



TRANSCRIPT OF DAY 7 – PUBLIC HEARINGS

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

MONDAY, 8 MAY 2023 AT 9.32 AM (AEST)

DAY 7

HEARING BLOCK 5

**MR TONY McAVOY, Senior Counsel Assisting, with MR TIM GOODWIN
and MR NICK BOYD-CAINE, Counsel Assisting**
**MS GEORGINA COGHLAN KC and MR DAN STAR KC, with MS LUISA
FREDERICO and MS GEMMA CAFARELLA for the State of Victoria**

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CHAIR: This is the seventh day of hearings in Hearing Block 5 where we are hearing from government witnesses on the priority areas of child protection and Criminal Justice. Today we will hear from Chief Commissioner of Police, Shane Patton, and the Minister of Police, the Honourable Anthony Carbines. Before we start I would like to invite Commissioner Lovett to give the acknowledgement of country.

COMMISSIONER LOVETT: Thanks, Chair. (Speaks First Nations language)

CHAIR: Thank you, Commissioner Lovett. Counsel, may I have appearances, please.

MR MCAVOY: May it please the Commission, Chair, my name is McAvoy, I appear as co-Senior Counsel Assisting the Commission, and today I appear assisted by, or with Mr Tim Goodwin and Mr Nick Boyd-Caine.

MS COGHLAN: Good morning Chair, Ms Coghlan. I appear for the State of Victoria. I would like to begin by acknowledging the Traditional Owners of the land on which we meet today, the Wurundjeri people of the Kulin nation. We pay our respects to their elders, past and present. We acknowledge all First Peoples here today. We acknowledge in particular Aunty Donna Nelson who is here today and those observing the hearings from elsewhere and those who have participated in this important inquiry, particularly in relation to policing and police conduct.

The State hears the strength and resilience in those voices. The State acknowledges the key role it's played, particularly with colonial policing and the traditional imposition of the legal system and the oppression of First Peoples that that's created, and that significant historical roles of police in the lives of First Peoples establish an early pattern of conduct that continues today. Thank you, Chair.

MR STAR: If the commission pleases, my name is Dan Star. I'm appearing today for the State of Victoria with Luisa Frederico when the Chief Commissioner of Police is appearing. I will also be appearing with Gemma Cafarella when the Minister of Police, the Honourable Anthony Carbines, is giving evidence. This is my first appearance here and I would like to acknowledge the Wurundjeri people of the Kulin nation, their Elders past and present and thank them for lawing us to have this meeting on their land. I also want to pay my respects to all First Peoples here in the Commission room today and to all those watching now or later on. Thank you.

CHAIR: Thank you. Thank you very much.

MR MCAVOY: Chair, before I call the Chief Commissioner, I propose to identify the key documents for today. They are the witness statement of the Chief Commissioner, which has a document identification of VPOL.0004.0001.0001. That document has previously been tendered. An opening statement with the document ID VPOL.0004.9999.0001 which has also been previously tendered, a short supplementary statement dated 3 May 2023 of which I now tender and ask that you direct be published on Yoorrook's website.

CHAIR: Thank you, Mr McAvoy. That document will be allocated with the next exhibit number.

5 MR MCAVOY: Thank you. May it please the Commission, I now call today's first witness, the Chief Commissioner of Police, Shane Patton. Commissioners, he is one of two witnesses to be called today. The second witness is the Honourable Anthony Carbines MP who has another engagement today, this afternoon, in his capacity for Minister for Racing. We propose to interpose the Minister into the middle of the Chief Commissioner's evidence. For that reason, we've started with the Chief Commissioner early this morning, and I thank the
10 commission for that.

We then propose to call the Minister at or around 10.30 am to allow him to leave by 12.30 pm, at which time we will recall the Chief Commissioner to give further evidence before
15 concluding today's hearing.

<SHANE PATTON, CALLED

CHAIR: Thank you. Thank you, Counsel, and welcome to the Commissioner.

20 MR PATTON: Thank you.

MR MCAVOY: Chief Commissioner, I would like to ask you to make an undertaking to provide truthful evidence. Do you undertake to provide truthful evidence to the Yoorrook Justice Commission today?
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MR PATTON: Yes, I do.

MR MCAVOY: Thank you. I understand that you propose to make an opening statement; is that correct?
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MR PATTON: Yes, I would, with the permission of the commission.

MR MCAVOY: Are you able to do that now?

35 MR PATTON: Yes, I am.

MR MCAVOY: Thank you.

40 MR PATTON: Thank you for the opportunity to appear before the Commission here today and to make some brief opening remarks prior to making an apology. I would like at the outset to begin by acknowledging the Traditional Owners of the land on which we meet, the Wurundjeri people of the Kulin nation, and pay my respects to Elders, past, present and emerging and also to those here today or watching online.

45 I see this as a watershed moment for Victoria Police and I hope for the Aboriginal people of Victoria. I think it's important for me, prior to making - reading my apology, to explain the

facts on the basis on which I came to arrive at it, because as a police officer, and being in this organisation for around 45 years in Victoria Police, I'm a person of facts and evidence.

5 I've delved deeply to understand the role of Victoria Police played over the past 170 years since 1853 when we were established as an organisation, and through a range of research, discussions and attempts to gain greater cultural awareness, I've been actually very confronted and immensely challenged. I now understand that while we've done much, in my view, to improve our policies and practices, we need more than that.

10 We need to undertake transformational change. That change needs to be urgent. That needs to be effective, and it needs to be done with purpose. While I firmly believe that Victoria Police, as an organisation, is not intentionally racist nor are the vast majority of its members, our policing of Aboriginal persons is influenced by systemic or structural racism. With the permission of the commission, I will now read my apology.

15 I, Shane Andrew Patton, Chief Commissioner of Victoria Police, thank the Yoorrook Justice Commission for the opportunity to make these comments before my statement is formally received by the Commission and I'm asked questions in relation to it. I would like to firstly acknowledge the Traditional Owners of country across Victoria and pay my respects to their
20 Elders, past, present and future. I recognise, embrace the fact that Aboriginal people are connected to the oldest continuous history.

I use the term Aboriginal to respectfully refer to Aboriginal and Aboriginal and Torres Strait
25 Islander people. I do this to ensure consistency with the terminology used in existing Victoria Police policies, documents, forums and positions, and because I understand it is a preference of the Aboriginal Justice Caucus. My use of this term is not intended to deny the right of Aboriginal people to determine the way in which they are referred.

30 I appear before you today in full uniform as a mark of respect for the commission. I also wear this uniform with pride, pride in being part of the profession that is dedicate today keeping the community safe, supporting people in time their need and holding offenders to account, pride in the skills and dedication that police bring to a range of duties, and pride in the colleagues who have served Victoria Police over the past 170 years.

35 However, I know this uniform means something very different to many people in the Aboriginal community. Through my reading and my conversations with Aboriginal staff and other members of the Aboriginal community, I understand that this uniform can be a symbol of fear. I'm aware of lived experience evidence given at this commission that illustrates that fear of police.

40 When recently speaking with an Aboriginal employee with lived experience of the impact of police actions, they expressed it powerfully to me. "You wear your uniform with pride, yet to us, we are scared of it because of what has happened in the past and because of what might happen in the future." As Chief Commissioner of Victoria Police, I am deeply and truly sorry
45 for this impact. My aim and that of Victoria Police every day is to work for a safer community.

I acknowledge that since the establishment of Victoria Police in 1853, our understanding of what safety means for all members of the community has evolved considerably. I have been a member of Victoria Police since 1978 and have held the position of Chief Commissioner since 27 June 2020. I know that the standards to which Victoria Police is held to account and community expectations have also changed over time and rightly so.

I know Victoria Police has caused harm in the past and, unfortunately, continues to do so in the present. As an organisation, we continue to make necessary changes and improvement. And it is a firm requirement of mine that we will continually strive to do better. More specifically, it is a key priority of my tenure as Chief Commissioner to build greater trust and stronger relationships between Aboriginal people and Victoria Police.

I recognise that there is still real and significant obstacles to this occurring. I consider it is necessary and appropriate to face up and accept responsibility for the times when Victoria Police has failed and done wrong. As Chief Commissioner, and on behalf of Victoria Police, I formally and unreservedly apologise for police actions that have caused or contributed to the trauma experienced by so many Aboriginal families in our jurisdiction.

Victoria Police was historically one of several agencies with legislative responsibilities for the management and movement of Aboriginal Victorians. From 1864 to 1992, police had the power to remove neglected children. The Board for the Protection of Aborigines also had power to move neglected children from 1871 and broad powers to remove any Aboriginal child from 1890 until 1957. Although poorly documented, it is indisputable that Victoria Police assisted the board with devastating consequences for Aboriginal families.

The responsibility for determining when a child was neglected or unprotected was shared across several agencies, including Victoria Police. I cannot begin to imagine the profound distress that the forceable separation of children from their families would have caused and that continues to be felt. Victoria Police has searched for evidence of extent of police involvement in the Stolen Generations in the Victoria Police records held at the Victoria Police Archives Services Centre and the Public Records Office Victoria. Progress has been slow due to fragmented recordkeeping, document disposal, illegible documents, records that do not record Aboriginality and lack of recording of informal child removal arrangements. I recognise that inadequate and incomplete recordkeeping frustrates the desire that Aboriginal people have today for a full and frank account of police actions over the past 170 years.

As has been documented in the whole of Victorian Government submission to the commission, the role of police extended beyond the Criminal Justice system to include acting as the enforcers of legislation and regulations, policing behaviour, controlling access to rations and conducting population surveys. Frequent intrusive and detrimental contact between police and Aboriginal communities, families and individuals has been a pattern for 170 years, the effects of which continue to be felt today.

As a result of systemic racism, racist attitudes and discriminatory actions of police have gone undetected, unchecked, unpunished or without appropriate sanctions, and have caused significant harm across generations of Aboriginal families.

For all this, I genuinely and formally apologise as Chief Commissioner and on behalf of Victoria Police. I am sincerely sorry that this has occurred to Aboriginal people. It should not have happened. I cannot undo past actions and decisions of Victoria Police. What I can, and will do, is ensure that we proactively review our policies and processes with community to address systemic racism, unconscious bias or unequal use of discretionary power in outcomes.

I know this must happen expeditiously. I will also harness the dedication, duty and sense of community service of Victoria Police to make sure that we continue to work in partnership with Aboriginal people and communities to support self-determination and improve outcomes: concrete outcomes, not just promises and good intentions.

We will know we have achieved true partnership when every Aboriginal person feels confident to look to this uniform for services and support, and better yet, when more and more Aboriginal people want to wear it. Thank you. I now appear before you to answer questions.

CHAIR: Thank you. Thank you very much. And I would just like to make a short response to your apology, and we would like to have a minute's silence when that's finished. Thank you. I acknowledge your apology here today, Chief Commissioner Patton. This includes the formal recognition of the significant harm caused by police to First Peoples since the beginning of Colonisation in Victoria.

It is important that your words are now on the public record. Since the very beginning, Victoria Police has been the main arm of the Victorian government, the colonial government carried forced occupation of our homelands and the destructions and dislocation of our families. The systemic racism, racist attitudes and discriminatory actions of police over the last 170 years has been perpetuated with the intent of making us First Peoples disappear.

Yoorrook has heard that our people continue to be targeted, attacked, harassed and racially profiled by police. Since then, our children have been born into overpoliced communities. Your presence today is important, very important, because if actions do not follow your apology, then what hope will we have?

Your apology must bring real change. The Yoorrook Justice Commission asks for an undertaking today that Victoria Police protect Aboriginal communities and families and that Victoria Police respect our culture and human rights. I would just like to have a minute's silence for our people. Okay. We should have rehearsed this.

I just want to make a statement that this is not a gift. This is about a commitment. This is a symbol of the change we wish to make. This is part of the story of Victoria, and it's part of the legacy Yoorrook wishes to leave. Any Aboriginal person will be able to look at this and tell a story. It can be other people's story too, by looking at it. But it starts from our expectation of a change in what happens to Aboriginal people between Aboriginal people and police, and the authorities in this country. So it's a gift to your --

COMMISSIONER LOVETT: It's not a gift.

CHAIR: It's not a gift, sorry. It's a symbol of the change we are seeking from the Yoorrook Justice Commission and it's a symbol of an expectation of the future.

MR PATTON: Do you want me to receive it, or --

5

COMMISSIONER LOVETT: Yes.

MR PATTON: Thank you. I understand this isn't a gift. I understand this represents, from a Victoria Police perspective, since we were established, significant pain to the Aboriginal community. You request they give an undertaking to respect the human rights and to try and do better for the Aboriginal community in Victoria, and I give that undertaking that I will do that to the best of my ability and use the authority and power that I have to the best of my ability to do that.

10

I understand that receiving this here today as has been pointed out is not a gift, but represents a journey that Victoria Police needs to go on if we're going to be doing what we need to be doing and truly represent all of Victorians, including the Aboriginal community. My hope is that in the not too distant future, we will see that this isn't a symbol of the pain and anguish that has been caused over the past 170 years by Victoria Police, but it will be a symbol of hope and a watershed moment where we have seen a commitment by Victoria Police to do better, to recognise our failings and to take urgent action to address those failings. And I give that undertaking to try and do so to the best of my ability.

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20

CHAIR: Thank you.

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COMMISSIONER LOVETT: Also recognising that we have got human rights, but we have also got cultural rights as First Peoples of this country. We are the first law-makers of this land and that needs to be respected and that's part of this as well. Our sovereignty has never been ceded and I want to make that clear here today.

30

CHAIR: Thank you for that.

MR PATTON: And we will talk with the commission where this should be displayed. My initial thoughts are in my office as a constant reminder to me in my role, but then again there may be some position at the police academy where every recruit goes in and out and they understand the significance when they come out of that academy but we can speak further to the Commission about what you wish.

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CHAIR: We can speak further. Thank you. (Indistinct speech) .

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COMMISSIONER LOVETT: So the ancestors can look over you.

CHAIR: Yes, a minute's silence.

45

COMMISSIONER HUNTER: If we could all stand for a minute's silence for those who died at the hands of the State.

(Video played during silence)

COMMISSIONER HUNTER: Thank you.

5 CHAIR: Counsel, thank you.

COMMISSIONER LOVETT: Before we start, can I just ask a question, please. As I said in handing over the cultural artifact to you, I mentioned the words our sovereignty has never been ceded. Now, I note in your opening statement and your apology that there was no
10 recognition, as other departments have done, of our sovereignty never being ceded. So I wanted to ask, does VicPol acknowledge - Victoria Police and the organisation that it is and the ongoing impact and trauma that has caused our people - recognise that our sovereignty has never been ceded?

15 MR PATTON: Yes, we absolutely accept that.

COMMISSIONER LOVETT: Thank you.

MR MCAVOY: Thank you, Chair, thank you, Commissioner Lovett. I too acknowledge that we are here today on the lands of the Wurundjeri people and I acknowledge the significance and the symbolism behind the delivery of the shield to the Chief Commissioner.

Chief Commissioner, I now propose to ask you a number of questions, but first, would you prefer that I address you as Chief or Commissioner or Chief Commissioner?

25 MR PATTON: Whichever you're more comfortable with. It doesn't worry me in the slightest.

MR MCAVOY: In that case, I will address you as Commissioner. Firstly, Commissioner, following on from Commissioner Lovett's observations, I wish to ask you some questions
30 about the acknowledgement and apology that you've just delivered to this Commission. Yes?

MR PATTON: Yes.

MR MCAVOY: And I wish to suggest to you that you are, or you have apologised this morning as the Chief Commissioner of Police on behalf of the institution that is the Victorian Police Service for historical - for the historical oppression and dispossession of Aboriginal people by that institution.

MR PATTON: Yes, I fully understand the significance of that.

40 MR MCAVOY: Are you aware of that ever having been done before?

MR PATTON: No, I'm not aware of that. I believe it hasn't occurred.

45 MR MCAVOY: In addition, as you made clear, you were apologising for the present day failures of the Victorian Police Service in continuing the effects of oppression and dispossession of Aboriginal people in Victoria; is that correct?

MR PATTON: Yes.

MR MCAVOY: And that has never been done before either?

5

MR PATTON: I believe you're correct.

MR MCAVOY: In making those admissions and acknowledgements, Commissioner, you are aware that this commission has heard evidence of ongoing racism against Aboriginal people perpetuated by people presently in the Victorian Police Service. You're aware of that?

10

MR PATTON: Yes.

MR MCAVOY: And to be clear, you're apologising for that conduct as well?

15

MR PATTON: I am.

MR MCAVOY: Are you apologising for the fact that they may still be employed by the Victorian Police Service, having engaged in that conduct against Aboriginal people?

20

MR PATTON: I'm apologising for any harms that have been caused to Aboriginal persons by Victoria Police officers where they've acted inappropriately, criminally, racially, or with unconscious bias, and have caused detriment, harm, discrimination and disadvantage to Aboriginal people. In terms of am I apologising for if some of those police officers are still in the organisation, I can only say, we are bound, an organisation, and I don't use this as an accuse, an organisation that is bound by procedural fairness and quite some bureaucratic processes, and wherever we have found any police officer who is committing a racist or discriminatory action, we attempt to deal with them as best as we can within the discipline system that we have.

30

MR MCAVOY: Thank you, Commissioner. There's no suggestion that the police service should deal with people in a way that is ignorant of their procedural rights or their human rights, but you would agree that in apologising for the conduct of the Victorian Police Service and its officers, that many Aboriginal people who have been the subject of mistreatment by officers have not had their complaints and concerns adequately investigated and the matters not been dealt with appropriately by the police service?

35

MR PATTON: Yes, I agree with that.

MR MCAVOY: And are you apologising for that failure to adequately investigate and deal with those complaints against police officers?

40

MR PATTON: Very much I apologise for the failure for the proper investigation of those complaints, but additionally, and I'm not sure whether you want to speak to that now but - and I don't attempt to mitigate that that but there are a range of circumstances that have dictated why that has occurred which we're trying to address.

45

MR MCAVOY: We'll come to that later, Commissioner. This commission has heard evidence from many experts and Aboriginal organisations who are of the view that the police service protects wrongdoing by its own officers. Do you accept that those complaints have been made about the police service in Victoria?

5

MR PATTON: Yes, I do accept those complaints have been made.

MR MCAVOY: And do you apologise to the commission and Aboriginal people in Victoria for the fact that the police service has had a practice of protecting wrongdoing by its own officers?

10

MR PATTON: I don't know whether it would be called a practice, because to me that would be an endemic process. But certainly, I do apologise for occasions where that has occurred for the instances where that has occurred, where officers haven't been truthful and have attempted to cover up matters. Absolutely.

15

MR MCAVOY: Thank you. We will come to the detail of that a little later. You've attempted to address some criticism in your apology that may flow, but you accept that in coming here and apologising to the Aboriginal people of Victoria, many will see that as a cynical exercise, seeking to deflect from 30 years or more of inaction since the Royal Commission into Aboriginal Deaths in Custody?

20

MR PATTON: Yes, I would agree with that, absolutely.

25

MR MCAVOY: Commissioner, what's the size of your media or communications unit?

MR PATTON: I do not know the actual size of it. I should. But it's a significant body of people.

30

MR MCAVOY: I'd suggest to you that that significant body of people has been working very hard to manage public perception about your role and that of the Victoria Police service in the lead up to this hearing. You would agree with that?

MR PATTON: I would not agree with that, sorry. I haven't given one single instruction to anyone in my media unit about that, and have not - am not aware of any matters being put out proactively or reactively in response to this.

35

MR MCAVOY: Do you say that the piece about you in The Age on Saturday, 6 May, two days ago, was not a piece that was, in part, directed towards managing perceptions flowing from this commission?

40

MR PATTON: No, I don't agree with that. The article you're referring to is with John Sylvester. He had been requesting to come and see me because I was coming up to the third anniversary of my tenure. That was arranged, I think about - I'm going to say two weeks ago or something I met with him, and it was a broad-ranging - a broad-ranging discussion about all things policing, of which he then put in whatever he chose to put in that arose from our discussion.

45

MR MCAVOY: But you knew it was going to be put to print on 6 May, didn't you?

MR PATTON: No, I did not.

5

MR MCAVOY: Commissioner, I now want to ask you some questions about the lack of public confidence in the police service. You're aware of the reports going to public confidence in the police service?

10 MR PATTON: Yes.

MR MCAVOY: The most recent data suggesting that the public confidence is at an all-time low, with something approaching 15 per cent of people having a lack of confidence in the police service?

15

MR PATTON: I'm not aware of that data. My recollection of a national survey of confidence in policing, I think, puts it at around 78 per cent of people having confidence in policing. There's many different datasets, though. So - but in the absence of the dataset you're referring to, no, I'm not aware of that.

20

MR MCAVOY: You accept that the public confidence in the police service is a most important aspect of the role?

MR PATTON: It's absolutely pivotal. I mean we have laws that allow us to do our job, but without the public support, we can't do them.

25

MR MCAVOY: And indeed if there's no confidence in the police service as the law enforcement body, then law and order is apt to break down?

MR PATTON: I don't know whether it will break down, but it would then create a divide, and we wouldn't be doing what we're supposed to be doing, which is being - policing for the community.

30

MR MCAVOY: It means you have - would generally have an unhappy workforce because they feel undervalued.

35

MR PATTON: I think that would flow from it, yes.

MR MCAVOY: Staff retention drops?

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MR PATTON: Yeah, it would if that was the case, yes.

MR MCAVOY: Yes. So by that, I mean you have more people leaving the service because they don't - well, you have more people leaving the service.

45

MR PATTON: Are you suggesting now or are you speaking if --

MR MCAVOY: As a result of a lack of public confidence, is that the case now?

MR PATTON: No, that's not the case now. We have a significant attrition issue now because, during COVID for a couple of years, no one retired because they couldn't go
5 anywhere. Since then we have had significant retirements, and people have reassessed their life values, and we now have, I think it's - at last count for me was, I think, 783 members under attrition.

MR MCAVOY: But you agree that the level of public confidence in the service is low?
10

MR PATTON: Certainly in respects to the data from the national policing surveys that indicates it's as low as it's been because it previously was up in the high 80s, I think, and it's now around 78 or something like that. That may not be accurate but that's my last recollection of the statistics.
15

MR MCAVOY: Do you accept that, at least in part, some of that lack of confidence comes from a perception of the police service as being racially intolerant?

MR PATTON: I don't know that to be the case. Certainly I know that is a - is a view that's held by large - large portions of the Aboriginal community and some other areas as well, but not as a general overview across Victoria, no.
20

MR MCAVOY: You have been the Chief Commissioner of Police in Victoria since 2020.

MR PATTON: Yes.
25

MR MCAVOY: During that time, there are things that you have done in order to change the police service in a way that is directed towards ensuring a proper respect and equality of the treatment for Aboriginal people?
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MR PATTON: That's true.

MR MCAVOY: Would you like to identify for the Commissioners some of those actions?

MR PATTON: Well, some of those, Aboriginal cultural awareness training, that is significant and mandating that, which is a direct face-to-face training and cultural awareness, teaching about unconscious bias, teaching about the cultural history and oppression of Aboriginal people, and a range of other matters, and that's mandated for all police officers, protective service officers and now police custody officers. And that's rolling out.
40

I've expanded the cautioning program for Aboriginal youth, changing a whole range of key aspects associated with that so that it meant that Aboriginal youth would have a greater opportunity to receive cautions. There's a range of other policies we've changed. We've changed our searches policy because we were made aware that Aboriginal youth were being searched more frequently.
45

One of the key policies that is introduced has been, when an Aboriginal youth is brought into custody, the police informant is required to notify a supervisor and they are required to notify the divisional - what we call a 265, a senior sergeant, who then intrusively questions what's the reason they're brought into custody for, their welfare, and make sure that they are additionally
 5 are being treated appropriately. But also their disposition is - when I say "disposition", sorry that's police terminology, the way they will exit the police station, if you like, whether it's bail or summons, that that is appropriate and justified.

Also that if it is contemplated that they would be remanded in custody, that - or contemplation
 10 for seeking their bail to be refused, that prior to doing so, they would consult with our Frontline Prosecutions Unit who would then really test that. There's a range of - I've appointed an assistant Commissioner, assistant Commissioner Barrett to be the portfolio for Aboriginal matters to drive and ensure consistency.

We have enhanced and created more, what we call ACLO positions, Aboriginal community liaison officer positions, and we now have 16 of those, albeit five are unfilled at the moment, because they are an integral link with the community for us. We have created and placed a greater emphasis on police and Aboriginal Liaison Officer roles. Previously I think we had in the hundred-odd or something like that. We now have 231 police and Aboriginal liaison
 20 officers which aren't Aboriginal persons but they're police officers who have volunteered and have undergone further training so that they can understand and be aware of cultural matters to help and work with the Aboriginal community and to help our police officers understand better.

Our Professional Standards command which had previously had no Aboriginal liaison officers in there now has five in there. We are currently exploring whether we can find an Aboriginal community liaison officer to go in there. And there are a number of other policies which, if you want me to keep - I can check my notes or whatever and refer to those, but they're some of the broader matters that have been introduced in that period of time.
 25

30 COMMISSIONER LOVETT: How long have you been undertaking to deliver cultural awareness training? You wouldn't be the first Chief Commissioner to --

MR PATTON: No.

35 COMMISSIONER LOVETT: So it's been delivered for a significant amount of years, and yet we've still got significant or overrepresentation of our people in the justice system or contact with police.

40 MR PATTON: Yeah, I agree with you, Commissioner. I couldn't be more frustrated with the lack of pace in the rollout, the lack of urgency about it, and that's why it's been made mandatory. In fact, I was astounded when, in preparation for this, when I was preparing for appearing before this commission and I was seeking updates on the rollout, and I'm advised that it's anticipated the rollout of the Aboriginal community - Aboriginal cultural awareness
 45 training will be done by the end of 2024, which seems like an inordinate amount of time given it's been going so long, and it's, if you like, a key linchpin in trying to address unconscious bias and racism. But I was astounded when I found that there had been no mandatory

direction given to our police custody officers who are public servants who are responsible, yet in uniform - a custody uniform, yet are responsible for dealing with people in custody. I've given that direction.

5 Out of the 400 police custody officers, which we have - 33 of those positions are vacant at the moment or were vacant when I last checked. But 44 of those, I think it's 44 of those custody officers had voluntarily undertaken it, but such a glaring oversight when we have custody officers who weren't even being directed to undertake the training. So I sense your frustration, and it's my frustration as well, and in respect to the custody officers, I've now made it a
10 direction that they will complete it within six months from a month ago or so. So they, in their important role, will have that done. But, yeah.

COMMISSIONER LOVETT: How do you communicate across the organisation, to ensure you at the top, the most senior person, down to the graduate, implement that?

15 MR PATTON: Yeah, we - are you speaking in respect to the --

COMMISSIONER LOVETT: Any direction that you set and an expectation.

20 MR PATTON: When legislation is put in place, we analyse it, we put in place policies and procedures and training processes that will support the implementation of that legislation, and subject to the suddenness or the importance of it, etcetera, we will create what is called a Chief Commissioner's instruction that lasts for a year that directs you will do this and you will do this by then and gives clear and implicit directions.

25 COMMISSIONER LOVETT: And how do you monitor the effective delivery of that direction?

30 MR PATTON: Can I say, though, don't be under the misapprehension that such a direction has gone out for this training because it hasn't, because we --

COMMISSIONER LOVETT: I'm talking about broadly systemic issues within the org.

35 MR PATTON: Sorry. We - obviously in terms of different matters, it's there and it's a policy that exists and if someone breaches it, well then, they're held to account in terms of a complaint form goes in and it's investigated.

40 COMMISSIONER LOVETT: Is that ever independently - any of the processes that we're referring to around direction statements, is that independently reviewed or is it always internal to make sure that people are adhering to the direction?

