YOORROOK Justice Commission

TRANSCRIPT OF DAY 3 – 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, 1 MAY 2023 AT 10.06 AM (AEST)

DAY 3

HEARING BLOCK 5

MS SARALA FITZGERALD, Counsel Assisting
MS GEORGINA COGHLAN KC, on behalf of the STATE OF VICTORIA
MS ELIZABETH BENNETT SC, WITH MS CARLY MARCS, on behalf of the witness

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<RESUMED 10:06 A.M.

CHAIR: Today we will hear from Katherine Whetton, and Eleanor Williams, who appear on behalf of the Department of Health. This is the third day of hearings in the Hearing Block number 5 where we are primarily hearing from government witnesses on the priority areas of child protection and Criminal Justice. Before we start today's hearing, I would like now to invite Commissioner Hunter to give a Welcome to Country and acknowledgement.

COMMISSIONER HUNTER: Thanks, Chair. I would like to acknowledge that we are on my ancestral lands, the lands of the Wurundjeri. I pay my respects to Elders past and present and acknowledge those that went before us to give us voice here today that we are able to speak our truths. I also want to honour those of our children currently in the child protection system, those men and women that are currently incarcerated in the systems and acknowledge their pain and hurt and the injustices that have put them where they are today. May Bunjil watch over us as we conduct Aboriginal business. Thank you.

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

MS FITZGERALD: Sarala Fitzgerald, Counsel Assisting.

MS BENNETT: Commissioners, my name is Elizabeth Bennett and I appear with Ms Carly Marcs on behalf of the witnesses.

CHAIR: Welcome. Thank you.

MS FITZGERALD: If the Commission pleases, I now call today's witnesses, Katherine Whetton and Eleanor Williams.

<KATHERINE WHETTON, CALLED

<ELEANOR WILLIAMS, CALLED

MS FITZGERALD: I understand that before making a truth declaration, you would each like to acknowledge Country?

MS WHETTON: I would like to acknowledge the Traditional Owners of the lands we're meeting on today, the Wurundjeri people, and I pay my deep and sincere respects Elders past and present and those emerging. I would like to acknowledge too those who have given evidence before today, particularly Elders, and acknowledge their extraordinary strength and courage in sharing their testimonies. I would also like to acknowledge and thank each of the Commissioners for the opportunity to appear today.

MS WILLIAMS: Thank you, and thank you for the opportunity. I would also like to acknowledge we are meeting on the lands of the Wurundjeri people today, the Kulin Nation, and pay my respects to Elders past and present and to all First Peoples in the room today and our colleagues from the Department of Health as well.

MS FITZGERALD: Ms Whetton, do you undertake to give truthful evidence to the Yoorrook Justice Commission today?

MS WHETTON: I do.

MS FITZGERALD: And, Eleanor Williams, do you undertake to give truthful evidence to the Yoorrook Justice Commission today?

MS WILLIAMS: I do.

MS FITZGERALD: Ms Whetton, you are the Departmental Secretary of Mental Health and Wellbeing. Could you explain your professional background and qualifications to the Commissioners?

MS WHETTON: Thank you, Ms Fitzgerald. I'm the Deputy Secretary of Mental Health and Wellbeing in the Department of Health. I have worked in the Victorian public service for just a bit over 20 years. I have an Arts degree with an Honours in Psychology, a Post-Graduate Diploma in French and Executive Master's of Public Administration and in my time in the public service, I've worked across Departments of Premier and Cabinet, Education and now Health.

MS FITZGERALD: And, Ms Williams, will you do the same, explain your professional background.

MS WILLIAMS: So I'm the Executive Director of Strategy and Policy in the Mental Health and Wellbeing division in the Department of Health. I hold a Master's of Public Policy and Management and a Master's of Evaluation. And similarly to Ms Whetton, I've worked in Department of Premier and Cabinet and for the past about six years I've worked in the Department of Health and before that in the Department of Health and Human Services when the departments were combined.

MS FITZGERALD: And the department has provided a statement that covers themes of mental health, social and emotional wellbeing, the use of alcohol and other drugs, and public intoxication.

MS WILLIAMS: Yes.

MS FITZGERALD: Although it has been signed by the Secretary, Professor Wallace, the opinions expressed in the statement are representative of the department and, in particular, the Mental Health and Wellbeing division. Is that right?

MS WHETTON: Correct.

MS FITZGERALD: They have been informed by staff's first-hand professional experience and observations and by data and information produced or provided by subject matter experts. Is that right?

MS WHETTON: That's correct.

MS FITZGERALD: Before we hop into the substance of your evidence, I might mention one thing about timing and breaks. I understand that at some point today at about 12.30, there may be some building works upstairs and so we had an ideal finishing time of 12.30. So, Commissioners, normally we would have a break for morning tea. And I thought - my understanding is that it might be appropriate, given we do have somewhat of a hard finish, we might just play it by ear where that break happens and how long it is.

CHAIR: Thank you, Counsel.

MS FITZGERALD: Thank you, Commissioners. We'll start with the statement. Ms Whetton, I ask you to confirm that the contents of that statement are true and correct.

MS WHETTON: They are.

MS FITZGERALD: And I'll tender the statement at the end of the evidence, Commissioners. At paragraph 16 of the statement, the department accepts that ongoing and systemic racism and discrimination and intergenerational trauma caused by Colonisation and dispossession impact significantly on First Peoples' health and wellbeing and are an intrinsic consequence of historic and ongoing government policy and practices. So the department accepts that government policies are currently giving rise to racism, discrimination and trauma.

MS WHETTON: I accept that.

MS FITZGERALD: The department says that health-related factors drive involvement with the child protection system but also that involvement with child protection itself negatively impacts on the health of families. Is that the department's position?

MS WHETTON: It is.

MS FITZGERALD: And I should say there are two of you in the witness box. And as I understand it, as the Deputy Secretary, you will be able to address some of the more overarching issues and that, as a subject matter expert in particular areas, Ms Williams will address some more of the detail, but as between you, you can feel free to answer the questions you have more informed knowledge about.

The department also states that involvement in the child protection system is both driven by parental mental health issues and contributes further to mental health illness due to the impact of family separation and childhood trauma. Is that right?

MS WHETTON: Yes.

MS FITZGERALD: So, you accept that it is a vicious cycle to which the system itself contributes?

MS WHETTON: It is.

MS FITZGERALD: And it seems like the current child protection system operates in a way that potentially creates more work for itself. Do you think that is the case?

MS WHETTON: Yes, I would agree that's the case.

MS FITZGERALD: And do you accept that reducing the involvement of First Nations People in the child protection system cannot be done by the Department of Families, Fairness and Housing alone; that health and mental health feed into the involvement with that system?

MS WHETTON: Yes, health certainly plays a role in that prevention space.

MS FITZGERALD: And that is your department's area of responsibility?

MS WHETTON: Yes.

MS FITZGERALD: The statement says at paragraph 19:

"*More than 60 per cent of the children reviewed as part of Taskforce 1000 came to the attention of child protection as a result of parental mental health issues in combination with other risk factors and that parental mental illness was found to be a common reason why many children could not be returned.*"

The Commission has heard from a large number of Aboriginal community-controlled organisations, or ACCOs, and what is striking is that they look at all of the issues facing the human before them - all of the issues that are contributing to the problem. Do you accept that the way the government divides up its departments often doesn't allow any one of them to fully address the causes of a person's problem behaviour?

MS WHETTON: The government does structure itself in a way that means that there are portfolios with specific responsibilities. I would say that there are - either through monitoring, governance and reporting, that there are ways of bringing things together, but your first statement that, yes, the structures do mean that you have pretty separate responsibilities.

MS FITZGERALD: And as you say, although the department accepts in its statement that there are significant areas of intersectionality, it's a barrier that the Health system and the child protection system and the Criminal system are all sitting in separate silos, if you like, in different government departments with separate budgets and each of them will only deal with their part of the problem because that is all they are authorised to do?

MS WHETTON: Portfolio lines do then set up the authorisations for responsibility. I think, then, there's a role for senior public service staff to collaborate and come together. But your first statement that the way things are structured mean that you are authorised to perform particular functions.

MS FITZGERALD: That my statement is correct?

MS WHETTON: Yes.

MS FITZGERALD: At paragraph 32 of the statement, the work of Balit Durn Durn Centre of Excellence in Social and Emotional Wellbeing is discussed, and the model is ensuring that there isn't a wrong door for Aboriginal people to access support. And do you agree that this is in response to this - the very siloed nature of government; that it can create wrong doors for Aboriginal people with mental health or drug and alcohol problems in both the child protection and the Criminal Justice systems?

MS WHETTON: Balit Durn Durn Centre has been, or is being developed and established in directly in response to the Royal Commission into Victoria's Mental Health system. And so one of the key drivers there is that the Royal Commission found and why it recommended the Balit Durn Durn Centre was that there should be no wrong door for First Peoples to be able to access health and wellbeing services and so whether that be through ACCOs or ACCHOs, or whether that be through mainstream health services, that was the reference to no wrong door.

MS FITZGERALD: Is it a response that there have been a lot of wrong doors for Aboriginal people looking for help in the mental health system?

MS WHETTON: Yes.

MS FITZGERALD: Moving to child protection, we know that a contributor to some First Nations parents losing their children is their mental health or drug and alcohol issues. Is it right to say that there is a huge demand for alcohol and other drug services in Victoria, more than can be met at any one time?

MS WHETTON: The current alcohol and other drug service system is under very significant strain at the moment.

MS FITZGERALD: Are there waiting lists for these services?

MS WHETTON: I believe there are waiting lists for those services.

MS FITZGERALD: This might be too much detail for you and I'm not sure, Ms Williams, whether it's something you may like to address. But if I decided today that I was ready to do something about a very severe drug or alcohol addiction that I had, what would I need to do to get into, for example, a residential rehab?

MS WHETTON: I'll try and step through the way people come into the AOD service system. So, there are a number of ways of accessing treatment, care and support. That can be either through call to direct line, it's a 24/7 number where you can call to self-refer. You could also be referred through a general practitioner, or if you were in contact with the Criminal Justice system, for example, you might be referred into the AOD service system. That would then mean that you were in an intake and then an assessment phase, and when you're assessed there is priority given to some factors for a person's life. So, for example, if you are being assessed for treatment, if you are First Peoples, if you are involved in the child protection system or if

you are in a family reunification order, so the court has asked you to seek treatment so that there are some things - or you have a mental health illness - so there are some factors that mean you are prioritised for service.

MS FITZGERALD: And how does that prioritisation work in practice? Assuming I was on a FRO, how long would it take - sorry, a family reunification order, how long would it take once - from that assessment stage for me to get into a residential rehab service when I'm being prioritised?

MS WHETTON: I would need to take that on notice about how long, just to perhaps have some data about how long that wait time might be. So, I could come back to you on that if it would assist.

COMMISSIONER WALTER: When you are getting that data, could you provide us with data on not just a priority, but how if much somebody doesn't - I mean, I can see that most of those peoples would actually probably meet all four. Do the priorities add up? If you're First Peoples and you're on a family reunification order, does that up your priority or is it just all equal? Is it the same? But also, how long would it take if somebody wasn't on one of those reunification orders, on average. I'm sure you've got some figures for average for the last year?

MS WHETTON: Yes. We can get that, thanks, Commissioner Walter.

MS FITZGERALD: Given that children are still being removed because of parental mental health and drug and alcohol reasons, do you accept that some parents are still not getting the help they need within the necessary timeframes?

MS WHETTON: I'm not sure of the definition of a necessary timeframe but I would say that there would be people who would still have trouble getting the care and treatment that they need.

