think it's called Sister's Day Out programs. There's a Marumali Healing

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Program through that grant program as well. We fund Wadamba Prison to Work Program. It's not a cultural program. It's more of an employment program, but with a cultural lens aimed for Aboriginal people. Sorry, I'm trying to remember.

5 COMMISSIONER HUNTER: That's alright. We can obviously come back to them later, because I don't want to -

MR MCAVOY: It's not a memory test. But certainly the Aboriginal-specific programs are matters of particular importance to this Commission, as you understand.

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MS STRONG: Of course. Yes.

MR MCAVOY: One of the programs that might exist - well, we are aware that exists but is not one for the prisoners is it's cultural awareness training for the staff. And that comes out of your base funding, does it?

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MS STRONG: Yes, it does.

MR MCAVOY: Is it mandatory for all staff to undertake cultural awareness training?

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MS STRONG: It's mandatory for all prison officers.

MR MCAVOY: For prison officers, correctional officers.

25 MS STRONG: Yes.

MR MCAVOY: And you are aware, aren't you, of some difficulties with delivery of that program at Dame Phyllis Frost Centre?

30 MS STRONG: I'm aware of what - there's two things. So one is the cultural awareness training that all new prison officers must do as part of their pre-service training, before they become a prison officer. That's delivered by the Koorie Heritage Trust. The Dame Phyllis Frost Centre was additional training for all staff at Dame Phyllis Frost Centre, so for all custodial staff, whether they were senior prison officers, operations managers and all VPS staff that work at Dame Phyllis Frost Centre. It's delivered by NJAC. It's a new initiative.

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We only started delivering that training on 8 February. We have had four sessions to date. And it's deeper than the cultural awareness training. We have had around 80-plus staff so far go through, but we will have 500 staff go through that training. It's partly to support a new Aboriginal Healing Unit at Dame Phyllis Frost Centre that's due to get up and running mid this year and to support the Aboriginal controlled organisation that will deliver the program and services in that unit.

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So to provide a better environment, we have NJAC provided us training to all staff at DPSC. There was an issue last week in a training session where one staff member did leave the room, someone went to check on them, and they did say they weren't going to come back. So most of the evaluations have been very positive. So 90 per cent of the staff who to date have done

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the training have found it really positive. We have had some staff found it very confronting, but I think they are the discussions we need to have. It really does go into the terrible history of colonisation and the impact on Aboriginal people.

5 And we have had a small number of staff who have queried why they should be doing this training, which we will absolutely managing and taking seriously. We are making some changes. We are going to take the training off-site, non-uniform and extend the time of the training so people have more time to reflect and to discuss that and to process the information and what it means for them in how they work.

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COMMISSIONER WALTER: How long is the training now?

MS STRONG: It will go to four hours. We did compress it to two.

15 COMMISSIONER WALTER: Two hours?

MS STRONG: The reason it was compressed to two is we didn't want to have women locked down to do the training, so we are going to back to four and rearrange rosters to support the training.

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COMMISSIONER HUNTER: What about medical staff you have on site?

MR PHILLIPS: I can talk about medical staff. So, certainly, medical staff - significant changes that are coming in in health service provision. And ahead of that, efforts are being made to improve cultural awareness training (indistinct) in particular at Dame Phyllis Frost Centre, there has been training provided to all of the health staff noting that we will be moving to a new provider from 1 July. Embedding cultural awareness training across the health system is clearly critical. We know that the failures that we have been seeing in health service provision are at the heart of many of the deaths in custody (indistinct) unless we can change our workforce, we're not going to get a different outcome. So immediate action has been taken, but there's a longer term strategy now with new healthcare providers.

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COMMISSIONER HUNTER: Will that be mandatory that they have to do this training?

35 MR PHILLIPS: Yes.

COMMISSIONER HUNTER: Thank you.

MR MCAVOY: So can we take it from your answer in relation to the question around the training at Dame Phyllis Frost Centre that it is something you are aware of and you have in hand?

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MS STRONG: Yeah. I was - I think it happened on Thursday. I was briefed on it on either Friday or Monday. And I am absolutely aware of it. There is a meeting on Tuesday which my Deputy Commissioner is going to.

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MR MCAVOY: Just going back to the programs you were speaking of earlier, for the prisoners' benefit, are all of those programs available to non-sentenced prisoners?

5 MS STRONG: All of the cultural programs, yes. The only programs where you have to be legally cleared is the offending behaviour programs. Education, harm minimisation, cultural programs, reintegration, they are available. There are some practical reasons why you may not have access to those programs. Some people are in and out so quickly that - you know, we do a language and literacy, numeracy assessment but normally that's about three weeks into being in the system. Some people are in and gone within that three-week timeframe so they haven't gone through that process or engaged with TAFE at that point in time. But in terms of  
10 criteria, it's only the offending behaviour ones you need to be sentenced for.

COMMISSIONER LOVETT: We have heard and given the overrepresentation of Aboriginal men and women in the Corrections facilities - and you talked about cultural programs. We have heard directly from people in prisons saying that they are still having to wait to get a cultural program. That's sort of contrary to what you're just saying right now. Whether they are sentenced, that they are - they still, because the overrepresentation, there's so many people in there that there's only so many people who can attend a class, whether it be an art class or a dance class or anything.  
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MS STRONG: Yeah, sorry, I may have not answered exactly. I was referring to what's technically eligible and then there are barriers in terms of access. So one might be due to the fact that people are in and out quickly. Another one might be to do with, I guess, that you have got more demand for the program and that's available and you might have to wait to get that program.  
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We certainly had issues that we are out of that now in terms of COVID and a lot of those programs moving to remote, which was not ideal at all. They are back face to face and have been for some time. When I looked at the data - and it's not unique individuals, but in the six months, so from July to December last year, we had 954 Aboriginal people had participated in one of those cultural programs. Now, some of those people, might have done a number of them. So that's not a unique individual number. And that doesn't reflect, I guess people who flow through the system. So while we might have 822 people on Monday, the people that will flow through our system is a much higher number. So, absolutely, I take your point that  
30 people will have to wait for programs or might not get them.  
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COMMISSIONER LOVETT: Given we know the data of overrepresentation of our people, we, I guess, would hope that the system would accommodate and know - you know, you've got forecasting data, as you were talking about earlier in another element of this work, that Aboriginal people should have access to cultural programs.  
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MS STRONG: Yes, I agree.

COMMISSIONER LOVETT: Thanks.  
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MR MCAVOY: Just on that question of overall numbers, not the daily bed numbers, but overall through any given period, do you have that data available to you?

MS STRONG: We do have that data. If you rely on my memory, it might not be reliable but if I look at receptions in the last financial year, I think we might have had about 12,000 receptions and around 11,000 discharges, which is a term we use and it sounds like hospital, but we mean releases. We would have that information available by Aboriginal men and women as well, I just do not know it off the top of my head.

MR MCAVOY: Is it the case that the through-put numbers for Aboriginal detainees is higher than the regular population, again reflecting a higher number of shorter stays.

MS STRONG: Yes, I think that would be the case. Certainly our median stay is shorter for Aboriginal women and Aboriginal men compared to non-Aboriginal men and non-Aboriginal women.

COMMISSIONER WALTER: Does that indicate that men and woman going in, especially those that are on remand, are on less serious charges.

MS STRONG: I don't know if I could speak to that. It does indicate that probably you have a - which we do know that we have a higher proportion of Aboriginal people on remand and often the people on remand might go in, they might subsequently get bail and then be released.

COMMISSIONER WALTER: Do you have data on the charges against all of these people so we could actually look at the pattern?

MS STRONG: Certainly we have records on everyone and on what their warrant and what they are in for. How we could extract that - we can take on notice how we could do that, yeah.

COMMISSIONER WALTER: Thank you.

COMMISSIONER BELL: Do you have a view as to the cause?

MS STRONG: I think it's related to changes in the *Bail Act*, which has seen a higher number of people coming into custody on remand. I should say progressive changes starting from 2013 but then also the 2018 ones were significant.

MR MCAVOY: And you talked about the intake assessment in terms of their certain capacities that the prisoners might have coming in. It is the case that you do medical assessments on intake?