MR PATTON: Pretty much internal, yeah. Yep.

45 COMMISSIONER LOVETT: Thank you.

COMMISSIONER BELL: Can I ask, you referred to what I might call individual initiatives designed to ensure cultural awareness is obtained. Do you have a cultural awareness strategy

operating as a project, with a project committee, milestones, reporting to strategic command and the like?

5 MR PATTON: We have, as a result of matters from the past when we produce, there was a report produced of equality, which is not the same, which I understand the Commission may have heard of, undertook a range of matters and that was to produce a priorities and safer communities division, and that's an important area for us that has set up a whole range of portfolio --

10 COMMISSIONER BELL: Are you referring to another initiative, and I don't doubt the significance of the initiative and I am aware of it. But my question was whether you have a strategy operating as a project reporting to police command with milestones and the like?

15 MR PATTON: Yeah, and I was trying to - I was just about to try and give context. They have a strategic plan under them, but it's not what I would call a whole-of-organisation approach which is what you're talking about, and that is something that became glaringly obvious to me in preparation for appearing to give evidence here today, that whilst all these, well, not good intentions, they are meaningful changes that we've made but they're all - piecemeal is probably not the word, but they're in isolation without anyone looking at in totality what we're doing to
20 address the discriminatory impacts of certain policies or processes.

COMMISSIONER BELL: Would you even be prepared to consider the formulation and implementation of a whole-of-force strategic project addressing systemic discrimination, lack of cultural awareness in such matters, reporting to strategic command, operating as a project
25 with milestones?

MR PATTON: Look, I've already considered when coming along here, looking, as I said, preparing, it was surprising to me the range of matters where I'm saying, well, we will put that in and we have set it, and then we have left it and we haven't come back and evaluated it, we
30 haven't monitored it, we haven't looked at what impact that has on something else and what other matters had and where the gaps are. So I'm already contemplating and still need to discuss how viable it is.

35 But the thing for me is, we are very good in policing if something's - if something's measured, we do it, and if it's not measured, it doesn't get done. And we're very good in policing in terms of crime, emergency management, road policing. We have a State task coordination approach that each month our assistant Commissioner has come along and they look and analyse all of the data and have dashboards and we task and coordinate so that we take appropriate actions, and if we need to change policies, we do.
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COMMISSIONER BELL: I want to bring finality and clarity to these questions.

MR PATTON: And that's what I was about to say, Commissioner, that that's the type of approach that I intend to bring to the issues that you're raising, with a view to having an
45 overall strategic plan that addresses Aboriginality with a sense of urgency that this is an emergency, because we're very good at dealing with emergency responses.

COMMISSIONER BELL: Yes.

MR PATTON: And put in place those processes such as, if it's going - once I explore it, if that's able to work, and do that on a similar manner.

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COMMISSIONER BELL: Thank you. I appreciate that.

MR MCAVOY: Thank you, Commissioners. Now, Commissioner, it's the case that you are ultimately responsible for the actions of the police service you lead?

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MR PATTON: Yes, I'm responsible for the management and control of the Victoria Police.

MR MCAVOY: And prior to being appointed as the Chief Commissioner, you were a Deputy Commissioner.

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MR PATTON: That's correct.

MR MCAVOY: With a specific role.

MR PATTON: I performed two separate roles. One is regional operations which, broadly speaking without going into detail, is uniform policing across the State, and the other is crime and in specialist areas.

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MR MCAVOY: And whilst you were working with the uniform police across the State, it's correct to say that there was no discrete strategic plan for the delivery of Cultural Awareness training for those officers?

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MR PATTON: That's correct.

MR MCAVOY: And is it fair to characterise the programs and actions that you've outlined in response to the questions that I've given and those from the Commissioners, that Aboriginal cultural awareness and delivering a service which protects Aboriginal people particularly is not a core objective of the Victorian Police Service, is it?

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MR PATTON: No, it's a core objective of us to protect every person in the Victorian community. Every person.

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MR MCAVOY: Well, that may be the case, Commissioner, but the Royal Commission into Aboriginal Deaths in Custody reported in 1991 on the discriminatory treatment against Aboriginal people, and you were a Deputy Commissioner from 2016 through to 2020, is that correct?

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MR PATTON: That's correct.

MR MCAVOY: In charge of operational police.

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MR PATTON: That's correct.

MR MCAVOY: And now you're the Chief Commissioner, and it's the case that the things that you're saying here today are - can be characterised as things that have only come to your attention as being deficient today or in the preparation for this evidence.

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MR PATTON: No, it's certainly been heightened as I prepared to give evidence here. But along the way, we've implemented different responses and different approaches.

MR MCAVOY: But none of them have been of any success, have they, Commissioner?

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MR PATTON: Well, I think some of them have been of success. Some have been very successful.

MR MCAVOY: I understand you might be talking about the cautioning system for young people, but on the whole, the Victorian Police Service has been unsuccessful in meeting the recommendations of the Aboriginal - Royal Commission into Aboriginal Deaths in Custody. Would you accept that?

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MR PATTON: I agree with that. We've got a lot of work to do still in relation to, that and it's completely unacceptable that, 32 years later, we still haven't finalised those. I mean, we went back over the recommendations and we are currently working through those, not just to acquit them, because they've previously been acquitted, but to review them and look that we're actually addressing the intent of what was meant in those. And so we are - yeah, it's unacceptable that's still the case, I agree.

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MR MCAVOY: And I suggest to you that whilst it might be the case that the police service's core objective is protection of the whole community, there has been insufficient done in respect of protection of the Aboriginal community.

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MR PATTON: Yes, we need to do more; there's no doubt about that.

MR MCAVOY: Your term of appointment expires in two years or thereabouts?

MR PATTON: That's right.

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MR MCAVOY: In assessing your suitability for reappointment, the Minister and the government should take into account the work that you've done in order to ensure the protection of Aboriginal people in the community. Is that a matter that they should be able to take into account?

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MR PATTON: I'm not sure it's for me to tell the government what they should take into account in assessing my employment, but clearly that would be an important aspect given the disadvantage that has been caused over the years in the discrimination, yes.

45

MR MCAVOY: Well, given it's part of the core business of the police service, it should be, shouldn't it?

MR PATTON: Yeah, I agree with you.

MR MCAVOY: And they should take into account, you would think, having been in the position, the compliance of the police service with the Human Rights Charter in Victoria?

5

MR PATTON: Yes.

MR MCAVOY: Would the Minister or the government take into account any attempts that have been made at rebuilding the public confidence in the Force?

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MR PATTON: Again, I can only surmise that but I would think that would be an important factor. Public confidence in policing is integral to policing.

MR MCAVOY: Another matter that ought to be taken into account, I suggest, is whether the police service has been able to recruit and retain Aboriginal officers.

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MR PATTON: Yes.

MR MCAVOY: Because that's an integral part of the cultural change that's needed in the police service, isn't it?

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MR PATTON: Yes.

MR MCAVOY: And finally, it ought to be considered, I suggest to you, in determining appropriateness for the position of Chief Commissioner of Police in Victoria, whether a person has the capacity to, or has demonstrated ability to develop positive relationships with the Aboriginal community that reflects an understanding in government that it's trying to change its ways in terms of in dealing with the community and to reflect the work that's going on in the Treaty process as well.

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MR PATTON: I agree with that. There are many factors that the government would consider in appointing the next Chief Commissioner, but that would be an important one to consider.

COMMISSIONER BELL: Commissioner, in relation to deaths in custody, I've read your witness statement which catalogues what you have been able to achieve. I'm not quite sure of the categories or the items that you have not been able to achieve. Could you just elaborate on that briefly so that the Commissioners can have an understanding of what is yet to be done?

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MR PATTON: I think one of the key things for us that is yet to be done is, as the Commission would be well aware, the complexity in previous data reporting to the Commission from Victoria Police about the number of injuries in custody and the like and the inability of Victoria Police to understand those. And what we've seen in the past over previous years was an inconsistent approach to reviews of deaths in custody and/or injuries in custody and we have matured markedly since then, and we now have a very consistent approach to how deaths or injuries in custody are dealt with.

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But the delivery of an automated system which we are on the cusp of delivering that will allow analysis - transparent and clear analysis about any incident and - that occurs in custody will ensure it's captured, so there can be no, if you like, doubt or lack of transparency in relation to what occurs in our cells.

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COMMISSIONER BELL: Thank you.

COMMISSIONER LOVETT: We touched upon this but I'll ask again. Under your leadership, what have you done to change the culture of Victoria Police?

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MR PATTON: Well, in terms of culture, I think it's a very difficult - it's a simple word to say, but it's a very difficult thing to change. I've been explicit since I came into the role and I met and spoke with, I would say, the entirety of the organisation, even through COVID on Teams meetings, outlining my clear and unequivocal expectations about conduct, about fairness, about decency, and a whole range of other matters. I've instituted a discipline transformation project.

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We have made it very clear that poor conduct will not be tolerated, and there have been a large number of police officers who have been held to account, dismissed or resigned prior to being dismissed, set in place numerous standards, really pushed home with the Professional Standards Command about the importance of proper investigations.

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I've also implemented a service delivery transformation project that has culture as one of the key linchpins in it, which we are still working at establishing at the moment, but which is about outlining to people about conduct, about responsibility and about service delivery. And there are many other, if you like, contributing factors. Culture can't be solved with just saying, "Oh, we're going to roll out one little program" or something like that. Culture is made up of a whole range of different things.

25

We have training for police responding in mental health events. We have the ACAT training, as I've said, the Aboriginal Cultural Awareness training. We have, I think, symbolically and importantly, as a leader, I've shown the significance and the import that I have and the importance that I place on human rights through leading our human rights strategic advisory group, as well as me being the, if you like, the lead or executive sponsor for Aboriginal matters. They're the only two portfolios that I take.

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And if I use an example about our culture, for instance, and I know we'll get to it later in terms of public drunkenness, but to try and move from what has been seen to be a culture that is internally focused, that doesn't share, that doesn't listen, to move it to one that does listen, that takes on board input from other people, that shares its issues. And if I can use one of those examples, in March this year, for instance, at the human rights strategic advisory group that I chair that has a range of key stakeholders in it including the Aboriginal Legal Service and many other key stakeholders, we gave a presentation on the approach that Victoria Police will be taking to human rights when we operationalise public drunkenness, and sought input and advice, and any concerns that that may have.

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That's the type of transparency. So I'm trying to create a transparent organisation, an organisation that too, when we get it wrong, we say, "We got that wrong." But one that - and I've said to my officers, if they make mistakes and they make them in good faith, and they're not ridiculous that should never have been contemplated, but they make a good faith mistake they will be supported. But for anyone who acts criminally or totally inappropriately, they'll be exited from the organisation. And I've set these standards in respect to a range of conduct, in relation to discriminatory actions, in relation to information release.

I won't go on just to continually take time, but what I'm trying to say is there are a whole range of matters that I have put in place and am putting in place to address culture, but it's about being inclusive, it's about being transparent, it's about being fair and decent, treating people in accordance with their human rights.

COMMISSIONER LOVETT: How many people have you dismissed from your organisation due to racism?

MR PATTON: In the past five years, the statistics that I've been advised, we've had 175 police officers complained against for incidents of racism which covered 188 complaints but specifically 175 police officers. One police officer has been dismissed for racism-related matters. Another is being transferred, and others have received - one, I think, one or two received good behaviour bonds, I have to check that exactly, and a number of others have received lower level sanctions, as well as a number of police officers resigning prior to the matters being heard in a discipline forum.

COMMISSIONER WALTER: Can I just ask before we move on about the Culture Awareness training, which is bringing it down to the lower level. This is a three and a half hour training package.

MR PATTON: Yes.

COMMISSIONER WALTER: I am concerned about the cultural load being placed on the First Peoples employees in your organisation. For example, here, you talk about the cultural content is presented by Aboriginal community liaison officers and other Aboriginal employees who share their personal experiences. I was horrified when I read that. It's very culturally unsafe for people to have to share their personal experiences in their workplace where there is admittedly systemic racism that puts them in a very vulnerable position. So I guess my question is how do you make sure that the cultural load is not unfairly placed on your Aboriginal employees and not inappropriately placed?

MR PATTON: It's a really challenging question. So it's delivered with one of our training officers but also an Aboriginal Community Liaison Officer or an Aboriginal person - employee. And yes, it's voluntary for them. We don't compel them. Of course, the term "voluntary", I mean, you know, I understand the look that you're giving. I mean, we're asking you to do this and who else is going to do it if we don't.

There's a number of issues with that that we've explored and currently are exploring whether - and (a) it's amazing they share their experiences with us. It's quite moving, actually.

And what they take away from that, when I've spoken to those employees who share their experiences, it is traumatic for them, it is challenging for them, but it's uplifting for them at the same time, I'm told, in that they can see that they're getting through.

5 But how do we address that cultural load, as you say? We're exploring whether or not it's going to be as effective if we can - and with their consent, because they've consented to share, but if we can video that so that - and as to whether that is as effective or not. But also I raised recently, I said, why are we just relying on employees to do this? Why can't we go to an Aboriginal community-controlled organisation, external, and/or people who are expert in this
10 so that they can - we can then and then through doing that actually streamline the rollout of it in a much quicker fashion as well.

So I don't have the answer to your question. I accept the concerns because they're my concerns, and the only two answers that I have to potentially at this stage are the videoing of
15 the matter, whether that would be as effective or not, or spreading the load and paying organisations who are expert in this as well who can share those cultural experiences.

COMMISSIONER LOVETT: With respect, Commissioner, Victoria Police has been a member of the Aboriginal Justice Agreement or a signatory to that document, right?
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MR PATTON: Yes.

COMMISSIONER LOVETT: Surely, 2023, the stories, the heartache, the pain and the trauma of our people is pretty well documented where we shouldn't have to be asking staff to share
25 their own journeys. Would that be fair to say?

MR PATTON: Well, for me, I've sat through the Aboriginal Cultural Awareness training, and I've read a lot, and more so of recent times. I claim to have no expertise or deep knowledge or understanding of the pain and harms that can be caused to the Aboriginal community. I
30 understand, broadly speaking.

But in terms of the effectiveness and the need to have an Aboriginal person provide that to you, to us, the impact of that on me and on other people that I've seen in those forums is absolutely moving. And it's absolutely impactful, and for those reasons, I believe it's
35 necessary. I don't claim to be an expert in training, and it's, you know, we continually review that. We had - I think the - at one stage we developed it and we thought we had it right, but then we had Aboriginal caucus look at it and there were other changes and - because it was another case of us thinking we knew. But we didn't. And so, yeah, I think it's important.

40 COMMISSIONER HUNTER: Do you think three and a-half hours is enough, three and a-half hours, that's all we get, three and a-half hours?

MR PATTON: Given the historic harm, disadvantage, discrimination that has been involved, it sounds completely insignificant. But it's a start, and we have our Priority Community
45 Division is looking at, okay, well, this isn't a set and forget. It's about what do we do next. How do we refresh the training? What's the amount of training we should be doing in a refresher?

5 COMMISSIONER HUNTER: With all due respect, you said it's not completely rolled out, you've given six months for everybody to have it, and you are talking now about reviewing it. It's only three and a-half hours and still not rolled out. Was it mandated before you took up your position?

10 MR PATTON: No. It was brought in. I've mandated it. And it's - it will be six months, I've said, for the police custody officers because of the integral role they have in dealing with persons in custody. They'll have that done within the next six months. The rollout to the organisation, the briefing I've been given is it won't finalise until the end of 2024. And that's the pace - the slowness of the pace which I've already expressed a frustration with. I will be continually, as I said, not just monitoring it now, but pushing it to see can we change, can we bring that in. But to the prime part of your question is three and a-half hours enough? I would say no, and what does that mean we need to do in the future?

15 COMMISSIONER HUNTER: Because our people are getting locked up at ridiculous rates. Three and a-half hours is not good enough and six months waiting is still not good enough. Your staff hold so much power over people that they need to understand that that should have been mandatory. You have apologised for 170 years, yet we get three and a-half hours. It's not good enough.

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MR PATTON: No, I understand what you're saying. And when I say - and I don't mean to try and - and I'm not trying to mitigate anything here, other areas, other police officers will undertake more significant periods of time. They will go on culture camps. They will undertake specific training and everything. For instance, I understand Dr Lois Peeler out in our eastern region is going through a - has introduced over the last couple of years, a restorative justice program which our people out there, the police officers out there have undertaken. I think it's a two or three day immersion to get greater understanding.

30 COMMISSIONER HUNTER: With all due respect, it's not mandated, is it?

MR PATTON: No, it's not.

35 COMMISSIONER HUNTER: So it's up to the police officers to actually do that training.

MR PATTON: Yes.

COMMISSIONER HUNTER: I understand the time, too.

40 COMMISSIONER LOVETT: We're going to have more questions around systemic racism after.

MR MCAVOY: Thank you, Commissioner, I can confirm we will return to this topic. There are two issues that I wish to touch on briefly on the series of questions that you've just been asked by the Commissioners and then going back to where we were before. Firstly, it is the case that in addition to in-service training, the Cultural Awareness training that people have

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whilst in their role as an officer, there is now cultural awareness training in the police academy as well?

5 MR PATTON: Yeah, significant input at the police academy, and I've outlined in my statement there is a lot of that. I think it's, off the top of my head, around 17 hours' worth of training when they go in the foundation training.

10 MR MCAVOY: In respect of the voluntary programs that you have just discussed with Commissioner Hunter, it's generally the case that the people that voluntarily take up the options of undertaking that training are largely the officers who don't really need it. They are the ones that have an interest of their own and are prepared to engage?

MR PATTON: That's probably very fair.

15 MR MCAVOY: Now, I want to take you back to the questions I was asking you about the matters which ought to be taken into account in determining suitability for the role of Chief Commissioner of Police. What would you say to the Commissioners about your view as to whether they should make any recommendation from this Commission that the role of Police
20 Commissioner ought to have a specified selection criteria dealing with the candidate's ability to engage and confront the issues of systemic racism, and that those milestones ought to be built into the successful candidate's contract so that they can be held accountable against those milestones as they go forward?

25 MR PATTON: Well, they're matters for the Commission whether they make them. I mean, they're matters that any Commissioner who's leading any policing organisation should be addressing.

30 MR MCAVOY: And it's not inappropriate, in your view, for a Chief Commissioner to be held accountable to those matters?

MR PATTON: No, I'm held accountable to many matters and being held accountable for doing everything I can within my power to address inappropriate conduct, racism, inequality; I'm very comfortable with that.

35 MR MCAVOY: Thank you, Commissioner. I might, Commissioners, ask if we could interpose the Minister for Police, the Honourable Anthony Carbines, at this point. Police Commissioner, you will be called back later today. You are able to stay and return later?

40 MR PATTON: Yes.

MR MCAVOY: Thank you. I might ask the witness to leave the witness box now.

MR PATTON: Thank you.

45 CHAIR: Thank you very much.

<THE WITNESS WITHDREW

CHAIR: Are we having a break at all or going straight on?

MR MCAVOY: Perhaps, Commissioners, a five-minute break?

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CHAIR: Yes. Thank you.

MR MCAVOY: I'm just conscious of time.

10 CHAIR: 10.55.

<ADJOURNED 10:50 A.M.

<RESUMED 10:59 A.M.

15 MR MCAVOY: May it please the Commission, I call the interposed witness, the Honourable Anthony Carbines MP, who is in the witness box.

<ANTHONY CARBINES, CALLED

20 CHAIR: Thank you, and welcome.

THE HON. ANTHONY CARBINES: Thank you, Chair.

MR MCAVOY: Minister, could you tell the Commission your name and role, please?

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THE HON. ANTHONY CARBINES: My name is Anthony Carbines. I'm the Minister for Police in the State of Victoria.

MR MCAVOY: And do you undertake to provide truthful evidence to the Yoorrook Justice Commission today?

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THE HON. ANTHONY CARBINES: I do.

MR MCAVOY: Minister Carbines, you've provided a statement to the Yoorrook Justice Commission. I can confirm that that statement has been tendered. I understand that there are some corrections you wish to make to that statement? Is that correct?

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THE HON. ANTHONY CARBINES: In my opening statement, there may be one or two words, yes, but I could read what would be the final, but nothing particular.

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MR MCAVOY: Yes. Sorry, I'll let you - I invite you to make an opening statement now, and then I will take you to your formal statement to the Commission. Thank you, Minister.

THE HON. ANTHONY CARBINES: I'd like to begin today by acknowledging the Traditional Owners of the lands on which we meet, the Wurundjeri people of the Kulin Nation, and pay my respects to their Elders past and present. I'd also like to acknowledge

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Aboriginal Elders from other nations and all Aboriginal people who are here with us today or watching this appearance.

5 I accept that sovereignty was never ceded and that this land is and always will be Aboriginal land. The Commission has been established as the first formal truth-telling process to complete the official record of a lasting legacy, that Colonisation, dispossession of land, has had on Aboriginal people, the impacts of which continue today.

10 I recognise the direct role of government decision-making in that history, the role of the Criminal Justice system and of law enforcement. Since Colonisation, Aboriginal people have experienced harm and trauma as a result of interactions with police and the Criminal Justice system. That harm and trauma continues today. Most Aboriginal people have no direct involvement with the Criminal Justice system; however, Aboriginal people are disproportionately represented in the Criminal Justice system.

15 It's a shameful fact. Existing systemic injustices faced by Aboriginal people must stop. And I do take the opportunity to recognise the lived experience, witnesses who have bravely shared their stories with the Commission. The evidence they have provided has been powerful to read, to hear and to watch. The stories they have shared speak to interactions with police and the Criminal Justice system that many Aboriginal people have also experienced.

20 I thank the Commission for the opportunity to appear before you today. It is a humbling experience. I regard it as the most significant forum I've participated in in my public life. I hope my evidence today supports the importance of the truth-telling commission. Thank you.

25 CHAIR: Thank you. Thank you, Counsel.

MR MCAVOY: Now, Minister, you recall that you prepared a statement on the request of this Commission, and that statement was dated 31 March 2023?

30 THE HON. ANTHONY CARBINES: That's correct.

MR MCAVOY: I might just show you a document.

35 THE HON. ANTHONY CARBINES: Thank you.

40 MR MCAVOY: This document sets out some corrections to your statement of 31 March 2023, including, for instance, at footnote 8 to paragraph 32, correcting a reference to the Chief Commissioner of Police statement. Minister, it's proposed that this document making those corrections be tendered - will be tendered with other material in a way that is clear that it refers to your original statement. I won't make that tender now, Commissioners, but you can accept, Minister, that for the purposes of this, today's evidence, it will be conducted on the basis that those corrections have been made.

45 THE HON. ANTHONY CARBINES: Yes, and I did have those in front of me. I was probably just at cross-purposes before, so very clear with the document that you refer.

MR MCAVOY: Thank you, Minister. Can you just, Minister, explain for the Commissioners your roles and responsibilities with respect to the police service?

5 THE HON. ANTHONY CARBINES: Certainly. So as Minister for Police, I have a wide range of responsibilities, certainly around the legislation, any passage of legislation that has effect or an involvement of Victoria Police, and making sure that those laws are implemented. I have a role in terms of funding and of engagement with Victoria Police around monitoring their performance, their outcomes, their infrastructure, if you like, equipment and the like.

10 And my engagement with the Chief Commissioner on a regular basis about how we work through the accountability, and the introduction and the acquittal of what are the government's priorities, the Parliament's priorities, both through our election commitments, but also by laws we either need to pass by the parliaments and then also need to have responsibilities of Victoria Police to implement. They'll be some examples of my role, and also to uphold what

15 is confidence in Victoria Police and its role in providing community safety to all citizens.

MR MCAVOY: You don't have any responsibility in terms of the day-to-day operational matters of the police service?

20 THE HON. ANTHONY CARBINES: No, the day-to-day operational matters of the police service as particularly outlined in the Police Act and section 10 makes some clear delineations about what my role is as Minister and the government, and the operational responsibilities of Victoria Police led by the Chief Commissioner in part, so that there is a separation in relation to my capacity to not direct police about the operations that they undertake and who they

25 undertake them on and how they do it.

MR MCAVOY: Thank you. But you do communicate with the Chief Commissioner for Police regularly?

30 THE HON. ANTHONY CARBINES: I do. We would meet - we work in a scheduled way of meeting weekly with the executive command which is the senior leadership of Victoria Police led by the Chief Commissioner, and we would do that weekly.

MR MCAVOY: You would meet weekly, did you say?

35 THE HON. ANTHONY CARBINES: That's right. There would be occasions where that might have to be rescheduled, but we have a regular weekly executive command meeting which we are able to both allocate through our offices, and Department of Justice and Community Safety, agenda items which will change from time to time about progress on some of the matters I've touched on, or other elements that our offices and the like will determine

40 we need to have discussion on.

MR MCAVOY: But there would be occasions where there are matters of particular importance to the police service where you would communicate on a daily basis or much more

45 frequently than on a weekly basis.

THE HON. ANTHONY CARBINES: Sure, I think the parameter of the weekly meeting provide some structure and accountability around our work, but certainly outside of that we would have many conversations in there, the flow of things week to week and particularly between our offices.

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MR MCAVOY: Have you had discussions with the Chief Commissioner for Police about the need for some transformation of the police service?

THE HON. ANTHONY CARBINES: We have. We've had conversations about the way in which - in response to either recommendations or response to surveys and work about what Victoria Police needs to do to constantly be a more effective organisation to build its community support and engagement, and keep people safe.

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MR MCAVOY: Have any of those discussions been in relation to the police service performance with respect to Aboriginal people?

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THE HON. ANTHONY CARBINES: They have, yes.

MR MCAVOY: And what's the general context of those discussions?

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THE HON. ANTHONY CARBINES: Well, perhaps an example, if I could go to it, when I was appointed to the role in June last year, there was a particular priority from government that had been ongoing in relation to intoxication laws and reform. And so that is an example of where there has been a desire and a need from government directly in my role to drive what was going to be not only legislative change but then priority of government - how we would action that through Victoria Police.

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MR MCAVOY: So that's a matter which you discussed with the Chief Commissioner of Police, obviously?

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THE HON. ANTHONY CARBINES: Many times, yes.

MR MCAVOY: And no doubt there are other matters?

THE HON. ANTHONY CARBINES: There are other matters in relation to, for example, when we get recommendations from independent bodies, so coroner's findings, independent oversight bodies and the like, what is the work that we need to do to implement those recommendations. Will it require other legislative change, or how I can work with the Chief Commissioner and the government can work with the organisation to ensure we are meeting those obligations that are placed upon us. It's a shared responsibility as much as there's some delineations into how the actions are taken.

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MR MCAVOY: In your role as Minister for Police, is it the case that in addition to ensuring that decisions affecting the police service in those decisions by the government, the views of the police service are known? That's the case?

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5 THE HON. ANTHONY CARBINES: Yes. They would give me their unvarnished advice of what they would say either - for example, in relation to recommendations how they could be acquitted or legislative change that might be part of those - that work, what different effects might be. So I can give consideration to that, separate to advice I get from the Department of Justice and Community Safety.

MR MCAVOY: So you're also - you're aware of the Victorian Charter of Rights and Responsibilities.

10 THE HON. ANTHONY CARBINES: 2006, yes.

MR MCAVOY: You understand, is it correct that as Minister for Police you have an ultimate responsibility for the police service; is that correct? Or does that lie elsewhere?

15 THE HON. ANTHONY CARBINES: All I consider myself in the executive, as a Cabinet Minister in the government, that I have a responsibility to – in the performance of Victoria Police, but there are some delineations about what that means in an operational sense for the Chief and what that means for – as a member of the government and a member of the Executive.