MS FITZGERALD: Are you aware that the legislation only gives a parent two years to sort themselves out before the permanency objective requires that a - if they can't be with their parents, at that point, it requires they be permanently placed with someone else?

MS WHETTON: I'm aware.

MS FITZGERALD: So, thinking about all of the intersecting issues that some First Nations parents have, do you accept that it can take a long time to address and resolve those issues, particularly if we are thinking about mental health and alcohol and drug addiction?

MS WHETTON: It can take some time, once people do access treatment and care, to resolve their challenges. I would say that's a very individual thing, so for each person who might be accessing AOD treatment that it's hard to put an exact timeframe, but it may be less than two years, and in some cases it would be more.

MS FITZGERALD: Yes. So you accept that the issues cannot always be resolved in two years?

MS WHETTON: Not always.

MS FITZGERALD: And even though people on a family reunification order are prioritised, there is no guarantee that those people will get what they need in time, is there?

MS WHETTON: I don't believe there's a guarantee.

MS FITZGERALD: And -

COMMISSIONER HUNTER: Sorry, Ms Fitzgerald. So are we saying that - basically we're saying that parents can't get their children back, if they can't access drug and alcohol rehab or detox or whatever wording you want to use, because they may - one, may not fit the criteria, and we have heard evidence of that within in-custody and outside. And so the system isn't working correctly, or have long wait lists. So children may go on permanent care orders because they can't access what they require. Is that correct?

MS WHETTON: If they can't access what they require, that could then, yeah, lead to a challenge with that family and the child not being able to be with their family.

COMMISSIONER HUNTER: If it's court ordered that they have to go to detox but they can't get in, then that leaves the child in out-of-home care.

MS WHETTON: That would be correct.

COMMISSIONER BELL: May I ask a follow-up question. As the Royal Commission found historically, people needing mental health treatment, care or support experienced widespread and profound difficulty over many decades in obtaining that support.

MS WHETTON: The Royal Commission into Victoria's Mental Health System found that, and the language of the Royal Commission was that it had catastrophically failed Victorians.

COMMISSIONER BELL: Yes.

MS WHETTON: And there is certainly parts of the Royal Commission's inquiry that go precisely to the support that wasn't there, or hasn't been there and isn't there always for First Peoples.

COMMISSIONER BELL: And it's the case, isn't it, that among the Victorians that the system catastrophically failed were a very large number of Aboriginal people.

MS WHETTON: First Peoples are overrepresented in a lot of the materials around that they do face more psychological distress, they may be less likely to seek help, and, yes, that they are disproportionately affected.

COMMISSIONER BELL: And the catastrophic failure with respect to them would have significantly contributed to difficulties within families where it was parents that were needing support that they could not obtain?

MS WHETTON: It absolutely would.

COMMISSIONER BELL: And it would follow, wouldn't it, that the catastrophic failure over a long period of time would have contributed significantly to the incidence of child removal of Aboriginal people from their families?

MS WHETTON: Yes.

COMMISSIONER BELL: Thank you.

COMMISSIONER HUNTER: Can I just follow on from Commissioner Bell's point. So, substance abuse and addiction and mental health, so they continue, as we can see, to be punished in a punitive way. Would you say health is the key driver for offending, yet it's not our number one priority?

MS WHETTON: I think it's a contributing factor. I'm not sure if I'd say it's the key factor, but it's certainly a very important factor in people's lives and then for their interaction with child protection and Criminal Justice.

COMMISSIONER HUNTER: Would you agree that health should be a core response to those issues?

MS WHETTON: It should absolutely be a core response.

MS FITZGERALD: In your witness statement - in the department's witness statement, rather, at paragraph 63 there is a discussion about the need to better address some of the contributing factors identified in your response through investment and prevention, and that whole paragraph is very much reflecting, in fact, what the community has been saying for some time: That there is a need for prevention and to address contributing factors to child protection involvement, and the department accepts that.

MS WHETTON: Yes.

MS FITZGERALD: And two of those contributing factors, to child protection involvement, are domestic violence and drug and alcohol addiction; that's accepted?

MS WHETTON: Yes.

MS FITZGERALD: And, done properly, the public health response to public drunkenness would, therefore, directly address some of the lead causes of First Nations people's getting caught up in the child protection system. It could have that dual impact.

MS WHETTON: It could have that effect, related.

MS FITZGERALD: The Health response to public drunkenness will involve outreach services being provided to intoxicated people, and those services can make referrals to other services. Has child protection been thought about as one of the outreach services or referrals that might be made as part of the Health response?

MS WHETTON: I might ask Ms Williams in a moment to go to the child protection point and our work there. But before we do start talking about public intoxication, I did just want to acknowledge it's a sensitive area and I'd like to acknowledge that we are talking about the very terrible circumstances of the passing of Aunty Tania Day and just how distressing those circumstances are. I'd like to express my deepest condolences to the Day family and recognise that some of what we might talk about in responding on this issue could be triggering for some people. And also I'd like to acknowledge the strong advocacy over a very long time for this overdue reform.

MS FITZGERALD: And without that family's advocacy, we might still be waiting for reforms.

MS WHETTON: That's right.

MS FITZGERALD: Yes, so the question was about whether child protection has been thought about as one of the outreach services that might be provided in the response.

MS WHETTON: It is possible that child protection could be in there, but actually the outreach and sobering services proposed under the public intoxication reforms are a very brief intervention, and so it's more likely that somebody would be referred on to another service like a homelessness service or a family violence service or a mental health service that then could potentially have involvement with child protection. But it's very unlikely from the brief intervention, the point in time where someone was found publicly intoxicated, that it would have any direct referral on to child protection.

MS FITZGERALD: And it is overall the department's view that public intoxication should be treated as a health issue?

MS WILLIAMS: Absolutely.

MS FITZGERALD: And to date, it has been treated as a law and order issue and rather than helping, you accept that, to date, the state has criminalised and imprisoned First Nations People.

MS WILLIAMS: Yes.

MR KNOWLES: The Department of Health has provided an apology in its statement to First Peoples who have died in custody who did not receive a health-based response to public intoxication.

MS WILLIAMS: Yes.

MS FITZGERALD: And implicit in that apology is an acceptance that if those people had received a public health response, they may not have died.

MS WILLIAMS: That's right.

MS FITZGERALD: And because of delays in implementation, at this moment, First Nations peoples can still be arrested by police for being intoxicated?

MS WHETTON: Yes.

MS FITZGERALD: In public, I should say. And this is at a time when the State accepts that this is the wrong thing to do.

MS WHETTON: Yes.

MS FITZGERALD: In fact, Parliament, the people elected by Victorians to represent them, voted to abolish that crime from November 2022; that's right?

MS WHETTON: Yes.

MS FITZGERALD: And it was at the behest of the Executive that the crime stayed in place for an additional year; is that right?

MS WHETTON: Yes.

MS FITZGERALD: And at page - sorry, paragraph 105 of the statement, it's noted that delays were largely associated with COVID-19. What were the other causes of delay?

MS WHETTON: Thank you for the question. It's definitely the case that the COVID-19 pandemic has contributed significantly to the delays that we've experienced in the decriminalisation of public intoxication and standing up the health-led response. There have been some other challenges as well that have contributed, and some of it a bit driven by the pandemic. So, we've had some significant challenges in workforce recruitment in our trial sites. We've also found that the construction sector has had some delays where there has been a need to fit out a building to enable a sobering service for the trial sites, as well as then the planning system and the time that it takes for that.

And also one of the things that we've found as we've undertaken the work in this reform is that the service model, we needed to do more work on the service model to develop the trial sites than we had anticipated when we first set out. So we were very focused on the trial sites get up and running very quickly, but it's become apparent that we needed to do quite a bit of service model design to even have the trial stand up while then also working on the state-wide response.

MS FITZGERALD: I'm not sure who this is a question for, but do you accept it was known by those making the decision about whether to delay that removing these laws risked further Aboriginal death ins custody?

MS WHETTON: Yes, that was acknowledged, that the risk would remain for that time.

MS FITZGERALD: And the government knew that this could be the result of the extension, didn't they?

MS WHETTON: Yes.

MS FITZGERALD: If I could have one of the -

COMMISSIONER WALTER: Can I ask - are you finished with the trial sites?

MS FITZGERALD: For a little while, so definitely -

COMMISSIONER WALTER: I was going to ask what's the current status of the trial sites now? How developed are they?

MS WILLIAMS: Yes. So all four trial sites are operational. So there's one trial site in Yarra which is based quite near here, in Gertrude Street. There's one in Greater - well, there's services operating in Greater Shepparton, in Greater Dandenong and in Castlemaine, which is Mount Alexander Shire. All sites are now considering their transition planning, because we are in the process of moving across to the state-wide model, and the sites for the state-wide model are different from the trial sites. So they are all operating in different sort of formations because they were testing different models, so different levels of demand and different demographic profiles in each location. And then they are all working on how they will stand down by November to transition into the state-wide model.

COMMISSIONER WALTER: So 7 November is a definite date. It's not going to be another 12 months delay because the trial sites have taken a lot longer to get going?

MS WILLIAMS: That's right. There has been agreement that the state-wide model be established alongside the trial site, so we are continuing to learn about and from the trial sites right up to the moment of state-wide implementation.

COMMISSIONER WALTER: Will there be a public report on the evaluation of the trial sites before 7 November?

MS WILLIAMS: There will. So the evaluation issued a report in August. So an interim evaluation was undertaken last year in November.

COMMISSIONER WALTER: But the trial sites weren't up then?

MS WILLIAMS: Yarra was operating in almost full capacity. That's right. So that one's primarily an evaluation of the Yarra site.

MS FITZGERALD: Sorry, Commissioners. If I could ask the operator to bring up DJCS.006 - no, I think it's 0006.0001.0284, which is the government response to the report of the Expert Reference Group on Public Drunkenness. And for the witnesses, that should be tab 7. Thank you, operator. Could we now move to - I think we can stay on page 1 and if we could move down to the bottom half of the page. In the government's response to the Expert Reference Group on Public Drunkenness, a commitment is made to decriminalising public Drunkenness and implementing a public health model to ensure those who are intoxicated in public can access the healthcare and support they need. Is this access to additional services or - that are being put on, or is this simply referring into the same pool of existing alcohol and other drug services?

MS WHETTON: The government's commitment in that statement was certainly around having a dedicated health-led response to people found publicly intoxicated.

MS FITZGERALD: And so that is - although the word access is used, it's not just access. It will provide new services.

MS WHETTON: There are new services as part of that health-led model.

MS FITZGERALD: At paragraph 56 of the department's statement, you do discuss the challenges that have faced you in this response. Modelling suggests that 2500 more workers in the public mental health system will be needed over the next three-and-a-half years just to stabilise the system and implement currently funded reforms. And at paragraph 59 of your statement, it's confirmed that this additional recruitment must occur in a system where there are already widespread vacancies; is that right?

MS WHETTON: Yes.

MS FITZGERALD: And so given there are not enough people to fill the current roles in the public mental health system, where is it planned to get 2500 more from?

MS WHETTON: There's a significant piece of work underway in response to the Royal Commission into Victoria's Mental Health System to build the Mental Health and Wellbeing workforce. So that two and a half thousand number that's there, that we've modelled, we have been working on a series of initiatives and there's a Mental Health and Wellbeing Workforce Strategy - and, again, Ms Williams might have more detail she would like to provide but there's a focus on building the pipeline, so more training and education of people. It takes some time to have people reach the certain qualifications to join the sector, as well as then seeking to retain the existing workforce as well. But the pandemic has had a big impact on the health system overall including the Mental Health and Wellbeing system and including the workforce.