MS STRONG: Yes. So it's a requirement that everyone who comes into prison from either police cells or straight from court is seen by a doctor and a mental health nurse within the first 24 hours, and it normally happens, unless they're very late reception, within the first - if they come in, they are put in a holding cell, they go through a system, we will check that we have got a warrant that, they are the right person, they're legally detained, and they move to see the doctor and the nurse through that process.

MR MCAVOY: And you heard the evidence this morning with respect to young people, did you?

MS STRONG: Yes, I did.

MR MCAVOY: And the numbers of young people assessed in the system as having some mental health or intellectual disability.

MS STRONG: Yes, I did.

MR MCAVOY: Do those same figures flow through to the adult population?

MS STRONG: We certainly have a much higher rate of people coming into custody with mental health issues and needs and with disability. If I look at - and it's not a mental health diagnosis which is what Youth Justice were talking about, though I think that information would be available through Justice health, but we do use ratings in the prison system. So we have a psych rating, and that helps us understand where they can be placed and their management. So we have - I think it's about 48 or 49 per cent of people in the adult system who have a psych rating which most of them, about 42 per cent, it is a diagnosed - it's a mental health issue that's stable but requires support and treatment.

MR MCAVOY: And do you have access to numbers of Aboriginal people within that cohort?

MS STRONG: Yes, the Aboriginal people have - in terms, again, not the mental health diagnosis, but the P rating a higher percentage of Aboriginal people would have a P rating in our system. It would be more around the 60 per cent, from memory.

MR MCAVOY: 60 per cent of the cohort or 60 per cent of the Aboriginal people?

MS STRONG: The Aboriginal people.

MR MCAVOY: 60 per cent of Aboriginal people in the system come in with a psych rating or have it -

MS STRONG: Yes.

MR PHILLIPS: And I may be able to assist the Commission with statistics. So from a Health perspective, when I speak about prison population generally, one third of people coming into our custody have come into custody with a pre-existing mental health condition. In the same way, there is a much higher levels of mental health conditions for First Nations men and women. So the statistics I have are that 72 per cent of First Nations men have a mental health condition on entry into custody and 92 per cent of First Nations women.

COMMISSIONER WALTER: 92 per cent?

MR MCAVOY: So that's a condition that is present on intake?

MR PHILLIPS: That's right, the most common being depression and anxiety, so quite generalised mental health conditions being the dominant categories. We would be able to provide greater breakdown for you as well, if that would be of assistance.

5 MR MCAVOY: So -

COMMISSIONER LOVETT: Yes, thank you.

10 MR MCAVOY: Thank you. So when you layer those statistics on the overrepresentation of First Peoples in the system, you end up with a very high - a very high - prevalence of Aboriginal people, First Nations People in the system, with mental health problems as compared with the rest of the population?

15 MR PHILLIPS: That's right, yes.

MR MCAVOY: Have you done that analysis?

20 MR PHILLIPS: We have. We have, and there are - the key response to that is the new approach to health service delivery which comes into effect across Victoria's men's and women's system from 1 July. So this is the recommissioning of health services, which includes both physical health but also primary mental health, which - so secondary, so more serious mental health is dealt with by Forensicare, so our partner in the system. But the primary health service retendering seeks to focus on a number of priority cohorts, but  
25 Aboriginal people in custody being the key - the key focus of our health reforms, given the significant mental and physical health challenges that we know Aboriginal people in our care face.

30 MR MCAVOY: If we can just stick with the mental health challenges at the moment, I understand that - if I understand it correctly, those people who are assessed as having a mental health issue are not at that stage acute? Or does it include people who are having acute episodes?

35 MR PHILLIPS: That includes everybody but a significant proportion of people will not be having an acute episode on entry into -

MR MCAVOY: So not all of - sorry for cutting across you. Not all of those people will require medical intervention? Is that the case or they all do?

40 MR PHILLIPS: No, they don't necessarily. It's have they been diagnosed with a condition at some stage before entry, but they may be - they may enter into custody with medication for depression and so then simply require continuation or maintenance of that once they are received into custody. But then there are other people who have much more acute - we know that many people who come into custody have not been able to access mental health care before they reach us. I think there was evidence presented to the Mental Health Royal  
45 Commission in Victoria about the fact that, for many people, entry into custody is the first point at which they receive appropriate or any care.

MR MCAVOY: Without the risk perhaps of sounding a little bit flippant about it, at times, it must feel as they you are running a secure medical facility.

5 MR PHILLIPS: I think there's some truth to that, and, Larissa, you may be able to talk a bit about some of the facilities, the Marrmak facility and other facilities in our system which seek to meet the needs of people with particularly acute mental health conditions.

10 MS STRONG: I think it is a challenge. In terms of the people that do come into our care who do have mental illness - and some of them have very serious mental illness. Our response to that has been to - when Ravenhall was built, we did invest in mental health beds delivered by Forensicare, who is the State's statutory forensic mental health specialist, and we invested in 75 beds at Ravenhall, which really - acknowledging that we were struggling with how do we appropriately manage people with a serious mental illness while they might be awaiting a bed at Thomas Embling Hospital, for example, for compulsory treatment. In the women's  
15 system, we have also a mental health unit also run by Forensicare, which is 20 bed.

MR MCAVOY: So that 75-bed facility and the 20-bed women's facilities -

20 MS STRONG: There are also - at the Melbourne assessment prison, there's an acute assessment unit which is 16 bed and at Port Phillip Prison, there's a 30-bed psychosocial unit.

MR MCAVOY: Are those beds regularly full?

25 MS STRONG: Yes, they would be.

MR MCAVOY: So there is perhaps a further need within the system for more acute beds for mental health issues?

30 MS STRONG: I think it's partly - yes, I think that's true but it's also work with Department of Health about, I guess, beds at, you know, in Thomas Embling for people who might be more appropriately managed at Thomas Embling as well. And also, I guess, the focus of the Royal Commission was acknowledging the need to really lift the specialist mental health services available for people with serious mental illness as well. So I think it's all of that.

35 COMMISSIONER BELL: Commissioner, you are giving me the impression that the system is handling, under stress, mental health demand, but it's much worse than that, isn't it? I was a judge, as you know, for 15 years. I've got direct experience of this. I was the president of the Forensic Leave Panel for four - rather, six. And my experience is that it's extremely difficult for prisoners to obtain the mental health treatment, care and support that they need. It's  
40 extremely difficult to access beds, and as for getting access to Thomas Embling hospital, good luck with that.

MS STRONG: Yes, and that's partly why, I guess, we had a Royal Commission into Mental Health, so yes.

45 MR MCAVOY: It's the case that the recommendations from that Royal Commission are still in the process of being implemented. It's not the case that they have all been met, is it?

MS STRONG: That's my understanding.

MR MCAVOY: We've also had evidence in the course of this Commission from lawyers from VALS, the Victorian Aboriginal Legal Service, who made observations about the number of their clients who have mental health or substance issues being exceedingly high, and their concerns that people with health issues are being dealt with in the criminal justice system. You're on the tail end of that, running Corrections facilities. Is it fair to say that the demand is not diminishing but growing in terms of mental health services?

MS STRONG: That's slightly difficult because our numbers have actually gone down because of the COVID pandemic, so -but within that, whilst we have vacant beds which is a great thing, in our normal general beds, our mental health beds are full which just indicates there was unmet demand even before that.

MR MCAVOY: And the numbers that you have given on people assessed at intake doesn't obviously include people who are diagnosed or develop mental health issues whilst in prison. There must be some cohort that falls into that category.

MS STRONG: I think Ryan's numbers on the Justice Health record were from intake. The numbers I provided were at any one point in time in the prison system, and they weren't a diagnosis but more a flag for us to be aware of.

MR MCAVOY: Thank you. Moving now to -

COMMISSIONER WALTER: Can I make a little statement about mental health. It's just struck me that you made that statement at the start that the criminal justice system is an ongoing legacy of colonisation. Given that First Peoples suffer huge levels of intergenerational trauma, which much of the mental health experience is linked to that, are the Aboriginal prison population in Victoria an ongoing legacy of colonisation as well?

MR PHILLIPS: Yes. Absolutely.

COMMISSIONER HUNTER: Can I just add to, sorry. So we have heard directly, particularly from the women that have struck me - you know, it stays with me, the things they have said. They are coming in already diagnosed, but no one is getting their records. That's what they have said. We are telling people we have got bipolar or have been diagnosed with something. And then their medication is getting changed in the middle of it, or - and I'm not sure, maybe you can correct me if I'm wrong, or one of the other Commissioners, but they're waiting months to see - to put in to see a counsellor or a psychologist. Months. And some are being released before they even get to see anybody, which adds to the stress of being in prison on their mental health. So people are being untreated, and that's the case we have heard from the women.