20 COMMISSIONER LOVETT: Can you clarify the delineations for us and the community?

THE HON. ANTHONY CARBINES: I suppose – yes, and thanks, Commissioner Lovett. Perhaps what I really want to get to with that is I don't make decisions about how police should go about investigating crime, where they might put the resources to do that, where as broader policy decisions that the government may make about – we want to target work in particular areas, we can raise those with the Chief. But ultimately there's an acceptance that in an operational sense of the doing, that is their purview. I can certainly seek an explanation and understanding of how they've made decisions to deploy resources, how they've gone about their task, but there's some very clear legislative parameters that determine how far I go with that.

30 COMMISSIONER LOVETT: So they're not a government department, are they, VicPol; they're an agency. Is that right?

35 THE HON. ANTHONY CARBINES: I'd accept that, and I think that there's - both in the legislative arrangements but then in the way too, as I found over the past almost year, we meet separately from the department, but I sort of see it in terms of my engagement, the meetings are on the same day, I see them at the same level of importance to me in my deliberations that I'm meeting with Victoria Police and I'm meeting with the Department of Justice and Community Safety.

COMMISSIONER LOVETT: Thanks, Counsel.

45 MR MCAVOY: Minister, are you aware that the Report on Government Services from the Productivity Commission in 2023 found that public perception of the Victorian Police Service

was that 15 per cent of the population were not confident in the police. Are you aware of that figure?

5 THE HON. ANTHONY CARBINES: I'm aware of the ROGS report and the varying, or variable figures in that report, but I certainly am aware of, yes.

10 MR MCAVOY: Is that, as the Minister for Police, worrying to you, that there's a 15 per cent - that 15 per cent of the population of Victoria is not confident in their own police service?

15 THE HON. ANTHONY CARBINES: I think what drew my attention particularly around the report and its parallels with other jurisdictions was - what probably caught my eye in the first instance was, well, overall, say, the satisfaction rates had dropped, they were, so they were in the high 70s from what I recall, and looking at that across jurisdictions, and my consideration of, well, what are some of the elements that have driven that. And it certainly provides a platform and a context to reflect on the reporting period and the surveying period for ROGS, what's happened in that time, and what we might do about that.

20 MR MCAVOY: Well, bearing in mind your observations about other jurisdictions, how did that impact on your view as to the figures that are relevant to Victoria?

25 THE HON. ANTHONY CARBINES: Well, I felt that it simply demonstrated, too, that over the period of time, over that year, it had been a difficult time for police, in many ways. What might have been some of the determinations, there were different, from my perspective, I felt there was some different public reporting and engagement. There were independent investigations and commissions of inquiry that police were involved in - we had a pandemic and the like, around the public's engagement with Victoria Police. So I felt, well, there were probably - I didn't consider it unremarkable. I probably felt that that was reflective of community engagement perhaps, and if it were not engagement, observations of other work that engaged police had over that time that perhaps had led to some of those findings, (indistinct) findings.

30 MR MCAVOY: You were aware of the Victorian Parliament's Legislative Council review of the Criminal Justice system.

35 THE HON. ANTHONY CARBINES: Yes.

40 MR MCAVOY: And its findings as to the persistence, as it's put, of racial discrimination and police profiling of Aboriginal people in Victoria?

THE HON. ANTHONY CARBINES: Yes.

MR MCAVOY: Is that of any concern to you?

45 THE HON. ANTHONY CARBINES: Absolutely. And while I would - I understand that the Chief Commissioner and Victoria Police have made it very clear that this is not a formal policy of the way in which Victoria Police operate, I accept the findings in that committee

report and more broadly that that occurs, that it happens, and that we have to not only be vigilant but we have to have practices and arrangements in place to continue to call it to account and stamp it out.

5 MR MCAVOY: It's one thing to say that, Minister, with respect, but you understand that these issues were reported upon in 1991 by the Royal Commission into Aboriginal Deaths in Custody, and it's still being reported upon as prevalent within the Victorian Police force in 2022.

10 THE HON. ANTHONY CARBINES: I think that some of the elements that have made it difficult to make the change, the transformative change that is required that has been outlined in the Royal Commission so many years ago, stems in part from the systemic and structural racism bias that is in State organisations that come from colonial times. They are still the same organisations. As much as some policies and practices change, we talk about a history
15 of 170 years of Victoria Police, it's because we're taking - we claim ownership of its actions and it being the same organisation from that time. And so I do believe that there is clearly much more work that we need to do that demonstrates that policy and practice alone doesn't drive the transformative changes needed to bring about that change and accountability that we don't see today where we need it to.

20 COMMISSIONER LOVETT: Under your leadership, what are you going to do about the systemic racism in Victoria Police?

25 THE HON. ANTHONY CARBINES: The example, Commissioner Lovett, where there was very immediate to me in coming into the role in June last year, around systemic racism was how we action our changes to the law, as a result of coronial recommendations again and again around public drunkenness laws. When I came to the role in June last year, given - it was the number one engagement that I found I was having, not only with Victoria Police but with my colleagues in the department, that has been a mechanism by which systemic racism
30 by the overrepresentation of Aboriginal people in the justice system. It's a law and a mechanism that has had that effect that was most immediate work of the government when I came into the role in June last year.

35 It's not everything, but it was certainly in its transformative nature potentially that it took - that was most of - that was a very clear - a very ongoing engagement when I first came to the role. We talk about different things that happen in your working day, this was the constant when I came to the role in June and it was clear to me there had been quite - there still had been grappling across government when I came to the role.

40 COMMISSIONER LOVETT: Minister, hang on, but there was no response to about tackling systemic racism apart from looking at those reports. Have you got anything further to add on that?

45 THE HON. ANTHONY CARBINES: What I also choose to do, my role as Minister of Police, while I talked earlier about - I meet with Victoria Police very regularly and seek their advice and counsel, the same with my department. But in my role, I've also sought to be much

broader in where I take understandings and advice, whether that has been with the police accountability project or whether that has been with Victorian Aboriginal Legal Service.

5 Our justice partners, our Aboriginal justice partners, I've sought to meet independently of where else I get advice to try and understand in the first instance, being when I look back over the past 12 months, to understand more clearly, those systemic injustices and what needs to be done and how I can affect a role as Minister for Police.

10 COMMISSIONER LOVETT: You set clear expectations to the Chief Commissioner about your expectations of him addressing systemic racism particularly in the context of Aboriginal people?

THE HON. ANTHONY CARBINES: We have had those discussions, yes.

15 COMMISSIONER LOVETT: Yes, thank you.

20 COMMISSIONER BELL: Can I ask a question. I asked questions of the Chief Commissioner in relation to his approach to attack systemic racism, uplift cultural awareness, and he agreed that there were individual initiatives being carried out, a significant number of them, but not a strategic project answerable to Executive Command, supported by milestones with accountability processes. Would you comment on the importance of adopting that kind of approach?

25 THE HON. ANTHONY CARBINES: Thanks, Commissioner Bell. It's correct in my observations too of what I've seen, our work together with the Chief where Assistant Commissioner Barrett's work leading around Priority Communities and reporting directly to the Chief Commissioner, to try and draw out the importance and the priority of the work being done, but also that the work being understood at the highest levels at Victoria Police.

30 In the testimony earlier that the Chief gave, I could see also the importance, though, of - is it a context of also police being able to do that in the way that they approach other emergencies, other dire circumstances to which they respond extremely well, how do we have the context of people understanding the urgency that this Commission has also brought to these issues and that has been brought time and again by other commissions of inquiry and the like.

35 And I believe the Chief is - we're trying to work with that, and we also need to be open to others who can give advice on how to do that more effectively.

40 COMMISSIONER WALTER: But with respect, Minister, you used the term unacceptable a number of times throughout your statement and you admit within that statement that First Peoples in Victoria are still subject to ongoing discrimination and racism and unfair treatment. Yet, and you've also talked about the need for transformational change, but I don't see anything or in your answer now that would presage that transformational change. What needs to happen at your level to get that transformational change underway?

45 THE HON. ANTHONY CARBINES: In part, I think the government's determination to work with having the justice commission- the Yoorrook commission established is in part about

looking to other advice and direction to help deliver transformative change at Victoria Police. I think it's also about how we work through a range of individual programs and say, well, them alone, they provide an element of work and we can count and assess them, but what is it bringing back, whether it's youth cautioning programs or the like, is that there's still systemic racism bias there, it's still happening, which means it must be happening in other elements of the organisation in its operational work. But it's only out of very deleterious outcomes that we have been able to work on specific elements that are drawing out this information more starkly to the organisation and how do we - is there one catch-all that does that.

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I don't - I'm not sure that there is, but I do believe that there are elements where we've been able to bring to light where that systemic racism and bias is occurring, whether that's - it's great to have a youth cautioning program, but it's not being applied appropriately; it's still being disadvantaging Aboriginal young people. It's an example of - across the board of where perhaps matters are being identified, a solution is thought to be found, but there's still this overlay of a more harsh treatment and judgment of Aboriginal people than on others.

15

It's the constant reminder that there is - it's not equality and there needs to be more consideration around how equity is provided here. We're not all the same and people have not been treated the same. And we'll only understand how we make transformative change through accepting that there has to be an equity overlay to the way in which we engage and put our policies into action.

20

MR MCAVOY: Minister, I understood Commissioner Walter's question to be asking what you were going to do, how you were going to action this transformation in the police service. And you spoke in your answer about the things "We were doing as a government". But I understand Commissioner Walter's question to be saying, you are the Minister for Police, you are in a position to do things. What are you going to do during your term as Minister for Police to deal with these matters?

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30

THE HON. ANTHONY CARBINES: What has been clear not only through the work that I've done in preparation to attend the Commission today in understanding what drives our broader government's position around justice for Aboriginal people and my engagement with Aboriginal justice partners, the work that I can do, it's not only just in holding to account how we make progress on different recommendations that are made to us by independent parties and coroners and the like, what is asked of us at Aboriginal Justice Forum and Aboriginal justice partners but then it's about, well, what are the other elements that we can bring together that make that change more broad.

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I'm looking at that, how we can do that. We've been driven a lot by specific elements that I've sought to drive in that work and to make sure that they happen, but I would accept that there needs to be a more overarching framework that delivers that equity, otherwise, while there may be progress, there are other elements of police engagement with the community that aren't changing and aren't changing quick enough.

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COMMISSIONER BELL: As we sit here today, there is not a whole of government overarching strategy for reducing or eliminating racial discrimination and systemic injustice towards Aboriginal people, is there?

THE HON. ANTHONY CARBINES: No, I think that there's - there is a broader understanding, but there needs to be the mechanism that drives that. I've seen that in the way in which we may try to do that through our cultural awareness training and the like, but it has to - that alone isn't going to make the change that we need. Those things almost should be an expected and a given. It needs to be what is the - what is going to bring a more substantive change across every element and organisation - every interaction that First Nations People have with their police service.

10 MR MCAVOY: Chair, I might take this opportunity to suggest that we take a short five minute break. If Commissioner Bell would like to do that, I understand he has material on his computer and if he would like to have a break now to -

15 COMMISSIONER BELL: Yes, there is, and I apologise for the interruption, but there is something I need to access, and I would be grateful for the break.

MR MCAVOY: I suspected that might be the case, Commissioner Bell.

20 COMMISSIONER BELL: Thank you.

MR MCAVOY: If it's appropriate, Chair, might we take a five-minute break to allow that matter to be resolved?

25 CHAIR: Thank you. Yes, 11.35.

MR MCAVOY: Thank you.

CHAIR: Thank you.

30 COMMISSIONER BELL: Sorry about that.

<ADJOURNED 11:31 A.M.

<RESUMED 11:38 A.M.

35 MR MCAVOY: Minister, I'm going to ask you some questions now about your views about what is needed to change the police service in Victoria. Do you believe it's possible for the police service to actually change and be a service that respects Aboriginal people?

40 THE HON. ANTHONY CARBINES: Yes, I do. And in part, that starts from the work the Chief Commissioner and I need to do together. We may have slightly different paths of responsibility, but it can only be done working in partnership and both understanding what's expected of us.

45 MR MCAVOY: And do you have in your mind a timeframe of how long it's going to take for that change to occur?

THE HON. ANTHONY CARBINES: I think change can happen every day. Where it concludes always needs to be as soon as we possibly can to - it's taken too long, and the less progress we make, the more damage is done.

5 MR MCAVOY: Minister, is it something in your mind that is going to be substantively dealt with by the next election? Or is it something that, in your mind, is going to take five years or 10 years or another 30 years as we've seen with the Royal Commission into Aboriginal Deaths in Custody?

10 THE HON. ANTHONY CARBINES: Elections are job interviews and they can be a way in which you are held accountable. But in the more specific context, this process here at the Commission, the government's commitment to Treaty, the government's acceptance and determination to work with self-determination for First Peoples, we need to demonstrate immediate progress and ongoing change that is rectifying the gross disadvantages and the
15 disproportionate nature of the Criminal Justice system affecting Aboriginal people.

MR MCAVOY: So there's not a specific period that you have in mind when you talk about transformative change of the police service to one that is culturally safe for Aboriginal people?

20 THE HON. ANTHONY CARBINES: It should always be culturally safe for Aboriginal people. I accept that it is not. I think it will also be for our Aboriginal justice partners to be able to give voice to whether - what progress we are making, what some of our priorities need to be as well, how we can engage together that is not just our - not just for me to make a determination that we've got there or that it's done and we continue to work on these - this
25 every day. It has to be part of the work that we do.

COMMISSIONER WALTER: But it's not their job; it's yours.

30 THE HON. ANTHONY CARBINES: It's absolutely, yes. I'm mindful of taking the broadest possible advice on how we will deliver that, and I am not going to say that it will all be done tomorrow or the next month, but it has to be embedded in the work that we do every day.

MR MCAVOY: So is it the case that you're not able to, or not willing to, voice any opinion here as to what your expectation is for this transformative change in the police service that
35 everybody has been talking about?

THE HON. ANTHONY CARBINES: I want to see transformative change in terms of greater equality and equity and less Aboriginal people caught up in our justice system and the disproportionate nature at which this happens, I want to see that change and I want to see that
40 the way we engage with Aboriginal people and the processes and the policies and practices that we put in place don't allow that to happen.

COMMISSIONER LOVETT: You have been Minister for 12 months, near 12 months; is that right?
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THE HON. ANTHONY CARBINES: Yes.

COMMISSIONER LOVETT: The government is committed on a pathway to Treaty?

THE HON. ANTHONY CARBINES: Yes.

5 COMMISSIONER LOVETT: What have you done to support self-determination?

THE HON. ANTHONY CARBINES: Part of the work that we are doing around self-determination is also understanding when we make decisions about laws and also about our practices that affect Aboriginal people, we need input and understanding from Aboriginal
10 people about what that means and how that works.

I understand even for an example of how we can make that - how do we make that work effectively, will come first by, in this process, of acknowledging what is wrong and how government will make determinations in its engagement with Aboriginal people, that we're
15 going to have to release some of the power and authority that we have to make decisions and say the resourcing or the way in which some of our - the decisions have to - we need to ask Aboriginal people to engage us on, to talk to us and accept their views on how this works, effectively. Bail laws is an example where we don't, if we're not engaging and accepting the advice of Aboriginal people, it has a deleterious effect on Aboriginal people.

20 Self-determination in part, is for - is accepting that Aboriginal people know what is best to support and advocate and advance the interests of Aboriginal people.

COMMISSIONER LOVETT: So the government's committed to the Aboriginal
25 self-determination reform framework.

THE HON. ANTHONY CARBINES: Yes.

COMMISSIONER LOVETT: Which Victoria Police is a part of.
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THE HON. ANTHONY CARBINES: It is.

COMMISSIONER LOVETT: We don't have to wait for Treaty.

35 THE HON. ANTHONY CARBINES: No.

COMMISSIONER LOVETT: And the government is committed to not waiting for Treaty but to negotiate Treaty. What power and authority and resources have Victoria Police transferred over to the community to date?
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THE HON. ANTHONY CARBINES: I wouldn't say that that has happened, Commissioner Lovett.

COMMISSIONER LOVETT: That's a no? None.
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THE HON. ANTHONY CARBINES: No. No, and the Aboriginal Justice Forum, while it's a mechanism for us to take action, it's action that Victoria Police and the government take not as

a direct - not as a direction from the Aboriginal community. So in the end there's a consultation, not an acceptance of authority given to act in a way that Aboriginal people and its advocates would determine.

5 MR MCAVOY: Minister, this commission of inquiry has been established to look at past and current injustices involving Aboriginal people in Victoria and to make recommendations to the government as to how those injustices might be eradicated or met. In making recommendations to the government, the Commission has to understand, I suggest to you, what steps the government is going to take to change the present system, to eradicate those
10 injustices. Do you accept that?

THE HON. ANTHONY CARBINES: That's right.

15 MR MCAVOY: So I ask you this question: do you have, in your mind, any idea as to what length of time the police service ought to be given to retrain or remove those people who are displaying racially discriminatory conduct?

20 THE HON. ANTHONY CARBINES: Well, those things have to happen immediately. They shouldn't happen at all. Certainly in even the work that we've done in being here today has demonstrated that there has been inaction around training. There has been inaction around ensuring that, for example, police custody officers have undertaken training as directed, that goes to the heart of keeping Aboriginal people safe when they have had their liberties taken from them. There are examples of where that work's not getting done.

25 MR MCAVOY: But, Minister, even with the knowledge that Criminal Justice was going to be the subject of inquiry by this Commission for many months, the uptake in - across cultural awareness training in the police service is, in the words of, I think, the Chief Commissioner, surprisingly low. And so in circumstances where the Commission is shining a light on these things and the service still fails to respond, how can the Commission have any confidence that
30 there's going to be action going into the future and these particular acts of transformation are ever going to occur?

35 THE HON. ANTHONY CARBINES: In part, it has to come from commitments that the Chief Commissioner and I make around the work that we want to do together around driving that change. But also I think it has to be about looking at this differently around - in a self-determination lens that others - Aboriginal people will tell us how we need to do it.

40 MR MCAVOY: Minister, you understand that for many Aboriginal people in Victoria, the police service - the police are the enemy. Do you understand that?

THE HON. ANTHONY CARBINES: I do. I accept that.

45 MR MCAVOY: Do you understand that for many Aboriginal people their experience of policing is one in which they are the subject of racial profiling.

THE HON. ANTHONY CARBINES: It is, yes.

MR MCAVOY: And it's the police who are abusive to them. Do you understand that?

THE HON. ANTHONY CARBINES: Some police are, yes. Many police. I understand- accept that.

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MR MCAVOY: And it's the police who don't pursue complaints about crimes against Aboriginal people and that's some people's experience of the Victorian Police Service.

THE HON. ANTHONY CARBINES: It is some people's experience.

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MR MCAVOY: And it's Aboriginal people's experience - many Aboriginal people's experience that they are never let off with a warning by the Victorian Police service?

THE HON. ANTHONY CARBINES: That has been the experience of Aboriginal people.

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MR MCAVOY: And you're asking the Aboriginal community to reach out and work with the Victorian Police Service and yourself to try and find a path to change the behaviour of those officers. Is that the request?

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THE HON. ANTHONY CARBINES: No. Victoria Police and the government need to do reaching out, and we do that in part through a collaboration with the Aboriginal Justice Forum and our partners. Aboriginal people have been asking - have been demanding this for a long time, and it's had deleterious effects on them, and it shouldn't be this way. But I understand, and I accept that that is how Aboriginal people feel about their engagement with Victoria

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Police.
MR MCAVOY: Do you have any expectations that the Chief Commissioner of Police will deal with these issues in a substantive form before his present term expires?

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THE HON. ANTHONY CARBINES: Yes, I do. I'm confident that I have the right person to lead the organisation and my engagement with him, with the Chief, in the time that I've been the Minister, and that that's a journey that we are both on the work we will do together.

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MR MCAVOY: And his present term expires in June 2025; is that correct?

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THE HON. ANTHONY CARBINES: That's as I understand it, yes.

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MR MCAVOY: And do you expect - you're telling the Commissioners now that you expect that he should have made some substantial achievement in those matters of transformation of the police service by that time?

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THE HON. ANTHONY CARBINES: We should be able to point to and demonstrate that we are making substantial progress.

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MR MCAVOY: And if, in the event that that substantial achievement or substantial progress isn't achieved by the end of the Chief Commissioner's term, is that something that should be

taken into account in determining whether he ought to be reappointed or somebody else should be appointed?

5 THE HON. ANTHONY CARBINES: Well, the appointment of the Chief Commissioner, and I've not been through that process before, but there is the potential that I could be in the future, given the time of the expiration of the current term, and I would expect given the appointments of Chief Commissioners in part goes to priorities and expectations of what the government determines would form the basis of the criteria and the decisions the government would make. And I would make, if I was in that role with the Premier in particular and the
10 advice we would take to our colleagues around the appointment, but also making it clear to those who want to fulfil that role and lead that organisation about those expectations from the government.

15 COMMISSIONER LOVETT: How much weight does election commitments that Aboriginal self-determination, Treaty and truth have in that decision and those decisions?

THE HON. ANTHONY CARBINES: They should be paramount.

20 COMMISSIONER BELL: Counsel, are you going into deaths in custody later, or can I ask a question about that now?

MR MCAVOY: I would prefer that perhaps you ask the question now Commissioner, please.

25 COMMISSIONER BELL: Now?

MR MCAVOY: Yes, please.

30 COMMISSIONER BELL: As you know some ten persons have died in police custody since the Royal Commission in 1991 and (indistinct) this morning the Chief Commissioner said that there were a category of the - there was a category of the subject matter of recommendations that were not yet implemented by Victoria Police. Do you have in place some plan to hold the Victoria Police and the Chief Commissioner to account for implementing the recommendations of the Royal Commission?

35 THE HON. ANTHONY CARBINES: Yes. There's - Commissioner Bell, there's a couple of elements to that. One is on the more immediate coroner's findings and recommendations in relation to deaths in custody that have happened in more recent times, there has been a need to drive that work through on intoxication reform. You mean in the other -

40 COMMISSIONER BELL: I mean with respect to the recommendations of the Royal Commission, as they bear upon those police deaths, do you have a mechanism for monitoring the implementation of recommendations and specifically the ones that are outstanding?

45 THE HON. ANTHONY CARBINES: Yes. So they're reported to me in our meetings with the Chief Commissioner, and also what's come to light in part of our work with the Commission.

COMMISSIONER BELL: Yes.

THE HON. ANTHONY CARBINES: More specifically, has been the slow rate at which some of those recommendations are being acquitted.

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COMMISSIONER BELL: Yes.

THE HON. ANTHONY CARBINES: And that the changes that the Chief has also outlined to mandate timelines around some of those recommendations being acquitted should also lead to - they should lead to better and safer outcomes for Aboriginal people, but they leave at risk Aboriginal people until that work's concluded.

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COMMISSIONER BELL: Concluded. What's your knowledge about the recommendations that have not been implemented? Do you know what they are?

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THE HON. ANTHONY CARBINES: Some of those that have not been implemented?

COMMISSIONER BELL: Yes.

THE HON. ANTHONY CARBINES: For example, around police custody officers and the like and training that would leave exposed Aboriginal people in police custody who have had their human rights --

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COMMISSIONER BELL: Violated.

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THE HON. ANTHONY CARBINES: They have. They have. And there's then an obligation on Victoria Police in the way in which they should treat and look after and care for people who they've taken their human rights from under the powers that they have and what we have seen, particularly around police custody officers which is where we have seen police deaths in custody, and recommendations made about the work that, at the very least, is required of those custody officers to ensure greater safety of those who have been deprived of their liberty has not been done.

30

And to this point today, people at risk by virtue of that work not being done and those recommendations not being followed, and the Chief and I have certainly conversed on those matters and he's outlined some further changes that we're making to give more immediate effect to those recommendations. But it comes to a broader point, the recommendations alone and their acquittal, an example where it's not happening is not enough. And I'll need to look to what changes in my review and oversight work I can do to bring those matters to light, more contemporaneously.

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COMMISSIONER BELL: I was going to end on that very question. The fact that this long after the Royal Commission has made recommendations, including with respect to that critical matter, does it not suggest that there is something wrong with the implementation response?

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THE HON. ANTHONY CARBINES: I'd accept that.

COMMISSIONER BELL: That we are still waiting for something so important and so obvious to happen.

5 THE HON. ANTHONY CARBINES: I would accept that and I found it - I just - I almost couldn't believe it when I looked at it because of its importance, its absolutely fundamental importance, and the fact that it led to - it's leading to people still having not - on every recommendation it's not allowing, in that particular instance, to give every effect and protection to Aboriginal people who are in custody today.

10 MR MCAVOY: So do you have any views as to what recommendations this commission ought to make to government about monitoring the implementation of the Royal Commission into the Aboriginal Deaths in Custody Report?

15 THE HON. ANTHONY CARBINES: That's where the Commission can be of assistance in this matter is, are there mechanisms that provide, or to whom they're provided, around monitoring and the implementation of recommendations where, as I've said, I think, in my statement, whether it's on the street or within recommendations made, police are the doers, effectively, the doers. Perhaps there needs to be an independent authority that is tracking this. But at the same time, I sort of feel I still have responsibility to make sure we find a way to do it ourselves because it's our responsibility.

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But I don't see why it wouldn't be open to others having the opportunity to monitor or hold account that work being done. So I don't see it as something we hand to someone else because it's not our task, but there are others who could potentially have a role there.

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MR MCAVOY: What I understand from your answer just now, Minister, that you have contemplated the notion of there being some independent monitoring of the implementation?

30 THE HON. ANTHONY CARBINES: I believe that's the - that mechanism is open to consideration, yes.

COMMISSIONER LOVETT: Can I ask, how many people in Victoria died in custody as a result of Victoria Police?

35 THE HON. ANTHONY CARBINES: There have been 33 deaths in custody since the Royal Commission.

COMMISSIONER LOVETT: That's right, since the Royal Commission.

40 THE HON. ANTHONY CARBINES: Yes.

COMMISSIONER LOVETT: We haven't really spoken much about all the historical trauma that our people have gone through at the hands of Victoria Police.

45 THE HON. ANTHONY CARBINES: Sure. Yes.

COMMISSIONER LOVETT: How many people have been charged for those deaths?

THE HON. ANTHONY CARBINES: I'm not aware of any, Commissioner Lovett, that have been charged for those deaths, which it would be none.

5 COMMISSIONER LOVETT: How many people have been reprimanded?

THE HON. ANTHONY CARBINES: I'm not aware of any, Commissioner Lovett.

10 COMMISSIONER LOVETT: How many people have been investigated?

THE HON. ANTHONY CARBINES: I'm not aware, Commissioner Lovett, that there have been any. There would be naturally investigations into those matters, but where accountability is held has clearly been lacking.

15 COMMISSIONER LOVETT: Not one person has been held accountable. Not one. Was WorkSafe ever called to investigate?

20 THE HON. ANTHONY CARBINES: I'm not sure, I wouldn't be clear whether they would have been, no.

COMMISSIONER LOVETT: So out of the investigations that have been conducted, who has conducted those investigations?

25 THE HON. ANTHONY CARBINES: I suppose the source of advice in the main has been from the coroner's findings in relation to investigating those matters independently.

COMMISSIONER LOVETT: But Victoria Police would have investigated, had an involvement in investigating, their own organisation for some of those deaths?

30 THE HON. ANTHONY CARBINES: I would expect so, because as I've more broadly understood it, in police custody, police cells, that can be in the divvy van, they can be in a range of different settings where people are in police custody. And there would have been reviews of that, of what's happened.

35 COMMISSIONER LOVETT: But still no accountability.

THE HON. ANTHONY CARBINES: No, I accept your point absolutely.

40 COMMISSIONER LOVETT: Yeah.

MR MCAVOY: Commissioner Lovett, there is the option of requesting the Minister to take those questions on notice and provide further information after the evidence has concluded. Do you wish the Minister to follow up with those questions?