MS FITZGERALD: And further down on that page, the - I might just read it from here:

"*The government acknowledges that adequate resourcing is a key factor in the successful implementation of these reforms.*"

Would you accept that adequate resourcing is the key factor in the successful implementation of the reforms?

MS WHETTON: I think it's one of the key factors.

MS FITZGERALD: Do you accept that it is more important than all the other key factors? That successful - sorry, that adequate resourcing will end up being the most important of all the factors in the success of this reform?

MS WHETTON: The reason I say it's a key factor is there are some other things that are needed, and I'll just go to one example, is that public intoxication and decriminalising it means a significant culture change in our community as well. So I think in terms of - there are lots of aspects to this. There's - definitely a key factor is the resourcing of a health-led model, but I do think there are other things about how we educate the broader community to see that public intoxication is a public health issue, it's not a Criminal Justice issue, so that people don't find themselves thinking that the first thing that they would do is call the police if they do come across someone who is intoxicated in public. So I just pull that out as one example, but I do think it is important that resourcing is very important, but there are other aspects as well.

MS FITZGERALD: And is it right that the department advised the rest of government that there would be significant implementation risks if government supported a 12-month deferral without adequate funding to enable immediate commissioning of state-wide services?

MS WHETTON: We did.

MS FITZGERALD: And was funding provided to enable the immediate commissioning of state-wide services?

MS WHETTON: Yes.

MS FITZGERALD: At that time?

MS WHETTON: Yes.

MS FITZGERALD: And if I can take you back to 2 June last year: is it right that around early June or perhaps at the end of May, the funding for public intoxication reforms was only confirmed to 30 June, less than 28 days, before the money ran out? I haven't put that question very well, sorry. But is it right that a funding decision on trial sites and funding the public intoxication reforms was only made 28 days, or less than a month, before the funding was about to run out?

MS WHETTON: I think that's - I will say, Ms Fitzgerald, just checking - are we able to answer that question?

MS FITZGERALD: That is a question on notice. We might come back to that question.

MS WHETTON: Thank you.

MS FITZGERALD: So it is true to say, though, that government was aware that this risked, that its funding decisions in general and the extent to which they - how long they were was risking staff attrition and uncertainty for trial sites.

MS WHETTON: That's definitely the case, yes.

MS FITZGERALD: And without a funding decision, the Department of Health - without those funding decisions, you can't fund things like fit-out activities to establish trial sites or allocate funding for standalone Aboriginal service responses, can you?

MS WHETTON: No. The way that budgets are appropriated to departments are for particular projects or services and so we did need those funding decisions to be able to implement the reforms.

MS FITZGERALD: But even if you have plans for things and some money lying around for other things, you can't just use it, you can't appropriate it of your own accord for those things?

MS WHETTON: Not without government's approval.

MS FITZGERALD: And the statement speaks of recruitment difficulties for the trial sites. Do you accept that most people don't want a job where they don't know if it's going to exist in a month's time?

MS WHETTON: Very challenging to recruit people with such short timeframes, yes.

MS FITZGERALD: And - I will leave that question for later.

COMMISSIONER HUNTER: Ms Fitzgerald, can I just - you are the second lot of witnesses from the government and this is the second time we're hearing that funding and resourcing is a problem. I want the State to remember that our kids are still being removed and our people are still dying in custody, and it's not good enough. You guys hold the purse strings. I just want to make that really clear. Thank you.

MS FITZGERALD: Now, Commissioner Walter was asking some questions about trial sites and the extent to which the trial sites will be ready. I just wanted to step you through, in a little bit more detail, where each of the trial sites are at and what services are being provided there.

COMMISSIONER BELL: Counsel, this screen is scrambled. We can't see it. I think they're on to it.

MS FITZGERALD: Thank you, Commissioner. When you are done, you can take down that reference. An interim evaluation of the trial sites took place from October 2022; is that right?

MS WILLIAMS: The evaluation started earlier, in that the report - draft report in October 2022 and then a final interim report.

COMMISSIONER WALTERS: But only on the Yarra trial site.

MS WILLIAMS: That's right. And the - it did include some reflections on the stand up of the other sites, so it was looking at the implementation. It was speaking to the other sites as well about where they were up to and trying to understand what was behind it taking longer than expected with the other sites as well.

MS FITZGERALD: Right. So the evaluation hasn't evaluated the trial because the trial is not actually - was not fully operational at that point.

MS WILLIAMS: The interim evaluation only looked at the Yarra site in terms of the sort of throughput and what was happening, activity at the site. But the final evaluation in August of this year will look at all sites.

MS FITZGERALD: And so is it fair to say - so there will be an evaluation in August.

MS WILLIAMS: Yes.

MS FITZGERALD: Right. And you've mentioned in the statement that - at paragraph 121 that one of the insights from that interim evaluation that took place in late 2022 was the importance of positive proactive engagement across all relevant stakeholders, including Victoria Police. Is Victoria Police one of - sorry, "the importance of positive, proactive engagement across all relevant stakeholders" is the quote and those stakeholders include Victoria Police. Did you have, up to that point, positive, proactive engagement from Victoria Police?

MS WHETTON: Been working very closely with Victoria Police throughout the development of all the reforms. They are part of our governance arrangements. We work with them on a day-to-day basis, and they have continually expressed a keenness to see these reforms implemented as soon as possible.

MS FITZGERALD: Thank you. I'll just finish off this topic and then I have a proposal for - to go back to my previous questions. I'm pleased to say, I'm using one of Her Majesty's Counsel as my junior. We will just see if we can finish off that topic in a second and avoid any problems.

In the public - sorry, I might withdraw that and just go back to those questions now. We're talking about, around 2 June 2022 and this is, as I understand it, just before - I'll withdraw that. At that time, and in general, did you have enough time to properly prepare for the public intoxication reforms?

MS WHETTON: I would say that throughout we've been working towards, we've known our timelines and we talked earlier about the deferral date and that - so that the timeline had been delayed. Been working with our colleagues across government the whole way to develop - to

implement the trial sites, to develop the state-wide model and that includes regular conversations with our colleagues across government and in preparation for briefing government. So I think while there are times where decisions come at particular points, that there's no surprise to our colleagues and government about what we would be seeking, what we think we need to implement the reforms.

MS FITZGERALD: But was there a funding delay that impacted on your ability to take action on, on the plans that you had developed?

MS WHETTON: I'm not sure I'd characterise it as a funding delay, but I would say that decisions are made at particular points and that there are times where decisions are taken when it might be getting relatively close to really - us really needing to know what funding will be provided for us to be able to take the next steps.

MS FITZGERALD: Yes, and I might ask that a different way rather than there being a funding delay, because it might have always been planned to make a decision at that time. Did the timing of funding decisions impact on your ability to take action as quickly as you wanted to?

MS WHETTON: I don't believe it did, but, Ms Williams?

MS WILLIAMS: No, I don't think so. So we were seeking for funding to be released from contingency. So we knew that the funding was committed and it was just seeking for it to be released. So we were still able to give those trial sites assurance that the funding would be provided, but we just needed to go through the process.

MS FITZGERALD: Yes. But am I right in saying that all of the employees at those trial sites had an employment contract that was about to fall off a cliff within a month.

MS WHETTON: Certainly the funding - some of the funding challenges related to our team in the Department of Health and the timeframes that we had before we could commit for our staffing but - for the trial sites?

MS WILLIAMS: My understanding is at the trial sites, so most of those or all of those trial sites providers deliver some kind of alcohol and other drug services already, and most staff were on contracts related to - were already on contracts with those organisations. So while it was potentially a challenge for a small number of staff, most staff would have had positions with those services that were longer term that wouldn't have run out at that point.

MS FITZGERALD: And if I can just take you now to where we were going to go before, which is - sorry, this is another issue I'll have to deal with creatively. Do you understand that it was a requirement - if we can just step to what we're told publicly and one of those things is - could the operator please bring up DOH.0003.0001.0255, which is Seeing the Clear Light of Day. Sorry, it is a part of Seeing the Clear Light of Day.

Now, the recommendation of the Expert Reference Group in relation to the public health first response, which is set out here, was that:

"The primary first responder should be personnel from health or community services organisations such as outreach services, including existing outreach programs associated with homelessness services, alcohol and other drug services and Aboriginal Community Controlled organisations."

And is it right to say that the government's overall response to the report was to support that approach based on increasing access to health and social services as the first response?

MS WHETTON: I'd say that in committing to deliver on the Expert Reference Group's report, it was about developing a health-led - a specific health-led model to public intoxication. I think just in your statement that through some of those services - so through outreach and through the sobering centres - there may be access to other social services but that the State committed to implementing a health-led response specifically for public intoxication.

MS FITZGERALD: And Yoorrook was given a presentation - and I cannot tell you which department it was from - on 19 January 2023 and if I could just bring that up. It is BAL5.1000.0001.005 and that is, for the witnesses, that is under tab 4. Thank you, operator. If I could now just move to page 6 of that presentation, which is BAL5.1000.0001.0010. And on page 6, there is a discussion about the use of existing emergency services responders. And Yoorrook was told that:

"*Existing emergency service responders such as Victoria Police and Ambulance Victoria will respond to public intoxication in instances outside of the health-led model."*

Is that your understanding?

MS WHETTON: Yes.

MS FITZGERALD: And if the operator can take us two slides on, to page 12, 0012. In that presentation, we were told that:

"The new health-led service model will provide coverage to approximately 82 per cent of Victoria's Aboriginal population."

And so am I right in calculating that leaves 18 per cent of First Nations peoples that will not be covered by a first response of the kind recommended by the Expert Reference Group?

MS WHETTON: That's correct.

MS FITZGERALD: And because of this, do you accept that there are residual health risks for this 18 per cent in situations where no family, friends or support services are available?

MS WHETTON: I accept there are residual risks. If we may, Ms Williams might be able to talk about some of the numbers that we're talking about. I think, to Commissioner Hunter's point earlier that we are talking about percentages, but actually we're talking about people in communities, so if we may, Ms Williams might be able to elaborate.

MS WILLIAMS: Yes. So you will see in that presentation we talk about the fact it's 82 per cent of Victoria's Aboriginal population, but it covers 98 per cent of where the offences have traditionally occurred so we have very much tried to focus the efforts of the health-led response in locations where it's most likely that there would be people picked up. So in the majority of local government areas in Victoria, there's less than five cases of public drunkenness picked up in a year. So it's very hard to get a full health-led response in those local government areas where the numbers are so small because it would mean a worker employed 24/7 to cater for, you know, potentially around five people in the year. So that's - what we have tried to do is really concentrate the health services in the areas of greatest need, which was what was recommended by the Expert Reference Group. They said to use that offence data as the focus for where health services are provided.

COMMISSIONER HUNTER: So if are you one of those five people, what response do you get?

MS WILLIAMS: So it's still - that's called the secondary response, and that's what the Department of Premier and Cabinet worked with Emergency Services to prepare. And so it will still be Victoria Police or Ambulance Victoria attending in those locations, but remembering one of the really important things that we've achieved through these reforms is that there's no additional powers for Victoria Police. So then you will not be charged and you will not be taken to a cell if Victoria Police attend. But they can support you to get to friends or family. So friends and family are still absolutely an option, and Victoria Police are revisiting their operational guidelines to work on things like referrals to other services, where appropriate in those locations where there is not a health-led response 24/7 operating.

MS FITZGERALD: And is it right that the reason Ambulance Victoria and Victoria Police are the key secondary responders is because the core parameter for the secondary response was that there was no additional funding to be dedicated to that secondary response?

