



TRANSCRIPT OF DAY 10 – 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, 15 MAY 2023 AT 9.30 AM (AEST)

DAY 10

HEARING BLOCK 5

MS FIONA McLEOD SC, Senior Counsel Assisting, with MR TIMOTHY GOODWIN, Counsel Assisting
MS GEORGINA COGHLAN, with MS LUISA FREDERICO for State of Victoria

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<RESUMED 9:31 A.M.

CHAIR: Good morning. Good morning, welcome. This is the tenth and final day of
hearings in Hearing Block 5 where we are hearing from government witnesses on the
5 priority areas of child protection and criminal justice. We will hear this morning from the
Honourable Enver Erdogan MLC, Minister for Corrections and Youth Justice. We will
then hear from Raylene Harradine and Adam Reilly, both representatives from the
Department of Families, Fairness and Housing. But, before we start, I would like to invite
Commissioner Hunter to give a Welcome to Country.

10 COMMISSIONER HUNTER: Thank you, Chair. I would like to acknowledge that we are
on the lands of the Wurundjeri and pay my respects to Elders past and present, to the
ancestors who guide us through this Commission, and also to those that come before us to
give us voice here today. If it wasn't for them, we wouldn't be here and I'd like to also
15 acknowledge those that have died at the hands of the State. So Wominjeka. Come with
purpose and may Bunjil watch over us today. Thank you.

CHAIR: Thank you, Commissioner Hunter. We will now have a minute's silence. If we
could stand, thank you.

20 (Video played during minute's silence)

CHAIR: Today, we remember particularly our Torres Strait Islander brother who passed
in a Victorian prison last week. Thank you. May I have appearances, please, Counsel.

25 MS MCLEOD: Thank you, Chair. Commissioners, I appear with Mr Goodwin to assist.

MS COGHLAN: Thank you, Chair. I appear on behalf of the State of Victoria. I appear
today with Ms Frederico on behalf of the Minister for Corrections, Youth Justice and
30 Victim Support this morning and this afternoon I appear for two witnesses from the
Department of Families, Fairness and Housing, Raylene Harradine, the Deputy Secretary
Aboriginal Self-Determination and Outcomes Division and also Adam Reilly, Executive
Director, Wimmera South-West Area.

35 I acknowledge the Traditional Owners of the land on which we meet today and have met
over the past few weeks, the Wurundjeri people of the Kulin nation. I pay my deep
respects to their Elders past and present. I acknowledge all First Peoples and Traditional
Owners here today and those who might be watching on. I acknowledge that sovereignty
has never been ceded. And given some of the topics that will be touched on today, the
40 State acknowledges the First Peoples who have died in custody and the compounding
impact of terrible pain, sorrow and trauma and anger that this has caused for First Peoples
communities and their families. Thank you, Chair.

CHAIR: Thank you, Counsel.

45 MS MCLEOD: Thank you, Commissioners. I also thank Commissioner Hunter for her
Welcome to Country. I acknowledge that we are on the lands of the Wurundjeri people. I
acknowledge ancestors and Elders of the Wurundjeri and acknowledge that Aboriginal
lands in this State have never been ceded. I too acknowledge all Aboriginal people here in
50 this hearing room and following online, and thank them and those acting for them for their

work seeking justice in the Criminal Justice system. I acknowledge all people who have died in custody and in the care of the State and honour their memories.

5 Your Honour, before I call the witness this morning, there is an administrative matter that I would like to attend to; namely, the tender of documents. I seek to tender into evidence the documents listed on weeks 2 and 3 annotated tender list, numbered 2.2.1 through to 2.2.284, and I also seek an order be made pursuant to section 26(1) of the Inquiries Act; namely, pursuant to section 26(1)(b) of the Inquiries Act 2014 Victoria and having regard to the matters set out in sections 26(2)(b) through (e):

10 (1) The documents in section C, documents subject to a section 18 claim, numbered 2.2.160 to 2.2.260 in the Hearing Block 5 weeks 2 and 3 annotated tender list dated 15 May 2023 are tendered on a confidential basis and subject to a restricted publication order in recognition of the claims made over those documents under section 18 of the Inquiries Act.