45 COMMISSIONER LOVETT: I do.

THE HON. ANTHONY CARBINES: Particularly where there may - investigations may have occurred and the information and related evidence to deal with that.

5 COMMISSIONER LOVETT: People have been investigated. So we know no people have been charged, you have confirmed that.

THE HON. ANTHONY CARBINES: Yes.

10 COMMISSIONER LOVETT: The investigations undertaken and who conducted the investigations.

MR MCAVOY: Thank you, Commissioner Lovett. Commissioner Walter, did you have a question?

15 COMMISSIONER WALTER: No, I was - I had something, but then we talked about the oversight and I was intrigued and the authority of where that might go.

20 MR MCAVOY: Minister, I just want to now take you to the issue of raising the minimum age of criminal responsibility to identify the way in which matters might be dealt with from your position. And I don't want you to discuss what you discuss in Cabinet but when matters involving the police service arise in Cabinet, part of your responsibility is to take forward the views of the Commissioner about what the effects might be on the police service?

25 THE HON. ANTHONY CARBINES: Yes, it's that - as I touched on earlier, I have advice that would come to me in different settings that's from the department and from Victoria Police.

MR MCAVOY: And also from non-government stakeholders?

30 THE HON. ANTHONY CARBINES: Yeah, absolutely.

MR MCAVOY: So if the --

35 THE HON. ANTHONY CARBINES: Not as formalised, but yes, that informs what I would take forward.

40 MR MCAVOY: So if the Police Association of Victoria put a position to you that was relevant to the matter under consideration by Cabinet, you would inform Cabinet of that position?

45 THE HON. ANTHONY CARBINES: Well, I just don't know that - I want to answer the questions without feeling that I'm speaking about - there are formal processes that would be not unreasonable to assume that I would take the views of Victoria Police and the department, my department, in my deliberations in those forums. I wouldn't say that while it might inform my thinking, there's not a formality about taking anyone else's --

MR MCAVOY: I'm not suggesting that there is a formality, I'm suggesting that it would be something you would do in terms of ensuring that the relevant information was before Cabinet. And if the Police Association of Victoria, for example, as one stakeholder, were to have provided you with information, you would take that - you could take that information with you to inform the discussion?

THE HON. ANTHONY CARBINES: I'd say –

MR STAR: Sorry to interrupt. This is sensitive topic and may the question be reframed. I am concerned that this raises issues of Cabinet confidentiality and inferences can be made.

MR MCAVOY: I can confirm, Commissioners, that although I prefaced this line of questioning with a reference to the minimum age of criminal responsibility, the form that I'm putting the question to this witness in now is in a generalised form and it's not in relation to that particular issue.

COMMISSIONER BELL: Would you repeat the question, Counsel.

MR MCAVOY: In matters relating to the police service or impacting on the police service before Cabinet, if you receive relevant information from stakeholder groups such as the Police Association of Victoria, or - I will add this to the question - or the Aboriginal Justice Forum. Are those matters that you might communicate to Cabinet in the course of consideration of matters?

THE HON. ANTHONY CARBINES: Thanks, Counsel. That would be, yes, certainly in advice that I would receive, a range of partners or stakeholders' views may form the basis of advice that goes to those forums, yes. Not something, not, say, exclusively but certainly a range, a range, yeah.

MR MCAVOY: Now, returning to the issue of the minimum age of criminal responsibility, I just want to ask you about your understanding of the position of the Victoria Police Service, the department, and I'll leave it at that point at this moment. But is it their position, as far as you understand, that children do not develop sufficiently to understand the risks and consequences of what they do and particularly those under the age of 14?

THE HON. ANTHONY CARBINES: Doli incapax yes.

MR MCAVOY: Not doli incapax impacts as a common law proposition but as a matter of neurocognitive brain development that children do not sufficiently develop to understand the risks and consequences of what they do.

THE HON. ANTHONY CARBINES: Yes, and police understand that.

MR MCAVOY: And it's your understanding that the police accept that medical evidence?

THE HON. ANTHONY CARBINES: I believe they do, yes.

MR MCAVOY: And do you - is it your understanding that police accepts that the contact by children with the Criminal Justice system increases the chances of longer term engagement with the Criminal Justice system? Is that generally accepted?

5 THE HON. ANTHONY CARBINES: Yes.

MR MCAVOY: And, finally, that children tend to grow out of patterns of offending behaviour. Is that something that's understood by the agency- the department and Victoria Police or --

10 THE HON. ANTHONY CARBINES: Ageing out.

MR MCAVOY: Yes.

15 THE HON. ANTHONY CARBINES: I think that concept's understood, yes.

MR MCAVOY: In formulating responses to matters involving the raising the age of minimum - minimum age of criminal responsibility, those principles are - stand out as guiding principles in formulating a position?

20 THE HON. ANTHONY CARBINES: Of the government, yes.

MR MCAVOY: And how can you balance that against concerns that police - the police service might have about community safety?

25 THE HON. ANTHONY CARBINES: I think because you take - in my role, you are Minister for Police, but you're also taking advice from many partners, justice partners, who represent those who end up in those circumstances. You are taking a broad range of advice and an understanding of, well, I still expect in the Victoria Police to give me their view about how they think changes to the law will operate. But how law affects people, I talk to a broader range of people about those matters and in making decisions.

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COMMISSIONER LOVETT: Victoria Police is an agency of government. So they are really more in the delivery arm, really, Victoria Police. Why do Victoria Police have so much power and authority over Cabinet processes?

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THE HON. ANTHONY CARBINES: I'm not sure, Commissioner Lovett, that they do.

MR STAR: I'm concerned, I'm objecting to the question, Commissioners, respectfully, because it may invite discussions, whether that's the fact or not, (indistinct) Cabinet.

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COMMISSIONER BELL: What is the point of the objection? I don't follow the objection.

MR STAR: As I understood the question, was, why does Victoria Police as an agency have so much power within Cabinet --

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COMMISSIONER BELL: No, over Cabinet processes. It's a proposition; it doesn't go to any matter before Cabinet. There's no invitation to discuss some subject matter. It's a question about Cabinet processes, and the proposition is answerable without the disclosure of anything about Cabinet.

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MR STAR: I was being too concerned, but the Commissioners rule.

COMMISSIONER BELL: Yes.

10 THE HON. ANTHONY CARBINES: Perhaps, Commissioner Lovett, in answering your question to explain it in terms of - there's an obligation as an agency for them to provide advice that's formal as opposed to other partners in the community for which governments and departments have advice that don't - that may not, but they are usually gathered in that advice in what will come from my department, whereas I'm getting from Victoria Police, in my
15 day-to-day decision-making, exclusive advice in relation to how they see it.

COMMISSIONER LOVETT: But they're commenting on Cabinet processes holistically, Victoria Police.

20 THE HON. ANTHONY CARBINES: Victoria Police is engagement across so many facets of legislation and government decision-making - government actions and what government has responsibility for. I mean, there's an opportunity for Victoria Police to do that.

COMMISSIONER LOVETT: But they have the ability to review, to influence and oppose; is that correct? Providing advice to influence.
25

THE HON. ANTHONY CARBINES: Advice to do those things, to do that; that's correct, yes.

MR MCAVOY: And is it your observation that in receiving the submissions or briefs from
30 the Commissioner for Police or the department that they - those submissions are cognisant of the longer-term impacts on community safety as opposed to the immediate impacts?

THE HON. ANTHONY CARBINES: I suppose Victoria Police - what I need from them is their unvarnished advice on what they think the impacts of government decision-making will
35 be on the course of their duties.

MR MCAVOY: Perhaps I'll be more specific, Minister. Immediate advice about community safety might lead the Victorian Police Service to say there are a group of children in the 14 to 16 age bracket who are high-risk offenders. They need to be prosecuted, and if they are
40 subject to custody, well, then that's an appropriate measure to manage that community safety risk.

However, the longer term impact to community safety of criminalising a young cohort of people who come into contact with the youth justice - the justice system might be - might
45 dictate that there's a diversionary response rather than a custodial response. I'm asking you whether you can observe whether the service and the department understand and can balance the long-term impacts on community safety as against the short-term.

THE HON. ANTHONY CARBINES: Yes, and it's also because in the work and advice that comes to me from Victoria Police, there's much engagement with Department of Justice and Community Safety with Victoria Police in the formulation of their advice and consideration, and the main conversation that I have had on this matter in particular in a policy development sense with the Chief Commissioner has been – anxiety is probably not the right word, but an understanding that we need to have the right programs in place that if the law changes, that the services that are required for young people that don't need a direct police intervention response under the law, because that's what police must do under the law, that that's available.

And the point that stands out to me in all our conversations about this matter was the Chief Commissioner did not indicate to me any non-support of change but we need – if the mechanisms aren't there to protect and support young people when that law's changed, again, it's first responders of Victoria Police who will be engaged.

So there's also mechanisms making sure, when change comes, that a safety net of support is there for those young people when regardless of the understandings we have of young people and the deleterious effect of coming into contact with the justice system under the current laws around age, that will be the consequence. Whilst the law for Victoria Police, if we can't have those other services available.

COMMISSIONER BELL: Accepting the importance of what you have just said about the need for care support services, diversionary, conduct, when the age is increased, where does political responsibility for ensuring that the police have those services in company with others or within their own organisation sit? Does that responsibility sit with you as the Police Minister or with the Attorney or with whom? Because this is fundamental to achieving the objective, isn't it? Unless there are those sorts of services available, then we can't raise the age, as I understand the government's position.

THE HON. ANTHONY CARBINES: That's correct, Commissioner Bell. And so the broader conversation across government is that we are working on health responses.

COMMISSIONER BELL: Yes.

THE HON. ANTHONY CARBINES: That really allow police to step back from that.

COMMISSIONER BELL: But that would be within Health.

THE HON. ANTHONY CARBINES: Yes, and then also where they may come into contact with the justice system, there will still be a broad engagement, I think, with our crime prevention teams and our justice teams around other supports.

COMMISSIONER BELL: So that's within Attorney-General's. Yes.

THE HON. ANTHONY CARBINES: Yeah, they need to coordinate those matters, or they may come in through the Corrections systems so justice commissioners will be engaged in this

work but ultimately it needs to be led in the discussions we are having with Health, or DFFH in particular in relation to - we still have young people (indistinct).

5 COMMISSIONER BELL: Political departmental leadership or ministerial leadership has not yet settled.

10 THE HON. ANTHONY CARBINES: That's correct, Commissioner Bell. And I think we're seeing this too in other elements of the government's decision-making around the Mental Health Royal Commission and we know that it's often police that are called to deal with those matters and we are trying to work through --

COMMISSIONER BELL: Usually they're first responders.

15 THE HON. ANTHONY CARBINES: Yes and it's whether they are taking people, whether to CAT teams or to health services but how do we extract police from that engagement and we're seeing that again around our health lens around intoxication. Age is another one. And the parallel discussion of an intoxication sense has been, in part, anxieties around police because that's - they're there 24/7 and they get engaged, but in drawing it back, government has to be accountable to make sure the other services are there and that they work.

20 COMMISSIONER BELL: Because you are the Minister for Police, is it not the case that you, who was after all part of the Cabinet decision that produced this outcome, should take a really active interest in ensuring that police have those options, have those services available to be able to achieve raising the age?

25 THE HON. ANTHONY CARBINES: It is. We have a responsibility in that work because I also find in the community's context where - as the community become more educated too around what police are there to do, and at the moment under the law it's right for them to call and they're engaged. But police are happy to not be engaged in that work in terms of the
30 arrests and the custody, but we need to have the right accountability mechanisms to ensure that that happens. That doesn't mean there isn't still a role for police.

35 COMMISSIONER BELL: I asked the Attorney last week whether if these sorts of supports were in place with respect to the 12 to 14 cohort, she would support moving to 14. Is that your position also?

40 THE HON. ANTHONY CARBINES: The Cabinet position is - the Attorney has outlined publicly is that we're, we have a more immediate commitment, a lower age level and moving to 14 by 2027 or earlier, if possible, with regard to the caveats in the main, are about - it's a slightly larger cohort of people.

COMMISSIONER BELL: People. Yes, we understand that.

45 THE HON. ANTHONY CARBINES: And naturally more serious behaviour which the community may rightly have some concerns about. So how do we make sure there will be a broader program and resources needed to support those young people in drawing back?

COMMISSIONER BELL: So as soon as they are in place, you can move.

THE HON. ANTHONY CARBINES: Absolutely. And I can - yes. That's our intention. That's the work that we will do.

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MR MCAVOY: Thank you. Just going back to your - one of your earlier responses, Minister, you reminded the Commissioners that in the raising the age context, that if there are no other supports in place, the first responder responsibility falls to police. Is there a discussion being had or a basis for a discussion around alternative first responders in the case of young people to police?

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THE HON. ANTHONY CARBINES: There is, although, obviously that word "directly" that's still obviously to come, something that I would still yet to see, to reflect on and have consideration of.

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MR MCAVOY: On a related issue, we have heard evidence about the success of the cautioning program for young people under the age of 14, particularly young people under the age of 12, and how that has been a substantial factor in the reduction of the numbers of very young people in the justice system and in custody.

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THE HON. ANTHONY CARBINES: It has been a good program.

MR MCAVOY: And is that a form of response to offending or alleged offending that should be legislated?

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THE HON. ANTHONY CARBINES: If that was something the Attorney felt would - if that would help drive more cautions, then that's fine. There's an acceptance that this is a program that needs to be embedded in the justice system.

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MR MCAVOY: And given the questions I asked you before regarding the patterns of offending, people growing out of - ageing out, I think, is the term, and the prevalence of children who are brought into the Criminal Justice system who then have greater chances of longer term engagement with the system, is there any reason why that cautioning system should not be extended at least to 14 to 18 year olds in the Aboriginal community?

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THE HON. ANTHONY CARBINES: I can't see why that wouldn't be a matter that should be explored and advice taken from Aboriginal justice partners to do that, and the Attorney would probably - would be leading advice around that work.

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MR MCAVOY: Thank you. I just want to now take you to the issue of body-worn cameras. You are familiar with that issue as it relates to the police service?

THE HON. ANTHONY CARBINES: I am.

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MR MCAVOY: Have you considered whether there should be disciplinary charges for officers who fail to activate or wear their body-worn cameras?

THE HON. ANTHONY CARBINES: I understand where those - where that has happened and how those matters have been, you know, come to light or been dealt with or --

5 MR MCAVOY: Are you saying in response to my question that there are - there have been disciplinary charges against officers who have failed to activate their body-worn cameras?

THE HON. ANTHONY CARBINES: I couldn't speak to whether there has been but there's an expectation that body-worn cameras are activated.

10 MR MCAVOY: Yes, but the question is should there be disciplinary charges for officers who fail to activate their body-worn cameras.

THE HON. ANTHONY CARBINES: Unless there is some understanding of reasons why they should not be activated, then they should be.

15 MR MCAVOY: The Victorian government audit office found in 2019 that body-worn cameras were only acted on 83.6 per cent of the occasions when they ought to have been activated. So that's sitting somewhere between the 15 and 20 per cent mark of circumstances where those cameras haven't been activated. You would agree that that is an unsatisfactory figure?

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THE HON. ANTHONY CARBINES: I don't know why - what the reasons are for why cameras haven't been activated in other circumstances. The reason we have officers wearing them is in part for their safety and in part for accountability. They should be activated as often as possible in their interactions with the public.

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MR MCAVOY: In some responses to criticism about the failure to activate body-worn cameras, it's been suggested that the rollout of body-worn cameras across the police service means that police officers are still coming to terms with the need to activate those cameras. But that time for adaptation, I suggest to you, has passed, and they should all be familiar with the need to activate the cameras whenever they are involved in an incident.

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THE HON. ANTHONY CARBINES: If you've been trained to wear them, you would be trained to operate them.

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MR MCAVOY: You are aware that many of the complaints that Aboriginal people have in relation to the police service might be able to be resolved with the use of footage from body-worn cameras?

40 THE HON. ANTHONY CARBINES: Yes, do I.

MR MCAVOY: A lot of the complaints that this Commission of inquiry has heard go to the uses of discretion by police officers, misconduct, assaults. Many of those matters would be resolved with access to body-worn cameras.

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THE HON. ANTHONY CARBINES: There would be the potential for that to be the case, yes. Cameras have perhaps been, in part, seen by some as an accountability mechanism on

Victoria Police members in their operational duties. They've also provided other roles. They've been helpful in family violence cases in terms of their capacity to interview victims that are seen rather than having to re-interview them again. They've also been about being able to provide, in a complaints context, truth and fairness that can go in both directions.

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COMMISSIONER HUNTER: Is it not mandated to turn them on?

THE HON. ANTHONY CARBINES: I would have thought they should be, that it is, yes, that it is.

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COMMISSIONER HUNTER: It would be unacceptable, as Mr McAvoy said, that that percentage is just way too high.

THE HON. ANTHONY CARBINES: Yes, I haven't seen what the other element of the percentage as to why, whether they were malfunctioning or the like, but the expectation is that they are operative when they're being worn.

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COMMISSIONER HUNTER: Thank you.

MR MCAVOY: Minister, in circumstances where it's known to the government that there are persistent racial profiling and discriminatory conduct towards Aboriginal people, I suggest to you that it's imperative that officers, particularly when they are engaging with Aboriginal people but with everybody in the community, activate their body-worn cameras.

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THE HON. ANTHONY CARBINES: Yes, and I believe it's also in the interests of Victoria Police members and operational duties to do that. It serves the purpose to support them as well.

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MR MCAVOY: In 2022, the audit office report on body-worn cameras, in that report, it was found that there was no adequate system or no system for tracking body-worn camera footage use. So when that footage had been used. And there was no system in place to manage or track the request and delivery of body-worn camera footage. Are you aware of that finding in the 2022 audit office report on body-worn cameras?

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THE HON. ANTHONY CARBINES: I'm aware we have had discussions about body-worn cameras, the technology and its application.

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MR MCAVOY: Your predecessor in this role as Minister for Police - I hope I'm correctly paraphrasing it - claimed that it wasn't necessary to provide for that form of monitoring or tracking about the use of body-worn camera footage because body-worn camera footage is only one means of providing evidence. But you accept - I'll put to you the proposition that that's not the point. The point is that it needs to be able to be tracked and retrieved and used as necessary. Would you agree with that?

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THE HON. ANTHONY CARBINES: Yes, I'd agree with that.

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MR MCAVOY: And if it's - if the evidence exists, and indeed it might be exculpatory evidence, then an accused would be entitled to made aware and given copies of that evidence; would you agree?

5 THE HON. ANTHONY CARBINES: If they lodged a complaint or the like?

MR MCAVOY: Well, even in a matter in which an accused person is charged with an offence and the body-worn camera footage discloses some exculpatory evidence that might be useful to the accused that should be disclosed.

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THE HON. ANTHONY CARBINES: I can understand how that would be helpful to them, yes.

MR MCAVOY: I suggest to you, Minister, that in the present day, it should not be too difficult for the Victorian Police Service to develop a system that ensures secure storage and management and tracking and retrieval of body-worn camera footage. Would you agree with that as a general proposition?

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THE HON. ANTHONY CARBINES: Yes, I would, and there has been a significant evolution in the rollout of body-worn cameras, and it's a very good initiative.

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MR MCAVOY: Well, you agree that that body-worn camera footage should be routinely available to defence lawyers and people who make complaints about the way in which they have been treated by police?

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THE HON. ANTHONY CARBINES: I don't know how - I haven't been advised about what the - you know, we take advice about why that may not have occurred already, and what the competing reasons are why it's not. Overall, the overarching principle is those that whether it was through a complaints mechanism that was lodged or made, but if that evidence is available in relation to the interaction with an individual, then a court or a body should be able to make a determination that it's available. I think it's a --

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MR MCAVOY: Minister, I'm happy for you to take that question on notice as well, but I put it to you, I inform you, and I don't expect a response to this, but it is the case that this Commission has had difficulty obtaining body-worn camera footage.

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Now, have you had any consideration or advice as to whether the failure of an officer to turn on - to turn on or keep turned on a body-worn camera or the failure to produce the body-worn camera footage should be a basis for a judge to make an adverse inference about that evidence?

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THE HON. ANTHONY CARBINES: I don't know that I would have had experience with that.

45 MR MCAVOY: You don't recall having any advice on that?

THE HON. ANTHONY CARBINES: Not particularly, no.

MR MCAVOY: Are you a lawyer by trade?

THE HON. ANTHONY CARBINES: No.

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MR MCAVOY: I might ask you, Minister, to take that question on notice as well; that is, whether the failure to turn on or keep turned on or produce body-worn camera footage ought to be a basis for a judge or magistrate to make an adverse inference in relation to the evidence that that footage ought to have captured.

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THE HON. ANTHONY CARBINES: I'm more likely to be engaged in what are some of the policy and procedures of Victoria Police and the expectations through its own internal processes around how police are meant to manage and use and operate body-worn cameras.

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MR MCAVOY: Are you aware that a report by the Victorian Auditor-General, Andrew Greaves, has recommended that the Victorian Police should develop a policy through recording logs and track officers' performances and compliance in relation to the activation and use of body-worn cameras?

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THE HON. ANTHONY CARBINES: I know that there has been - there is a report, yes.

MR MCAVOY: And are you aware that the Victorian Police Service has rejected this recommendation, saying that it's not needed as it has found no instances of body-worn camera footage being mishandled?

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THE HON. ANTHONY CARBINES: I can imagine that that would be their view.

MR MCAVOY: And I suggest to you that that response is inconsistent with the evidence that - some of the evidence that has been before this Commission as to the access and use of body-worn camera footage.

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THE HON. ANTHONY CARBINES: I couldn't speak to that, I don't think.

MR MCAVOY: I just want to take you now to independent oversight of police activity, police misconduct. How does the Victoria Police Service or the Victorian government propose to address the high rates of conflict of interest amongst investigators of police complaints?

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THE HON. ANTHONY CARBINES: Part of the work that's underway is a more systemic review that's come from other royal commissions in relation to police informants and recommendations on police accountability and police complaints. That systemic review work which is underway by the Department of Justice and Community Safety report to the Attorney, but I would expect to have some engagement with her in that work.

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COMMISSIONER BELL: It's just about impossible to fix under the current system, isn't it? Isn't that the problem?

THE HON. ANTHONY CARBINES: Commissioner Bell, the current system is not adequate, it's not fit for purpose, and it needs to change.

5 MR MCAVOY: Minister, I have put to previous witnesses that the conflict of interest reported upon in the recent IBAC report sat at 84 per cent of cases, and in that regard, the 84 per cent figure relates to cases in which a conflict of interest form had been completed. Even though they were mandatory, there was 16 per cent of the cases where they weren't completed.

10 THE HON. ANTHONY CARBINES: I understand.

MR MCAVOY: The accurate figure about conflict of interest is 42 per cent of cases where a conflict of interest existed. You'd agree with me that even such a figure as 42 per cent is incredibly high and undermines community confidence.

15 THE HON. ANTHONY CARBINES: It is high and it does.

MR MCAVOY: It remains unsatisfactory that even in respect of completing the mandatory documents, there's still a 16 per cent non-compliance rate.

20 THE HON. ANTHONY CARBINES: That's right.

MR MCAVOY: So that, in fact, the command that is in charge of investigating misconduct is itself non-compliant.

25 THE HON. ANTHONY CARBINES: In those instances, that's right.

MR MCAVOY: We've had questions about how the police service changes its relationship with First Peoples of Victoria, but how does the Victorian government and the Victorian Police Association propose to address this distrust in the investigation of police complaints? You've mentioned it a moment ago, but can you explain in a bit more detail where it's likely to go?

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THE HON. ANTHONY CARBINES: I couldn't speak for the Police Association; I know it's the government's --

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MR MCAVOY: Did I say Police Association? I meant the police service, I'm sorry.

THE HON. ANTHONY CARBINES: The role that government has at the moment, there's two. There's the systemic work in response to earlier Royal Commission recommendations and that work coming to government. And I'm very clear that at the moment, we see Aboriginal people have given up on making complaints about police interactions and behaviour and harms and wrongs that they feel have been done to them. I have met with other community and justice partners, whether it's VALS or the accountability round table, because I wanted to understand, while I don't have direct responsibility, it is having a huge effect on the confidence and the engagement of all citizens with Victoria Police, but also on Victoria Police's - the culture and the way in which the organisation operates, if there's not

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accountability and transparency and independence in the way in which complaints are dealt

with and people feel that they can make them - not only make them but be victims at the centre of them on behalf of their advocates and feel they can get timely and just outcomes with consequences.

5 MR MCAVOY: Failure to adequately deal with complaints, would you agree, might lead to some sense of impunity within the police force.

THE HON. ANTHONY CARBINES: Where there's no consequences, behaviour continues. Behaviour gets worse.

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MR MCAVOY: What processes does the government propose to employ to include First Nations community engagement in the investigation of police complaints?

15 THE HON. ANTHONY CARBINES: As I've outlined in my statement, I feel that what we have to be very mindful of is government accept that systemic review and work that's going to come to us. And equal - one consideration I would say that needs to happen is you can't just have a complaint system for all citizens that is the same for all, because the inequity in the way in which Aboriginal people have been treated have given up on making complaints.

20 Their overrepresentation in the justice system, the lack of accountability and determination to have victims at the centre, they're matters dealt with respectfully and swiftly.

And consequences from those investigations, I mean, it's more than ever, but I feel that we need to have that engagement, that self-determination lens to say I would have thought there needs to be, specifically for Aboriginal people, a mechanism that they have confidence in, where they can, or their advocates can make complaints, and that they will be dealt with and because disproportionately they are being affected by the justice system and come into contact with the justice system, and frankly others of us don't make complaints.

25 Therefore there was a greater need to make sure our complaint system that more broadly many would tell me and say to me in the community doesn't work effectively. It is having a more deleterious effect on Aboriginal Victorians and the capacity to want to draw out and engage them and their advocates, in wanting to hold people to account and bring their stories to life and have justice is part of whatever complaints mechanism comes to government to be determined. I don't think it's going to be just one size for all here. It's going to have to realise that there has not been inherent bias and structural bias. There has not been - we almost can't count how much Aboriginal people may have wanted to raise those complaints about their treatment.

30 COMMISSIONER LOVETT: Do you have any thoughts on what self-determination looks like in the independence of the review mechanism?

45 THE HON. ANTHONY CARBINES: I do wonder whether perhaps, as we've seen in the way in which Koorie Courts have operated, that some of the principles around the capacity for Aboriginal people to make determinations about law and justice and fairness, we need to be asking and be willing to accept whether it's from the Commission or other justice partners, they need to give their support imprimatur, and to whatever the complaints mechanism looks like, that they feel it is going to best serve Aboriginal people.

COMMISSIONER LOVETT: Would that include, in your view, transferring power and resources?

5 THE HON. ANTHONY CARBINES: I think the resources will be there. Power so that people have - need to be engaged in how these matters are dealt with, how they are brought before an arbiter, and that also that all parties feel that they have confidence in how that system will operate to make complaints, and to have their circumstances heard and acted on.

10 In the current system, sitting in judgment on others, it's not working and people have given up on being part of it. And that has only compounded injustices.

MR MCAVOY: Minister, you made an observation, and I understand it's in search of an appropriate example about the operation of Koori Courts. In the Koori Courts, you would appreciate that the magistrate or judge is often and usually are non-First Nations person; do you accept that?

THE HON. ANTHONY CARBINES: Yes.

20 MR MCAVOY: I just wish to ask you, would you be comfortable supporting an arrangement where it was an identified position for a Victorian Aboriginal person to be the decision-maker with respect to complaints about Victorian Police in relation to misconduct against Aboriginal people?