MS WHETTON: There was no dedicated funding for that secondary response, but it relies heavily on the existing operational aspects of Victoria Police and Ambulance Victoria and that - given that they are often the first responders to people, whether it's a health or community safety risk, and so it was about relying on their current skills and operational practices.

MS FITZGERALD: Yes, but is it fair to say - I'm not asking why Victoria Police weren't paid any more. I'm saying the reason that VicPol and Ambulance Victoria were chosen is because there was no money to pay anyone to do the secondary response?

MS WHETTON: I wouldn't say that.

MS WILLIAMS: Yes, so one thing that was done is there was a pretty extensive mapping of what services are available in those communities in terms of 24/7 community services are available, and we spent a lot of time doing what we call market testing, which is jargon for talking to community service about would you be willing to find a way. And most of those services said they are absolutely at capacity and they wouldn't be able to extend - even

necessarily with additional funding - to providing a 24/7 service, particularly if it involved transport because it's such a big step up from where regional rural community services are up to.

And so they were sort of - we did explore the other options but, effectively, they weren't viable and wouldn't be viable without a really significant injection of funds which would be disproportionate to the sort of issue that they would be trying to respond to, that very small number of people and the small number of incidents. So it was deemed better to work on the cultural change in Victoria Police and Ambulance Victoria in terms of their operational guidelines to try and use those services that do have that full state-wide coverage to make sure people do at least get a response that somebody will come, because the community services organisations can't guarantee to be able to scale up in those communities given their existing size and scope.

COMMISSIONER WALTER: So it's a resourcing issue?

MS WILLIAMS: Potentially, but it's also a cost/benefit decision in terms of - I know, sorry, that sounds absolutely terrible.

COMMISSIONER WALTER: Terrible language.

MS WILLIAMS: Yes, so terrible language but it's - the level of investment you'd have to do to scale up a community service organisation in a rural or regional setting to be able to provide a 24/7 service for a very small number of people is really challenging. There's just not an easy answer to how you can -

COMMISSIONER WALTER: How would the State respond if there are more Aboriginal deaths in custody in those areas?

MS WILLIAMS: I guess the key - I can see that you would like to speak.

MS WHETTON: I think, as Ms Williams is talking about, the capacity of some of those services, so that it would be - we were talking earlier about some of the workforce challenges. So that you could provide more resourcing and more funding to those community service organisations in those different towns around Victoria, then you would have the challenge of recruiting more people to go and work in them. So I think it's not purely a resourcing question as much as, really, a capacity question as well. I know they are -

COMMISSIONER WALTER: Splitting hairs, capacity, resources.

MS WHETTON: Possibly - well, I think one thing we have certainly learned from - just more generally, I think, in my role in Mental Health and Wellbeing, so for the reforms we're undertaking in response to the Royal Commission is that even when you apply more funding, it can be very challenging to - for organisations to build their capacity and capability to be able to take on those new services and functions.

COMMISSIONER HUNTER: Just coming back to the Expert Reference Group that you were talking about, who sits on that?

MS WILLIAMS: It had four members. So it had Victorian Aboriginal Legal Service, so Nerita Waight; and Helen Kennedy, who was at that stage was working at VAACHO; and Tony Nicholson from the Brotherhood of St Laurence; and I think Jack Blayney from Victoria - ex-Victoria Police was their chief information officer.

COMMISSIONER HUNTER: So just four -

MS WILLIAMS: Four members.

COMMISSIONER HUNTER: I understand. And how often did they meet?

MS WILLIAMS: Their work is undertaken over the course of about a year. I'm not sure. They weren't sort of auspiced by the Department of Health, so I'm not sure about their sort of meeting frequency.

COMMISSIONER HUNTER: Who were they auspiced by?

MS WHETTON: I understand it was Department of Premier and Cabinet. It was set up specifically to lead that piece of work. So it doesn't meet any more. If it would help, we could -

COMMISSIONER HUNTER: It doesn't meet any more?

MS WHETTON: It was established to undertake and develop that report that was then provided to government around August 2020, and I understand it disbanded at that time.

COMMISSIONER HUNTER: Is Ambulance on there, Ambulance Victoria?

MS WHETTON: Ambulance isn't on it, but they did consult very significantly with all relevant agencies to do their work.

COMMISSIONER WALTER: I'm presuming that that group didn't recommend that coverage only be 82 per cent of the state? That was a departmental decision?

MS WILLIAMS: It is a bit unclear. One of the things they did recommend is that there be on-demand services where the demand didn't justify a 24/7 response. So that's what we have put in the locations where there have been substantial offences occurred. But not in the areas where there haven't been. So they recommended to be guided by the offence data in terms of setting up the health-led service.

MS FITZGERALD: And is it right to say that the funding envelope that you were given for these reforms and the amount of funding given has never provided for complete coverage of the health response, the first response?

MS WHETTON: The funding envelope we have been provided would not provide 100 per cent coverage of the State.

MS FITZGERALD: Commissioners, it's 11, and I am halfway through my questions. And if you wanted to take a short break, I think we're tracking okay to finish by 12 -

COMMISSIONER WALTER: Can I ask a question and perhaps be answered when we come back. I'm referring to the Balit Murrup and you said already that this - your department auspices this, 2017 to 2027. So my question relates to the monitoring evaluation reporting of the outcomes and achievement. So that's on page 35 and it says that you will have a detailed evaluation approach with key Aboriginal research evaluation service delivery organisations, and that you will be reporting and you will identify the indicators - I'm a bit surprised they weren't identified before you wrote the report - to monitor progress, recognising that measuring social and emotional wellbeing is a responsibility, et cetera, et cetera. Can you point us, when we come back from the break, to the documents and reports that have been made based on that and your model of evaluation?

MS WHETTON: We'll do our best to do that. Thanks, Commissioner Walter.

COMMISSIONER WALTER: Thank you.

MS FITZGERALD: Shall we return at 25 past?

CHAIR: 25 past. Thank you. We will adjourn for the moment, and at 25 past 11 we will come back. Thank you.

<ADJOURNED 11:06 A.M.

<RESUMED 11:28 A.M.

MS FITZGERALD: There are some section 18 claims that have made in relation to the documents that are relevant to these witnesses. I had mistakenly misunderstood this morning that those issues are resolved, and as it turns out they are not resolved, and as a result there has been - I've needed to make some adjustments to how I refer to those documents in the interim, until they are resolved. I anticipate that if they are not resolved soon, it will create some real difficulties hearing the evidence tomorrow, because I understand Senior Counsel Assisting Mr McAvoy does rely very heavily on documents over which claims are made. I just foreshadow that and apologise ahead of time that I may take some time to pick my way through those issues, and I think it may possibly mean for these witnesses that there is a need to ask them to come back on another occasion. But, at this stage, I am just attempting to put the questions without raising any concerns about issues that are unresolved. Now -

COMMISSIONER WALTER: Excuse me, Counsel.

MS FITZGERALD: Yes, sorry, Commissioner, your question.

COMMISSIONER WALTER: The response to my question asked before the break.

MS WHETTON: Thank you for the question, Commissioner Walter. So Balit Murrup is a framework with a 10-year aspiration, as you will well know, having looked at the document, and it does have a number of objectives and short, medium and long-term actions and objectives. We are going to own it on behalf of the department, we have not undertaken good evaluation and monitoring. I can see that it is listed -

COMMISSIONER WALTER: Seriously? After five years there is no monitoring and evaluation? But it is under your section here:

"*Our commitment to enable reform."*

And this says:

"Monitoring and evaluation are key aspects of that."

So you're telling me it hasn't been done?

MS WHETTON: We haven't done it well. I think there's probably been some ad hoc monitoring of particular parts of it. What I would say, though, is that we are very aware of it and we have had lots of feedback from our partners and hearing it from the Aboriginal community controlled sector.

COMMISSIONER WALTER: Why would Aboriginal people in Victoria think you are taking this seriously if five years into a 10-year program, you have not put in the monitoring and evaluation that you promised at the start?

MS WHETTON: So I can understand that challenge, and I think that what we are trying to do now, having heard that feedback and know that it's not good enough, is that we have - in the Department of Health, we have an Aboriginal Health and Wellbeing Partnership Forum that's co-chaired by the Chair of the Aboriginal Health Service and also the Minister of Health, and we have had lots of feedback from Forum members about it not being good enough.

So we have developed - we have got a - the Forum and that Forum has developed a partnership agreement that's a 10-year aspiration as well, but then to really get into the specifics, that Forum has also - it's currently in draft form but there's a partnership agreement action plan that's a two-year action plan, and the idea with that is that then that has been developed with those Forum members. So we see it as part of our commitment to self-determination. Then just finally, getting to the monitoring and evaluation aspect, that we are developing a dashboard as well as part of that, and that dashboard will be initially developed - led by the Department of Health but will transition to be owned by First Peoples and transitioned to be held by VACCHO.

COMMISSIONER LOVETT: What's the name of the strategy?

MS WHETTON: The Balit Murrup or the -

COMMISSIONER LOVETT: Yes.

MS WHETTON: So it's Balit Murrup.

COMMISSIONER LOVETT: What does that mean.

MS WHETTON: That means strong mind in Woiwurrung language.

COMMISSIONER HUNTER: It's actually strong spirit.

COMMISSIONER LOVETT: Yes.

MS WHETTON: Sorry. I -

COMMISSIONER LOVETT: The point of asking the question is, let's not get caught up into utilising language. The mob have given and enabled you to use language with good faith that the department would honour its commitments. You know, and I think it's incredibly frustrating that our people, you know, come to the table and yet we always are hearing that, you know, government needs more time or that we're - "We haven't made decent attempts at evaluating strategies" and so forth as well.

As I asked a previous witness before us, what authority does that Forum have? The community members that are ACCOs - I think the co-chair, you said before, was the Victorian Aboriginal Health Service. So what authority do community members or CEOs of these large organisations or organisations that represent our people, what authority do they have in these forums? Key word: authority.

MS WHETTON: I was going to talk about accountability, which you may say it is a different thing, but just thinking about the way, as part of our self-determination agenda in the department, have established the Partnership Forum and tried to have the most senior decision-maker involved as the co-chair through the Minister for Health and then with the Chair of VACCHO as the other - as the co-chair, and that the idea of the partnership agreement - the partnership agreement action plan and then this dashboard that's being developed, the idea is that, from an accountability point of view, to come to those discussions, and so for example one of the actions that's in this draft action plan is about building cultural safety in the universal health system.

And so the idea would be that we would be asking CEOs of mainstream health services to come to the Forum when we meet and to talk to their progress in delivering on building cultural safety in their services. So, again, a question around authority versus accountability, but the idea that those Forum members that include some departmental staff and, critically, ACCOs would be there to ask those questions and hold people to account.

COMMISSIONER HUNTER: They have no authority, I think, is Commissioner Lovett's point of view because you have been - you've just said they have been talking about not evaluating this, yet it's still not evaluated in five years, as - Commissioner Walter.

COMMISSIONER WALTER: It means there's no accountability on this, so this is really not worth the paper it's written on because it's a plan without any accountability.

MS WHETTON: I wouldn't say -

COMMISSIONER LOVETT: How long has the Partnership Forum being going for?

MS WHETTON: I think it's at least a couple of years now.

COMMISSIONER LOVETT: And pre-COVID, I suspect.

MS WHETTON: I think pre-COVID. I would have to double-check when it was -

COMMISSIONER LOVETT: Yes. We are now nearly 18 months out of COVID, in a sense, and it was pre-COVID and that went for about two years. So not long after the strategy was released - was it five years ago? And then we have had these Forums to have an oversight mechanism - oversight, not accountability mechanism, oversight mechanism - and yet we still don't have effective monitoring and evaluation. So the authority is no. The answer to the authority question.