COMMISSIONER WALTER: They also made the point that they have to put in a form to ask to see a doctor and that that may take weeks before. So there is - even if they're feeling - and that we did hear from women that their medication from their strong diagnosis had been

stopped, had been started, new medication stopped, started and absolutely no continuation of care.

5 MR PHILLIPS: We know there have been significant issues and failures with health care provision at the Dame Phyllis Frost Centre. We are aware of that and have been working hard to address - take interim steps ahead of the new provider starting from 1 July, so that the government has funded us to move to public health provision, so Western Health will begin providing health services at Dame Phyllis Frost Centre in coming months, which - and underpinning that is a new health service model with significant service uplift for Aboriginal people. So that hasn't started yet but it is imminent, and we think that this is going to change women's experience.

15 COMMISSIONER HUNTER: I hope it does change women's experience, because one of the women - and this will stay with me - said to me that why it did take for someone to die for things to change when they already knew they weren't sufficient? They're the words of a women incarcerated. "And we are worried that we will be the next one, because we're not getting the help we require." So I hope those words stay with you, as you change because they definitely will stay with us.

20 MR PHILLIPS: They will stay with me.

COMMISSIONER LOVETT: Can I also come back to the prison sitting idle. Where is it?

25 MS STRONG: It's near Barwon Prison, so is that Lara, is that near -

COMMISSIONER LOVETT: Who's country is that.

MS STRONG: It's Wathaurong.

30 COMMISSIONER LOVETT: Wathaurong Country. Yeah. 1 billion. Does it strike you as concerning that \$1 billion is spent on a prison that is sitting idle?

35 MS STRONG: I think - well, yes, but I think it would be more concerning to open the prison if you didn't need those beds. The decision was made at a time where the projections were suggesting we would need the beds.

COMMISSIONER LOVETT: Do you know what that kind of money, \$1 billion, would do for our people?

40 MS STRONG: It's an enormous amount of money.

45 COMMISSIONER LOVETT: It seems unfathomable to me that so much money has been spent on that facility with next to no outcomes or limited outcomes while our Aboriginal organisations are fighting for scraps to try to make the services available to our people. \$1 billion. It's a lot of money. Imagine what that could, \$1 billion could do to Wathaurong as a Traditional Owner group. Sorry.

MR MCAVOY: Thank you, Commissioner. Commissioners, I'm about to move from mental health to intellectual disability. If there's any other questions on mental health before I move on to that subject.

5 COMMISSIONER BELL: I think we have only just scratched the surface, Counsel, and that has been useful. I think I just want to put on the record that I consider the system - the evidence establishes that the system is not acting to meet anywhere near the needs of people. And that the Aboriginal population of people incarcerated not having their mental health needs met and who are the legacy themselves of colonisation fills me with shame. And I would  
10 want to come back to this at some point.

MR MCAVOY: I propose that we will come back to the issue of dealing with mental health matters before we finish with these witnesses this afternoon, but it may be the case, Commissioners, that they need to be recalled at some stage.

15 COMMISSIONER BELL: It's a huge multifaceted area. I'm in your hands, Counsel, but I'm really saying it is -

MR MCAVOY: Well, clearly, the dimensions of this problem, which is quite significant, are  
20 many and varied, and they need detailed discussion, and the time that we have this afternoon is really -

COMMISSIONER BELL: It's not adequate, no.

25 MR MCAVOY: - not sufficient to explore issues in the detail that's necessary. And, Commissioners, I'm aware that, as a result of your visits to some centres, that there are matters of which you're aware that really may - you may want to ventilate with these witnesses. So I'm reluctant to move on but there's a number of other issues that should be attempted to be covered this afternoon.

30 So with the promise to come back to it this afternoon, we'll see what we can get through. So in terms of intellectual disability, is there any assessment that's undertaken on intake of prisoners that assesses their intellectual disability status?

35 MS STRONG: It's a self-report, and we also check if they have - so some - so whether they have an intellectual disability flag, if they've been with us before. We used to have information sharing with DHHS. NDIS has probably changed the concept of - before it used to be intellectual disability in terms of the IQ measure. Now it's more about, I guess, functional impairment and what that means. But we do ask about, are you registered  
40 intellectual disability. That's done at the beginning. The health assessment will also check for other disability needs and aids as well that people might need.

Probably about four weeks in, we'll start to ask about do you - are you registered with the NDIS. So are you on the disability support pension, is something we do ask upon reception.  
45 I'm sorry, I should have mentioned that before. So on reception we'll ask about intellectual disability, we will know if they've got a flag from DHHS, and we will also ask are they on a disability support pension.



Four weeks in, we will ask if they have a NDIA package. We don't do the cognitive impairment assessment on reception. It's (a) probably not a good time to do that. We do have a service, a Prison Disability Support Initiative, where we can refer - custodial or anyone can refer a person for further assessment and support in terms of behavioural management support plans for people as well as interface with the NDIA in terms of their packages, especially if they're transitioning out.

MR MCAVOY: Thank you. You understand that many, many people in the Aboriginal community go undiagnosed with respect to their -

MS STRONG: I would understand that, yes.

MR MCAVOY: Mental Impairment. So self-reporting is only going to go so far in that knowledge.

MS STRONG: I understand that and that's where the Prison Disability Support Initiative does support, so where someone can be referred for further assessment.

MR MCAVOY: And how often is that facility exercised?

MS STRONG: There are - the service is quite new. It's only a few years old. It's had a lot of referrals. More - it has got more demand than the actual team can support at this point in time. The work that they do, I do know, is highly valued. But absolutely we have way more referrals than that team can support.

MR MCAVOY: Clearly, it's important to understand a prisoner's cognitive abilities in terms of how you provide for them in the first place, but what programs are available, how they might respond to commands and directions given by officers, whether they're being disruptive, or that's simply a cognitive dysfunction? You would agree that it would be important to know, if you're responsible for the care of an inmate, to know whether they have got the cognitive ability to deal with a situation.

MS STRONG: Yes, I do agree.

MR MCAVOY: And in those circumstances where people are often undiagnosed - and we have heard from the Youth Justice team that I think the number was somewhere near 80 per cent of children that present in that environment have some intellectual disability. There's no reason why we would expect the adult population to be too much different from that, is there?

MS STRONG: It would certainly be much higher than the, I guess, the non-incarcerated population. Maybe not as high as Youth Justice, because it's a broader proportion of adults that end up in the adult system but absolutely I would expect high rates of cognitive impairment within the adult system.

MR MCAVOY: That figure was in relation to Aboriginal young people, not the general population. Is the prevalence of such impairment something that your Commission or the department is working on in terms of providing a better diagnosis and treatment for those prisoners?

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MS STRONG: Yes. It is the Prison Disability Support Initiative that is relatively new. I think it's only two years old. It's available at a lot of prisons. I would have to check exactly which ones. It does allow for referral for someone to get an assessment, so exactly to your point about what is the diagnosis but also, importantly, how do you understand their behaviour in the context of their capacity. So behavioural support plans. And also the link to NDIA. It's fair to say that that pilot has shown the real value of it. And we need to, I guess, build up that evidence base of that need and the value it provides. There's unmet demand there, without a doubt.

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MR MCAVOY: So your answer just then, you've given before. I realise that. But the comment that concerns me most, I suppose, is that there's unmet demand. How much unmet demand is there?

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MS STRONG: I could go and look at the referrals and, I guess, where we're at in terms of those assessments and that would give you a sense of how able that service is to keep up with the referrals. That does go to someone has to refer as well. So normally there's a good indication and it's - so I think I could start to look at that in terms of giving you that information.

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MR MCAVOY: Who makes those referrals?

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MS STRONG: Anyone can make the referral. So the case worker can make the referral, custodial officers can make the referral, anyone working in the prison system can make the referral.

30

MR MCAVOY: The custodial officers, though, aren't given any specific training in terms of identifying -

MS STRONG: No, they can't do diagnosis, but they would be aware of someone's behaviour. And also one of the roles of that team is to actually do education about what to look for and when to refer as well. So -

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COMMISSIONER HUNTER: We have heard evidence from women saying that just to even get a doctor's appointment is difficult to get through one of the prison officers there. I don't see how a prison officer would be referring. I think the words were, "We're at the mercy of the prisoner officers if they decide to put our forms through or not and then we're waiting." But you said it was a pilot so there's got to be some evaluation to the pilot.