25 THE HON. ANTHONY CARBINES: If there's - in the mechanisms that come forward for consideration by the Attorney and the government, why can't that be looked at in terms - why can't that be considered, given you are disproportionately caught up in the justice system. Why would we have mistrust that Aboriginal people can't make assessments and determinations about whether people have been treated fairly and appropriately or, where they have not, that there are consequences or that? Why can't be engagement at that level? I would suggest that could be; that could be part of the considerations here.

COMMISSIONER BELL: That still would not be an independent oversight, would it?

35 THE HON. ANTHONY CARBINES: I think it's all of those elements, Commissioner Bell, that in trying to take advice, that we're not consulting and doing something else, but it needs to be real for First Nations People about how it operates and that they have confidence that they will - that it's a system that - an oversight that they want to be party to, as VALS and others say to me, "We need an oversight mechanism that has victims at the centre".

40 MR MCAVOY: You understand, though, that VALS and the other organisations involved in the Aboriginal Justice Forum are advocating for a body which is structurally and institutionally independent from government?

45 THE HON. ANTHONY CARBINES: Yes. Yes.

MR MCAVOY: And Commissioner Bell's question was directed towards that issue. Are you aware of whether that type of model is currently part of the government's discussions?

5 THE HON. ANTHONY CARBINES: No, I'm not sure, because that work hasn't come to us yet. But I think it gets back to that earlier discussion where, if we are using, from even colonial times, the same structures and the same mechanisms that have done damage and trying to fit them around the problem that is only exacerbating and getting worse, we'll get the same outcomes. So we have to be very - we have to be brave and alive to the fact that we have to do it differently.

10 COMMISSIONER BELL: That means structurally different.

15 THE HON. ANTHONY CARBINES: Yes, I would accept that and I think it was what government has to look to when recommend - when versions - well, there's versions, but when propositions will come to us about how this is done.

20 COMMISSIONER BELL: The Commissioner has said in his statement - we haven't got to it yet with him - that the choice of the model is a matter for government, and he said that he will implement whatever choice is made by the government.

THE HON. ANTHONY CARBINES: As has always been in my engagement with the Chief Commissioner, where the matters for government and government makes those decisions, they get implemented.

25 COMMISSIONER BELL: In your statement, you say that Aboriginal people don't trust police, but it's a much deeper problem than that, I suggest to you. Evidence has been given by many organisations, Aboriginal organisations and Aboriginal people to the Commission that they lack confidence in the police complaints system because it is operated by police.

30 THE HON. ANTHONY CARBINES: Yes.

COMMISSIONER BELL: And that confidence is unlikely to be restored, is it not, particularly taking into account the colonial origins of the police as an institution unless the police complaints system is structurally and operationally independent of the police?

35 THE HON. ANTHONY CARBINES: Yeah, I accept that. The element, I suppose, in trying to find what some of the solutions are is they need to not just - being independent of Victoria Police, they're still State and colonial structures that need to be outside of VicPol.

40 COMMISSIONER BELL: Yes, the issues don't stop there. You have still got to resource it.

THE HON. ANTHONY CARBINES: In a way that has not just an empathy, it has to be lived experience in judgment and in engagement from Aboriginal people to be involved in that, whatever that looks like.

45 COMMISSIONER LOVETT: Can I ask, sorry, how much consultation or influence does the Police Association hold over policies around accountability?

THE HON. ANTHONY CARBINES: I suppose on the accountability mechanism directly, Commissioner Lovett, I haven't spoken as much directly with the Police Association on that because they would know that, in large part, the accountability mechanisms sit with the
5 Attorney. Sometimes there will be discussions in relation to the PRSB, the Police Registration Services Board, and the like in those elements but we also know they're in a different context to broader complaints and the actions and the outcomes for victims and that there may well be conversations that are more had on that matter between the association and the Attorney than
10 directly with myself. I'm not always seen as the decision-maker on what that might look like directly but I'm aware of it.

MR MCAVOY: Minister, I'm aware you have to leave shortly. I've got a few questions for you in relation to the neighbourhood policing model. In his statement, Chief Commissioner Patton refers to a model of policing introduced in April 2022 which he describes as
15 neighbourhood policing. Are you aware of this model?

THE HON. ANTHONY CARBINES: Yes, I am.

MR MCAVOY: Have you received any reports on the success or otherwise of this model in
20 creating better relationships between the police and the community they serve?

THE HON. ANTHONY CARBINES: I have, yes.

MR MCAVOY: What do those reports say?
25

THE HON. ANTHONY CARBINES: In the main, those reports talk to a greater engagement on the frontline with communities and their policing needs, and a greater involvement directly with community organisations in local areas about how police serves them, and that that has
30 been - it's had some positive effects and I know it's a key priority of the Chief Commissioner to embed that neighbourhood policing model across the State.

MR MCAVOY: So the early findings are that it's good for police?

THE HON. ANTHONY CARBINES: It's good for the community, yes, and the engagement,
35 and the work that police do in engaging communities in a desire to - a reminder to have police engagement in community in amongst their work.

MR MCAVOY: Do you accept that neighbourhood policing is likely to work better than
40 when the officers - the cultural diversity of the officers reflects the neighbourhood in which they're working?

THE HON. ANTHONY CARBINES: Certainly in my own electorate, I've seen it working
45 where it has worked. I visited in my crime prevention portfolio roles the actions and the work of neighbourhood policing and how that has been effective.

MR MCAVOY: I put this to you, and it's not put in a pejorative sense, but it is the case that the Victorian Police Service is largely a monoculture of white Australians.

THE HON. ANTHONY CARBINES: Yes, we could say that the - well, I do like to say the police force, the police service, represents and reflects the community that it serves. At the same time, very alive to the fact that you don't find very many Aboriginal people in the Victorian Police Service, and the fact that we have outcomes that are harming First Nations People is in part because they're not reflected in the community - in its police service in the same way.

MR MCAVOY: You're aware that the police service has really quite great difficulty in recruiting officers in accordance with its diversity and inclusion strategy, generally?

THE HON. ANTHONY CARBINES: Yes.

MR MCAVOY: It has had some limited success in certain areas, but particularly with respect to Aboriginal people, the numbers are still very low.

THE HON. ANTHONY CARBINES: They are.

MR MCAVOY: And you heard the Chief Commissioner say this morning that there were some 95 serving officers out of some 16,000 officers.

THE HON. ANTHONY CARBINES: I believe so, yes.

MR MCAVOY: So that figure, did I detect a sigh then? I mean, is --

THE HON. ANTHONY CARBINES: No, I was just catching my breath on the figure - I thought it might have been a couple of hundred. Look, it's a very low figure, it might be half a per cent, it's --

MR MCAVOY: It's miniscule.

THE HON. ANTHONY CARBINES: I think it's about half a per cent, yes. I don't think that is, in part, is in the thing, in the matters that we have discussed not only today but of course across the period of time the Commission has sat and the evidence has been tendered to the Commission, both from the lived experience witnesses and others, and what the Chief touched on earlier in relation to it being a uniform that many in the First Nations communities fear, there are huge challenges to engage and want to have our Aboriginal people would want to wear the uniform and part of change will be to have more people ultimately wanting to do that.

MR MCAVOY: So do you have any views as to what's needed to - needs to happen in Victoria Police Service to make it an attractive career option for First Peoples?

THE HON. ANTHONY CARBINES: In choosing to say that Victoria Police reflects the community it serves, it will have to demonstrate that we are also serving Aboriginal people, not just in understanding culture or responding to crimes, but the way in which citizens and - so that includes Aboriginal people as citizens, we talk about why there's this - why there

is - reflects their community, it would - they don't, no one wants to come and work there in the numbers we would like, we need them to, if we're going to also bring change to the organisation.

5 MR MCAVOY: Thank you, Minister. I have one final question, and I wish to give you the opportunity to say now to the First Peoples of Victoria anything you would like to say that might give them comfort that the Victorian Police Service will change in the way that we've been discussing?

10 THE HON. ANTHONY CARBINES: Well, I'd say in my first instance, over the course of the commission's hearings and my watching and listening at harrowing tales, the true stories of lived experience witnesses, Auntie Doreen in particular and others that I have heard from, is harrowing. I commend them and thank them for their bravery, for their generosity in sharing their lived experience.

15 That - Aboriginal people have witnessed too long for transformational change in the police service and across many elements of which government has control as the State, and it is our work and commitment through telling the truth to repair damage and promote healing that leads to the capacity through Treaty to come together, and the State has to be prepared to give
20 more of itself in both its powers over community and in that way demonstrate trust and support that we're equal partners in the work that we need to do together with First Nations People who have their own lore, traditions and culture that too often is cast aside in the determinations the State makes.

25 I also wanted to say, though, that not everybody gets to speak here, but their voices are heard in the views that they have, the lived experience that they have, and I'm very cognisant that I have an opportunity in my responsibilities, however long that may be, to effect change in a way that many in the community don't have that opportunity. They effect change by speaking
30 at this Commission, by sharing their stories in all the advocacy that they have fought for, and pursued on behalf of themselves, their families, their community, for decades and decades, for hundreds of years. It's not lost on me.

I want, from the work of the Commission, that it continues to provide direction and support to
35 government about what we can do in partnership together, and that I'm committed to doing that work for as long as I am in this role, and do that in concert with the Chief Commissioner, the Aboriginal community, and our government and people of Victoria.

I thank the Commission for the opportunity to speak today, and I do feel that I have the
40 capacity to be better at my role and my task as Minister than I would have been had I not had the opportunity to engage far more deeply in these matters than I have in my public life to date.

COMMISSIONER LOVETT: Is there any - what legacy you want to leave with this portfolio
45 in the context of what we have spoken about? What legacy do you want to leave?

THE HON. ANTHONY CARBINES: I'd like to see the demonstration of being here today and the work and the committed work of Commissioners has borne fruit and has not just laid

the foundation but has delivered meaningful change that has improved the lives, the respect and the engagement of the justice system and Victoria Police. So that when we say it's a service that reflects the community that it serves, then everybody feels that they can see ownership, protection, safety and engagement in the police service that should represent and serve them all.

COMMISSIONER WALTER: Minister, thanks for being here. I have to say that I recognise the genuineness of your intentions. However, I'm really disappointed to see that despite your awareness of the ongoing inequities of First Peoples in their interactions with Victoria Police that there isn't part of a cohesive and comprehensive plan that would actually enable the transformation of the work that is needed. So I'm really hoping that, going forward, that you can work very quickly to begin that process.

THE HON. ANTHONY CARBINES: Thanks, Commissioner Walter. And I do - I accept that outside of the immediate matters that need attention, that's not the way we're going to bring about a transformative change of the organisation and the way in which I have a role in leading and working with that organisation and the Chief Commissioner. I believe I'm fortunate to work with someone who - we're of a similar mind, and that we can drive that change together and that accountability together with our partners.

COMMISSIONER HUNTER: I think I have more of a comment than a question.

THE HON. ANTHONY CARBINES: Commissioner Hunter.

COMMISSIONER HUNTER: You actually stated that those that come before us are strong and brave. Those people that come before us shouldn't have to be strong and brave, and that our lives are in your hands. And it's urgent; change is urgent. As Minister for Police, you effect the change. So listen carefully and put that into action. Our people can't wait for this any more.

THE HON. ANTHONY CARBINES: Thanks, Commissioner Hunter. I understand.

MR MCAVOY: Minister - were there any other questions from the Commission?

COMMISSIONER BELL: There's just one quickly, acknowledging the power of what's just been said to you, Marius Smith from the back row has been active in recent times, including today, on the issue today of homelessness, being confronted by prisoners on release. I wonder, having regard to the fact that homelessness is an indicator of many things within your portfolio, you want to comment on the problem of homelessness in relation to prisoners.

THE HON. ANTHONY CARBINES: A couple of elements, Commissioner Bell, one being, in a broader context, both Victoria Police and the justice system find itself in contact with vulnerable people more often than not. Homelessness, we have even seen more public debate about it recently and the way in which people who perhaps find themselves in custody and be able to go home where they do have a home, that it shouldn't be there for them as a further punishment for having been incarcerated for a period. None of that is acceptable.

We're not going to - invariably, those who come into contact with the justice system, they haven't got a problem - an issue with being able to have a home. They may well have one in relation to alcoholism or drugs, or family breakdown and the like. But what we are learning and what we are trying to implement across some of our other elements in mental health responses, intoxication, and the like, is it isn't a justice response those citizens need. They need a health response or they need a home response around how they are given accommodation. And too often, over a very long period of time, it's been a justice lens and a justice response. I can understand why that can happen because, in part, the public call police. They're there. And then people can't get out of that conveyor belt that brings them into the justice system.

And there are elements that we are working on to make sure that changes, but I think it's a net that be cast far wider in the way in which we think about our engagement with vulnerable people but with so many others in our community, that it's not a justice response; it's a starting point.

COMMISSIONER BELL: Thank you.

MR MCAVOY: Thank you, Minister. There are numerous aspects of your statement that we haven't been able to touch on in the evidence today. There's a question that has been put to other witnesses, and I'd like to put it to you as well, that if the Commission has the opportunity to hear from you again in the coming hearings, would you be willing to come and give further evidence about the matters which you've discussed today, the ones perhaps we haven't got to, and to answer the Commissioners' questions about what has been done in the intervening period?

THE HON. ANTHONY CARBINES: Certainly, I'm always at the Commission's disposal.

MR MCAVOY: I have no further questions of this witness, Chair. I'm not sure whether my learned friend has any questions?

MR STAR: No, we know there's questions on notice and we'll deal with them in the most efficient and cooperative way. So the short answer is no, and I know that the Minister needs to get to another commitment.

MR MCAVOY: Chair, is it appropriate to take the lunch adjournment now until 2 pm?

CHAIR: Yes, 2 pm. Thank you. Yes, we'll adjourn until 2 pm. Thank you.

MR MCAVOY: Thank you.

<THE WITNESS WITHDREW

<ADJOURNED 1:06 P.M.

<RESUMED 2:04 P.M.

<WITNESS SHANE PATTON CONTINUING

MR MCAVOY: Thank you, Commissioner. I will note that you have returned to the witness box after having - after the Commission having heard evidence from Minister Carbines. I want to take you now to the issue of training for VicPol officers. You agree that VicPol officers need to be well educated in matters relating to First Peoples history and culture if behaviour and attitudes are to change?

MR PATTON: Yes.

MR MCAVOY: And I just want to ask you now about some of the teaching that's gone on with recruits. I would like you to have a look at a document which will come up on the screen. It's VPOL.0003.0001.0009. Page 10 of that document. Are you familiar with that document?

MR PATTON: No.

MR MCAVOY: Have you seen a document - have you seen that document or a document like that before?

MR PATTON: I've seen documents of a similar nature like that but I don't recall seeing this one.

MR MCAVOY: It's a document from the Police Foundation training session 1 on Aboriginal cultural awareness. Can we just go back to the front page of that document, please, operator.

MR PATTON: Yes, I accept that it looks - it appears to be a session plan, a standard sort of session plan that we would have for training, yes.

MR MCAVOY: It's not one that you're familiar with on sight?

MR PATTON: No.

MR MCAVOY: In that document, I'll tell you, on page 10, it's suggested that police recruits be - are told that some First Peoples consider being members of the Stolen Generation was the best thing that happened to them. Have you been made aware of that type of communication with police recruits?

MR PATTON: No.

MR MCAVOY: Do you have any concerns about it being suggested to police recruits that some people from the Stolen Generations have said that being stolen was the best thing that happened to them?

MR PATTON: Excuse me. From my knowledge of what I've been told about Aboriginal people who have been involved in - as Aboriginal persons involved in the Stolen Generation, that would seem the opposite of the experiences that I've been told.

MR MCAVOY: Page 10.

5 COMMISSIONER BELL: Can we see that on the screen because I'm just wanting to know whether I've missed it or whether it's there.

MR STAR: When I'm raising that, we're just checking we've got the right document because I can't see it in the document that I've been provided with.

10 COMMISSIONER BELL: Yes. Thank you.

MR MCAVOY: Certainly. Certainly. To be fair to my learned friend, I can't read the screen from here either so I don't know that it's the document that I'm trying to direct the witness to.

15 COMMISSIONER BELL: We can read it but we can't find that passage.

MR PATTON: Yes, it's under the further discussion component there. It says:

20 *"You can discuss here that we have all heard many stories of Stolen Generation people saying that it was the worst thing that ever happened to them. And then you have others that say it was the best thing that happened to them."*

25 MR MCAVOY: Yes. And you accept that that messaging is largely inconsistent with your understanding of the effect of being a member of the Stolen Generation on First Peoples in Victoria?

MR PATTON: Yes.

30 MR MCAVOY: Do you accept that it appears to - it appears to create a perception that the police were aware that - or were worried about their role in the Stolen Generations episodes in Victoria?

35 MR PATTON: I don't know whether that's what it appears. When I read that just reading it cold here, it seems to me it's quite apparent there's two different points of view put about what it means to be a member of the Stolen Generation and the second view that's being put just isn't consistent with my understanding.

40 MR MCAVOY: The second view, I suggest to you, is not one that is readily put by any of the Aboriginal organisations that the police service works with and certainly not a view you would have heard in the Aboriginal Justice Forum?

MR PATTON: That's correct.

45 MR MCAVOY: And it's inconsistent with the acknowledgement that you've provided here today?

MR PATTON: It certainly - in terms of the acknowledgement, that view is, as I read it, as I state, it is trying to attribute an apparent comment, belief, perception, by an Aboriginal person who was involved in the Stolen Generation. I can't take it any further than that, other than to say I've never heard that professed before and it's not consistent with my understanding.

5

MR MCAVOY: Would you be concerned if you were - if there were criticism of the training in that it focused on the deficit narrative about First Peoples rather than any positive view of First Peoples in Victoria?

10 MR PATTON: Sorry, I'm not trying to be cute, but when you say "deficit narrative", what precise - what do you mean, sorry?

MR MCAVOY: That term is sometimes used to characterise discussions about Aboriginal people which focus on negative associations and negative - in negative contexts and speak about the disadvantage only that Aboriginal people suffer rather than focusing on the positive aspects of Aboriginal culture and lifestyle.

15

MR PATTON: I'd be very concerned, yes.

20 MR MCAVOY: Can you --

COMMISSIONER BELL: Are you leaving this? Are you leaving this now?

MR MCAVOY: I was going to move on to a different question, yes.

25

COMMISSIONER BELL: I've got a number of issues with this, Commissioner. It raises doubts in my mind about what the purpose of the training is, because protecting the interests of the police seems to be embedded as an objective of that training. Everybody has a different story, but how can you help change the perception of police as the reason that the Stolen Generation occurred, which is a kind of strategic objective, I suppose, of the police to change public attitudes about police. This is supposed to be a program for lifting cultural awareness, but the interests of the police seem to have a prominence in the document. Could you comment.

30

MR PATTON: I agree with you and I have the same concerns when I see that as well. It's not about the purpose of this training - and this is foundational training at the academy, as I understand - isn't about helping change the perception of police. I mean, I'm quite comfortable in being transparent, as I have this morning, as far as I can, in saying yep, we've done the wrong things and we've done things we shouldn't have done and to where - and to say we'll change that, but to not try and deny what's occurred. It's not about - this training shouldn't be - and I hope it's not framed in that manner and I hope it's really clumsy language and everything, but, nonetheless, it's not about changing the perception of police as the reason the Stolen Generation occurred. This training is to give that cultural awareness so our officers can interact better and understand what's occurred over time.

40

45

COMMISSIONER HUNTER: Is this current? Sorry, Commissioner Bell. Is this current, Counsel?

MR MCAVOY: Yes, it is current training manual, Commissioner Hunter.

COMMISSIONER HUNTER: I, alongside Commissioner Bell, have concerns about this.

5

COMMISSIONER BELL: It needs to be pulled, doesn't it?

MR PATTON: Well, it certainly needs to be immediately reviewed to determine whether there's any other training that has that type of commentary or insinuation that detracts from the purpose of the training --

10

COMMISSIONER BELL: Yes.

MR PATTON: -- and I will undertake that I will make sure that occurs immediately because the training itself - and I don't know the ins and outs of it, but the training itself may be there and be appropriate training still because I believe it is. I mean, we're a registered training organisation which regularly gets reviewed.

15

COMMISSIONER BELL: I meant this document obviously--

20

MR PATTON: Yeah, that's what I'm saying, but clearly that can't be the intention behind the training and it isn't.

COMMISSIONER WALTER: Can I ask if you also take the second part of Counsel's questions about the deficit narrative that seems to be embedded in the training, in what they call the five Ds, about disadvantage, about difference, about disparity, about dysfunction, that that is the focus of how - because that creates a picture, the narrative, it creates a picture of who First Peoples are. It's very negative, stereotypical and pejorative and does impact on how police officers going out then see those people.

25

30

MR PATTON: Certainly and that's not what we want to project and I'm not sure that - I certainly can't draw the assumption that that's our training, a deficit focus in our training based on one either clumsily or poorly or very badly worded document or badly intended document. But deficit focus isn't for us. We've moved - and I tried to give some appreciation of it this morning - we have moved a long, long way. We've still got a long, long way to move. Don't - I'm under no illusions about that. But, by and large, our focus is about our organisation embracing the rich cultural history of Aboriginal persons and moving forward to address the issues that we've been involved in and preventing future issues. I can't say much else.

35

40

MR MCAVOY: Taking into account what you've just said in response to the question, Commissioner, surely further discussion in paragraph - in the second paragraph of the document that we're looking at, would encourage - ought to encourage police officers to accept responsibility for the police services role in the Stolen Generations rather than seek to change perceptions about it, should it not?

45

MR PATTON: Yes.

MR MCAVOY: Can I take you now to document VPOL.0003.0001.0023. This is session 2 of the same module, as I understand it. And Commissioner Hunter, in answer to your question about whether this is the training module, the current module, those who instruct me tell me that it was current at 9 February 2022, and there is no known updated version of it. So if it's not current, we're not aware of it but it's certainly very recent.

COMMISSIONER HUNTER: Thanks, Counsel.

MR MCAVOY: So if we can go to page 25, at page 0025 of that document, please, so this document is a similar session plan for training in relation to Aboriginal - Introduction to Aboriginal Culture. And could we go to page 25, please. 0025. At this page, there's an activity which is said to be led by the instructor with student involvement, and it reads:

"Do you remember -"

We can zoom in on the bottom, the bottom layer, please. Yes. So you can see it has in bold:

"Activity: photo-board. Instructor to ask."

"Do you remember in the last session we spoke about people and how they identify as being - how they identify has been of Aboriginal heritage."

It then says:

"Have some fun with this, let your bias show here when describing each person."

So you can understand that they are encouraging people to express themselves in a way in this environment and perhaps a way that's safe. But the next line is:

"You can ask the recruits to raise their hands if they think these people are Aboriginal. Raise your hand if you think they are Torres Strait Islander and raise your hand if you think they are white, and do this on the screen showing one person at a time and getting people's input. Make sure you have descriptive words such as ranga."

Then if we go over the page, the next page, please, starting at the top box. So using descriptive words such as ranga and then the top of this page it says:

"Freckles, big nose. To demonstrate that we judge people by their appearance, unconscious bias, never question a person's Aboriginality or assume that they are or aren't Aboriginal. Aboriginality isn't about skin colour. It's about kinship and connection to community."

And then it lists a range of people who the students are asked to identify whether they think they are Aboriginal people or not. Do you have any difficulty with that, that mechanism for trying to establish people's biases, Commissioner?

MR PATTON: I'm not a training expert but it seems to me to be, as is outlined there, an attempt in a safe environment to show that by trying to judge someone just on their appearance is not an appropriate way to identify whether a person is Aboriginal or not.

5 MR MCAVOY: Thank you. Now, as I've said, this document comes from the second session of Police Foundation training on First Peoples. The first is an introduction to culture, and if I could see, please, on the screen, document VPOL.0003.0001.0009, please. That was the first document we looked at, by the way. Okay. So this is a session plan for the first of the two sessions that we've talked about. The training aims to provide foundational awareness
10 regarding Aboriginal people and Aboriginal culture and insight into the supports for the Victorian Police and the police academy that those organisations have in place for their employees and an understanding of Aboriginal diversity within Victoria and Australia. The training discusses various topics including Welcomes to and Acknowledgement of Country, the meaning of Aboriginal and Aboriginal and Torres Strait Islander flags, different historical
15 nations and groups, or traditional nations and groups that live within Victoria.

There is also a section on lore and law, so l-o-r-e, lore and l-a-w, law. If we can go to page 9 of that document, please. And if we can just zoom in. Yes. Okay. In that document the section effectively asks one question concerning recruits with knowledge of payback as
20 cultural practice. Can you see that?

MR PATTON: Yes, I can see that.

25 MR MCAVOY: Are you familiar with the term "payback"?

MR PATTON: I'm familiar broadly with it, yes.

MR MCAVOY: This is a policy or training module for Victorian police, isn't it?

30 MR PATTON: Yes.

MR MCAVOY: Are you personally familiar with the operation of payback in Victoria?

35 MR PATTON: No, I'm not.

MR MCAVOY: Is it something that you're aware is common or frequent traditional lore custom?

40 MR PATTON: I'm not aware of it. It hasn't come to my knowledge as occurring in Victoria in my policing experience.

MR MCAVOY: No. There isn't, in this section about lore and law, anything taught about, for instance, the role of Elders or other cultural practices. Do you accept that it appears to be entirely misdirected and inappropriate for Victorian police officers?

45 MR PATTON: As I said before, and I don't say this to not answer the question, but I haven't read the entirety of what's contained in the document. Whether it's entirely misappropriate, I

don't know. Certainly, the aspect there about payback would appear to be completely out of context from a Victorian perspective, I'd agree with that.

5 COMMISSIONER BELL: I'm embarrassed to see that here. I'm embarrassed beyond this Commission with the people sitting on my left next to them to read this. I am really deeply embarrassed by it.

MR PATTON: To read about payback, Commissioner?

10 COMMISSIONER BELL: To read about payback which displays a complete ignorance of the Victorian Aboriginal community and --

COMMISSIONER HUNTER: I find it very offensive --

15 COMMISSIONER BELL: It is.

COMMISSIONER HUNTER: -- as a Traditional Owner of Victoria. Most of what we have just - Counsel has gone through, I find offensive.

20 MR PATTON: And, as I said, I haven't read that in its entirety. Some - certainly the payback aspect, as I just stated, I have no knowledge of that occurring in Victoria so I don't know why it is put in there for any context or not. All I can say is the - well, I can only hope - sorry, I can't speak for who's authored the document - that this has been done with best endeavours to provide a broad-based, a broad outline of what the person or persons who put this together believe that they were providing appropriate training. Clearly, it's not only inadequate but
25 offensive and I apologise for that. And I can only undertake to - and this comes back to the way we have gone about our training and a whole range of things where one would expect that if this had have been - and I make this presumption - if this had have been put together by those from the Aboriginal community who have training background or people from the
30 Aboriginal community who had have been asked to review all of this, then clearly I presume I would have received the same reaction that I've referred here and our training would have been not in line with that.

35 So I can only apologise for it and say clearly there's a need for me to, based on the earlier matter that was drawn to my attention and this, even if we have a couple of aspects in here that are completely wrong, inappropriate or offensive, well they should be removed and we need to make sure that there's no others in there anywhere.

40 COMMISSIONER HUNTER: I would suggest - I'm sure Mr McAvoy is going to go through some more, but I would suggest that this training be revised and looked at because just those two bits that Mr McAvoy has pointed out are highly offensive and I'm sure --

CHAIR: I just want to say there's another danger about this, as though there's a generalisation about a one-word, meaning the use of the word "Dreamtime". Not everybody uses
45 Dreamtime. They use Dreaming, so there's things there that just flag the inappropriateness or lack of understanding, but there is a danger about generalising, that everybody is going to

know about payback and some people won't know about payback. Some people won't know. The people that do know --

5 COMMISSIONER LOVETT: The four Aboriginal justice agreements, as I said earlier this morning, all Aboriginal justice agreements, caucus have been advocating the changes to this training for at least 20 years and in 2022, was it? 2022 this is still being rolled out.