15 (2) The documents in section D, documents subject to a section 26 order request only, numbered 2.2.261 to 2.2.285 in the 15 May 2023 tender list, are subject to an interim restricted publication order.

20 (3) the 15 May 2023 tender list not be published until such time as the relevant agencies of the State of Victoria have had an opportunity to make any claims under section 18 and 26 of the Inquiries Act over any information included in the 15 May 2023 tender list and a copy of this order is to be published on Yoorrook's website with the web's address given in the order.

25 Notes 1, pursuant to section 48(1) of the Inquiries Act, it is an indictable offence for a person including a body corporate to knowingly or recklessly contravene an order of a Commissioner under section 26(1). I seek an order in those terms, Chair.

30 CHAIR: Thank you. I make those orders in the terms sought and the documents in the tender list will be allocated the next available numbers. Thank you.

35 MS MCLEOD: Thank you, Chair. Chair, I call the Honourable Enver Erdogan, Minister for Corrections, Youth Justice and Victim Support.

THE HON. ENVER ERDOGAN: Thank you, Counsel assisting.

40 MS MCLEOD: I understand that you would - your preference - sorry, I should invite you to give an undertaking to tell the truth. Minister, do you undertake to provide truthful evidence to the Yoorrook Justice Commission today?

THE HON. ENVER ERDOGAN: Yes, I do.

45 MS MCLEOD: Thank you. I understand you would like to make an opening statement today.

THE HON. ENVER ERDOGAN: Yes.

50 MS MCLEOD: Please proceed.

THE HON. ENVER ERDOGAN: Good morning, Commissioners. Thank you for the opportunity to be here today. I wish to begin by acknowledging the Traditional Owners of the lands on which we meet, the Wurundjeri people of the Kulin nation and pay my respects to their elders, past present and emerging. Those are the lands where I work, live and raise my family. I also acknowledge the Traditional Owners of lands on which corrections and youth justice facilities across our state including the Wurundjeri people, Wathaurong people, Boonwurrung people, Dja Dja Wurrung people, Djab Wurrung people, Gunaikurnai people, Yorta Yorta people, Taungurung people and Traditional Owners across Victoria. I acknowledge that sovereignty has never been ceded.

In accordance with the preference of Aboriginal Justice Caucus, I use the term Aboriginal to respectfully refer to Aboriginal and Torres Strait Islander people. I also acknowledge the First Peoples' Assembly and the truth behind that name. Aboriginal people are the first people of this country and hold a special and distinct place in the past, present and future of the State. I acknowledge ongoing intergenerational trauma that Aboriginal Victorians have suffered and continue to suffer because of the Colonisation of Victoria. That included the deliberate creation of institution of policies to dispossess and disadvantage Aboriginal people, including the Criminal Justice system. As well as the direct use of State violence to impose trauma on Aboriginal people.

I acknowledge that the current Criminal Justice system still has its roots in that truth. This had, and continues to have, lasting implications for Aboriginal people both in the Criminal Justice system and across our society. There is no clearer or more devastating example than deaths in custody. There have been too many. These deaths happened away from community, culture, family and country. These people had hopes and plans and, of course, were loved by family, friends and community.

Since the Royal Commission into Aboriginal Deaths in Custody, 34 Aboriginal people have died in Victorian custody. 24 have been in our Corrections system. I am saddened to note that the number now includes a seventy year old Torres Strait islander man who passed in hospital last week. To respect to his family's wishes, I will not be naming him. I know the names of Aboriginal people that have passed in custody have been mentioned at this Commission out of respect for them and their families. I also wish to express my deep respect for them and their families.

I acknowledge that the State is responsible for Aboriginal deaths in custody and many of these deaths were a direct result of critical and unacceptable failings within our institutions. Personally, and on behalf of the State, I apologise for them and for the profound grief and trauma those deaths have caused. I send my deepest sympathies to the families, friends and the wider Aboriginal community for the loss and trauma this has caused.