MS WHETTON: I think by having co-chair of the Forum being the Minister for Health brings with it a level of authority as the most senior government decision-maker -

COMMISSIONER LOVETT: My questioning was about the community coming to table with authority, having authority back into government. Beyond the co-chair.

MS WHETTON: I think I've talked about the accountability mechanisms that - to really have people come and have to be accountability to the Forum members. But in terms of that authority, I would appreciate the point that you're making.

COMMISSIONER LOVETT: You accept the point? Appreciate and accept are two different things.

MS WHETTON: Sorry. I accept the point you're making.

COMMISSIONER LOVETT: Thank you. Thanks.

COMMISSIONER HUNTER: Can I ask if this database that you're planning on doing, that be handed back to the community, you will hold them accountability, am I correct? Or who would have the authority to hold people accountability to that?

MS WHETTON: It will be the Forum. And that's why I go back to the Forum. I acknowledge the conversation we have just had about authority but the idea of having the Forum being made up or co-chaired by the Minister for Health alongside the Chair of VACCHO brings with it that accountability.

COMMISSIONER LOVETT: Is it VACCHO or the Victorian Aboriginal Health Service? I thought it was the Health Service.

MS WHETTON: Sorry. It's - so it's actually the Chair of VACCHO, who happens to be the CEO of VAHS.

COMMISSIONER LOVETT: Yes. Okay. Yes. And just to be clear to this Commission but also people listening in, my question is not to have comments directed at our community members who have come to this Forum and tried to advocate, but it's just so we can understand what authority and who - you know, the decision-making around what this looks like as well. We are here to provide systemic recommendations for reform, and this is why we are asking the questions. So I just want to be clear on that. Thank you.

MS FITZGERALD: Thank you, Commissioner. Just going back to who's doing what under the response in relation to public drunkenness, and we have been talking about the secondary response which will cover 18 per cent - it's estimated will cover 18 per cent of First Nations Peoples and that that response will be provided by, in part, Victoria Police. I understand you're aware that the Victorian Aboriginal community has significant concerns about any part of that response being provided by Victoria Police.

MS WHETTON: Yes.

MS FITZGERALD: Are you aware of that?

MS WHETTON: Yes, I'm aware of that.

MS FITZGERALD: And do you accept that the Aboriginal community are not just unhappy about it? They are sceptical about getting good outcomes when that role is left to police discretion. Do you accept that it's up to - it will be left up to police discretion whether, in any particular instance, what is given to Aboriginal people who are intoxicated in public is either the helpful, compassionate health-based response that is envisaged by the Expert Reference Group, or the punitive crime-based response that has been taken to date by Victoria Police. Do you accept that - which of those two First Nations Peoples get is a matter of police discretion when it comes to the second response?

MS WHETTON: It's true to say Victoria Police will, as we've talked about earlier, will play a role in a future health-led model. One of the things I think it is important to keep reminding ourselves is that the offence of public intoxication will be no longer. And that is already - it has been legislated and the commitment is that that be - come into place on 7 November this year. So police will no longer have the power to arrest, which means you will not see people going into police cells purely for the reason of being publicly intoxicated.

It does mean that when police, if they happen to be the first responder in the case of someone found publicly intoxicated, that they will - if there is no other community safety risk, they will be using - so there's a degree of discretion but it's discretion that - I don't want to speak on behalf of police. It's a discretion that they use every day. And so there will be a much bigger focus now on what that person needs and if it is about helping them get to a place of safety,

which may be contacting friends and family and getting them home, it may be to contact an outreach worker because they think that that person could use the support of an outreach team.

And it could also be just the operational response that police would generally have about using their skills in calming a situation, de-escalating; that kind of thing. So I think it's not a case that if a police person arrives to someone who is found intoxicated in public that, therefore, it's a punitive model; that it still is about all - that Victoria Police will still be part of this health-led model.

MS FITZGERALD: When you say the police will be using a discretion that they already use everyday, to the extent that we've heard evidence at Yoorrook about that very discretion being exercised in a racist way, those concerns remain about their response to the public health response, don't they? Their participation?

MS WHETTON: I can - I accept that that would be a concern that some people would continue to have.

MS FITZGERALD: And you are aware that First Nations People have had traumatic interactions with police and, for that reason, are unlikely to trust police, even if they take on this new caring role?

MS WHETTON: That is the case, yes.

MS FITZGERALD: There is a long history of are interactions between police and Aboriginal people that will, in fact, colour those future interactions. Do you accept that neither side, neither the police force nor the First Nations community, can flick a switch and change attitude overnight?

MS WHETTON: I think that's right; that it's impossible to flick a switch on any complex health-led or social policy type reform. I think there is significant effort that is underway in Victoria Police for - through training and cultural change to prepare police for the change to a health-led model. And as I mentioned earlier, there's the broader cultural change to, I think, about how community - the general Victorian community, sees public intoxication as a health issue rather than a justice issue.

MS FITZGERALD: And one of the key risks that has been identified is that Victoria Police may not translate the public drunkenness frameworks proposed approach into operational effect.

MS WHETTON: I think all of the interactions that we have had with Victoria Police - and Ms Williams and I generally are working with senior personnel from Victoria Police - that they are very committed to this reform, and they're, like all of the agencies, including ourselves, who are working towards implementing this model from later this year, that they are also undertaking all the necessary preparatory work for it to genuinely be a health-led response.

MS FITZGERALD: Because the success of the Secretary response is very much dependent on Victoria Police making real cultural and operational change; do you accept that, and that there is no guarantee that will happen?

MS WHETTON: I accept that, and I think it's impossible to give a guarantee, but I do think that, as I said, Victoria Police are working towards those operational and cultural changes.

MS FITZGERALD: And are you aware that the Victorian Aboriginal Legal Service made a submission to Yoorrook - recommendation 49 was that Victoria Police must not be first responders in a health response to public intoxication, and in having Victoria Police be the only response for 18 - sorry, Victoria Police and Ambulance Victoria, be the only response for a portion of the Aboriginal community, that is directly opposed by the Aboriginal community?

MS WHETTON: It would be opposed according to VALS submission, that's right.

MS FITZGERALD: Yes, the VALS is opposed to it. And you're aware that Victoria Police is concerned - has expressed concerns about having to fill service gaps if a public health model is not adequately resourced?

MS WHETTON: Yes, I'm aware of those concerns.

MS FITZGERALD: You understand that's not a job they want?

MS WHETTON: I think Victoria Police has expressed on a number of occasions, both internally within government and also publicly, that they are concerned about the demand that if they are the first responder and although they might be seeking to contact an outreach team or they may be helping that person get to a place of safety, that they have expressed a concern around the time it might take for those responses to come and maybe having to sit with that person for that time.

It's also part of the model that it would not be unreasonable that, because it's no longer an offence to be intoxicated in public, that that person may be left in place. That is a legitimate part of this response. And if the police and, equally, if Ambulance Victoria were the first responder and they arrived and there is no other emergency - health emergency or significant health risk and not a community safety risk, that that person - if those first responders think that they're okay, they could leave them in place.

MS FITZGERALD: And although there is a role envisaged for Victoria Police and Ambulance Victoria in relation to that smaller cohort of people, it's right to say, isn't it, that for 82 per cent of First Nations Peoples and a large portion of Victorians, the first response will now move from Victoria Police to the public health response that is being newly set up?

MS WHETTON: For the most part, yes. It is reasonable that in - for the areas where there is the dedicated response with outreach services and sobering centres that people still may call police as the first responder. And so that police may still arrive and, same, Ambulance Victoria may still arrive to that person even where there is that dedicated response. But that's where, as I was saying earlier, police or Ambulance Victoria would assess that if there's no

other community safety risk or health risk, that they may either leave that person in place or contact an outreach worker or try to get that person home.

MS FITZGERALD: Right. I thought we would move now - sorry to jump around -

COMMISSIONER HUNTER: Is it ready to go for when that - in November 7th?

MS WHETTON: 7th, yes.

COMMISSIONER HUNTER: Yes, is that ready to go? Will that be in full swing by November?

MS WHETTON: We're pulling out all stops for it to be ready for November. I may ask Ms Williams to talk, but we are right in the middle of commissioning services, so we are in a market process at the moment to bring providers on to deliver those services.

COMMISSIONER HUNTER: Because we are really aware that if that's not ready to go and police or the ambulance have this way that they're not ready for to respond, then that's going to backfire and people aren't - when you talk about community education. So this needs to be ready to go.

MS WHETTON: Yes. I -

COMMISSIONER WALTER: May I ask also back to how is it going to be monitored and evaluated and reported so that we can make sure or Victorian Aboriginal people can have faith that this is actually being implemented the way you are intending to implement it, and that those 18 per cent are not being arrested on other measures like resist police or some other measures. What's the breadth as authority of the evaluating and monitoring system?

MS WHETTON: I'll ask Ms Williams to talk to that. We have put a lot of thought into that approach, but to your point, Commissioner Hunter, we absolutely know and are doing everything that we can to be ready. We know that it's not an option not to have that response in place by 7 November this year.

MS WILLIAMS: So just in terms of monitoring and evaluation, they are sort of multiple streams and at the moment we are pulling together the overarching monitoring and evaluation plan. So that's being - it's being led by the Centre for Evaluation and Research Evidence in partnership with Urbis and Cox Inall Ridgeway, which is an Aboriginal evaluation organisation. There's - that overarching evaluation and monitoring plan will cover both multiple components of the evaluation, plus describe the governance arrangements that oversee.

So in terms, there's two major streams to the evaluation work. So one led by the Department of Health evaluating the health-led model and one led by the Department of Justice and Community Safety who will outsource to an independent evaluator whose sole job is to focus on the justice impacts of the reforms too, so particularly to look at if there's any change in offence data over that time.

Then there's two sort of governance aspects that are currently proposed. So there's an implementation monitoring and oversight group which is - it's currently - the members have been approached. So that's predominantly First Peoples and will be First Peoples led. And then there's also an independent oversight committee which is being proposed by government which will particularly look at the first period of implementation to make sure, as you say, Commissioner Hunter, that implementation is happening in time for November.

So both - so the overarching plan is in development at the moment. The implementation monitoring and oversight group, the members have been contacted. So that's very close to stand up. We are just working on the differentiation of the role between that group and the independence oversight committee that will look at the initial stand-up.

COMMISSIONER WALTER: Can I ask you send Yoorrook a copy of that once it's finalised so we would like to be then watching it over the next year.

MS WILLIAMS: Yes.

MS FITZGERALD: I was just about to turn to trial sites. And a presentation was made to Yoorrook on 19 January about the trial sites, and I think we had it up before. It indicated that all trial sites have a general and Aboriginal-led service response. Now, when Yoorrook was told on 19 January that all trial sites have an Aboriginal-led service response, is it more accurate to say that it was planned that they would have that response? Because those responses were not in place or operational on 19 January, were they?

MS WILLIAMS: So, yes, not all of them were and we have partners for each of the sites. So there's a health partner and there's also a justice partner that's supporting the outreach team, and in some places they were still operationalised and still recruiting. Something in my eye.

MS FITZGERALD: Take a moment.

MS WILLIAMS: Yes, sorry.

MS FITZGERALD: It's a lot of -

MS WILLIAMS: This happens -

MS FITZGERALD: (Indistinct) at this time of the -

MS WILLIAMS: Yeah, I'm okay, sorry, this happens all the time. I have drippy eyes.

MS FITZGERALD: Yes. The Aboriginal-led service response in each of the sites.