10 MR MCAVOY: What I suggest to you, Commissioner, is not only does it disclose something that is offensive to the Commissioners and would be offensive to other First People in Victoria, but perhaps more importantly for this discussion it discloses a lack of care, a lack of care about ensuring that the information that is being given to police officers about the Aboriginal community is correct.

15 MR PATTON: Yes, I'd agree with you.

MR MCAVOY: And what is it about the relationship between the Victorian Police Service and Aboriginal people that there's nobody within the service that was able to pick this up? Nobody.

20 MR PATTON: Well, I can only say that I certainly haven't been reviewing the training. I make the - and I don't think unreasonable presumption, that because we're a registered training organisation we have checks and balances and processes in place that this should have been picked up. But other than that, I can only say that I will undertake to make sure that all of the training that we provide and that gives outline about cultural awareness and matters relating to
25 Aboriginality, that we ensure that it is culturally appropriate, it is correct, and it's accurate. That's all I can say. And I undertake to make sure that it is, moving forward. And rather than - and I don't know this to be the case, I'm making a presumption, this was done by someone in my organisation. But, clearly, it goes to ensuring that we make sure that it's reviewed, it's accurate by the Aboriginal community.

30 MR MCAVOY: Operator, if we could just return to the front page of that document, and if we could go to the top of that document, please. If you could just zoom in a little bit for my eyes. You can see that the program is the Police Foundation program.

35 MR PATTON: That's right.

MR MCAVOY: So that's the program that's delivered to new recruits, is it?

40 MR PATTON: Yes.

MR MCAVOY: And the area which has produced it is the Centre for Professional Policing.

MR PATTON: That's right.

45 MR MCAVOY: And that's all within the People Development Command.

MR PATTON: Yes.

MR MCAVOY: And a service which has existed in this State for 150 years can't get the traditional lore of the Aboriginal people whose land they're on which they exist right.

5 MR PATTON: Well, it's not right on this occasion, is it, and other occasions, obviously.

COMMISSIONER LOVETT: Particularly of human rights, surely that's a breach of how that's articulated, our people, our culture.

10 COMMISSIONER BELL: It doesn't pay any respect to the cultural rights of Victorian Aboriginal people. It denigrates them.

MR PATTON: I don't - yes, I don't disagree with what you're saying and the fact that it's under the heading of Golden Thread, that human right is the golden thread that's running through it, it's particularly concerning.

MR MCAVOY: And it's as much about what is not being taught as what is said, and perhaps even more so, that all of the richness and detail of the various lore systems that exist within the State and the only real reference to any system is one which doesn't operate here. You agree with me that it's entirely unsatisfactory?

MR PATTON: It's very unsatisfactory.

MR MCAVOY: The session then moves on at page 10 of that document, please, to speak about Stolen Generations and I've taken you to this earlier, but if you can zoom in under the heading 'Stolen Generations'. Sorry, under 'Further Discussion', I believe. And it reads in that section - I'll read it for the record:

30 *"You can discuss here that we have all heard many stories of Stolen Generation people saying it was the worst thing that ever happened to them and then you have others say that it was the best thing that happened to them. Everybody has a different story but how do we as a police officer make our interaction with a member of the Aboriginal community as a positive experience that helps to change perception of police as the reason for the Stolen Generation."*

35 And you agree we have looked at that already. That too is unacceptable.

MR PATTON: Yes, as I said, it is. I mean, my best hope is that it's really poor language and that they're trying to improve the perceptions of confidence in policing, but when it's read in conjunction with the last line, that's a completely different outcome that will be achieved.

40 And, Mr McAvoy, I mean, in respect to the matter, I'm working on the presumption as well that this is a current document, but irrespective, even if it wasn't a current document, the fact that it's only a year old, it's unacceptable.

MR MCAVOY: Now, Commissioner, in your statement at paragraph 137 - can we see 137 of the Police Commissioner's statement - you note that Aboriginal cultural awareness training was initially developed by First Peoples employees, then revised in 2019 by the Nyuka Wara

Consulting, a registered Aboriginal training provider and endorsed by the Aboriginal Justice Caucus in 2022.

MR PATTON: Yes.

5

MR MCAVOY: That training is different from the Police Foundation training we just looked at, isn't it?

MR PATTON: Yes.

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MR MCAVOY: Why is that?

MR PATTON: I haven't sought to compare them both. I can only surmise that the foundation training is taking over a long stream, it's part of a continuum of training in relation to a whole range of matters. It's appropriately interspersed when - with other - a range of other matters, human rights and the like, whereas the ACAT, the Aboriginal Cultural Awareness Training, is quite specific and given to people who would have been out of the academy for - it could be many, many years who haven't had other training and so there's a need to, if you like, deliver that in - in the one block to them in that period of time.

15

MR MCAVOY: There's a proper question to be asked as to why the police service can engage a registered Aboriginal training provider that's endorsed by the Aboriginal Justice Caucus to deliver cultural awareness training but it can't engage in delivering appropriate and correct training to its recruits.

20

MR PATTON: Well, there's certainly some aspects you've just pointed out that are completely inappropriate and, as described, offensive. But what other aspects; whether it's appropriate to banner the whole training that's delivered to recruits as not appropriate, I'm not sure whether that's accurate or not.

25

MR MCAVOY: So every recruit that comes through in their - they do the Police Foundation training so they've taught them the information that was perhaps provided in that slide, depending on the time they came through the academy.

30

MR PATTON: Yes.

MR MCAVOY: And it's only those who have undertaken the additional cultural awareness training that have access to the more developed and correct and perhaps more nuanced training that's provided by the Nyuka Wara Consulting; is that correct?

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MR PATTON: I don't know whether the material that's delivered in the ACAT training has been utilised to be woven into the foundation training. So I can't exclude that that has been but I don't know that to be the case.

40

MR MCAVOY: I suggest to you that it is fairly obvious from the response from this Commission that it can't have been, otherwise that material wouldn't exist.

45

MR PATTON: Well, there's a whole range of material, and I'm not trying to be argumentative, I'm just trying to present that they're two different matters. It may be that the Aboriginal Cultural Awareness Training that has been approved and endorsed by caucus and appropriate Aboriginal training organisation, it may be at the police academy which delivers foundation training, that they've utilised aspects from that Aboriginal cultural awareness training and components of it, but in addition they've obviously got some other aspects that are quite inappropriate as well.

MR MCAVOY: Now, you've noted in your statement that training was mandatory in the - using the term ACAT. I think is the term you've used for Aboriginal cultural awareness training.

MR PATTON: Yes.

MR MCAVOY: The ACAT training, that as of May 2022 ACAT was mandatory training for police custody officers; that's correct?

MR PATTON: No, not - May 20 --

MR MCAVOY: 2022.

MR PATTON: For police custody officers?

MR MCAVOY: For police custody officers.

MR PATTON: It's only - it's only recently that I've mandated police custody officers when I became aware it wasn't mandatory for them and that was this year.

MR MCAVOY: Sorry. At paragraph 140 you say that since May 2022 Aboriginal Cultural Awareness Training has been mandatory for all police and PSOs.

MR PATTON: Yes.

MR MCAVOY: Sorry, my error. And as at March, in the same paragraph, as at March 2023, is it correct that only 12 per cent of police custody officers have undertaken the training?

MR PATTON: Yes, and I sought to explain that this morning.

MR MCAVOY: You did.

MR PATTON: And do you wish me to reiterate it again or not, because it was - it was - and firstly, the Aboriginal cultural awareness training, and it sounds - and I am frustrated with the rate at which it's being delivered, and the reality is - and I don't use COVID as an excuse, but I use it to give context. And then we had the endorsement and engagement with caucus and that only came to us I think in March 2022 or similar or early 2022 and then executive command endorsed that in May 2022 as mandatory.

So there has been some uptake. And in regards to the - well, a reasonable uptake, albeit not at the pace I'd like, and the police custody officer, it was only in the last couple of months when I realised it wasn't mandatory and I made it that, and that percentage of, I think, you know, 44 custody officers who had undertaken that or whatever, that was done at their own volition.

5

MR MCAVOY: But what does mandatory mean in this context? Does it mean that they have to undertake the training within 12 months or two years or is there a timeframe around it?

MR PATTON: Well, for the police custody officers, mandatory now means within the next six months from when I directed them, I think about a month ago, because I said that's the timeframe I require them to deliver it within. But that is the complexity - well, not complexity, that's the difficulty I'm now finding to get an actual timeframe for the rollout of - across the rest of the organisation because it's being devolved, if you like, to local officers in charge and district training officers to make sure that it's rolled out across the organisation and in my view that's not adequate, so I've asked that we put in a - because the timeline I've been given is by the end of 2024 for have it delivered across the organisation, so I've asked for a timeline so that I can be absolutely clear that (a) we can't do it earlier than that, but if that's the timeline, so that there won't be slippage.

MR MCAVOY: So from that answer do I take it that you are concerned that some local officers in charge might not take it as seriously as some others?

MR PATTON: No, I'm concerned - everyone is in no doubt in the organisation the importance which ACAT training is put at by the fact it's being made mandatory. But there are many, many competing demands within policing: many other training streams, many other aspects that police officers are asked to undertake, thus the reason I need to make sure that this is one of the top priorities.

MR MCAVOY: Okay. I'd ask that we get on the screen document VPOL.0003.0004.1322. Now, this is a document from the Family Violence Command. You can see that on the heading there?

MR PATTON: Yes.

MR MCAVOY: Just zoom in a little, please. And it's in relation to Aboriginal cultural awareness training; you can see that?

MR PATTON: Yes.

MR MCAVOY: And it's a document dated 13 February 2023 and you can see that in red, in the middle of the page, data collection period to 13 February 2023.

MR PATTON: That's when the data collection is to. I'm not sure when the document is.

MR MCAVOY: So this document concerns the rate of training for VicPol officers and PSOs since it became compulsory in July 2022.

MR PATTON: Yes.

MR MCAVOY: Okay. And this is the training you've referenced in your statement at paragraphs 135 and 136.

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MR PATTON: Yes.

MR MCAVOY: This document shows that, I suggest to you, 29 per cent of members and 21 per cent of PSOs have undertaken the training.

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MR PATTON: That's what it indicates, yes.

MR MCAVOY: Only 10 per cent of officers in the southern metro region. Can you see that?

15

MR PATTON: Yes.

MR MCAVOY: How does this match with your expressed commitments today; that the cultural awareness of every police officer and employee should be improved?

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MR PATTON: I'm just trying to --

MR MCAVOY: If you look at paragraph 135 of your statement. So paragraph 135 of your statement reads:

25

"Victoria Police aims to ensure the cultural awareness of every police officer and every employee. There is an existing system for Aboriginal cultural awareness training."

Can you see that?

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MR PATTON: Yes.

MR MCAVOY: Is it indicative of a culture that doesn't consider such training as important within Victoria Police?

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MR PATTON: No, I don't believe so. As I outlined earlier, this is an absolute priority for me. It's an absolute priority for Executive Command. We have been making sure this message is being filtered down right throughout the organisation and I've already given or attempted to give context as to why there have been delays in it and a number of competing demands, including the fact that it was only made mandatory in March last year, or - no, sorry, in May last year after sign-off by caucus. And I'm currently seeking advice on to what's an optimum number to say that mandatory training has been put in place across the organisation, and that may sound sort of bureaucratic speak because you would well, say 100 per cent, but the reality is 100 per cent will never be achieved at any point in time because of vacancy management and a whole range of other competing demands. And so what's the percentage you say, okay,

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we are doing well and then we continue to monitor it because we have reached as high as we can get, whether that's 85 per cent or whatever that might be.

COMMISSIONER LOVETT: I think it would be fair to say to continue to strive for 100 per cent rather than dull it down to 85 and then probably get 50 per cent.

5 MR PATTON: No. Yeah, if that sounded like there was a lack of commitment by me, please don't - I projected that poorly then because I want everyone to do this. I understand the absolute importance of it.

10 MR MCAVOY: Commissioner, are there any other steps that you have in mind to help improve the attendance and completion rate of these courses, other than ensuring that the service knows that it's a priority for you?

15 MR PATTON: Well, I think the fact myself and my entire Executive Command and command team have undertaken the courses indicates that we're trying to model the type of leadership to say this is how important this is. That message filters down but, as I outlined this morning, there are potentially smarter ways that we can expedite this through using Aboriginal community-controlled organisation, training organisations outside to assist in expediting the matters but not diminishing the quality of the training.

20 COMMISSIONER BELL: Commissioner, the Victoria police force is Charter bound, bound by the Charter?

MR PATTON: Yes.

25 COMMISSIONER BELL: And each police officer, when exercising police powers, is Charter bound? One of the rights in the Charter is the right to respect the culture of Victorian Aboriginal people. That's correct, is it not?

MR PATTON: Section 19 I believe of the Charter.

30 COMMISSIONER BELL: And it's your responsibility to ensure that they have the knowledge to be able to carry out that right?

MR PATTON: Very much so, and I take that responsibility very seriously.

35 COMMISSIONER BELL: And you would accept that unless training is delivered to put officers in the possession of cultural knowledge they don't know what to respect?

MR PATTON: Yes.

40 COMMISSIONER BELL: Does this suggest you've got significant work to do?

45 MR PATTON: I think the numbers here show we still have a lot of training to do and I can only reiterate what I've said, Commissioner, that it is a priority. I don't come here with - I've been to many Aboriginal Justice Forums as the Commissioner, and the sense of frustration there is palpable, which I can sense in this room as well, and I don't say that - I'm under no illusion that haste, urgency is required. I know what's expected of Victoria Police and I intend to deliver it as best I can.

COMMISSIONER BELL: Thank you.

5 MR MCAVOY: Just following on from Commissioner Bell's question, I ask you to accept from me that there is no mention of the Victorian Charter in the materials concerning lore or the Stolen Generations which is provided to the recruits. Do you have any information otherwise?

10 MR PATTON: I don't - I don't know whether - I haven't read the matter in detail. If you read it in detail and the only reference to the Charter is the box that has a cross up on the top front of it, if there is no other reference, well, then I would accept what you're saying, but the Charter of Human Rights is something - it's focused on at the academy and it is delivered to the recruits at the academy.

15 COMMISSIONER BELL: Can we talk about the bigger picture implications of this questioning which seems to reveal significant individual instances of proper content of material, of take-up of training and the like. Are you satisfied that you are resourced to the scale needed to confront the task, because I'm beginning to doubt it.

20 MR PATTON: We - I believe we're --

COMMISSIONER BELL: Or another way, have you put resources sufficient to scale up to the task, because I'm beginning to doubt it.

25 MR PATTON: The Aboriginal cultural awareness training isn't a resourcing matter. It's a matter of getting it done and it's a matter of getting those on the frontline available to be able to do it as soon as they can and prioritising that amongst all the other competing demands and commitments that we have in policing. And there's also - as I said, up until recently, we've not really considered utilising outside agency to try and expedite matters. But there's also - and I
30 just give you this for context as well, in terms of the challenges facing policing to release people to undertake the training and we are absolutely prioritising it. But we have at any given time 313 people who are off on leave without pay and we have 783 under attrition due to the post-COVID resignation, people who hadn't resigned during that, and due to significant issues, we have a large number of police officers who are off on WorkCover on mental health
35 issues.

So you have a large - at the moment we have a large number of absences from within the organisation. When you say we resource, fortunately we received 3135 extra police from 2016 onwards which we've put into the organisation. We are also being funded to recruit
40 another 502 police and 50 protective services officers but it's a matter of being able to recruit them. It's just - and we're now doing double squads to get them in. So I don't see - it's not a lack of resourcing. It's a difficult time in terms of the pressures that my officers are under and demands they're facing, but this is still an absolute priority for us.

45 COMMISSIONER BELL: Thank you.

MR MCAVOY: Commissioner, I now want to take you to recommendation 7 of the inquest into the death of Aunty Tanya Day. That recommendation was that the Victorian Equal Opportunity and Human Rights Commission review the human rights education of police custody officers. You're aware of that particular review?

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MR PATTON: Yes.

MR MCAVOY: You're aware of the recommendation?

10 MR PATTON: I'd have to refresh my memory on the recommendation, but I'm aware that there was a review conducted. I don't know whether it was specific to custody officers, was it?

15 MR MCAVOY: Commissioner, if you go to paragraph 81.5 of your statement, you will see recommendation 7 is set out there. I'm thankful to my learned friend, Mr Star. You can see the recommendation set out there at paragraph 81.5, Commissioner?

MR PATTON: Yes, I can.

20 MR MCAVOY: Are you familiar with that recommendation now that you've seen it?

MR PATTON: Yes, I am.

25 MR MCAVOY: Do you know whether the review was undertaken as recommended by the Coroner?

MR PATTON: Yes, it was.

30 MR MCAVOY: And you have received that review?

MR PATTON: That's correct.

MR MCAVOY: Were changes made by VicPol in response to the review?

35 MR PATTON: They haven't been made yet because we've presented the draft report to the Aboriginal Portfolio Reference Group on 22 November 2022 for stakeholder engagement to have the input and the views of the Aboriginal Portfolio Reference Group as to whether they believe the outcome of that was adequate or not.

40 MR MCAVOY: And just for the record, who were the members of the Aboriginal Portfolio Reference Group.

45 MR PATTON: I don't know all of the members. I know it's chaired by Assistant Commissioner Russell Barrett from my organisation, who I have appointed to hold the Aboriginal portfolio. Mr Chris Harrison from caucus, from the Aboriginal community; a range of other representatives from community, and police and different stakeholders.

MR MCAVOY: And is your evidence that the action on the review is awaiting feedback from that particular body?

5 MR PATTON: It's - yeah, I thought it was due around now, I think, from reference to - I thought it was due around now, that's right.

MR MCAVOY: Are you familiar with the review itself?

10 MR PATTON: No, not at this time.

MR MCAVOY: So you can't take any questions today, really, on what changes were recommended in that review?

15 MR PATTON: Not really.

MR MCAVOY: Are you aware of any previous review of the human rights education of police employees?

20 MR PATTON: Not off the top of my head.

MR MCAVOY: Is there otherwise ongoing specific education about the obligations police employees have at large under the Charter?

25 MR PATTON: Yes.

MR MCAVOY: And are you able to say whether that training on the Charter equips police to understand the particular needs of First Peoples in relation to being protected from torture and cruelty and inhumane or degrading treatment when engaging with the Victorian Police?

30 MR PATTON: I don't know whether it specifies particularly Aboriginal persons in that regard.

MR MCAVOY: Are the police employees taught the particularities of providing humane treatment to First Peoples who are having their liberty deprived by police?

35 MR PATTON: I don't know whether it specifies Aboriginal persons. I know they're taught about treating people equally and appropriately. The only specific, if you like, aspect in relation to Charter and Aboriginality is, as I understand, relates to the Bail Act section 3A where it talks about specific mention of Aboriginality, and then our prosecution training and our bail decision-making training, as I've been briefed, then references back to section 19 of the Charter and how that should be read in conjunction with that.

MR MCAVOY: That's your understanding --

45 MR PATTON: That's my understanding, yes.

MR MCAVOY: -- of the Charter, but is there any overarching training or education framework by which they're - to educate employees as to their roles and responsibilities under the Charter?

5 MR PATTON: Yes, there's mandatory training for all police officers in relation to the Charter.

MR MCAVOY: And how often are they required to do that training?

10 MR PATTON: Once, I believe.

MR MCAVOY: And do you know what the uptake is on that mandatory training?

15 MR PATTON: I believe it has been a high level of uptake, but I don't have the number with me, no.

MR MCAVOY: Perhaps you can take that question, the number of participants in the mandatory training in relation to the Charter and the previous two questions about the provision of humane treatment to First Peoples who are having their liberty deprived and particularly the First Peoples being protected from torture and cruelty, inhumane or degrading treatment when engaged by police on notice and provide the detail to the Commission.

COMMISSIONER BELL: And the right to dignified treatment for persons in detention.

25 MR MCAVOY: And we can add the right to dignity --

MR PATTON: Certainly.

30 MR MCAVOY: -- for people in detention to that list.

COMMISSIONER BELL: That doesn't mean jail. It means detention in the broad, in the broad sense.

35 MR PATTON: Yes, you're not just talking cells, I understand that.

COMMISSIONER BELL: No. Yes. Commissioner, I think the operational police force is about 20,000, or 22,000?

40 MR PATTON: I can quickly break it up for you.

COMMISSIONER BELL: Yes, thank you.

MR PATTON: But if I was to rough it out, about 16 and a half thousand police officers.

45 COMMISSIONER BELL: Yes.

MR PATTON: About 1500 protective services officers, 400 police custody officers who aren't police officers, they're public servants who look after - who get specific training for the cell management of prisoners.

5 COMMISSIONER BELL: Yes.

MR PATTON: And several thousand public servants.

COMMISSIONER BELL: Okay. So that's about 20,000.

10

MR PATTON: 22 and a half.

COMMISSIONER BELL: 22 and a half thousand.

15 MR MCAVOY: Commissioner Bell, I might direct the witness to paragraph 11 of his statement where he has conveniently broken down the staffing numbers. It's a total of 22,380 in the organisation more than 16,450 police officers, 1,470 protective services officers, and 331 police stations.

20 COMMISSIONER BELL: Do I read your witness statement correctly that you have one specialist human rights lawyer advising you?

MR PATTON: That's correct.

25 COMMISSIONER BELL: 22,000 operational officers or the like?

MR PATTON: Well, we have one specialist, but we also have a regular human rights meeting that they chair along with other persons from our Priority Community division, I think from our legal services area. And we also seek - so that's in-house. But we also have significant
30 advice reaching to the Victorian Government Solicitor's Office and rely on them as well. The workload would be unsustainable for one individual. It - yeah.

COMMISSIONER BELL: Even taking into account your access to these other are human rights legal resources, do you really think that one is enough?

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MR PATTON: Well, as I say, he is a specialist. He has the lead. In a utopian world, if someone --

COMMISSIONER BELL: I'm not talking about utopia. I'm talking about whether your
40 human rights - internal human rights expertise is fit for purpose of an organisation of this size.

MR PATTON: I believe the lead from that group of people with the support from the Victorian Government Solicitor's Office when we have questions that need legal advice as well as with our training, I think it is sufficient.

45

MR MCAVOY: I just want to ask you a few more questions around the discriminatory conduct, racially discriminatory conduct towards Aboriginal people. Have you issued any

directives to officers in charge of the local areas that there is, for instance, to be zero tolerance of racist behaviour by officers?

5 MR PATTON: Well, it's very - I've issued a couple of emails where I've set out expectations right across the organisation. But in our Victoria Police manual, which provides the guidance and guidelines for the organisation, in our human rights component it's spelt out explicitly that discrimination is unlawful, racial profiling is not tolerated; that people are to be treated and dealt with in accordance with - if they're to be pulled up with reasonable suspicion based on their conduct and behaviour, and that race should not form any basis for any interception of
10 anyone. And that's quite explicit in our Victoria Police Manual.

MR MCAVOY: There might not be evidence before this Commission about this, Commissioner, but it's anecdotally understood that Aboriginal people who enter the police force, the police service, experience terrible brutalisation and that that's one of the reasons
15 why there's difficulties in retaining Aboriginal people in the police service. Have you heard any commentary to that effect?

MR PATTON: It would be naive to say that that hasn't occurred and doesn't occur. But I held discussions with a number of Aboriginal employees prior to coming here and they expressed
20 to me in the past they had experienced a lot of discrimination. But that this organisation has changed markedly, and I paraphrase that, that's what I'm summarising.

So I don't - don't get me wrong, I don't for one minute say that we don't have people who are racist in our organisation - we're representative of the community. But, by and large, the vast
25 majority of police officers do not tolerate racism and don't exhibit it, and won't allow it.

MR MCAVOY: So are you suggesting that the police service should not be seen as a haven for racists or a preferred vocation?

30 MR PATTON: We don't tolerate racism or discrimination.

COMMISSIONER LOVETT: With the Aboriginal staff who have left, whether they be police officers or not, have you offered any exit interviews for them to express their experiences in working for the organisation?
35

MR PATTON: Every staff member who leaves gets offered exit interviews. I'm - recently that became a significant focus for me because of the large attrition we've had, but not just that, but your point is really valid in respect to Aboriginal persons so that we would understand if we had issues like that. I know they occur. I haven't sought to delve down into
40 that level to understand it. Sitting here, as you suggest it, I go well, it's pretty obvious, I should, and I will. But yes, there are exit interviews occur on every occasion - or they're supposed to, I should say.

MR MCAVOY: Commissioner, I want to take you to a case study that's been the subject of
45 some examination by this Commission of inquiry involving a man by the name of Tommy Lovett and his mother, Auntie Doreen Lovett, and a complaint regarding excessive use of force by Victorian Police against Tommy. You're aware of that matter?

MR PATTON: Yes, I am.

5 MR MCAVOY: Now, I'm going to ask you a number of questions. The questions are not intended to have you express matters of fact or make conclusions of fact. Do you understand what I'm saying?

MR PATTON: I think so.

10 MR MCAVOY: So what the examination is intended to do is to draw to your attention certain matters and seek your comment about the procedure but not to make any expressions of factual findings that might affect the due and proper investigation of this matter.

MR PATTON: Certainly.

15 MR MCAVOY: Okay. So on 5 April 2016 a police vehicle was rammed by a stolen vehicle in Preston and heading towards the Northland Shopping Centre. The male driving the car, driving in this case was described as "*Aboriginal, black jacket, light coloured trackpants, red cap, approximately 40 years old, with a goatee.*" And you can see at tab 1 on document
20 BAL4 - sorry, I'd ask that the Commission be given a folder of documents that will be referred to in this examination. I thank my learned friend for reminding me. Tab 1.

MR PATTON: Yes.

25 MR MCAVOY: At page 0007.

MR PATTON: Yes.

30 MR MCAVOY: And the document is BAL4.002.003.007. Now, according to Doreen Lovett, Tommy Lovett's mother, officers from the Criminal Investigations Unit, so plainclothes detectives came to Tommy's grandmother's house to make inquiries about the stolen vehicle and ask for the whereabouts of Tommy who was 18 years old at the time. Okay? Now, there is an outline of the evidence of Doreen Lovett at tab 2, which is document
35 BAL4.0002.0003.0001 at page 1. And according to his statement, the officer who made those inquiries who I'm going to refer to in this discussion as Officer 6, then saw Tommy who he identified as an Aboriginal male in his early 20s wearing a black cap, black hoodie and with light pants on. The officer stated that due to the timing of Tommy's arrival at the house, the location of the dumped car being a block away and the fact that Tommy was Aboriginal and
40 was wearing the same clothes, he believed on reasonable grounds that Tommy was the driver of the stolen vehicle.

Now, you've got to remember that the person that was originally described at Northland Shopping Centre was a 40-year-old with a goatee wearing a red cap, whereas Tommy was identified as wearing a black cap, and being in his early 20s.

45 Now, I draw your attention, Commissioner, to tab 3 which is at pages 9 and 10 of the book. The document is - sorry, paragraphs 9 and 10 of that document. Now, the document is

BAL4.0002.0003.0047, at 48. And if we turn to paragraphs 9 and 10, you can see that the statement of the officer in question says:

5 *"As I was monitoring the radio, I observed a male walking towards the property. I immediately recognised this male as Tommy Lovett. Tommy Lovett is an Aboriginal male who I believed at the time was aged in his early 20s. He was wearing a black cap, black hoodie and had light pants on. He had a backpack and was riding a scooter, unmotorised. Due to*
10 *(a) the timing of Lovett's arrival with respect to the motor vehicle being dumped and the location of the dumped vehicle one block away and the fact that Lovett is Aboriginal and was wearing the same clothing as described by the members rammed, I believed on reasonable grounds that Lovett was the driver of the stolen vehicle."*

You can see that?