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MS STRONG: It's fixed-term funding. We did do an internal evaluation, not done by Corrections but done by our research and evaluation team within the Department of Justice to support continuation of the program, and we got funding for that. So we will absolutely need

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to build into that an evaluation to build a case for how that has been of value and what difference it has made.

5 COMMISSIONER HUNTER: It just seems that all the supports that are already offered or getting a diagnosis are getting - is - there seems to be a wait on everything. So I mean, going back to Commissioner Lovett's point that there's a prison sitting there and you've got money going into that, yet these women need this now. Do you agree it's not - the programs are not funded correctly, if we have got a huge wait.

10 MS STRONG: Yes.

MR PHILLIPS: I think, yes, agree with that.

15 MS STRONG: Yeah.

COMMISSIONER LOVETT: So just out of the pilot, what are the sort of early findings that you are seeing in that project?

20 MS STRONG: That having a behavioural support plan, to go to Counsel Assisting's suggestion, does it really support the appropriate management of someone in custody, and how officers understand how to work with that person for better outcomes for that person. That also the link in - the proactive link in with the NDIA also does have a big impact in terms of, I guess, their NDIA package and the supports they would get on release through that program as well. They are the two key ones that I can remember.

25 COMMISSIONER LOVETT: And in your view and your experience by saying that, would it be something worth government investing in?

30 MS STRONG: Yes, it would be.

COMMISSIONER LOVETT: Thank you.

MR MCAVOY: If I understand your evidence correctly, the pilot program is not available in all facilities?

35 MS STRONG: I don't think so. But I will have to double-check.

MR MCAVOY: And I'm sorry if I have missed this. When does the pilot expire?

40 MS STRONG: I think the funding is up for another - I think we have got about three years worth of funding.

MR MCAVOY: It's a pilot?

45 MS STRONG: Three years worth of fixed-term funding and then we would have to go and make a case to continue it or expand it, depending on the evaluation and what that suggested.

MR MCAVOY: Is the high rate of - the high prevalence of mental health issues and the likely high presence of intellectual impairment something about which the department consults with the Aboriginal community about options for servicing those particular prisoners?

5 MS STRONG: I won't talk to the mental health. Certainly in the disability in terms of the PDSI, I don't recall that being something that we have discussed through the Aboriginal Justice Forum structures.

10 MR PHILLIPS: And I think I would say the same for mental health. I'm trying to cast my mind back to whether that has been on any of the agendas recently. I can't remember.

MR MCAVOY: Mr Phillips, I would ask you either to raise - keep your voice up or sit a little bit closer to the microphone.

15 MR PHILLIPS: I can't recall the time when that has been discussed with the Aboriginal Justice Caucus.

MR MCAVOY: It's an issue that's clearly on the radar of Corrections, though, isn't it?

20 MR PHILLIPS: Yes, it is.

MR MCAVOY: And Corrections - you are able to raise issues of your own volition in the Aboriginal Justice Forum.

25 MR PHILLIPS: Absolutely we are.

MR MCAVOY: But you're not aware that it's an issue that either you or any of the Aboriginal agencies have raised in terms of provision of programs or services to the -

30 MR PHILLIPS: I would probably say two things. One, I can't think of a time where we have had it as a substantive agenda item. I do know though that many stakeholders do raise concerns regularly about issues of wellbeing, the wellbeing of people in custody. And so that includes mental health issues, general health issues, wellbeing issues. So I can say, yes, we do hear regularly from our stakeholders that people are worried and that there are concerns about  
35 the wellbeing of people in our care. So that is - it's often individual-based discussion, but I can't think of a specific agenda item where we have consulted on a model for change with the Aboriginal Justice Caucus.

40 MR MCAVOY: Do you think that it's a matter about which there could be useful discussion about systemic reform?

MR PHILLIPS: I think it would be very valuable and something that we can take forward.

45 MR MCAVOY: Just as you gave evidence earlier about the - I'm moving to a different subject, I'm sorry. Just as you gave evidence before about the amendments to the *Bail Act* having impacts on the prisoner numbers and the predictions that you would try to make to help

manage those changes in populations, are changes to the *Sentencing Act* also something that has an effect on prison numbers, prisoner numbers?

MS STRONG: Yes, that would be the case.

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MR MCAVOY: Sorry?

MS STRONG: Yes, that would be the case.

10 MR MCAVOY: And are you involved in review of the *Sentencing Act* or have you been involved?

MS STRONG: I haven't been.

15 MR PHILLIPS: So the reform to the *Sentencing Act* is led by my colleague Ms Chapman, who provided evidence yesterday. My policy team is involved in discussions with Ms Chapman's team. So, certainly, yes, we are consulted by the lead policy area as a key input into the considerations, but ultimately are not responsible for the reforms.

20 MR MCAVOY: In terms of the reform agenda overall, we've heard much in this Commission about a self-determining justice system. The model of mass incarceration is one that is something the State of Victoria appears very wedded to. In terms of policy development, is it - are alternatives, community-led alternatives, something that is on the department's radar?

25 MR PHILLIPS: I don't think I can answer that because I haven't been involved in the leadership of those reforms. I know that the Attorney-General, supported by Marian Chapman's area, is carefully considering what approach could be taken to sentencing reform. So I know that work is happening. And I know that there will no doubt be keen to be consultation with the Aboriginal Justice Caucus. Now, I know that's not self-determination,  
30 and I'm not suggesting for a second that that is. I probably can't comment any further on how that particular reform agenda is being developed, but I know it's under active consideration currently.

MR MCAVOY: In the past in other jurisdictions, there have been, for want of a better global  
35 term, bush camps used for sentencing of Aboriginal prisoners where they spend time on Country serving out sentences, sometimes under canvas or in rudimentary facilities. What sort of facilities - does the Victorian government have any ability or commitment to that type of sentence option?

40 MR PHILLIPS: I certainly think it's a very interesting idea, and I'm aware that that is in place in other jurisdictions and certainly something that warrants consideration about whether it's applicable to Victoria. So I can see no reason why that should be taken off the table. We know that innovative approaches to justice achieve very good outcomes, and I'm thinking about the Koorie Court initiative in Victoria and the results that we've seen from that.  
45 Thinking also about therapeutic justice, the neighbourhood justice centre. There are many examples where Victoria has been at the forefront, and not all of those initiatives are Aboriginal specific, but they are certainly examples of operational responses to sentencing and

justice that lead to the right outcomes for very vulnerable people. I think in the same vein, that if that is an idea that is put forward by community and community feels that that will achieve the right outcome for their people, then we should actively consider that.

5 MR MCAVOY: And, Commissioner Strong, that type of arrangement is not, on its own, something that your Commission could not work with in terms of -

10 MS STRONG: If you mean in terms of how - managing a custodial sentence as opposed to a sentencing option, so how we manage people once they're sentenced, it is certainly something that could be considered. So within prisons, there's different types of prisons, so - and the idea being that you spend your time in the least restrictive option, if possible, based on, I guess, an assessment of behaviour and risk.

15 So we have minimum security prisons which don't have a wall. We do have a transition centre in the heart of Melbourne for people towards the end of their sentence where they are going out on day permits and just coming back at night-time, so they are off looking for jobs and getting their drivers licence and all that sort of thing towards the end of their sentence. So a similar approach in terms of on Country, that could be considered. I mean, you would need to think of the parameters around at what point that applies and what criteria you might want and  
20 authorisation from government that they we're happy with that risk. But, yes, it could be considered.

MR MCAVOY: So it's not something that you could immediately rule out as an option.

25 MS STRONG: No. It's about, I guess, working out what that would look like with the relevant Aboriginal community and taking that proposal forward and getting that authorised.

MR MCAVOY: I take it that you would both accept that there might be great value for Aboriginal prisoners in being able to serve their custodial sentences in arrangements where  
30 they are on Country or in suitable environments other than -

MS STRONG: Yes.

MR PHILLIPS: Yes, I agree.

35 MR MCAVOY: In terms of a self-determining justice system, have you, Mr Phillips, turned your mind to how that might operate in a - in the Corrections environment? And can you discuss that with the Commissioners?