MS WILLIAMS: Yes. So we had - as I said, we had - there was two partners at each of the sites. And at most sites by January, they were operational by that stage. Some were still waiting on other partners or part of a service model to be standing up. So we had at least some

Aboriginal service operating each of the sites by that stage but it wasn't fully operational. That was still being - was still underway.

MS FITZGERALD: Now, your statement - the department's statement, rather, at paragraph 105 steps through those sites. Now, this statement was, I think, signed on 21 March. So at that point, the status of those sites is outlined. If we step through the four sites that are addressed in the statement, the City of Yarra, at that point is expected to be operational in March 2023. What's the status of that now?

MS WILLIAMS: Yeah, that site is fully operational. So at that stage we did have Dardi Munwurro operating but we were still waiting on the other Aboriginal partner. It was a recruitment issue.

MS FITZGERALD: And in Dandenong, the Aboriginal-led service response at the time of the statement is yet to commence operation. What's the status of that now?

MS WILLIAMS: So they're still - we have got one of the Aboriginal service partners operating and the other one is still working on recruitment and location for their staff.

MS FITZGERALD: And Castlemaine's Aboriginal-led response at that time was not fully commenced but it had commenced on a modified interim basis. And what's the status now?

MS WILLIAMS: That one's operating.

MS FITZGERALD: Fully?

MS WILLIAMS: Yes, it's a low-demand site, so the key intent of Castlemaine was to test a low-demand site where there was very few cases and they haven't had a single case of public intoxication but they are ready when it happens.

MS FITZGERALD: And in Shep, Shepparton, the Aboriginal-led response at the point of the statement has not fully commenced, but the sobering up service had. What's the status now?

MS WILLIAMS: Yes, that's fully commenced but also they are working through their transitional planning about when they'll stand down as well.

MS FITZGERALD: Sorry, I missed that end bit. The transition planning stand down?

MS WILLIAMS: Yeah. So they're working through - they are fully operational at the moment and they're working through - because one of the mainstream providers has made the decision to close early, they need to make decisions about their own operations. But they are fully operational at the moment.

MS FITZGERALD: And is it right - when you say close early, once the law is changed on 7 November, is it right that the trial sites will no longer provide those services or will some of them continue and some not?

MS WILLIAMS: There's potential for a small period of crossover because the trial sites were funded for a 12-month period and because of the delays in getting started, some have the option to continued a little bit further, which will create a little bit of overlap. And that's why we are working with each of the trial sites to decide if they want to continue briefly after the state-wide service is stood up in or whether they want to conclude in November.

MS FITZGERALD: So is it right to say that, at the moment, all of the First Nations-specific trial sites are operating?

MS WILLIAMS: Some part is operating at all sites but there's a couple of sites where they're still recruiting transport workers, basically.

MS FITZGERALD: So is it possible that by the time the trial has to end, there may still be some trial services that have not commenced?

MS WILLIAMS: I think that's very unlikely. We've been told very imminent for the couple of places where they're still recruiting.

MS FITZGERALD: And those services will have less than six months of trial time?

MS WILLIAMS: That's right.

MS FITZGERALD: And for the - for some period of years it's been known that the operation of these trials would be unlikely to inform the design of the framework because the trials would not have sufficient time to run?

MS WILLIAMS: We have designed a developmental evaluation so the idea is it's providing real-time insights from the trial sites so the level of reporting is very frequent. And so while we wouldn't say that the trial sites have the opportunity to fully - all sites reaching full maturity and a full period of evaluation, we have done our very best to try and bring those learnings in, and particularly the learnings around implementation have been really essential in our understanding of what it will take to commission and stand up these sites.

MS FITZGERALD: But the reality is that, from 7 November 2023, you will really still be learning as you go?

MS WILLIAMS: That's right. We've had to - I think some people described it as building the bike while we're riding it, yeah.

MS FITZGERALD: And the health response will need some time before it meets its potential?

MS WHETTON: I think it's fair to say that, with the services operating we will be learning as we're going, but the important thing is those services will be in place at that time. And so we expect that through the commissioning process that's underway and then working with those providers to have workforce recruited, knowing that we have had those challenges, some of

the planning system issues, fit-out times for facilities. So, we stand ready, as soon as we have got those providers on board, to really do what it takes to have it in place by November.

MS FITZGERALD: But you would accept that no matter how remarkable those services are, they ought not be judged - their success ought not be judged in the first six months, in the first 12 months, that they will all need some time before their success can be fairly evaluated; would you agree with that?

MS WHETTON: I think the learning as we're going aspect is a really important point about this, that there be no judgment on those services as they're getting up and running, and we do find this as we're working through some of our other reforms, including in Aboriginal social and emotional wellbeing and other Royal Commission into Victoria's Mental Health and System reforms is that sometimes if it's the first time or largely the first time that you've implemented a service, that there is that - those early stages where there's a lot of support in place if needed, to be able to help them operate, but acknowledging that it does take time before they can really be in the swing of things.

MS FITZGERALD: And I'm certainly not talking about the Department of Health judging them. I'm talking about public opinion judging them. Now, do you accept there's a real risk that detractors will use this lag in the health response becoming fully effective to say it isn't working?

MS WHETTON: It's possible.

MS FITZGERALD: And that replacement police powers are needed?

MS WHETTON: I can't comment on what some of the detractors may say but I think, again, just to why we are working incredibly hard to have the very best possible service response in place, and working on whatever is needed to have that in place, but I can't guarantee that there won't be some detractors who say that.

MS FITZGERALD: You are aware that Victoria Police has been lobbying for replacement police powers? They have said they need replacement police powers.

MS WHETTON: I have seen that public commentary. Also very aware that government has not committed to any additional police powers as part of this reform so that it is focused on the health-led response.

MS WILLIAMS: Is it fair to say too, I think that lobbying has come from the Police Union, not from the Victoria Police as an organisation?

MS WHETTON: Yes.

MS FITZGERALD: I was just going to move now to part of that - it's not public commentary, but the concerns raised by the unions, the Police Union, the Ambulance Union, and the Health and Community Services Union. If I could ask the operator to bring up the joint statement of

those unions, which is in the witness's folder at tab 22, and for the operator is BAL5.0001.0002 and if we start at page 0141, and then move to 0142.

This is a statement put out 18 months ago by the Police Union, Health and Community Service Union and Victorian Ambulance Union and they put out a statement in which all three of them welcomed decriminalisation. However, they considered there was a gap in the reform agenda for people who must be cared for primarily by police. Are you aware of that statement?

MS WHETTON: Yes.

MS FITZGERALD: And if we can go to page - the next page on, 143, the unions note that for those who can't be diverted away from police holding facilities - or asserted, rather, that there must be effective safety measures to ensure that those people get a health response in addition to what they currently get. Does the department agree that currently the State's police holding facilities do not have the necessary infrastructure for the police to manage people in custody that are health compromised or intoxicated?

MS WHETTON: I can't comment in detail around current police holding facilities, but I would say that, given the terrible circumstances surrounding why we are working on this very reform, would suggest that they're not adequate. But I don't know. Ms Williams, if you have got any other detail around that but?

MS WILLIAMS: Not really, although it's as much about systems and processes as it is about infrastructure. So people need health support. That's probably a matter of diverting people to health support rather than infrastructure itself.

MS FITZGERALD: Are you aware of whether the State is planning on doing anything about those particular concerns raised by the unions?

MS WHETTON: I don't believe so.

MS WILLIAMS: I don't think there's any infrastructure upgrades planned as part of these reforms but the culture change is really essential.

MS FITZGERALD: The unions also called for the introduction of medical monitoring technology involving camera aids that check a person's five vital signs and allow clinicians to remotely perform checks and confirm a person's safety. Are you aware of whether that measure, the Oxevision camera will be adopted?

MS WHETTON: I don't believe there's work on that at this stage but it might be better directed to Victoria Police.

MS FITZGERALD: And the statement by the unions also says that the police are unqualified to provide a health response and the onus should never be placed on them to provide it. Do you agree?

MS WHETTON: I agree it's not Victoria Police's role to deliver a health response, which is why we're implementing the different parts of the model through outreach teams, sobering services, and that we were talking earlier about Victoria Police, if they happen to be the first responder to find someone intoxicated in public, that they would be using other techniques in trying to find whether that person can get to a place of safety, whether it be home or with friends, or if there is any concern around behaviour, just deescalating the situation. So I think that there are - it's not a health - they are not delivering the health-led response but they are an important party to being able to deliver that health-led response to people.

MS FITZGERALD: And the unions have also called for a specialist workforce to assist them to provide - police, rather, to assist police to provide care and on-site medical assistance for people in custody, including Mental Health nurses, social workers and alcohol and other drugs workers and paramedics. Are you aware of whether that specialist workforce to assist police on site when people are in watch-houses will be provided?

MS WHETTON: Given that people will not be taken to a police cell purely for being found intoxicated in public, that they won't have - as I understand it, won't have teams at police holding facilities to do - to undertake those purposes. Some of those skill sets and qualifications will be the people that staff up the outreach teams that will be on-site where someone is found in public.

MS FITZGERALD: Although there will no longer be an offence of public drunkenness or the three different offences that involve primarily being - punishing being drunk in public, there will still be people who have allegedly committed other offences who are in holding cells who are intoxicated.

MS WHETTON: If the person has committed another offence, that may be the case.

MS FITZGERALD: And what the unions are calling for is on-site assistance of Mental Health nurses, social workers, alcohol and drugs workers to help them provide a health response to people who've got drug and alcohol issues but have also committed other offences. Are you aware of whether the State is considering resourcing that request?

MS WHETTON: It would be considered Justice Health.

MS WILLIAMS: So it probably sits - because the Department of Justice and Community Safety provides health services within correctional facilities, but I don't want to speculate. I know there are - you know, there's always consideration of what services are appropriate, but I think it would need to be directed to the Department of Justice and Community Safety for a more complete response.

MS FITZGERALD: I will ask you some questions about prisons, noting that that's not your area of primary responsibility. Before I do, I will just quickly touch on the issue of raising the age, noting it's also not an area of your primary responsibility but there are a number of health issues that it squarely raises.

On Anzac Day, the president of the Royal Australian College of Paediatricians, Jacqueline Small, came out in the press saying that:

"Many children in the Youth Justice system have significant neurodevelopmental disabilities and other physical and mental health needs which are compounded by contacts with the Youth Justice system and incarceration."

Is that consistent with your understanding of the science?

MS WHETTON: It's consistent with the report that I've read around - or the draft report I should say, rather of the Council of Attorneys-General into this issue. I don't know - I couldn't talk to the science of both from my qualifications but also the Department of Health role in this work has not been to provide that medical specialist scientific input. But I will accept your statement about the challenges that many young people find themselves in, if they're in the system.

MS FITZGERALD: So is it right to say that the Department of Justice has never sought advice from the Department of Health in relation to those issues?

MS WHETTON: Not specifically the Department of Health other than when it was briefing government on the decision around raising the age.

MS FITZGERALD: And, operator, if we could bring up the draft report that the witness was just mentioning, which is BAL5.0001.0002.0001. Tab 23 of your file. As the witness has mentioned, this is a draft report prepared for the Council of Attorneys-General Age of Criminal Responsibility Working Group. If we could go to page 51 of that report, which is 0051. In that report, there was consideration of the developmental science in the area, and finding 3 of the report is that:

"A child under the age of 14 years is unlikely to understand the impact of their actions and to comprehend criminal proceedings."

And is that finding accepted by the department?

MS WHETTON: This report was produced for a Commonwealth/State working group. Sorry, it was developed by a working group to go to the Council of the Attorneys-General. So the Department of Health hasn't expressed a view. It hasn't come to us in any formal capacity to provide a comment.