15 MR PATTON: Yes.

MR MCAVOY: Okay. Now, in light of that, the fact that that description was issued for a man aged 40 years old with a goatee and red cap on, it seems entirely improbable that a person could come - any person could come to the conclusion that there were reasonable grounds that
20 Tommy was the driver of that stolen vehicle. Do you accept that?

MR PATTON: Based on those facts?

25 MR MCAVOY: Yes.

MR PATTON: Yes.

MR MCAVOY: In terms of the description given other than the reference to the black jacket or hoodie and the light-coloured pants, the only other thing that Tommy and the suspect had in
30 common was that they were identified as being Aboriginal; is that correct?

MR PATTON: From what I'm aware, yes.

MR MCAVOY: And can you understand from that set of circumstances and what you know
35 about the history of racism and racial profiling, and you indeed acknowledged this morning, can you understand why Aboriginal people might accuse police in those circumstances of racial profiling?

40 MR PATTON: Yes.

MR MCAVOY: Four other uniformed officers present at the time of Tommy's arrest quickly came to the opinion that Tommy was not the suspect based on the description issues. You're aware of that?

45 MR PATTON: I'm aware of a number of, I wasn't sure it was exactly four, but I'm aware of a number of them.

MR MCAVOY: Tab 4 which is document BAL4.0002.0003.0028, at page 29 on that document, and you can see that's another statement, and you will see, although the paragraphs are not numbered, in the last paragraph on the first page halfway through that paragraph, the maker of the statement says:

5

"This Aboriginal male had his hands handcuffed behind his back and his head was down and he looked unhappy but compliant."

And then over the page at the top of the page he says:

10

"I thought that this was not the offender we were looking for because he did not match the description."

MR PATTON: Yes.

15

MR MCAVOY: And that's just one example. I won't take you to each of them but they're all there.

MR PATTON: Okay.

20

MR MCAVOY: The same officer who identified Tommy then stated that he began to chase him and tell him to stop. He then saw Tommy sitting on the nature strip and the officer stated he saw Lovett sitting on the nature strip:

25

"He was in the custody of several TMU units. He was not handcuffed and the TMU members were only standing around looking at him and did not appear to be looking to search him. I yelled for one of them to handcuff Lovett. Owing to my previous dealings with Lovett, I knew that he could be volatile and lash out violently with no reason."

30

And that's at tab 3. If you go to tab 3, which is again document BAL4.0002.0003.0047, you can see at paragraph 13 that that's what happened. And can you just explain for the Commissioners what the TMU is.

MR PATTON: Traffic Management Unit so people whose primary task is road policing.

35

MR MCAVOY: So in circumstances where an 18-year-old person is not being aggressive, sitting down, in the custody of other officers, do you think it was reasonable that in those circumstances for him to be handcuffed?

40

MR PATTON: You should only be handcuffed where it's reasonably necessary to do so.

MR MCAVOY: Officer 6 then gave a statement that even though Tommy was handcuffed, he ran up to him, placed his weight on him and his arms across the side of his neck because he still considered him a flight risk. He had not been searched and according to Officer 6 was known to him to be spontaneously violent.

45

Chief Commissioner, the young man was sitting there, already in handcuffs, surrounded by a number of officers. Just taking that factual scenario, and not commenting on this particular incident, but in that factual scenario would you think it was necessary to run up to a person and then place all your weight on them and your arm across the side of their neck where they're already in handcuffs, they are surrounded by other officers, they're not attempting to leave at all?

MR PATTON: Without commenting on that particular scenario, but in a circumstance such as that, in the absence of any other factors, no.

MR MCAVOY: Okay. And if we go to paragraph 14 - I'm sorry, we've just covered that. The four uniform officers gave statements that all suggested it was only after Tommy Lovett was arrested that he struggled, but even then was not otherwise aggressive and was compliant. In those sorts of circumstances, I suggest to you that, again, that the handcuffing was - would be totally disproportionate to the flight risk and the risk of any unsafety for the officers.

MR PATTON: Yeah, I don't - I don't have knowledge of any of the people involved in this matter or what knowledge they claimed or did or didn't have in respect to Mr Lovett, but on what you're telling me, I agree.

MR MCAVOY: In relation to the allegations of use by - use of force by Victoria Police against Tommy by reason of that and while he was handcuffed, there are different accounts given by police from the CIU and the uniformed officers that attended. Taking into account those matters, two officers including Officer 6 stated that Tommy was either placed on the ground against a wooden fence or moved to a fence and moved up against it:

"Due to Lovett wriggling, I had difficulty moving him towards the fence and I was - and he was dropped near the fence."

Those accounts are at - again at tab 3 at paragraph 18 but also at tab 8 at 0045. We don't need to go there at the moment to tab 8 but I ask you to accept that they are the circumstances of his being detained near the fence.

However, the uniformed officers in attendance gave markedly different accounts, including that all three of them - or three of them all stated that Tommy Lovett was thrown against a fence. And those accounts appear at tab 4, which is BAL.0002.0003.0028 at paragraph, or at page 29. If we can go to that document. Sorry, if we just put a hold on that for a moment and we can go to tab 7 in a moment.

So one of the officers stated in similar terms to the other officers that:

"One of the detectives then picked the male up by both legs, lifting them to waist height. While this one happened, one after the other detectives told the male to stand up. The male under arrest called the detective an idiot as his legs are in the air and was unable to stand. The detective with his arm across the neck of the male then picked the male up by his upper body and with the aid of both detectives threw the male into the brown wooden fence next to a

footpath. The male's back made contact with the fence before landing on the ground with his legs out before him."

5 And that's at tab 7 of the document, of the bundle of documents you have, and that the document is BAL.0002.0003.0041 at 0042. And at tab 7 it's the second page of that statement, halfway down, Commissioner, you will see the - there's a paragraph commencing with the words:

10 "*One of the detectives.*"

MR PATTON: Yes, I see the paragraph you are referring to.

MR MCAVOY: And that's the paragraph that I just read to you.

15 MR PATTON: Yes.

MR MCAVOY: Given those different accounts, do you accept that there's - I'll withdraw that. Commissioner, in those sorts of circumstances, is it good practice to seek to de-escalate a situation?

20 MR PATTON: We try and - well, our training is you should be de-escalating every situation that you can.

25 MR MCAVOY: So, Mr Lovett, Mr Tommy Lovett's complaint relates to some of the events that we've described, but he was subsequently sprayed with an OC spray despite being handcuffed and an incident report sheet notes that Tommy sustained grazing to the torso, knees and elbows from concrete abrasion and possible hairline fracture to his wrist, injury from handcuffs. And that's contained at tab 9 just for reference it's document BAL.0002.0003.0095 and it's at page 0095.

30 So from that, Tommy was charged with four counts of assault police, indictable offences; one summary charge of assault police; resist police, and a common law assault. Those charges were eventually withdrawn due to insufficient evidence including that some officers present could not corroborate some of the evidence of the arresting officers. You understand that to be the case?

35 MR PATTON: Correct.

40 MR MCAVOY: Now, on either 14 or 15 July 2016, Aunty Doreen Lovett raised complaints with the police as to how Tommy was treated at an Aboriginal Justice Forum that you attended as Acting Chief Commissioner. Do you recall that?

MR PATTON: That's right. Yes.

45 MR MCAVOY: Do you have recollection of that?

MR PATTON: A vague recollection.

MR MCAVOY: You remember Aunty Doreen attending the meeting, do you?

MR PATTON: Yes.

5

MR MCAVOY: The matter was referred to the Professional Standards Committee?

MR PATTON: Yeah, I think I referred it the next day.

10

MR MCAVOY: Yes. And did you have any expectation as to what would occur regarding that complaint?

15

MR PATTON: Yeah, well the expectation would be that it would go through a normal process and that would be that they would take the report, they would speak with the complainant in the matter, which was Ms Lovett on that occasion, and her son. They would investigate, take statements and take all appropriate evidence and then investigate the matter fully and properly.

20

MR MCAVOY: Are you aware that Tommy was advised by his lawyers not to make a statement while his criminal proceedings were before the Magistrates' Court of Victoria?

MR PATTON: Yes.

25

MR MCAVOY: That wouldn't be an unusual piece of advice from a lawyer to a client in a criminal matter?

MR PATTON: In circumstances such as that, no.

30

MR MCAVOY: And there was an investigation into the complaint, yes?

MR PATTON: Yes.

35

MR MCAVOY: And there was an investigation report, I suggest to you, from a first investigation which considered the evidence including, that it might be assumed, that the statements of the attending officers, and I suggest to you that that report concluded that they were unable to ascertain if any police member committed any criminal or disciplinary offence due to the complainant receiving advice from VALS not to provide a statement to myself or due to the possibility of incriminating himself or others.

40

Are you aware of that?

MR PATTON: I believe that's the case, and I think it was classified as 'not proceeded with', or similar.

45

MR MCAVOY: And the investigator also concluded that no human rights were - breaches were identified.

MR PATTON: Yes.

MR MCAVOY: You're aware of that?

5 MR PATTON: That's my understanding, yes.

MR MCAVOY: Yes. So in circumstances where there are clear differences of opinion as to relevant conduct on the face of the material provided by the police themselves, why would a statement from a complainant be essential for the complaint to be dealt with?

10

MR PATTON: It's a very good point. And we hear the term "systemic racism" tossed around, which, as I understand it, relates to practices and processes and sometimes unintended consequences. And processes that, if you like, statistically produce outcomes that are discriminatory for certain races or cultural groups. And it can be sometimes unintentional. It can be unconscious bias. Why do I answer in this respect? Because back then our process was that if a person didn't make a complaint, then they didn't continue on to fully investigate the matter. Now, clearly, that isn't a requirement, and they could have further and fully investigated this matter in the absence of a statement. But because of the processes that we had in place and the policies we had in place at the time, it was not proceeded with. We've now changed that because clearly that disadvantaged certainly Mr Lovett on this occasion, because he was exercising his legal right and acting on legal advice and not making a statement. But also it would disadvantage a vast majority of the Aboriginal community who don't, or didn't and probably don't, to a large degree, have faith in our complaints mechanism and don't want to make complaints - or make a statement, sorry.

15

20

25

MR MCAVOY: And you acknowledge that that's entirely understandable.

MR PATTON: I do.

30

MR MCAVOY: So I just want to continue on with this particular complaint. Tommy was told by letter dated 9 January 2017 that the finding of the investigation was that the complaint was withdrawn. It was not proceeded with. Further, the letter of 9 January 2017 noted:

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"As discussed with you, the actions/behaviour of Officer 6 [as we shall call him], on this occasion was appropriate and was in accord with law, policy."

But you're aware that that wasn't the conclusion of the investigation report?

40

MR PATTON: Correct.

MR MCAVOY: And, therefore, it's the case then that the letter regarding the conclusion was misleading.

45

MR PATTON: I'm sorry I'd have to read the letter in totality to understand that. I think - well, I'm not trying to defend it because it was an inadequate investigation, that's clear, but without reading the totality of the letter as to whether they're suggesting at this time that's the case or - I'd need to read it further.

MR MCAVOY: Well, I'll be more specific. The reference to the actions being in accordance with law and policy when the investigation didn't make any findings about that, would appear to be misleading.

5

MR PATTON: Misleading, inaccurate, yes. Well, sorry, Mr McAvoy, I'm not trying to be difficult, but when you said - did you outline to me that the investigation didn't find, is that what you said? Well, that would be true because they didn't conduct an investigation. It made no findings.

10

MR MCAVOY: Yes. And the assertion in the correspondence that the officers' conduct was in accordance with law and policy then is an added flourish by the author of the letter.

MR PATTON: Well, it wouldn't appear to be accurate because they couldn't have made that finding if they hadn't properly investigated.

15

MR MCAVOY: Thank you. The letter didn't inform - I'm telling you that it didn't inform Tommy that he might reopen the complaint if he provided a statement. You're not aware of that?

20

MR PATTON: No, I'm aware of, as I understand it, interactions with representatives for Mr Lovett requesting further statements, but I don't know whether they specifically told Mr Lovett that.

MR MCAVOY: Commissioner, I might just ask you to turn to tab 14.

25

MR PATTON: 14?

MR MCAVOY: Yes. I don't want you to describe the document but, if you can have a look at that document. I'm sorry, perhaps I should have taken you to it a little bit earlier, but if you can read that document.

30

MR PATTON: Yes, I've read that.

MR MCAVOY: So Tommy Lovett was not informed that he could reopen the complaint if he provided a statement.

35

MR PATTON: No, he wasn't.

MR MCAVOY: It records that - it:

40

"marks the completion of the investigation of your complaint by Victoria Police and no further action is proposed at this time."

MR PATTON: Correct.

45

MR MCAVOY: That would create the impression for someone, particularly if they're not represented by a lawyer, that it wasn't worth reactivating the complaint given the investigator had determined that the actions of the police were in accordance with law and policy?

5 MR PATTON: I'd agree with that, yes.

MR MCAVOY: And do you think it was designed to create that impression?

10 MR PATTON: I don't know what it was designed to do. It was certainly - my assumption would be that it - well, I don't know what it was designed to do other than to say this is what we've done and at this stage there's no adverse findings against the police officer.

MR MCAVOY: If you can turn back to the front page of that document, you can see it's addressed to Mr Tommy Lovett personally, not to any legal representatives?

15 MR PATTON: Correct.

MR MCAVOY: Following the ABC - following a report on ABC *7.30 Report* and in *The Age*, the investigation and the complaint was reopened around 2019 and you can see at tab 15 there's a document. You might just take a moment to read that.

20 MR PATTON: Yes, I've read it.

MR MCAVOY: Okay. Now, at tab 16, you will see another document, and I'd ask you to just have a look at that. You may have seen that document before but I'm happy for you to refresh your memory in relation to it. I just want to ask you a couple of questions.

25 MR PATTON: Yeah, I have seen it, and if necessary --

30 MR MCAVOY: If you need to look at it, we can do that. I just want to ask you a couple of questions. A critical review of the investigation file was undertaken and it noted a number of deficiencies in the initial investigation, including a number of things. Firstly, that seven statements that should have been obtained were not.

35 MR PATTON: Yes.

MR MCAVOY: That none of the statements attached to the investigation file depicted the injuries received by Tommy.

40 MR PATTON: I'm just trying to find where it appears in the - in the report. Are you able to direct me to where that appears in the report?

MR MCAVOY: I'll come back to that in a second, Commissioner. Witness statements were not canvassed or requested from Auntie Doreen or Tommy's grandmother, nor was a doorknock conducted of the location where Tommy was arrested for independent witnesses.

45 MR PATTON: Correct.

MR MCAVOY: In relation to the recommendation or the observation about the absence of any depiction of the injuries received by Tommy, if you look at page 3 of that document on the last line, second last and last line next to the letter G; can you see that?

5

MR PATTON: Yes.

MR MCAVOY: It's on page 3 of 4. You can see that. Do you agree that there were no depictions of the injuries by Tommy in the investigation file?

10

MR PATTON: Correct.

MR MCAVOY: The fourth of the seven items is that Tommy's human rights were limited by way of arrest and handcuffing and it needed to be considered whether those limits were necessary, reasonable and justified in accordance with the Charter. And so that's a further deficiency; do you accept that --

15

MR PATTON: Yes.

MR MCAVOY: -- covered in the review?

20

MR PATTON: Yes.

MR MCAVOY: The diary notes of the police officers were not considered in the initial investigation; you understand that to be the case?

25

MR PATTON: Whereabouts is that again, sorry?

MR MCAVOY: Not that the diary notes were not made but that the review observed that. So under Important Factors on page 3 of 4 in the subheading E, it's noted that:

30

"This member needs to be identified, provide a statement and attach his or her notes. These notes were provided to Lovett's defence counsel without going through the Freedom of Information stream. How this occurred is not yet known."

35

MR PATTON: Yes, I agree that they're saying an unidentified police officer, the notes of that person hadn't been included.

MR MCAVOY: And the further deficiency is that the investigation file does not include a copy of the use of force forms, if any, and did not advise VALS - if VALS received notification of Mr Lovett's custody admission at the Heidelberg police station. And that's at item H on page 4 of the document.

40

MR PATTON: Speaking about the investigation file, yes.

45

MR MCAVOY: You would be concerned by the sheer number of deficiencies in the investigation?

MR PATTON: Absolutely.

5 MR MCAVOY: The investigator noted that - further, the investigator noted that he had concerns about Officer 6's overzealous approach to the arrest and deploying of OC spray in Tommy's face while he was handcuffed. Do you accept that that observation was made?

MR PATTON: Sorry, whereabouts is that?

10 MR MCAVOY: At page 4 at item I. So it's the second item from the top of the page. If you can just read that to yourself.

MR PATTON: Yes, the investigator here questions the overzealousness and the demeanour and the deployment of OC spray whilst handcuffed.

15 MR MCAVOY: Accepting that this is one example of an Aboriginal person's dealings with the complaints procedure in VicPol, and accepting that there may be many others, and taking into account the findings and the IBAC audit in 2022, it raises, I suggest to you - this set of facts raises serious questions as to how Aboriginal people can have confidence in Victoria's
20 handling of their complaints, VicPol's handling of their complaints. Do you agree with that?

MR PATTON: Well, if you accept the findings of the IBAC audit, which I do, in which they examined 41 investigation files and 13 oversight files and found a range of deficiencies in the way we conducted investigations and if you use this as an example, yes, I do.

25 MR MCAVOY: This is one sample. So one example. We have heard in this Commission evidence from practitioners, criminal law practitioners, who have given evidence to the effect that their Aboriginal clients don't want to make complaints because they don't believe anything will happen with them. Does that evidence surprise you?

30 MR PATTON: No, it doesn't.

MR MCAVOY: On December 2020 Tommy's lawyers were told again that given Tommy and Aunty Doreen had not made statements in respect of the complaint, the investigation was
35 closed and could be reactivated. Aunty Doreen has given evidence that the reason Tommy hasn't given a statement is because it might retraumatise him. And that's understandable to you.

40 MR PATTON: Yes.

MR MCAVOY: Given the statements made by the police and the sheer number of deficiencies identified in the review on the investigation of the file, it really is a copout or a failure, gross failure, to have closed the investigation on two occasions merely because Tommy has determined not to provide a statement to investigators. Would you agree with
45 that?

MR PATTON: I do, and as I outlined before, that shouldn't occur. It won't be occurring from - since we changed our processes, and it can be fully investigated even in the absence of a statement from Mr Lovett on this occasion or any other person.

5 COMMISSIONER BELL: Does that change apply retrospectively to cover this case?

MR PATTON: Yes. Well, when I became aware of - I was aware of this matter initially, Commissioner, when I became aware recently through the hearings of this Commission that a second investigation had identified deficiencies but the matter had still not been adequately
10 dealt with, I instructed that a third investigation was to be commenced, and Mr Lovett and his family be approached to see whether they wished to make a statement or not. But irrespective of that outcome, that the investigation will go fully to a complete outcome taking into account any and all of the evidence that has been gathered and make sure that a full assessment is made. So that's occurring and active at the moment.

15 COMMISSIONER BELL: Thank you.

COMMISSIONER LOVETT: Do you accept that avoiding conflicts of interest is a key part of ensuring fairness and confidence?

20 MR PATTON: In terms of policing in general and in terms of investigating complaints, yes, I do.

COMMISSIONER LOVETT: Yes. Do you accept that there's an inherent conflict of interest in having police investigating its own complaints. Sorry, complaints against other police?

MR PATTON: It's - it's an interesting question in that when we - and sorry, rather than just a yes answer, Commissioner, if I could just be given a moment to explain. My - I've always been of the view that it's important that, having the management and control of the
30 organisation, it's appropriate that I have the abilities to be able to discipline those within the organisation and hold them to account. The vast majority of complaints made against police officers are of a minor nature and can be dealt with in an expedient way and it's important that I have the capacity to do that.

35 In terms of police investigating themselves, we have processes and practices in place that should be adhered to. They're not always adhered to, though, where if somebody is investigating another person they should be from a different work area, a different division and they are required to put in a conflict of interest form to declare they don't have any conflict or if there is a conflict and it's a minor, very minor one, it can be properly managed.
40 Okay, that's good. So we do attempt to avoid that conflict of interest.

But of recent months my position has moved somewhat in that irrespective of how - excuse me - how much I think that investigation will be conducted with integrity and the vast majority of them are, irrespective of that view, the fact of the matter is the Aboriginal
45 community and other members within the community, irrespective of how well conducted the investigation is or how poorly it's conducted, they will never have the confidence that it's

been impartially conducted. So my view is I'm completely open to any framework of oversight or investigation that government wishes to bring in, in which we operate within.

5 COMMISSIONER LOVETT: Still under basic governance though, investigating yourself, there's an issue there.

MR PATTON: Well, clearly we can see that in this one example that we know of. And as Counsel Assisting has pointed out, there will be others. I'm not saying that's a systemic issue, but certainly for Aboriginal people it is clearly an issue, especially with the low substantiation rates and the findings by IBAC in their investigation last year which recommendations we fully accept. So that's why, as I say, it's important that I still have the ability to deal with, and discipline, internally police officers who do the wrong thing.

15 But I don't think we could ever, police investigating police, especially in areas of Aboriginality, I don't see how we will ever be able to gain the confidence of the Aboriginal community and the faith in the system. And when I alluded to, earlier on today, some police not being held to account, we're only talking about the numbers of complaints that we do get. There will be, without a doubt, many others out there that we haven't received because there's no faith in us investigating the matters and in which haven't proceeded through some civil litigation area. So, yeah.

20 COMMISSIONER LOVETT: Do you think a police oversight system would be strengthened if we had an independent investigation of police complaints?

25 MR PATTON: I do now.

COMMISSIONER LOVETT: And you'd be open to that?

MR PATTON: Very much open to that.

30 COMMISSIONER LOVETT: Do you commit to advocating for that?

MR PATTON: I don't believe it's for me to advocate for. You may have a different view, Commissioner. I operate within the framework. If government ask me for advice on it, I'll certainly give them the advice that Victoria Police is open to operating with any external oversight body or framework they put in place.

MR MCAVOY: Thank you, Commissioner Lovett. Chair, it's now 10 to 4. I have still a not insignificant number of questions for this witness. What I propose is that we might take a short break and I might be able to rationalise some of those questions given what's already transpired, but my expectation is that we will be finishing, if we take a 10-minute break, something close to 4.30 and I'm just not sure whether that's suitable to Commissioners or other Counsel, and the Chief Commissioner of Police.

45 CHAIR: We are all good. The Commissioners are okay with that. Thank you.

COMMISSIONER BELL: Thank you.

MR MCAVOY: Is that suitable, Chair?

CHAIR: Yes.

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MR MCAVOY: If we just break until 4 pm?

CHAIR: Yes.

10

MR MCAVOY: Thank you.

CHAIR: It's eight minutes.

<ADJOURNED 3:52 P.M.

15

<RESUMED 4:03 P.M.

MR MCAVOY: I apologise, I was a little bit late getting back. You are aware, Commissioner, of the notion of a code of silence within the police services?

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MR PATTON: I can interpret it a number of ways. If you are referring to that police don't report on each other, is that what you're referring to?

MR MCAVOY: Yes.

25

MR PATTON: That has been the case in the past. I think we've done a lot of change in respect to that, but, yeah.

MR MCAVOY: And that's your evidence, that it's something that is a past culture of the police service; is it something that you say has been eradicated?

30

MR PATTON: I don't say it's been eradicated but certainly nowadays the tolerance levels of officers in respect to misconduct we see significant internal reporting of misconduct of officers by other officers, and it is a completely changed service in that respect, a completely changed organisation.

35

MR MCAVOY: Certainly there's no training at the academy that suggests to recruits that they should not report on other officers, is there?

40

MR PATTON: No. Quite the contrary. Our ethics training and all of those type, our values-based training and everything, there's an expectation that they will take proactive steps and they have an obligation under the Victoria Police Act to take steps if they see misconduct.

MR MCAVOY: So to the extent that those characteristics might exist in certain places within Victoria --

45

MR PATTON: I can't say that every individual officer in the organisation is going to act appropriately. As I've stated several times during the day, that I do want to reiterate importantly, our organisation, the vast majority of police officers in it act totally appropriately, in a decent, keen, community involved and diligent police officers but I can't speak for every
5 single officer.

MR MCAVOY: Certainly, but accepting that it is the case that in some places that culture might still exist, it's a culture that's learned on the job?

10 MR PATTON: I don't know that's necessarily the case, Mr McAvoy. I don't - I can't speak for the motivations of people who conduct themselves inappropriately or in a racist manner and where those learnings come from.

MR MCAVOY: You're aware, though, of an effect which is referred to in research as the
15 contagion effect or the peer effect on officers in relation to misconduct?

MR PATTON: I know what contagion means. I know that officers are certainly influenced by other officers in how to go about their duties. I haven't read any research of any contagion impact though spreading misconduct. But - so.
20

MR MCAVOY: But you accept that that type of conduct is something that occurred in the past?

MR PATTON: Yes.
25

MR MCAVOY: I want to take you for a moment to the evidence of Dr Tamara Hopkins who gave evidence last week to the effect that officers appear to have been appointed to senior positions notwithstanding that they have racism and integrity issues on their record. Are you aware of that having happened?
30

MR PATTON: I don't know who you are specifically referring to and what a racism and integrity issue - it depends (a) what she refers to as an integrity issue. It's a very broad word so I don't understand what that - I understand what integrity is, but whether she's suggesting that someone who's lied or someone who's - I don't know. It's a very broad one. But certainly
35 a police officer could still be promoted within the organisation if they've had a discipline finding against them, and then over the years have managed to rehabilitate their reputation and it might have been just subject to what the extent of the matter is. If someone makes a mistake or they've erred, depending on the extent of that, there is still the opportunity for them to be rehabilitated, for lack of a better word, and progress through the organisation. But it is always
40 considered in any promotional aspect and weight, as is appropriate, is placed on it.

MR MCAVOY: So - I withdraw that. In April 2022 you introduced the Neighbourhood Policing model --

45 MR PATTON: Yes.

MR MCAVOY: -- Victoria. Is it introduced throughout Victoria or in certain places?

MR PATTON: Completely across Victoria.

5 MR MCAVOY: You were present in the gallery when I was asking questions of Minister Carbinés in relation to that policing model?

MR PATTON: Yes, I was.

10 MR MCAVOY: Can you just explain for the Commissioners in your own words how the Neighbourhood Policing model operates?

MR PATTON: It's a key philosophy for myself and through discussions with government. I've described it as a back to basics policing approach and that's one of engagement with the community, it's about police being visibility, about police listening to the community, not
15 telling the community what we are going to do, but listening to what their concerns are, what their issues are, engaging in community forums, both online but visible meetings, as well as using community issues registers to record what aspects of concern communities have and dealing with them jointly and working with them in partnership and just as an example, I was
20 out the other week at Dandenong where we had a community safety forum and where all representatives of community can turn up along with council and other interested parties, and try and say well, these are our issues, this is how we want you, our police force, to help us solve them.

MR MCAVOY: And is this new model being monitored in terms of its outcomes or
25 performance?

MR PATTON: It is. There's an evaluation occurring at the moment as to the first 12 months, and as well as what outcomes had been achieved from it as well as areas we need to improve.

30 MR MCAVOY: So in terms of the outcomes, do you know off the top of your head what metrics are being recorded?

MR PATTON: No, I don't at the moment. Certainly for me part of that outcome would be increased community confidence, increased engagement with members of the community. It's
35 coupled with as well - well, not coupled with, but joined with our schools engagement program that I relaunched so that we're in schools and we're being seen as not the first encounter that youth have or other members of the community have; it's one that is a punitive matter as we saw during COVID, basically, but one where they're understanding that we are human. We're engaged in a whole range of programs. Even with Blue Light Victoria, they've
40 got a Blue EDGE program which we're involved in. It's educate, develop, grow and empower, which is involved with youth where police turn up and have meals with them, engage in sport and discussion and forums, all these type of things.