In the face of all that, I want to acknowledge the strength and resilience of the Aboriginal peoples of Victoria and the many important contributions Aboriginal people have made and continue to make to our society. That resilience and those contributions must mean something. We must all do better. As the Minister for Corrections, Youth Justice and Victim Support, as a member of this government, as a human being I'm committed to doing better. We must continue to address the systemic injustices that result in Aboriginal

people being overrepresented in the Criminal Justice system, in particular in custodial settings.

5 Aboriginal people must have a leading role in this work, recognising that advancing
 Aboriginal self-determination is a fundamental right of Aboriginal people and also because
 we know it leads to better outcomes. But we can't expect Aboriginal people to do this
 alone. This government has committed to playing its role in enabling self-determination
 and addressing systemic injustice together with Aboriginal people. We are doing this for
 10 the Aboriginal Justice Agreement, our commitment to the Treaty process and through this
 Commission. The guidance and wisdom of this Commission and the voices heard
 throughout it will be critical in this journey. I thank the Commission for the opportunity to
 contribute to its work. I am truly humbled to be able to assist the Commission's work. I
 am here to answer your questions in that spirit.

15 CHAIR: Thank you. I would just like to make a brief response and thank you for your
 apology. Your acknowledgement is important. Governments have caused great harm to
 Aboriginal people through the Criminal Justice system. This harm continues today. You
 have acknowledged and apologised for the Aboriginal deaths in custody and the failures
 that caused these deaths and sadly we are experiencing that today from what happened last
 20 week. Aboriginal people are dying at high rates in custody, not because they are more
 likely to die in custody than others, they are dying because of the staggering rates at which
 governments, the police, are arresting them are jailing Aboriginal people. The shocking
 rate at which governments are imprisoned Aboriginal people is entirely preventable. It
 must change.

25 It is the product of the deliberate policy choices made by governments and politicians
 knowing the harm their choices make. These choices insult the contributions of so many,
 so many of our people who have made numerous recommendations and commitments to
 do the opposite. The decision to change Victoria's bail laws and the consequent huge rise
 30 in people locked up on remand and waiting for their trial or sentence is just one example of
 this.

Once again Aboriginal people, and particularly Aboriginal women, are the hardest hit by
 these. The Premier, in writing to us about work in this Commission, talked about - stated:

35 *"The ongoing overrepresentation of First Peoples in the criminal justice and child
 protection systems is a source of great shame for the Victorian government. The
 government acknowledges the conditions and injustices that have caused this
 overrepresentation. It is also responsible for ensuring that racism and injustice are
 40 confronted and addressed."*

Minister, your acknowledgement and apology today is important. It is now on the public
 record and I thank you. However, apologies and acknowledgements are not enough. We
 need action and change. Victoria needs a justice system that lives up to its name, a justice
 45 system that reflects your government's, the Victorian government's stated commitment to
 self-determination, First Peoples' cultural and human rights must be recognised. Minister,
 you have a responsibility and an opportunity to ensure that change occurs. Thank you
 again.

50 THE HON. ENVER ERDOGAN: Thank you, Chair.

MS MCLEOD: Minister, can I first start with your statement. You have provided a statement to Yoorrook dated 9 May 2023. The reference for the record is DJCS.0018.0001.0001 [*Note: the correct document ID for this document is DJCS.0013.0001.0001*]. Have you had an opportunity to look at that statement recently?

THE HON. ENVER ERDOGAN: Yes, I have.

MS MCLEOD: Are there any corrections you wish to make to that statement?

THE HON. ENVER ERDOGAN: Well, sharing the new information of a passing last week. So the figure will be updated from 33 deaths in custody to 34 since the Royal Commission into Aboriginal Deaths in Custody. That's the only change.

MS MCLEOD: So that would be a change to paragraph 28 of your statement, if you have it in front of you?

THE HON. ENVER ERDOGAN: Yes, that's correct.

MS MCLEOD: With that change is your statement true and correct?