MS FITZGERALD: And do you know why it is that your expertise, the department's expertise, in relation to health, health issues, developmental issues, mental health issues, has not been sought by the Department of Justice in this reform process?

MS WHETTON: I think because this work was undertaken by a national working group that it's not unusual in Commonwealth/State relations type work that the Council of Attorneys-General and the Working Group - and the Victorian member was from the Department of Justice and Community Safety - that they would be developing that report

through, and you can see through the report there's lots of stakeholder consultation and consultation with experts, including some medical experts to come up with that advice. So it wouldn't be unusual that a process like this didn't specifically seek out the Department of Health's view until it came to the time of briefing government around a proposal.

MS FITZGERALD: And it is equally right to say that the Department of Health has not, was not consulted on the proposal to raise the age to 12 rather than 14?

MS WHETTON: The Department of Health provided advice to our Ministers at the time that government was being briefed on the proposal for raising the age to 12 and then, ultimately or down the track, to 14.

MS FITZGERALD: You provided advice to your Ministers but you were not consulted before the proposal choosing an age was decided upon?

MS WHETTON: I'm being a bit careful because it relates to briefings to Cabinet. So I think that's why I'm being perhaps just a little bit careful. But it is the case that as departments are preparing submissions for government decision-making that they do go through a consultation process to develop that. So we will have provided some comment as part of that. And then we briefed our Ministers for when the conversation was being undertaken by government.

MS FITZGERALD: If I can just, I suppose, cut to the end point. It wasn't the Department of Health that proposed 12 as an appropriate age of criminal responsibility.

MS WHETTON: No, we did not.

MS FITZGERALD: If we can now just turn to -

COMMISSIONER LOVETT: You provided advice from a health perspective, holistic health perspective to that process?

MS WHETTON: Yes.

COMMISSIONER LOVETT: Yes. Thank you.

MS FITZGERALD: Now just going to move to the final topic that I wanted to address, Commissioners, which is prisons.

COMMISSIONER HUNTER: Sorry, Ms Fitzgerald. I'm just looking at the Balit Murrup, and you actually have the case for change in here and you talk about Aboriginal children and young people, and that:

"There is continued overrepresentation of Victorian Aboriginal young people subject to Youth Justice and supervision in detention, with Aboriginal young people more likely to offend earlier (age 14) for Aboriginal people compared to 19 for non-Aboriginal people."

And just also looking at this around the wellbeing that you have got in this, around our youth, and self-determination and being connected to culture and having forensic care and all these things and yet we're only raising it to 12? I'm just really confused about, if you look at this document, it's really saying that our kids need help and we're not prepared to give it to them? Like, I don't understand that you can have a framework, an Aboriginal social and emotional wellbeing framework, who I add you have taken the time of the leaders in these areas of social and emotional wellbeing of Aboriginal people to do this. It's not been evaluated. In there it's saying that we need much more support for our young people, yet there's no action on it.

MS WHETTON: I think the action that has been taken with Balit Murrup and some of the other work that we're doing in response to the Royal Commission is around - in the prevention and early intervention space. So I accept that we do see that there are still children and young people who are involved in child protection and the Criminal Justice system. So we recognise that a lot of the work and certainly with the responsibilities that I have in the department, it is trying to focus much more on the supporting Aboriginal social and emotional wellbeing to have strong - strong families, strong children connected to culture so that they're not interacting with those services. So thinking about the role we can play -

COMMISSIONER HUNTER: There's also a part where you have got high rates of kids going into care and Criminal Justice that need mental health and, by this, you understand the development of children. I'm not sure if you know any 12 year olds, but think about their capacity of right from wrong. Think about this that you've written and think about them being locked up away from their parents. I think that's the point that we're missing, the children.

MS FITZGERALD: Moving to health and also Youth Justice, you are not responsible for the healthcare that the kids that we're talking about will receive when they are in a juvenile justice facility, are you?

MS WHETTON: No, it's overseen by Justice Health, which is a business unit in the Department of Justice and Community Safety.

COMMISSIONER HUNTER: So why is that - sorry, I just need to ask. Why is that a second - I'm not understanding. There seems to be silos. So why would you not have the Department of Health together? What is that, why is that that they are separate?

MS WHETTON: I can't speculate on the decision for why Justice Health sits in the Department of Justice and Community Safety, but I understand that there was a view at the time that Health was really disconnected with the Justice system and so the idea of having a business unit inside Justice and Community Safety was trying to bring Health and Justice together.

COMMISSIONER HUNTER: I don't think that's worked very well but we can bring that up later.

MS FITZGERALD: And it's often said, and there was evidence in the Nelson inquiry about this that prisoners get the same care for their health as the rest of us. Because prisoners are detained and cannot generally leave prison to access the health services that you manage or

external health services, their health needs are not provided by your department but, rather, by different private health contractors in each prison. Is that right?

MS WHETTON: So Justice Health oversees delivery. There are currently some private health services that deliver those services in prisons. There have been some changes and, for example, from the 1 July this year, there will now be a public health service. So Western Health will be providing health services into the Dame Phyllis Frost Centre.

MS FITZGERALD: And are you aware of why the decision has been made to replace a private health provider with a public health provider in Dame Phyllis Frost?

MS WHETTON: I couldn't comment on that, I'm afraid.

MS FITZGERALD: And are you aware that in his - I just had a word from solicitors assisting, your Honour, that we have received the - that the Coroner's Court has provided us with the State's response to Coroner McGregor's findings and recommendations. I was just going to ask a couple of questions about Coroner McGregor's recommendations. It might be useful if we stood down for five minutes and we could find out what the State's response was so that I'm not putting these things to the witness in a vacuum. Would it suit the Commissioners to - apparently Solicitors Assisting say we also will be without noise until 1 pm. So that I hope that five minutes doesn't jeopardise our peace.

COMMISSIONER BELL: We're fine with that.

COMMISSIONER HUNTER: Yes.

CHAIR: So five minutes?

MS FITZGERALD: That's a five-minute break to read the statement.

CHAIR: We will adjourn until 12.26, sorry.

<ADJOURNED 12:21 P.M.

<RESUMED 12:28 P.M..

MS FITZGERALD: We just took a short break to obtain the government response to the Coroner McGregor's findings. Now, I assume that, as a senior bureaucrat in the Department of Health, you were already aware of what the Department of Health's response was going to be in this letter before. So I'm hoping that the fact that you haven't had a good chance to read this from cover to cover won't hamper what I think are fairly high level questions, but let me know if you need to read it but I'm hoping there are no surprises for you in this about what the Department of Health is doing. Would that be fair to say?

MS WHETTON: No major surprises, no.

MS FITZGERALD: So you are aware, of course, that in his recommendations in the Veronica Nelson Inquest, Coroner McGregor found that the death of Ms Nelson as a result of complications of withdrawal from chronic opiate use and Wilkie's Syndrome in the setting of malnutrition was preventible and inhumane.

MS WHETTON: I'm aware of that.

MS FITZGERALD: And the Coroner also found that Ms Nelson had received inadequate medical treatment while in Dame Phyllis Frost Women's Prison. Are you aware if that?

MS WHETTON: I'm aware of that finding. Ms Fitzgerald, do you mind that I just do again acknowledge that we are talking about something very sensitive and the Coroner's findings, but we're talking about the very sad circumstances of the passing of Veronica Nelson. So I just want to acknowledge that and also it is challenging and also to express my condolences to the Nelson family.

MS FITZGERALD: One of the Coroner's recommendations is that the Department of Health and the Department of Justice should consult to determine from a clinical perspective which of you should have oversight of healthcare within prisons. And are you able to provide the department's responses to that recommendation?

MS WHETTON: I can and that is it's set out in the response here. So recommendation 19.1. And we say as part of the government's response that that recommendation will be implemented and that implementation has commenced. Our recommendation 19.1 recommends consult to determine. So I'd say that there is Department of Health and Department of Justice and Community Safety are in discussions at the moment about the best mechanism to undertake that consultation. So it's very early stages and that consultation yet to commence.

MS FITZGERALD: And just going back to recommendation 2, Coroner McGregor recommended that the government, in consultation with Victoria Police, the Department of Justice, the Department of Health, and peak Aboriginal and/or Torres Strait Islander organisations urgently develop a review and implementation strategy for the State's implementation of the 339 recommendations of the 1991 final report of the Royal Commission into Aboriginal Deaths in Custody. What's your understanding of the Department of Health's response to that?

MS WHETTON: I can't comment on that. We will have - will be party to those discussions. But I personally just - I'm not sure where the discussion is up to but could seek that out if that would help.

MS FITZGERALD: As you understand it, the State has indicated that it will implement an alternative to the Coroner's recommendation and that implementation has commenced.

MS WHETTON: It does say that, and I'll say that I am generally across this response but not the detail around what that alternative is without reading it in more detail.

MS FITZGERALD: There is a recommendation about.

"...auditing and scrutiny of custodial healthcare services to ensure that it's independent, comprehensive, transparent, regular design to enhance the health, wellbeing and safety outcomes for Victorian prisoners, designed to ensure custodial healthcare services are delivered in a manner that's consistent with Charter obligations and that the implementation of any recommendations for improved practice identified by the system for auditing and scrutiny is monitored."

And is it right that, at the moment, Justice Health is scoping the design for the new model for auditing Custodial Health Services?

MS WHETTON: Ms Fitzgerald, would you mind saying which recommendation you are referring to?

MS FITZGERALD: I'm sorry, I'm on - there are no page numbers. I'm on recommendation 18 which is -

MS WHETTON: I see.

MS FITZGERALD: - page 8.

MS WHETTON: On seeing this response, I would have to say that if the Department of Justice and Community Safety is saying that that's the work that it's going to do and is going to implement it, that that will be the case. I'm not aware of other work around that recommendation at this stage.

MS FITZGERALD: And you're not aware of any work that the Department of Health will be doing in that, in relation to that recommendation?

MS WHETTON: I don't but I can seek out that information if it would assist.

MS FITZGERALD: Yes, thank you, it would. And then, finally, the last recommendation that I think touches upon anything to do with the Department of Health is recommendation 38. Coroner McGregor recommended that:

"The Department of Health, in collaboration with relevant Aboriginal Community Controlled health organisations and other stakeholders prioritise the design, establishment and adequately resource a culturally safe, gender specific residential rehab facility for Aboriginal and/or and Torres Strait Islander women with drug and alcohol dependence."

Now, the response indicates that this recommendation is under consideration. Do you understand why the department has not accepted this recommendation fully?

MS WHETTON: This recommendation will say that it's under consideration because there's - for two reasons. One, there's work underway at the moment to undertake Mental Health and Wellbeing service planning and capital planning and that extends, or will extend to

alcohol and other drug services as well. So that work's underway and it's in response to the Royal Commission into Victoria's Mental Health System. It's something that has not been done well in the past. So there's that work about service and capital planning, but also that this would - to stand up a centre like this would require funding, and so it would be subject to future government consideration of funding.

MS FITZGERALD: Commissioners, those were the questions that I had for these witnesses.

COMMISSIONER HUNTER: Yeah, I'm just looking at the health.vic.gov. You've got here - it's called the Alcohol and Other Drug Treatment Principles. And I just - you know, there's quite a few of them. But one of them is the treatment - where is it, sorry - that the treatment involves integrated and holistic care, the treatment system provides full continuity of care, treatment is person-centred. So that's your stance as Health. So how, in evidence we've heard, in prison do women getting admitted that have to go through detox? They get a detox pack and they get two a day of Valium for two days and then it tapers off to one Valium, which is a total of six days. Is that treatment person-centred?