40 MR PHILLIPS: I can. I just, at the outset, am wary about providing an indication of what self-determination in the justice system could look like as I know that it ultimately is a matter for Victoria's Aboriginal people to determine. But what I can say is that when you look around the world, there are - there's a spectrum of different experiences. In some parts of the - of America looking at entire carved out parts of the system where First Nations People  
45 are responsible for end-to-end management of justice matters relating to their people. That's certainly, you know, one end of the spectrum.

There - we have, under the banner of the Aboriginal Justice Agreement, had some discussion with Aboriginal people in Victoria about whether there would be an opportunity in the Community Corrections space for Aboriginal-led service delivery. And that discussion, I think, replicates some of the discussion that this Commission has had in the last week about section 18 in the child protection context.

And discussions with community have had a range of views, but what we took away from them was there is certainly concern about handing responsibility of, you know, what's perceived to be a broken or problematic system to First Nations People to then implement. So that is the feedback we have had about that.

But I do think there - doesn't mean there's not opportunity for Aboriginal people to take control of a community-based sentencing model. I just don't think we can assume that it should look like the Community Corrections model that we are currently operating. So it's a longer term story about what is - and perhaps to your question, Mr McAvoy, about sentencing options, different sentencing options as part of that conversation, I think, is where a model of self-determination could be delivered.

There are a range of programs in the justice system currently that are delivered by Aboriginal people and Aboriginal organisations and are self-determined to that extent. But that is obviously within the broad framework of our existing kind of colonial corrections and justice system.

COMMISSIONER LOVETT: Can I ask, your substantive position - I know you are acting up at the moment - is that position a member on the Justice Caucus? The Justice Forum, continued member?

MR PHILLIPS: Yes, it is.

COMMISSIONER LOVETT: So you would be quite well aware of the continued advocacy of the Justice Caucus around more - embedding more self-determination principles in the current model.

MR PHILLIPS: Yes.

COMMISSIONER LOVETT: Thank you. I just wanted to be clear. Thank you.

MR MCAVOY: Related to the question of self-determination in the Corrections system is the issue of systemic racism. There was evidence given in another Commission by Andrew Jackomos about how one might identify whether the systemic and institutional racism exists within government agency. And his observation, in effect, was when an overwhelming number of the people who are the subject of the system are Aboriginal people, of the people who are making the decisions at every step of the way about what happens to them and then have control over their lives and make decisions about them are non-Aboriginal people, then that's a clear pretty indication that there's some systemic racism at play.

The Secretary yesterday accepted that the justice system perpetuates systemic racism. You accept that the manner in which the Corrections system operates perpetuates a form of systemic racism against Aboriginal people in Victoria?

5 MS STRONG: Well, yes.

MR PHILLIPS: I think - and to my opening remarks, the colonial institutions that were created in Australia are the predecessors to the justice system that's in place today, and those colonial structures were based on - were racist and the structures continue today and they  
10 continue to be racist. And we are doing - the obligation is on us to dismantle and change that. It's no easy task, but that's - that is why so many - that's why we're doing the work, because we see the impact on people.

MR MCAVOY: It's no - this - I suspect the Commissioners know full well that government is  
15 a big machine that it's difficult to change the direction of. And that machine has for 230-odd years chewed up and spat out Aboriginal people. And part of its remit is to figure out how we change that machine so it stops doing that. You've come here and given evidence about some of the programs and things that are happening, but there's nothing in your evidence that tells me we are not going to be back here in the same position in another 10 years. Is there  
20 anything that you can say to the Commissioners that would give them any confidence that we're not going to be having another Commission in another 10 years time asking why there's such a continuously high rate of overrepresentation of Aboriginal people?

MR PHILLIPS: I could sit here and talk to you all about all the, you know, the small changes  
25 that we make with programs and reforming health services and the things we are trying to do to make the system better, and I know there are many Aboriginal and non-Aboriginal staff who are working tirelessly to do just that. But the chance for transformation change is through the government's commitment to truth-telling, you know, the privilege to be here today to talk about what has happened before and what needs to change. And, you know, I think that the  
30 government's committed to reform to self-determination and Treaty - and I'm not saying we're waiting because we're not. We're doing everything we can right now. But that is what is different now. And certainly the Justice Department is deeply and wholly committed to the change that needs to take place and the self-reflection about the source of shame for all of us about what our system does to Aboriginal people.

35 COMMISSIONER WALTER: Can I just say that the word "committed" really rankles with me because it's not a doing word. It's a word that sort of says we're taking it seriously, but it never says what action is going to follow on that. So I'm concerned that we're talking about being committed, not talking about what change is going to happen.

40 MR PHILLIPS: So certainly I know our Secretary talked about some of the immediate law reform changes that this government has committed to and, through bail reform, a change to the age of criminality. In the Corrections space, a significant change to health service provision, moving to public health provision, particularly for women in the first instance, is a  
45 significant change. We are certainly working to implement change on the ground on a daily - daily basis. That's why people come to work every day.



COMMISSIONER LOVETT: But how many deaths, Aboriginal deaths in custody have there been in Victoria?

MS STRONG: Since the Royal Commission in 1991 -

COMMISSIONER LOVETT: Yes.

MS STRONG: - in the adult custodial system, 23.

COMMISSIONER LOVETT: How many people have been accountable for those 23? How many? Zero? Zero accountability?

MR PHILLIPS: I can only say that I sit here before you today to tell you what I can and to, on behalf of the department, express accountability for the department's failings.

COMMISSIONER LOVETT: Yes and I appreciate that in a sense but zero accountability in the sense. And we are talking about confidence about not sitting here in another 10 years time. You know, it's really concerning, zero accountability. We sit here and, as our Counsel said, you know, we have seen non-Aboriginal people continue to maintain the power and authority over our people, and I guarantee that people working in the system are also continually being promoted who could have done something about some of those deaths, and they continue to be promoted in the system today. I just want to make that statement.

MR MCAVOY: Thank you, Commissioner. Part of the operations of Corrections within the Justice portfolio extends to post-release programs. That's correct?

MS STRONG: Yes.

MR MCAVOY: In your view, is there unmet demand for access to post-release support?

MS STRONG: Yes, I would say that's true.

MR MCAVOY: Perhaps a polite way of saying could you do with more resources?

MS STRONG: Yes. I mean, any service system will say that, and - but, yes, we could.

MR MCAVOY: And do you also provide pre-release programs?

MS STRONG: We do. So I guess we call it transition programs and some of them are pre-release and they are pre-release preparation. Some of them span the transition from pre into post-release.

MR MCAVOY: One of the most telling pieces of evidence that this Commission heard was from its very first witness, Uncle Jack Charles, who has since passed, and he spoke of a cycle of being released from prison into a state of homelessness that happened over many decades, from that cycle. That's something that still occurs for many prisoners today, doesn't it?

MS STRONG: Yes, housing is a real issue post-release, yes.

MR MCAVOY: And the post-release program resources that the Commission has is insufficient to meet that demand from inmates?

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MS STRONG: That would be correct. So we tend to support - fund NGOs to provide post-release - so pre-release planning. The idea that their worker comes in and builds a rapport with the person getting out of prison, works with them on what they want and what their goals are, in terms of when they get out, puts in place the plan. That will often involve picking them up on the day of release and taking them to where they are going to be staying and then working with them. Often that's about some emotional and practical support, but also service navigation of managing your way through, you know, how do you access housing, how do you access components. We do have a limited number of houses that we have direct placement control over, for want after better word. It's only 80 transitional houses. Maribyrnong Community Residential Facility, which is a relatively new transition facility, has about 40. So we are then, I guess, trying to get access into the housing service system.

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MR MCAVOY: But housing in Victoria is under great stress at the moment.

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MS STRONG: Absolutely it is, yes.

MR MCAVOY: So finding additional houses is not easy, and I understand that even if you could find some additional houses, there's going to be resourcing issues as to - that limit your ability to meet all the demand?

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MS STRONG: Finding safe sustainable housing for people getting out of prison is probably one of the biggest challenges, whether that's public housing, transitional housing, private rental, there's a - it's very difficult.

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MR MCAVOY: But you accept that meeting that housing need is a very critical -

MS STRONG: Yes, I think it's basic, yes.

MR MCAVOY: - aspect of ensuring that people don't reoffend.