THE HON. ENVER ERDOGAN: Yes, it would be.

MS MCLEOD: I tender that statement and I also tender the opening statement of the Minister DJCS.0013.9999.0003 [*Note: the correct document ID for this document is DJCS.0001.999.0003*]. Chair, those documents can now be placed on the Commission website.

CHAIR: Thank you, Counsel.

MS MCLEOD: Minister, can I start with canvassing your portfolio responsibilities.

THE HON. ENVER ERDOGAN: Yes. So, as stated, I'm the Minister for Corrections, Youth Justice and Victim Support. I primarily appear as the Minister for Corrections, Youth Justice. My primary responsibility, my portfolio is administering Victoria's custodial and community supervision settings for adults and young people that are placed on government supervision, managing oversight of custodial and other facilities, servicing and supporting victims of crime, the delivery of services in custodial settings in community services, overall responsibility for a number of agencies including the Adult Parole Board, Youth Parole Board, and Post Sentencing Authority, but more broadly, to set and implement the strategic direction for my portfolios, and in terms of - there's an inexhaustive list I might also share about the administration, the Acts that I'm charge of, which are the Corrections Act, Parole Orders Act, Serious Offenders Act, Community Based Sentences. That's in the corrections area. In terms of youth justice the children, youth - -

MS MCLEOD: No, can I just pause there so we deal with them one at a time.

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: Thank you. So you are appointed Minister to each of these portfolios on 5 December last year.

THE HON. ENVER ERDOGAN: That's correct.

5

MS MCLEOD: And was that your first ministerial appointment?

THE HON. ENVER ERDOGAN: Yes.

10 MS MCLEOD: Could you tell the Commission, please, how long you have been a member of the Legislative Assembly.

THE HON. ENVER ERDOGAN: I've been a member of the Legislative Assembly since August 2019.

15

MS MCLEOD: Starting first with your principal portfolio responsibility for Corrections, and this is addressed in paragraph 22 of your statement, you are responsible for management and oversight of correctional facilities and processes including processing individuals through those facilities, correct?

20

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: You are responsible for the delivery of community based services, delivery of health services in prisons via Justice Health and the oversight of the parole system; correct?

25

THE HON. ENVER ERDOGAN: Correct.

MS MCLEOD: Now, just pausing there, in terms of the parole system, departmental officers manage the prisoner's pre-release and make recommendations to the independent Parole Board for the approval of parole conditions but the Parole Board is an independent body, correct?

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THE HON. ENVER ERDOGAN: That's right, the Parole Board is an independent body. I understand Corrections Victoria prepare an assessment which is one factor that the Parole Board will consider, amongst others.

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MS MCLEOD: Sorry, just for clarification, and I may have led the Commission astray. There's - the opening statement is dated 9 May but the witness statement is dated 31 March 2023. Apologies for that misdirection at the beginning, Chair. I'm sorry, just back to the Parole Board, the Parole Board is usually chaired by a current or retired judicial officer.

40

THE HON. ENVER ERDOGAN: That's correct, yeah.

45 MS MCLEOD: And those decisions are obviously guided by legislation and processes around parole.

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: That legislation and parole has most recently been reviewed by the Callinan review with subsequent changes to the parole system.

THE HON. ENVER ERDOGAN: Yes.

5

MS MCLEOD: You are also responsible for post sentence management of serious offenders.

THE HON. ENVER ERDOGAN: Yes.

10

MS MCLEOD: Prison transfer - prisoner transfer I should say between facilities. Is it correct that you are not responsible in your portfolio at least for people who are held pursuant to police powers, for example, in police lock-ups?

15 THE HON. ENVER ERDOGAN: No.

MS MCLEOD: That falls within the Minister for Police's portfolio.

THE HON. ENVER ERDOGAN: That's correct.

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MS MCLEOD: And the Minister for Police and Chief Commissioner of Police have responsibility there?

THE HON. ENVER ERDOGAN: Yes.

25

MS MCLEOD: Now, in terms of young people are they similar responsibilities?