MR MCAVOY: Can you tell the Commissioners whether one of the metrics that is being
45 recorded in terms of monitoring is the suitability of the program or the degree to which the various Aboriginal communities in Victoria have responded to the program?

MR PATTON: No, I don't and it's not something that I'd raised. I hope that people smarter than I have already included that in the metrics to be done, but to your point, it raises something that I haven't mentioned to the Commission, and that is it became apparent to me when we were - when I was preparing and exploring the evidence for you today over a couple
5 of months, that Victoria Police has - whenever we give briefings, we brief government and we brief in a generalised manner. We don't apportion or try and discern between what that will do to Aboriginal communities, what that briefing on respective legislation is. We haven't captured the data we should be where we break up the impact on the Aboriginal community versus - not versus but juxtaposed against non-Aboriginal community. And so it's something
10 that I've already instructed that we need to be commencing to do from hereon in so that we can really measure the impact of any positive outcomes but also any harms and so that's a learning for us, that I can't believe I'm sitting here saying now, but that's what we're going to be doing moving forward.

15 MR MCAVOY: Thank you, sir. In your apology this morning, you observed that you want to make VicPol a place where Aboriginal people want to work. That was one of the last things you mentioned. Do you recall that?

MR PATTON: Yes, I do.

20 MR MCAVOY: Recruitment of Aboriginal people as police officers has been very slow, hasn't it?

MR PATTON: Yes.

25 MR MCAVOY: And hasn't met the targets and the police service's diversity and inclusion policy.

MR PATTON: No, it hasn't.

30 MR MCAVOY: Do you agree that community trust is probably the biggest impediment to recruiting Aboriginal people to the Force?

MR PATTON: Yes, I would. As - well, I don't speak with any expertise, but also there are other aspects to that as well, such as balancing that line with the Aboriginal community and being seen to be a part of policing, and what that means for their relationship in the community. But at its core it comes back to a lack of trust in policing.

MR MCAVOY: Are you saying, in other words, that shifting the police justice system from
40 being something that's done to Aboriginal people, to being a service that's provided for and with Aboriginal people?

MR PATTON: That's where we should be.

45 MR MCAVOY: Do you agree that community trust is likely to improve when officers participate and live in the communities that they serve?

MR PATTON: Yes. You're talking rurally, are you, or are you talking - yeah.

MR MCAVOY: Rurally.

5 MR PATTON: Yes.

MR MCAVOY: And in Aboriginal communities around Victoria, is there any reason why there shouldn't be Aboriginal police officers who are available to work with those communities and help ensure community safety?

10

MR PATTON: No.

MR MCAVOY: Is there a proposal to further recruit Aboriginal people to the police service in Victoria?

15

MR PATTON: Very much so. That's a key area of focus for us. We've set a target which we haven't achieved, as you rightly pointed out, and we're doing everything we can by - sorry, I shouldn't say that because I don't know we're doing everything we can. We're doing a lot at the moment to engage with those in the Aboriginal community. There are the challenges, though, as you say, because of the inherent generalised mistrust of policing, but also we have expanded our diversity and recruitment program where, I think it was in February this year it's, I think it's about a 15-week program, to give greater skills to Aboriginal persons to be able to get through our recruit training, and I think we had seven Aboriginal persons graduate from that program in February, which means that will put them in good stead when they, you know, hopefully apply for policing; they can say yes, now they understand that because they've come along and been given information about policing and mentoring, so that they're in a position where they should be able to make it through the academy.

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There's a number of traineeships we have. There are a number of different programs that we're engaging with to try and get more Aboriginal people represented within Victoria Police, as well as - I think we have 25 specific positions allocated for persons who are Aboriginal. And the ACLO, the Aboriginal Community Liaison Officer position, who's a public servant, but is the interaction between police officers, if you like, and community, we've increased those to 16. We are contemplating whether we can take it up to 17 and we've just had a recent review that will have seen the grade of their remuneration go up so that we can attract, make it even more appealing for persons to join.

40

MR MCAVOY: I now want to ask you some questions about police and Aboriginal complainants or Aboriginal victims of crime. Is the Victorian Police service doing anything to improve the experiences or outcomes for First Nations complainants in Victoria?

45

MR PATTON: I don't think - the only - the only specific actions that I can think of that are relative to First Nations peoples and as complainants is in relation to those who do come forward and make complaints against police, which makes them a complainant in a matter. We have, within Professional Standards Command, we've put in place, as I said earlier this morning, five Police and Aboriginal Liaison Officers. We have trained all of those in our conduct and Complaints and Compliments Unit to understand, to a degree, as much as they

can, cultural awareness and be culturally aware and we're looking at whether we can get an Aboriginal Community Liaison Officer within Professional Standards Command. So now every complaint that comes in from an Aboriginal person as a complainant is viewed through the lens of what does this mean for that Aboriginal person, and when it's allocated out, it's allocated out with advice. If it's not dealt with within by the Professional Standards Command and it's allocated out to the regions. It's given guidance so that our Ethics and Professional Standards officers will not just send cold but will engage with an Aboriginal Community Liaison Officer or a payload to add some cultural awareness, but that's my understanding about what we're doing at the moment.

MR MCAVOY: Are you aware that for some people in the Victorian Aboriginal community there's a reluctance to go and make complaints to the police about their being victims of crime because their experience is that their complaints aren't taken seriously, or that they themselves are - will be at risk if they go to a police officer or call the police into their house?

MR PATTON: Very much so and particularly so in family violence matters, where generally the affected family member is generally very reluctant to do so and the levels of reporting are much lower because of that reason, yes. We created a number of years ago a Family Violence Command specifically focused on addressing issues relating to family violence for all persons in Victoria, but also involved in ensuring that our police and Aboriginal community family violence protocols are effective, trying to work through issues that have been identified, not just in Aboriginal people but in non-Aboriginal persons where police misidentify the perpetrator in the first instance, and a range of things.

So from our point of view, long - sorry, a long-winded way of saying yes, I am aware of a lack of confidence, especially in the family violence area.

MR MCAVOY: Just out of interest, Commissioner, are you able to put a percentage on how much of a general duties officer's work is involved in dealing with domestic violence or family violence?

MR PATTON: I think off the top of my head and - it's probably at least 60 per cent of the time when they're out on the road. The last time - and these figures won't be right - but it was over 90,000 incidents in a year of reported family violence and I think we were attending something like, or responding to an incident, whether attending or dealing with it in a police station, something like once each six minutes. And it's one of the most difficult but one of the most important responsibilities we have, to try and address and --

MR MCAVOY: Have you heard - and sorry for cutting you off, but have you heard of instances in certain commands where it's up to as high of 80 per cent of the work of general duties officers?

MR PATTON: That's quite possible. That's quite possible. And that's why we established a few years ago specialist - family violence commands - family violence units. We have got 31 family violence units right across the State that have 415 staff in there responsible for investigating matters. We have significant training protocols. We have introduced video and audio recording of evidence at scenes to try and capture the information better and everything.

And it's a continual journey for us and one of the most challenging issues that we can try and address, because we must do that both in the Aboriginal and non-Aboriginal community.

5 MR MCAVOY: One final question, just - and if you can answer briefly. How prevalent a role does drug and alcohol and mental health play in that family violence space?

MR PATTON: Significant.

10 MR MCAVOY: Thank you. Is it possible for Victoria Police to equip Aboriginal Liaison Officers to take complaints rather than police officers from Aboriginal people?

15 MR PATTON: At the moment it's not because of legislative prohibitions, but we've actually asked the Department of Justice and said we would like to be in a position where an Aboriginal person can make a report to a - because at the moment you can only make a report of a complaint to a sworn police officer or a protective services officer. We would be completely open to and, in fact, it would add to the confidence of the community if they could report in a safe manner to an ACLO, Aboriginal Liaison Officer. So if that legislation goes through, well that will be fantastic.

20 MR MCAVOY: Thank you. Just briefly on the minimum age of criminal responsibility, a big topic to preface with the words "just briefly", but the evidence from the Attorney-General was to the effect that the development of an appropriate response to raising the minimum age of criminal responsibility was going to be a multiagency response. And in ensuring that that response is appropriate and adequate and provided on time for the commencement of that legislation next year, there's going need to be some involvement from the Victorian Police Service in the development of that response. Is that correct?

MR PATTON: That's right. We'll work with government on that.

30 MR MCAVOY: And it's something that you can tell the Commissioners here that the Victorian Police Service has no objection or resistance to that change in legislation?

35 MR PATTON: No. No. We - we've given advice in respect to raising the age of criminal responsibility along the way. And there's different levels. As I understand it, government is now proposing to raise it to 12. We hadn't - had initially been opposed to that, but our most recent briefings of the last several months is, whilst not supportive of it, we weren't opposed to it, which sounds a bit bureaucrat-y, I know. But we're fully supportive, and, sorry, I don't want to be long-winded, but I'm fully supportive of any alternative model, any alternative processes, any alternative services that will keep young children out of contact with the Criminal Justice system. And we've been involved in a range of different matters at local levels, through multiagency panels, through the outreach services we provide, through different reforms at government level, common client reform, better connected care and now what is being spoken of as an alternative service model.

45 We are absolutely focused on prevention and avoiding children being taken into custody. The numbers below the age of 12 will be a very small cohort and their offending will be at a much lower level because the offending from children covers the full spectrum, if you like, from

very minor offending to very serious. My issue is - and so the raising the age to 12, that will be a very small cohort.

5 The other contemplation in relation to, as I understand, government considering in 2027, whether it raises to 14 or not, the 12 and 13 year olds are in a different cohort. They're committing - some of them are committing very significant crimes ranging from sexual assault, arson, aggravated burglaries, carjackings, to murder. And in the absence of alternative service models, there needs to be a way for them to be held to account, and if it's contemplated to raise the age of criminal responsibility, what that means to victims, what it means to
10 stopping a range of criminal offending occurring, a whole range of different things, need to be considered.

MR MCAVOY: Yes, but you do accept that - this is a question - you do accept that the medical evidence about the state of neurocognitive development of young children,
15 particularly those under the age of 14, is quite clear. Do you accept that?

MR PATTON: I haven't read the materials you're talking about. I understand, broadly speaking, that young children develop at different levels. That's why we've - in the time I've been in the police, in Victoria Police, it's always been necessary to prove that a child
20 understood that they were doing wrong; mens rea, and then if police didn't show that a child understood what they were doing wrong to an adequate level where the court could be satisfied, then the matter was never proceeded with and it was dismissed.

MR MCAVOY: With respect, Commissioner, that's a different test to what the medical science tells us about neurocognitive development in young people. It tells us that they may know that it's the wrong thing, but they don't understand what the risks are and what the consequences are. And so that the medical science says that - I suggest to you - that to hold those young people to account in the Criminal Justice system is an improper way of dealing with poor decision-making by people whose brains are still developing. You're not aware of
25 the science and you can't comment on that?
30

MR PATTON: No, as I said, I'm not disputing what you're saying but there's a couple of aspects to it. From my perspective, how young people are dealt with once they've been apprehended committing an offence, it's not - we don't want to push them into a Criminal
35 Justice system. We don't want to put them into custody, but I have an obligation and a responsibility to the community for community safety and in the absence of an alternative - and I don't say this to overdramatise things - in an absence of alternative at 3 o'clock in the morning when a police constable has arrested a 13 year old or a 12 year old who is driving at a couple of hundred kilometres an hour in a stolen car or been involved in a
40 stabbing, in the absence of an alternative service model that will allow society to adequately deal with their conduct in whatever way, that's why I'm not supportive of it this time.

Now, if there are alternative service models in place, if the community is satisfied that there are appropriate ways of dealing with high levels of criminal offending, high levels of criminal
45 offending that are going to keep the community safe, that are going to satisfy victims of crime, that are going to keep young people out of criminality, then I'm open for it to be explored.

MR MCAVOY: Commissioner, on this point, my understanding is that the government has already made a decision about it. It's approved the raising of the age to 12 and with a raising to 14 in 2027 and if that's the case, isn't it the police service's job to get on with ensuring that that's been able to be done at an orderly fashion?

5

MR PATTON: I certainly agree that government is going to legislate and change to the age of 12. I haven't been formally briefed that they are definitely going to raise it to 14. My understanding was - and as I say, I haven't had these discussions with the Minister yet, I haven't had an opportunity - my understanding was that it was subject to, 14-year-old, alternative service models being in place.

10

MR MCAVOY: And that's the basis for the staggered approach, I suggest to you, that the government - the media that has been put forward suggests that it's - that the staggered approach is to allow the alternative service model to be developed with the 10- and 11-year-olds with a view to moving to the 12- and 13-year-olds in 2027 or earlier if available.

15

I suggest to you, Commissioner, that given the importance of this particular debate, it's important for you, as the leader of the Victorian Police Service to understand the issues surrounding the culpability and the development of young people's brains to properly engage in this discussion. Would you agree with that?

20

MR PATTON: Not necessarily, no, Mr McAvoy. The fact is government are responsible. They're the ones who make the decision. I clearly agree with that. We've provided advice to government about what would be necessary, alternative service models and what will be necessary to ensure community safety if the age of criminal responsibility is raised to 14.

25

We are very supportive - and I continue to emphasise this because I don't want to be misconstrued - we do not want young people in Criminal Justice. We are happy to divert them. We are happy to give cautions. We are happy to put in place any other alternative service models that can be designed, initiated as a whole-of-government matter. But Victoria Police, I have responsibility to make sure that we can provide community safety and stop significant high-end offending. And at the moment, we don't have the alternative service models in place that would, in my view, allow raising of the age to 14. And I realise that the plan is that that will come over the next period of time and Victoria Police, and I, are happy to engage and are actually on board in working with Justice or any other agencies to do so.

30

35

MR MCAVOY: Do you accept that in providing advice to the government in relation to the - to community safety, you're not only - it's not only appropriate for you to consider the immediate issues of community safety, but the long-term effects of the way in which policing acts upon the people in the system?

40

MR PATTON: Yes.

MR MCAVOY: And so that if you are going about criminalising young people at an age where they haven't yet fully developed and causing them to have an extended life in the Criminal Justice system where that might be averted, that's a matter that you need to take into account in advising on community safety, isn't it?

45

MR PATTON: When you say police are criminalising them, what we're doing at the moment is operating within the system and the legislation we have. And I thought - I tried to express that I've given advice to government that in the absence of any alternative service models, that is the best way to keep the community safe. If the government - and indeed, as I said, I'm very comfortable to participate and anxious to be able to participate in any alternative service models. But in the absence of that, I can only restate what I've said, Mr McAvoy, that we try and keep young children out of custody as much as we can, but I have an obligation to the greater community.

COMMISSIONER HUNTER: What numbers would we be talking about for that age group in high offending?

MR PATTON: I think - and I'm just trying to think which year, Commissioner, 19-20 maybe or whatever, I think, we're talking, like, overall between 10 to 13 years of age was initially - or - initially something like 1163 but then it comes down at 700-odd of those we have managed to divert and move out of the system.

COMMISSIONER HUNTER: No, high offending numbers.

MR PATTON: No, no, I'm coming down to that. And we end up with, I think it was 283 that were charged and you come down to about 62 that were high offending that were considered for remand.

COMMISSIONER HUNTER: What types? What's high offending? What's the definition of high offending?

MR PATTON: Murder, affray, aggravated burglaries.

COMMISSIONER HUNTER: So we would be talking between, say, 12 to 14. How many roughly would there be, say currently? Numbers that have high offending.

MR PATTON: Not dissimilar numbers to what I'm saying there then. Yes, 12 to 13. Below 12, they're not typically associated with that high-end offending.

COMMISSIONER HUNTER: They're not really high numbers, though; correct?

MR PATTON: No, that's right. In the highest end, no.

COMMISSIONER HUNTER: Thanks, Counsel.

MR MCAVOY: There has been some evidence in this inquiry including on Friday from the Attorney-General about the repeal of the public drunkenness - public intoxication laws.

MR PATTON: Yes.

MR MCAVOY: Police services are presently involved with other agencies in the development of that service model, alternative service model?

MR PATTON: Yes, we're part of an interdepartmental committee, yes.

5

MR MCAVOY: One of the matters which was raised with the Attorney was the possibility of people being upcharged because of the removal of the public intoxication option for police officers. Is that a risk, in your mind?

10 MR PATTON: It is a risk, yes.

MR MCAVOY: And how do you as a Commissioner for police combat that?

15 MR PATTON: We've - I've always said we are supportive of decriminalisation of public drunkenness and we have - we are in the final stages of finalising our policy that will operationalise that. We will then issue that policy and give face-to-face training for peak areas as well as online training, and the face-to-face training will take longer to roll out, but we will have mandatory online training as well as clear direction to all police officers in readiness for the decriminalisation occurring on 7 November.

20

MR MCAVOY: Thank you. Finally, I just want to ask you some questions in relation to deaths in custody. There were some questions asked earlier but I just want to ask you these questions. Noting that VicPol responded to the Coroner McGregor's findings regarding the death of Veronica Nelson on 24 March 2023, and in that response it was noted that there were 25 10 recommendations which directly concerned Victoria - VicPol actions, policies, et cetera. And those recommendations were accepted by the Victoria Police Service and a timetable was provided noting that nine of the 10 recommendations had been accepted and acceptance of the 10th in principle. Have I correctly summarised it?

30 MR PATTON: That's correct. Yes.

MR MCAVOY: Are you able to speak briefly to the status of the recommendations that have been accepted but not yet implemented?

35 MR PATTON: There are a number there I outline in my statement. I have written a letter back to the Coroner in respect to the recommendations.

MR GOODWIN: Sorry, Chief Commissioner, we're just checking something.

40 MR PATTON: I should have a copy here, I think.

MR MCAVOY: It's your letter of 24 March 2023.

MR PATTON: Yes.

45

MR MCAVOY: So if you can just have a quick look at that and refresh your memory. I want to ask you about recommendation 12.

MR PATTON: Yes.

5 MR MCAVOY: It's a recommendation - it's the 10th recommendation that directly concerns VicPol and it was accepted in principle?

MR PATTON: Yes.

10 MR MCAVOY: Is that right?

MR PATTON: Correct.

15 MR MCAVOY: As the LEAP system is currently unable to catch and retain all the data identified by Coroner McGregor; is that right?

MR PATTON: That's correct.

20 MR MCAVOY: And VicPol committed to explore whether any current systems could be modified to capture that data. What's the status of that inquiry?

25 MR PATTON: I'm not - I couldn't tell you off the top of my head, sorry. I know that we are exploring where we can, and it may well be if - if I was being frank, which I've tried to be all day, I don't know whether they will have - how much they've progressed in relation to that at this stage. It would be reliant on funding. But other than that as well, it speaks about capturing data in relation to which exceptional circumstance test applies and other matters, given the flux and commentary by government that there may be significant changes to the Bail Act. That may become a moot point or not but I can't give you an update, I can only undertake to provide one to the Commission.

30 MR MCAVOY: It's noted that, moving away from that particular recommendation, VicPol has acknowledged five additional recommendations that will impact Victoria Police and have committed to working with the relevant partners to participate in consultation and actions concerning those recommendations. Can you just identify what those recommendations are?

35 MR PATTON: No, I don't recall which ones they are. I know that we reviewed the entirety of the recommendations from the Coroner, and that whilst - and I do not at this stage recall which ones they were, though. But whilst the Coroner didn't direct those to us, they're matters that we would necessarily have input in relation to.

40 MR MCAVOY: Can you take that question on notice and undertake to provide to the Commissioners - identify those recommendations and what VicPol proposes with respect to those recommendations?

45 MR PATTON: Yes.

MR MCAVOY: The Day inquest also made numerous recommendations to VicPol. Do you know what the status of the recommendations are with respect to Victoria Police and the Day inquest?

5 MR PATTON: Well, there's a number of recommendations there that are varied and different stages, and, again, I've written to the Coroner in respect to that. But there's a number there and, for instance, the one that outlines about including a falls risk assessment is part of the
10 detainee risk assessment, I know that that has proven very problematic and difficult to undertake. We're certainly making awareness of that but the falls risk assessment is primarily done by qualified medical persons and that, therefore, to expand that out to within a policing environment is very difficult. There's a range of different approaches there that we are still progressing, and several of the matters are at different state.

15 MR MCAVOY: Commissioners, that response is perhaps provided in a bit more detail at paragraph 81 of the Commissioner's statement. Commissioner, I just want to put one question to you. Have you heard of the fictional charge of 'driving whilst black'?

MR PATTON: I've heard the comment. There's no such charge. It's offensive, but I've heard the comment.

20 MR MCAVOY: There's some evidence given to this Commission by Dr Cubillo, an Associate Dean at Melbourne Law School, who is an Aboriginal man, Larrakeyah and Arrente man, who was stopped in his car, made to sit in the gutter whilst the police ran checks on him and that's how he described what he had been stopped for. Of course, it's the use of humour to deal with
25 distasteful conduct. It's sometimes referred to as gallows humour. But - the existence of that belief by Aboriginal people that they are being treated in that way indicates a much deeper malaise in the relationship between Aboriginal people and the Victorian Police. Do you agree with that?

30 MR PATTON: If that's a belief that's broadly held, yes.

MR MCAVOY: And what you've given evidence about today, and the tenor of our apology is that, in your own words, that this can be a watershed moment for the Victorian police and the relationship with the First Peoples of this State?

35 MR PATTON: Yes.

MR MCAVOY: And there are a number of things that are happening but do you agree that there's a lot more to be done?

40 MR PATTON: Very much so.

MR MCAVOY: Commissioners, they're my questions. I understand that my learned friend, Mr Star, has a couple of questions and that I also understand that, Commissioners, you may
45 have some final questions of the Commissioner.

CHAIR: Thank you.

MR STAR: Thank you. I will be very brief. Chief Commissioner, you were asked some questions about the ACAT training, the Aboriginal Cultural Awareness Training, and you referred to, on a number of occasions, to it being completed by the end of 2024 and there were
5 difficulties with that, and you also referred to issues with other training streams. What is the difficulty that it needs to extend out to the end of 2024 and why do you refer to other training streams in this context?

MR PATTON: Well, there are other mandatory training schemes as well, there's human
10 source management, and numerous others, there's disclosure provisions. When legislation changes, we're required to implement reforms and training and then so more training schedule gets added on top of it. It's getting the balance right and prioritising what's the important matters and so that's the complexity.

MR STAR: Are you able to indicate to the Commission how much time a police officer
15 spends in training as opposed to policing activities and comment on, again, trying to connect it to why does the ACAT training need to extend out to the end of 2024.

MR PATTON: I don't have the actual number of days that we spend on training but it is
20 significant. And, as I said earlier, we need to make sure - yes, it's going slowly - well not as fast as I'd like, but we've got to get it right and it's something we can't rush.

MR STAR: And the last topic I wanted to ask you a question about, you were taken in some
25 detail to the folder of documents in relation to the matter of Tommy Lovett, and you yourself referred to at one stage systemic racism and with the process of a complaint only proceeding if there were - was a statement from the complainant and you said that that's changed. Can you just say when that changed and why?

MR PATTON: I believe we've brought it in mid to late last year as a result of the IBAC report
30 and our review of that.

MR STAR: No further questions. I am aware -

MR MCAVOY: I have nothing arising from Mr Star's questions, Commissioners. I do
35 understand, though, that the Chief Commissioner would like to make some closing remarks, is that correct?

MR PATTON: I'll await the Commissioners.

COMMISSIONER WALTER: Thank you, Chief Commission, for your apology and for your
40 candour today and your commitment to engendering real change. However, as First Peoples we are very aware of the gap between commitment and action, and very well versed in being fed platitudes and aspirations by those who have the power to make change as if that would be
45 enough for us.

So I'm going to be looking forward to the next 12 months and really looking forward to some actions and outcomes to change that relationship between Victoria Police and Victoria's First Peoples.

5 MR PATTON: Thank you.

COMMISSIONER LOVETT: Under Treaty, there may be a request to - for Victoria Police to transfer power and resources. Do you give an undertaking to support broadly the principle of transferring power and resources to the community through the Treaty process?

10

MR PATTON: I don't think I'm in a position to give that undertaking. That's a government undertaking. Certainly, self-determination is an important, very important, matter, and we're supportive of self-determination.

15 COMMISSIONER LOVETT: One last one. Legacy, I asked the Minister this morning; I'd like to ask you the same question about what's the legacy in the context of today that you would like to leave when you finish in Victoria Police?

MR PATTON: Legacies are a very difficult thing. Sometimes you don't get to choose what
20 your legacy is, it's dictated to you. But in an ideal world, speaking about my appearance here today and the learnings that I've made along the journey arriving to here, the legacy I would want is one where Victoria Police is not seen as a symbol of fear or hatred, but we're seen as a police organisation that is representative of all Victorians including Aboriginal people, where Aboriginal people trust in us, where Aboriginal people wish to join us, but also that the actions
25 I intend to implement and have implemented already which I continue to enhance on and build on, that they result in that when an Aboriginal person is taken into custody, because that will still continue to occur, but when it occurs they are treated in a respectful, culturally safe manner and that we don't have any more deaths in custody.

30 COMMISSIONER HUNTER: Can I just reiterate that the symbol that was given to you today was about our people and from this moment on you have apologised and that is a symbol to protect and serve our people as well because you talk a lot about community safety, but our community does not feel safe with the police. So I'm hoping the apology and the symbol that you've got today of the shield becomes something that you can look at and look back on and
35 things change for our people; that they feel protected and are served by Victoria Police.

MR PATTON: Thank you, and I only go to reiterate what I said this morning, that the significance of the symbol of the shield is not lost on me and it will serve as a reminder to ensure that apologies and procrastination means nothing. It's about action.

40

CHAIR: Thank you. I would just like to reiterate that I've heard you say a few times about learnings, preparing for this hearing, and I think that's really important because we find that there's such ignorance in the mainstream community, whether there's a professional connection or not, and one of our goals is a shared understanding, and a shared understanding
45 comes from knowing the history and most people do not know the history from our perspective, obviously. And it's not in our schools, but I would like that you become part of the story because of your learnings to get here, your commitment today, and what we've asked

you to do from hereon in. So I thank you very much for your words today, and look forward to what happens in the near future in Victoria Police as well. But I thank you very much for your evidence.

5 MR PATTON: Thank you.

CHAIR: Thank you, Counsel.

10 MR MCAVOY: Chair, that concludes the evidence for today. I understand that the Chief Commissioner did want to make some closing remarks.

15 MR PATTON: I think we have very much covered it. I will be really brief because I don't want to just repeat myself. But, as I've said, I've had - a significant amount of preparation has gone into today. I have learnt a lot. Our organisation has learnt a lot. We have been - I firmly believe the majority of Victoria police officers are not racist, intentionally so. We exist in a system that produces systemic racist outcomes. I acknowledge that.

20 And I just commit here that I will do everything within my power and authority to make sure that we represent and ensure the safety of the Aboriginal community, and understanding that it can't be piecemeal, it has to be a joined-up approach with other government agencies and it has to be transformational because otherwise we are not going to achieve what we need to do.

CHAIR: Thank you very much.

25 MR PATTON: Thank you.

MR MCAVOY: Thank you, Chair. It's appropriate to now adjourn. The next sitting day of the commission is on Wednesday, 10 May, I understand.

30 CHAIR: Yes.

MR MCAVOY: And I understand Ms McLeod KC will be taking the witness on that day.

35 CHAIR: Thank you. We are now adjourned to Wednesday at 10 am, thank you.

<ADJOURNED 5:00 P.M.