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MS STRONG: I absolutely accept that. I think it's a basic human need and it's also important for reoffending as well.

COMMISSIONER BELL: I would call it a basic human right, but I'm really wanting to share with you a story. On the very day that Uncle Jack Charles gave evidence about this, I was standing with him outside Charcoal Lane, and a young man was walking along, an Aboriginal person, and they recognised each other. Uncle Jack had not seen him for a while, and he said, "Where have you been?" And the young man said, "I've been in prison, I've just done some time." And Uncle Jack said to him, "You are looking pretty okay. Where are you off to?" And the young man who had been released that day said, "I do not know." And Uncle Jack said, "What about tonight? Where will you be staying?" And the young man said, "I do not

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know". Uncle Jack, being Uncle Jack, said if you just go down the road turn right, knock on that door, then they will put you up for the night, a relative. That's how bad the system is.

MS STRONG: Sadly, I agree that does not surprise me.

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MR MCAVOY: I want to turn now to the provision of healthcare. It's a difficult subject about which we've heard much evidence in this Commission. There have been complaints from many witnesses to the effect that the delivery of healthcare generally - not talking mental health now - is insufficient to meet the needs of the Aboriginal community. Is the provision of healthcare to Aboriginal people in Victorian prisons something that is currently under consideration for some improved service?

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MR PHILLIPS: Yes, it is.

15 MR MCAVOY: Can you tell the Commissioners what consideration is being undertaken?

MR PHILLIPS: I can. So the model of healthcare in prisons in Victoria in recent years has been private service delivery. So there was a primary health contract in place. There is a primary health contract in place that comes to its conclusion at the end of June this year. So the department has been working for a number of years to re-tender that contract. As part of that process, the - a key area of focus has been improving Aboriginal healthcare across the system, and there is now a new model of healthcare that's attached to the contract that will come into effect from the start of July.

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Some of the features of the new contract that are worth mentioning are that there is a new Aboriginal health check that will be undertaken for all Aboriginal prisoners. That is equivalent to the health check that is available under Medicare. Now, the Commission may already be aware that prisoners are not eligible for Medicare, and this is a matter of some advocacy by the Victorian government with the Commonwealth over some time that has not yet been resolved, but in the interim, under the new contract, the Medicare equivalent health check will now be available for Aboriginal people in prisons. So that is new.

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The second new feature is that an integrated care plan will now be available for all Aboriginal people. So that seeks to look at both health and social, social and emotional wellbeing, and, where consent is given, connect a person's family in with the care - the health and wellbeing care of people in custody. That plan will also enable consideration of the needs of Aboriginal people when they are released from custody. So they're two key new features that are provided for in the new quality framework that's attached to our contract.

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There are a range of other service uplifts that are provided for in the contract. These range from improving access to an Aboriginal health workforce. So the providers are required to have particular proportion - from memory it's five per cent Aboriginal workforce - and will be providing scholarships to help develop an Aboriginal workforce who then can provide service in prison.

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So these are examples of key features that are embedded in the new contract, and they will apply across the men's system. The big shift I mentioned earlier is that, in the women's

system, additional funding has been provided by government that has enabled us to move to a model whereby health services into Dame Phyllis Frost by Western Health and services into Tarrengower Prison, which is the minimum security prison near Castlemaine, are provided by Dhelkaya Health, which is the local health provider.

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I just make one other comment, is that there is a requirement that all of the providers engage with the community-controlled health sector. The details of that are still being worked out, but I can say that Western Health will be partnering with VAHS, the Victorian Aboriginal Health Service, just -

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COMMISSIONER HUNTER: Sorry, is your microphone on?

MR PHILLIPS: It's green.

15 COMMISSIONER HUNTER: Okay. He just wants to check it. That's what I was -

MR PHILLIPS: Try again. Maybe that was the problem. Thank you. I thought I was trying to talk loud. Yes, so the different health providers - I've lost my train of thought now.

20 COMMISSIONER LOVETT: Talking about VAHS.

MR PHILLIPS: Yes, thank you. So VAHS and Western Health have a relationship and will be working to improve Aboriginal-led care in custody. We are exploring whether, ultimately, there's a model whereby there could be direct Aboriginal Health Service delivery within our  
25 prisons, and that's something the Aboriginal Justice Caucus is very interested in. We have - we've met with the ACT correctional system. They have an Aboriginal-led model of healthcare in their prisons. Now, that's - they have a very, very small prison footprint so there are different complexities but there is an example in Australia of where that model is working well and it's something that we are interested in exploring, subject to the service model and  
30 funding.

COMMISSIONER WALTER: This service model, can I just ask, how is it monitored and what are the consequences for care providers, if these targets if - I presume you have got targets and you have got measures that you are going to be matching them against - are not  
35 met?

MR PHILLIPS: Yes, so that's the role of Justice Health. Justice Health - so the businesses unit in the department is responsible for managing the contracts. So that will be the contract with GEO Healthcare for the men's system and then the two public providers for the women's.  
40 So there's a clinical team in Justice Health who is responsible for clinical oversight, and we have an Aboriginal health team that has been established in Justice Health in the last six months that's led by a senior Aboriginal woman who is a very experienced, and she has been building the team under her.

45 They will support and provide a leadership role in overseeing the contracts. So there's contract management and then there's also auditing. So I think it's fair to say that there has been some room for improvement with the quality of the services that have been provided by

Justice Health. We know that, and the team is working to rebuild, rebuild that function, to be able to make sure the new service providers are on track.

COMMISSIONER LOVETT: Are you accountable for Justice Health?

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MR PHILLIPS: I am.

COMMISSIONER LOVETT: I knew the answer but I wanted you to say it.

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MR PHILLIPS: Yes, I am.

COMMISSIONER WALTER: Thank you for the answer but it still doesn't tell me what the consequences are if these are not being met from the service providers, which I understand one of them is still a private provider.

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MR PHILLIPS: So there are - so it's commercial consequences under the contract. I can get you the specific penalties but it's - yeah.

COMMISSIONER HUNTER: What if someone dies in custody of a health-related issue? What's the consequences then? Because it's a lot for our community.

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MR PHILLIPS: So there are - if there are failings on the part of the health provider, and we know that in a number of the recent passings, healthcare provision is at issue. So there are contractual consequences for breach of the quality of care that's expected. And - but it's - you know, and, Larissa, I might throw to you to talk about in our private prison contracts there are different types of consequences for failure that are much stronger than our health contracts. So I think when there's a failure by a private prison - so if there's a passing in custody in a private prison that's attributable to a private prison staff member, there are a range of serious financial consequences and -

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COMMISSIONER HUNTER: It's more consequences for our community than it is financial, and, you know, these are people's lives and we really need to remember that because, you know, you've got these key features of a new fancy health system but it needs to meet the needs of our people.

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COMMISSIONER LOVETT: So different levels of accountability in the context of someone passing around public and private. Is that what you are saying?

MR PHILLIPS: I'm saying that the contractual mechanisms - so there are - so in the public system, if there's a failure of a staff member of one of the correctional staff members, the consequences are that there's a disciplinary process for staff but there's no commercial penalty for Corrections Victoria. If, say - if there's a passing in one of our private prisons and there's a breach - it's identified that there has been a breach by the prison operator, then there are commercial penalties for that prison operator.

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MR MCAVOY: If I understand it correctly, there's a new contract which has been entered into which will commence operating on 1 July with GEO?

MR PHILLIPS: That's correct.

MR MCAVOY: And the term of the contract, are you able -

MR PHILLIPS: It's five years.

MR MCAVOY: Five years. I don't know if you're at liberty to give this evidence but does the government have the capacity to vary that contract so as to engage directly with an Aboriginal community health provider to deliver services to Aboriginal prisoners?

MR PHILLIPS: Yes, we could do that.

MR MCAVOY: And are you aware that in the Northern Territory, there's an Aboriginal organisation called Danila Dilba which provides primary healthcare to the youth detention facilities?

MR PHILLIPS: Not specifically aware of the Northern Territory example. I have been in discussions with the ACT but not the Northern Territory.

MR MCAVOY: So it's - from the department's perspective, it's not - certainly there's no contractual impediment to the department entering into some alternative arrangement with respect to Aboriginal prisoners for primary health?