MS WHETTON: I couldn't speak to that. I don't have the expertise to -

COMMISSIONER HUNTER: But you would say that it's - so every woman that comes in. That's not centred around the person or holistic of the person. Would you agree with that, that every woman gets the same?

MS WHETTON: I accept that there will be people with different needs and that that may not be suitable in all circumstances.

COMMISSIONER HUNTER: So, yes, you agree it's not suitable?

MS WHETTON: Not necessarily in all circumstances.

COMMISSIONER HUNTER: You know that no one should die in the care of the State because of detox, because they are detoxing. No one. Not one single person. Yet we've got one health response here by the Department of Health, and then we get another level of care by Justice Health. So how can the government give us two different forms of advice for how you are treated? So you're saying if you're not incarcerated, this is what you get. If you're incarcerated, you get less than, because that's what it says to me.

MS WHETTON: There may be some nuance around that. I'm just not aware because it is - sits with -

COMMISSIONER HUNTER: How does a - what do they call it, a pack, a standard withdrawal pack, how does that, for every woman that comes in - and we've heard this as evidence. And then you've got all this treatment-centred. We've also heard that women that have mental illness that are incarcerated are being taken off and put on different medication or it's not available to them because no one's told them there it's to be picked up or, "Oh, you have ran out." So this advice, and from what I see and reading this, does not - how do I put

it - is for someone that isn't incarcerated. So if you are incarcerated, you get a different service system.

MS WHETTON: I can't -

COMMISSIONER HUNTER: They are still in State care. You're under the care of the State. No one should die from detoxing. No one. Thank you.

COMMISSIONER WALTER: I've just got a statement. I've read and reread your response. And thank you for your testimony today, but I have to say how disappointing I found this response. It had almost nothing of substance in it, to my reading, and it was really full of platitudes and vague aspirational statements issued without any enabling mechanism attached to them. So it was very disappointing. So thank you for your evidence to clarify some of the things that weren't in here.

CHAIR: Travis, did you want to say?

COMMISSIONER LOVETT: Yes, I have got one final question. Is there anything you would like to say to First Peoples families watching today, particularly those who may have been affected by the issues discussed today and the limitations within the system that has ultimately led to, you know, continued trauma of our people at the hands of the system?

MS WHETTON: Thanks for that opportunity, Commissioner Lovett. I would say a couple of things. So, in representing the Department of Health today, I do want to acknowledge the past harms that have been experienced by First Peoples but also there are current harms that are still being experienced by First Peoples, and that the importance of having a culturally safe health and wellbeing system and supporting social and emotional wellbeing is an important part of addressing intergenerational trauma.

I would say that we are working hard as a department to implement. So I think today we have talked about quite a few things about planning for things and things in the future, but I would say that we are implementing a number of changes, and some of those have been recommended by the Royal Commission into Victoria's Mental Health System, and really around that support for social and emotional wellbeing to seek to prevent and intervene early so that First Peoples don't have to interact with the child protection system or the Criminal Justice system. And then also that as we implement the health-led model to public intoxication, that we are seeking to work closely with First Peoples for those accountability points that you've raised about monitoring and evaluation and being sure that they are delivering for First Peoples.

And just acknowledging again that without the tireless advocacy over 30 years, that we may not be where we are to be implementing those reforms. So just, I guess, in closing, just acknowledging how much deep listening that we are needing to but also action. And I hear that very clearly from the Commission. So grateful for the opportunity to present today and that we are working hard to try and achieve some better outcomes for First Peoples in Victoria.

CHAIR: Do you want to say?

COMMISSIONER BELL: Yes, I've got a few questions, thank you. Firstly, a series of questions about human rights. I believe I know the answers to these questions, but I just want to get them on the record. And as I understand your department's policy standpoint, you accept that human rights are fundamental to practically everything that you do?

MS WHETTON: Yes.

COMMISSIONER BELL: And you acknowledge that you are Charter-bound and just about every officer within the entirety of your operations is bound by the Charter.

MS WHETTON: Yes.

COMMISSIONER BELL: I understand also that you acknowledge and take seriously that there are other sources of human rights, the Disability Convention, Convention on the Rights of the Child, UNDRIP, which specify human rights that you need to take seriously and take into account.

MS WHETTON: Yes.

COMMISSIONER BELL: The Royal Commission recently produced a large report to which you've referred, and that report generally called for an alignment between human rights obligations and outcomes with respect to the mental health system, and that's a report you have accepted and you are attempting to implement.

MS WHETTON: Yes.

COMMISSIONER BELL: In relation to the two recent reforms of the Mental Health Act, those reforms were intended to reflect that recommendation specifically about the relationship between mental health outcomes and human rights?

MS WHETTON: Yes.

COMMISSIONER BELL: That's not the end of the road, though, is it? There is more for you to go. There is further for you to go towards that objective.

MS WHETTON: Yes, there absolutely is.

COMMISSIONER BELL: I'm interested to know about the specificity of the operation of the system with respect to Aboriginal people and I'm - I think I can approach this subject this way: is it your aspiration that the mental health needs, the support that's required, and the human rights with respect to mental health of Aboriginal people are going to be met within mainstream services or, in the longer run, do you accept that they should be met within Aboriginal controlled services, consistently with the principle of self-determination?

MS WHETTON: Certainly in line with self-determination, we talked earlier in the hearing today about no wrong door and the aspiration of the Royal Commission and the one that government and the Department of Health has adopted is that no matter where First Peoples seek out support for mental health and AOD, that they could approach their ACCHO, ACCO or their mainstream health service and should receive a culturally safe, respectful, inclusive service. So the idea is it should - any door that First Peoples go to.

COMMISSIONER BELL: Yes. Now, that implies, does it not, a serious upscaling of cultural competence among providers of treatment, care, and support in the mainstream. Would you accept that proposition?

MS WHETTON: I do.

COMMISSIONER BELL: And so there's a natural question to ask. If there is a need for significant upscaling of that competence, what are you doing in order to bring that about?

MS WHETTON: So there's current work and there's future work. So in the current settings, we have as a - when we were the Department of Health and Human Services, so in 2019 there's a framework - the Aboriginal and Torres Strait Islander Cultural Safety Framework that was developed, and that is to set out objectives and aspirations for health services under funded organisations by the then DHHS. It is still a Framework that we use in the Department of Health. And at the moment there are cultural safety - obligations may be the right language, in health services, statements of priority. And they undertake training and it's also a part of the performance management framework when the department talks with health services about their performance.

I say that, that that's the current setting because it's not - it's not sufficient and we've absolutely acknowledged that. And I was referring earlier to the Aboriginal Health and Wellbeing Partnership Forum and the agreement and the action plan, and the action plan that I mentioned earlier, it is still in draft form, but it has been developed with our ACCHOs and that there are priorities in that action plan for the next two years about that upscaling that you've talked about. And so recognising that it's not sufficient - nowhere near at the moment. We do still hear lots of stories of First Peoples facing racism and bias and they are not culturally safe services. So it is an area that we are really prioritising for our work over the next little while.

COMMISSIONER BELL: Thank you. Who is managing that project at the moment? Is there a mechanism of engagement with First Peoples so that they're involved? Who has done the project design and so on?

MS WHETTON: So the work that - to come up with that action in the action plan, it's been a process of the department working with ACCOs who are the Forum members, so the Aboriginal Wellbeing Partnership Forum. So it's been developed together. I don't - I think the details are now being worked through about what that actually means in terms of training, how you then hold people to account having done the training, what they learnt from the training and how they apply the training. So there's a fair bit to go in terms of the design but it's - we're hoping very soon it will not be draft and it will be agreed as that's the action. And that we as senior leaders in the Department of Health have agreed at our Executive board that

we will undertake the necessary prioritisation of work and resourcing in the department to make that happen.

COMMISSIONER BELL: Thank you. One next question category, and that is that, within the mainstream, one mechanism for addressing the shortfall in availability of treatment, care and support identified by the Royal Commission, is the roll-out of the Headspace network so that people under the age of 25 - 27, I can't remember the date now - with mental health issues are able to go to a shop front and obtain assistance. Is that a fair description?

MS WHETTON: It is, and Headspace is a service that is run by the Commonwealth Government but works in with -

COMMISSIONER BELL: Yes.

MS WHETTON: - the broader system in Victoria.

COMMISSIONER BELL: Do you know whether anybody is monitoring the uptake by young Aboriginal people of access to Headspace services?

MS WHETTON: I imagine so. It would be the Commonwealth Government.

COMMISSIONER BELL: It would be the Commonwealth.

MS WHETTON: Yes.

COMMISSIONER BELL: So I couldn't ask you about that, I guess.

MS WHETTON: Not in detail.

COMMISSIONER BELL: Not in detail. It might be something you think about because, obviously, this has State implications.

MS WHETTON: Yes.

COMMISSIONER BELL: Now, the last question category is to do with compulsory treatment criteria. You have established an independent review of compulsory treatment criteria headed up by Justice Marshall and having a team of people, including people with lived experience of mental ill health -

MS WHETTON: Yes.

COMMISSIONER BELL: - and it is currently engaged in a consultation process around reforms - legal and administrative - that might be implemented to bring about a reduction, preferably down to nothing but we shall see, of compulsory treatment. Do you know what steps are being taken by that independent review to ensure that First Peoples engage in that consultation and ensure that their voice is heard, remembering the overrepresentation among First Peoples of mental ill health?

MS WHETTON: Thank you for that question. I might just see, Ms Williams, do you have any information about that point?

MS WILLIAMS: The independent review panel are developing up their consultation strategy at the moment, in light - but they also have, as you've said, a consultation process on Engage Victoria which is available now. So there's an opportunity for First Peoples to feed in, but we are very much managing it as an independent review panel. So it's arm's-length so I couldn't say specifically, but we could make a request of that panel to provide information to Yoorrook on that particular question.

COMMISSIONER BELL: I think it would be of great interest.

MS WILLIAMS: Yes.

COMMISSIONER BELL: Because compulsory treatment is a very serious human rights issue, which Aboriginal people experience to a much greater extent, consistent with the overrepresentation in the system generally. So, yes, I would welcome that.

MS WILLIAMS: Yes. Okay.

MS FITZGERALD: Thank you, Commissioner Bell.

COMMISSIONER BELL: Thank you.

CHAIR: Thank you. Well done, Counsel. Thank you very much. I don't know why I'm thanking you, because it's all so distressing and it reminds us of the past is just there all the time for us and that our people are almost subject to whatever latest strategy or framework is in play - not necessarily the current one, by the way, the one that's coming. So it's quite distressing from that point of view, but thank you very much for being able to provide the answers to the questions we've got and we will have more, I'm sure. Thank you. Thank you, Counsel.

MS FITZGERALD: If I may, Chair, I tender into evidence the following documents referable to the evidence of Katherine Whetton and Eleanor Williams. Firstly, Exhibit 2.1.1. The Department of Health statement dated 21 March 2023. The 2.1.2, the annotated bibliography, annexure A and other documents that I referred to today from Exhibits 2.1.3 through to 2.1.9.

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

<EXHIBIT 2.1.1 DEPARTMENT OF HEALTH STATEMENT DATED 21/03/2023.

<EXHIBIT 2.1.2 ANNOTATED BIBLIOGRAPHY, ANNEXURE A.

<EXHIBITS 2.1.3 TO 2.1.9 AS PER THE LIST

MS FITZGERALD: Thank you, Chair. We have now concluded today's evidence.

CHAIR: Thank you. We can now adjourn, thank you, and we will be resuming tomorrow morning, I understand, at 10 o'clock. Thank you.

<THE WITNESSES WITHDREW

<ADJOURNED 12:55 P.M.