MR PHILLIPS: The existing contract with GEO contemplates a role for Aboriginal service delivery. It doesn't go as far as the model in some other jurisdictions. So I think there would need to be some negotiations with the provider to make sure we could have that work under the existing contract. But certainly we see a lot of potential in the idea of direct service delivery by Aboriginal health organisations.

MR MCAVOY: Well, you're aware that the whole reason for the existence of Aboriginal community-controlled health services is that Aboriginal people tend to go and have their problems seen to by an Aboriginal controlled organisation, and tend not to go to mainstream health services. You are aware of that?

MR PHILLIPS: Yes, we're aware of that.

MR MCAVOY: So in a closed environment like a prison, if somebody is not inclined to speak to the doctor who is not from the medical service, their health needs might go unmet. Do you accept that?

MR PHILLIPS: We do accept that.

MR MCAVOY: It would seem that there is a good case for engaging directly with the Aboriginal community health services.

MR PHILLIPS: Yes, and we have been having some discussions through VACCHO, who has helped build a relationship between us and direct service delivery community-controlled health organisations in Victoria to progress that conversation. There were - most recently the discussions occurred towards the end of last year, but I know the most recent Aboriginal Justice Caucus meeting, the desire for us to progress this as a priority was raised and we've committed to taking that conversation forward.

COMMISSIONER WALTER: Yet you still signed this new contract for five years.

MR PHILLIPS: Yes, we have. There is - yes, it was at the end of a tender process that ran for multiple years. I think that there was the ability to make a decision to adopt a different approach for the women's system. The timing worked for us to be able to do that. There was certainly discussion about the men's system and what the options would be for public service provision there. The feedback from our colleagues at the Department of Health was that in a post-COVID environment, the pressures on the public prison system - sorry, the pressures on the public hospital system meant that they couldn't cope with the demand pressures from the Correctional settings and we were told that that wouldn't be supported by Health at this time.

COMMISSIONER BELL: Counsel, if I may. You will be familiar, Mr Phillips, with the Coroner's findings in relation to the tragic death of Veronica Nelson?

MR PHILLIPS: Yes, I am.

COMMISSIONER BELL: And you will be familiar with the fact that the Coroner held the State very much to human rights account across many human rights fronts for that death, and the answer is yes or needs to be -

MR PHILLIPS: Yes, I am.

COMMISSIONER BELL: Thank you. And that's because Ms Nelson was in state care at Dame Phyllis Frost Prison. Again, yes. You will need to say yes.

MR PHILLIPS: Yes, I'm aware.

COMMISSIONER BELL: The nod is not picked up. I'm just wanting to know what is the position with respect to private prisons? Is it accepted or not, has it been considered or not, whether the Charter applies to a prison that is privately operated?

MR PHILLIPS: That is a -

MS STRONG: My understanding is that it does.

MR PHILLIPS: Yes.

COMMISSIONER BELL: It does, because it is providing public services.

MR PHILLIPS: Yes.

COMMISSIONER BELL: So there would be no difference, whether there be a death in custody in a private prison, to the human rights accountability -

5 MS STRONG: That's correct.

COMMISSIONER BELL: - that might arise through the coronial process. Thank you.

10 MR MCAVOY: Can you say, Mr Phillips, whether the contractual arrangements specify compliance with the human rights obligations of the State in terms of the delivery of those healthcare services?

15 MR PHILLIPS: I don't know specifically. I know the legal position is that it does by operation of the human rights legislation, but whether that's embodied in our contracts, I couldn't say. And I can take that on notice unless, Larissa -

MR MCAVOY: So in terms of observation and performance, is the contract performance monitored by anybody to ensure that those human rights obligations are being performed?

20 MR PHILLIPS: I'll hand that one to Larissa. The oversight functions in relation to private prison management sit within Corrections Victoria.

25 MS STRONG: So in relation to private prisons, so the Human Rights Charter does apply. Most contracts do refer to needing to be compliant with State legislation and, of course, the *Charter of Human Rights and Responsibilities* is State legislation. The answer is yes. I mean, in terms of how we monitor private prisons, it's often compliance against Commissioner's requirements, which do have Charter assessments against them. So, yes.

30 MR MCAVOY: And what are the consequences of breach?

35 MS STRONG: It depends, I think, on the issue. And it can go from being issued a request to a contractual improvement plan to termination of the actual contract. The other thing I would probably mention, because I think it's relevant, is that, obviously, the WorkCover legislation does apply to all prison operators and to health staff and healthcare providers in prisons as well. I think that's also relevant in this context.

MR MCAVOY: Thank you. Chair, I have about - well, on my estimate, there's maybe 15 minutes of additional questions for these witnesses.

40 COMMISSIONER BELL: Fine for me.

45 MR MCAVOY: I've checked with my learned friend, Mr Knowles. It doesn't seem to be any issue from the State's perspective. I might ask whether the witnesses are able to stay on for a short period longer? They're indicating, yes.

CHAIR: Yes, we are all in agreement, yes. Thank you.



MR MCAVOY: Thank you, Chair. The topic that I want to take you to now is, although it's related to the mental health issue that we touched upon earlier, it's a sensitive topic, and that's one of self-harm by prisoners. We know that it's a serious issue. We know that it's prevalent, from other evidence. Do you have figures of reporting on self-harm by Aboriginal prisoners?

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MS STRONG: We do have those figures. It is something that we report to the Aboriginal Justice Forum when we have a forum, so regularly. I do not have them on me.

MR MCAVOY: Something that you could provide to the Commission?

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MS STRONG: It is, absolutely.

MR MCAVOY: Do you accept that it's a serious issue?

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MS STRONG: Yes, I do.

MR MCAVOY: And that it's something that is prevalent?

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MS STRONG: I would need to go back and check, I guess, what's understood by prevalent. I accept it's an absolutely serious issue and any self-harm is no good. We have a combination of people who might self-harm but it's - and it can be very serious, maybe even catastrophic, but then we also have some people that chronically self-harm, which is also really concerning as well. And we try to provide that information that that allows people to analyse that as well and understand it. It's a very serious issue.

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MR MCAVOY: Corrections has a strategy for managing prisoners that self-harm?

MS STRONG: Yes, we do. We have an at-risk framework, yes.

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MR MCAVOY: And that framework is the subject of consultation or discussion with the Aboriginal Justice Forum or not?

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MS STRONG: It's been such an established process, so ever since I've been working in the system, the at-risk framework has been around, and that is really around if you are aware or you have concerns about someone's risk of self-harm or suicide, you trigger a referral. The referral is to a mental health professional for assessment, and that must be done within two hours and that's a 100 per cent requirement. Based on the mental health assessment that's done by the mental health professional, they get - people will get a rating of risk, and then there will be a joint discussion with both custodial, health staff and other staff within the prison system on the management plan to mitigate that risk. That has been around so long that I couldn't go back to how that was evolved.

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MR MCAVOY: At what stage are Aboriginal community organisations or an individual's family brought into that risk management strategy, if it's an Aboriginal person?

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MS STRONG: So if it's an Aboriginal person, Aboriginal wellbeing officer will be engaged. We do not do family engagement well in the adult system. That is something we need to change.

5 MR MCAVOY: But - well, from your answer, I suspect that you understand the importance of being able to communicate with family at times of stress for Aboriginal people?

MS STRONG: Yes.

10 MR MCAVOY: And so is that - does the responsibility for ensuring that happens fall to the wellbeing officer?

MS STRONG: It would be something that's discussed at the joint risk review meeting, which has a number of different staffing groups from health, to custodial, to it might be our clinical  
15 team and the Aboriginal wellbeing officer in terms of the plan around that person, and if that - you know, how to facilitate that, when that would happen, that would be something that would be discussed and individualised.

MR MCAVOY: I cut short the discussion in relation to mental health earlier. It may not be  
20 something, Commissioners, that we can adequately deal with now, but if any Commissioner has questions of the witness that they would like to ask before we rise this afternoon, that could be done now.

COMMISSIONER HUNTER: Yes. Just on your last subject about including family. We  
25 have heard from plenty of women who are mums that don't have access to see their children. Half the time, they don't know where their children are. And then we heard in one group, one women tell another women how to get access to her children or how to get a phone call or a Skype. Surely they get told this information of how to do these things?

30 MS STRONG: I guess you've heard that so it may be not always. I would certainly hope so. Zoom visits are not - they should be easy to arrange. We also do have family engagement workers at Dame Phyllis Frost Centre and at Tarrengower, which is the other women's prison, whose part of their role is to support proactively the engagement with the family and children.

35 COMMISSIONER HUNTER: That's not what we are hearing.

MS STRONG: That's -

COMMISSIONER HUNTER: And the men as well, are not - we spoke to several men who  
40 they - their children were on permanent care orders. So whilst they're in custody, they're never going to see their kids again. Because they are now on permanent care orders, and we have had to refer them on to people that can help them, lawyers that can help them, because no one is giving them access in the prison system. You know, we have heard horrific stories about women not even being able to access sanitary pads. That's degrading.

45 MS STRONG: I agree.

COMMISSIONER HUNTER: It just shouldn't happen. Explain it. Like, a sanitary pad.

MS STRONG: There's no explanation for that. If that's happened, there's no explanation for that.

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COMMISSIONER HUNTER: Crying out for mental health facilities, putting in form after form, not wanting to complain and not wanting to upset any prison guard because they know that their form won't get to. You have a dentist that works, what is it, once a week. Half of those women have teeth issues. I don't know if you have had a tooth ache for quite a number of months, some of them, some of them don't get things you're talking about because they are on remand and they don't have access to it. Or by the time, they leave their number hasn't come up. It's a bit of a lottery.

15 Just because you have committed a crime doesn't mean you take away a person's human rights and dignity, let alone dying in custody. Also - and I will add because I promised one woman I would bring up the fact that it's costing her - a young woman who entered the system because of crimes of poverty to feed her family, was her original charges, gets minimum - the amount they get paid in there for the amount of work, yet the - I don't know if you have got land lines, but if you ring a landline it's quite cheap. But if you ring a telephone, you get 12 minutes and it costs you - you know, they have to - that's contact and connection to family.

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COMMISSIONER WALTER: At \$12 per call, I think.

COMMISSIONER LOVETT: Call a mobile, is what - just to clarify. Calling a mobile. So land lines is a cheaper rate. It still is expensive but if a person wants to call a mobile, it's at the same rate as probably the early 90s.

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MS STRONG: I am really aware of that issue. It reflects a contract that we have with the person that provides the - sorry, a company that provides the phone system because it is, the telephony involved in that phone system, because there's an ability to record and there's only certain numbers that you can call, and the scale - you're right. It hasn't kept pace with the fact that people don't have land lines any more. People have mobiles, and in the community now, you can get a plan that's really quite affordable. The Zoom visits are free.

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COMMISSIONER HUNTER: They are not getting them. Let's be clear. They are not getting them or they have to wait for months to get them. The rate people are charged for things in prison - sorry to cut you off, but I just need you to know. Some of them can't even afford shoes and they don't want to be wearing the prison issue shoes because, you know - and we have got people borrowing other people's shoes to look decent to come and see us as Commissioners, which was really sad. They can't buy what they need because the rate of getting paid for the work they're doing - you know, one said we sit there all day and screw a bolt on an end. And I said, "And then what happens to them?" "Oh, they are probably taken over to the men's and they unscrew them." Right? I just needed to make those points. These are human rights to be able to contact your family, get visits. See your kids.

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MS STRONG: I agree and thank you. I will absolutely look into this and I'm happy to come back to the Commission with more information.

COMMISSIONER HUNTER: And the rate of the phone calls. The -

MS STRONG: I do know the rate of the phone call. It's a harder one to unpack.

COMMISSIONER HUNTER: It needs to be looked at for every person in a prison system. You know that calms them and keeps them feeling safe and comfortable because they know what's going on outside.

MS STRONG: Yes.

COMMISSIONER HUNTER: So why would that not be a priority? These are fixable things.

COMMISSIONER LOVETT: And a big part of our culture is family and connection to family. It's not about, really, catching a possum skin. More than that. It's deeper than that. Thank you.

MR MCAVOY: Commissioners, that concludes the questions that I have for these witnesses today. I indicate that Counsel Assisting may request that the witnesses be recalled at a later hearing block, particularly to deal with some of the issues that we haven't quite examined to their force today.

COMMISSIONER LOVETT: Can I just jump in? One of those - sorry, just before you - one of those things for me is the Cultural Review into Corrections. We haven't even talked about that at all today. That is a significant piece of work. How many recommendations?

MS STRONG: 86.

COMMISSIONER LOVETT: 86. How many have been accepted or committed to?

MS STRONG: So the government released - when they released the report, they released the government's response. I think it was on 24 March.

COMMISSIONER LOVETT: Yep.

MS STRONG: There are a number of recommendations that they were - they did agree to commit to straightaway. There are other ones that the commitment is to work through an implementation strategy along with stakeholders, because there are so many - and you're right, it's a very important report. It's very far ranging. We really do need to do some thinking through about what do you first, what do you do in what order, what is the interdependency, how would you go about some things? So something like cultural awareness training and how do we absolutely lift that and make that mandatory in terms of refresher trainings and all along your career, and what does that training in terms of the competencies and the understanding need to instil?

So, you know, working that through with our Aboriginal Justice Forum structures, to then go through about appropriate procurement, to then work through how we actually roll out the

training. So some commitments have been made, but others require more thinking work; thinking work about what do we do this year, what do we do year 2, what do we do within our existing resources? What do we - we won't be able to do within existing resources and we need to build a case. And how do we engage with Aboriginal community but also people in custody and also our workforce.

COMMISSIONER LOVETT: I think coming back before us in the future, I think we will have more to ask about that.

COMMISSIONER BELL: We certainly will.

COMMISSIONER LOVETT: We're eagerly monitoring, I guess, any, you know, progress on that report.

COMMISSIONER BELL: Commissioner, can I just ask you to confirm what I think is the case: that neither you nor the government disputes the findings made in the report?

MS STRONG: That's correct.

COMMISSIONER BELL: Yes. Thank you.

MR MCAVOY: Thank you, Commissioners. I think I may have raised with the witnesses earlier their willingness or ability to come back to this Commission at a later stage. I ask that they be released now.

**<THE WITNESSES WITHDREW.**

MR MCAVOY: There is a housekeeping matter that I need to attend to before we rise this afternoon.

COMMISSIONER BELL: A short break in the meantime? Do you mean we might have to come back or you're -

MR MCAVOY: No, I'm ready to proceed.

COMMISSIONER BELL: Yes, very well.

MR MCAVOY: Chair, you should have before you a tender list or partial tender list for this hearing block.

CHAIR: I have it now.

MR MCAVOY: There's a tender list for documents 2.2.1 to 2.2.8 for today, 3 May 2023, and accompanying that tender list, Chair, is a proposed interim restricted publication order pursuant to section 26 of the *Inquiries Act 2014*. That order covers each of the eight documents in the tender list and the order in relation to those documents - the orders in relation to those documents are that:

*"Subject to paragraph 2 of this order, an interim non-publication order is made in respect of the following documents given to the Yoorrook Justice Commission by the State of Victoria including contents thereof..."*

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Each of the documents is listed, and then order 2:

*"This interim non-publication order will expire upon that publication by Yoorrook..."*

10 meaning Yoorrook Justice Commission:

*"...on its website of each of the documents listed in subparagraph (1)."*

And there is the note, (1):

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*"Pursuant to section 48(1) of the Inquiries Act 2014 Victoria, it is an indictable offence for any person, including a body corporate, to knowingly or recklessly contravene an order of a Commissioner under section 26(1)."*

20 I ask you, Chair, to make the orders in terms of the interim restricted publication order before you in relation to documents 2.2.1 to 2.2.8.

CHAIR: I make those orders as sought.

25 **<EXHIBIT TENDER LIST FOR DOCUMENTS 2.2.1 TO 2.2.8 FOR 3 MAY 2023**

SPEAKER: Thank you, Chair. Sorry for my absence. I can indicate the State supports those orders being made.

30 CHAIR: Thank you.

MR MCAVOY: Thank you, Chair. That was the only matter of housekeeping from me. The Commission is not sitting tomorrow. The next witness will be the Attorney-General on Friday morning, 5 May 2023.

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COMMISSIONER BELL: Brought forward to 9 am, I think.

MR MCAVOY: Brought forward to 9 am, yes. Yes, Commissioner Bell. Thank you.

40 CHAIR: Thank you. We will adjourn and resume on Friday at 9 am. Thank you.

**<ADJOURNED 4:17 P.M.**