THE HON. ENVER ERDOGAN: Yes, similar respondents. So the youth justice custodial settings I'm in charge of.

30

MS MCLEOD: Just to be clear about the point of transfer of responsibility from police lock-up to Corrections, at what point in time does that formally occur? Is it the transfer of a person from police custody into Corrections custody?

35 THE HON. ENVER ERDOGAN: Yes, that's correct.

MS MCLEOD: Okay. Are you also responsible for those who have completed their service but may be held under what's known as His Majesty's pleasure?

40 THE HON. ENVER ERDOGAN: Well, community supervision is also part of youth justice and there's obviously community corrections in the adult system also.

MS MCLEOD: Yes. Sorry, I'm speaking about people who have served their sentence but remain within the correctional system.

45

THE HON. ENVER ERDOGAN: Yes, I am responsible for that.

MS MCLEOD: Yes. And so are you - do you have a specific power to detain people after the completion of their sentence on what's known as His Majesty's pleasure if they are deemed to be an ongoing risk to the community?

50

THE HON. ENVER ERDOGAN: I will need to get the exact technicalities on that and provide that to you.

5 MS MCLEOD: Yes, okay. But they are within your portfolio, as far as you know?

THE HON. ENVER ERDOGAN: Yes, that's right.

10 MS MCLEOD: Okay. Turning then to the Minister for Youth Justice responsibilities set out in paragraph 23, you are broadly responsible for the statutory supervision of children and young people in custody and in the community.

THE HON. ENVER ERDOGAN: Yes.

15 MS MCLEOD: There's a range of youth justice outcomes that can follow with interactions with police; for example, a case may come to court, it may not proceed, it may be struck out, it may not be proven or it may be dismissed with the court, that's one possible range of offences. And if it meets any of those criteria as in not proceeding, not proven, struck out, then people are no longer within the custody of Corrections.

20

THE HON. ENVER ERDOGAN: No. Yes, no longer Youth Justice.

MS MCLEOD: Yes. If it proceeds, if a matter proceeds in court, it can proceed to a diversion program, that's one possibility. And another, of course, is that a person may proceed to supervision on conditions; that's within Corrections - -

25

THE HON. ENVER ERDOGAN: Right.

MS MCLEOD: - - responsibility. It may also proceed to a detention order where a young person is placed in detention within the care of the State.

30

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: Okay. The Children's Court and Victoria Police may also refer children and young people to various diversionary therapeutic programs aimed at encouraging young people to reflect on their offending.

35

THE HON. ENVER ERDOGAN: That's right. Well, there's a range of criminogenic programs.

40

MS MCLEOD: Well, we call them criminogenic. If we could use the word therapeutic as being the intention of those programs - -

THE HON. ENVER ERDOGAN: Yes, that's right.

45

MS MCLEOD: - - you would agree that that is the aim, to have young people removed from the system and given opportunities for therapeutic outcomes?

THE HON. ENVER ERDOGAN: Yes.

50

MS MCLEOD: Those programs that the Children's Court and Victoria Police engage in are not legislated, are they?

THE HON. ENVER ERDOGAN: No.

5

MS MCLEOD: Who has oversight of the efficacy of those programs, as far as you know?

THE HON. ENVER ERDOGAN: Well, there's a range of different programs. Some are held within - some are under my - that Youth Justice runs, but some are also run, because they are early diversionary programs, they might fall into the responsibility of the Minister for Crime Prevention which is also the Minister for Police, so it may be in other portfolios because, obviously, we want children to avoid making contact with the youth justice system as much as possible. So they conform to a whole bunch of responsibility including the Minister for child protection.

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COMMISSIONER WALTER: Excuse me, Minister. Does that sort of atomisation of responsibilities around those programs limit how well you can monitor how well they work?

THE HON. ENVER ERDOGAN: I think there's an element of nuance and I've noticed that some of the programs are - yeah, they fall within a certain, I guess, portfolio but there can be significant overlap and I can see how that could be confusing for some.

COMMISSIONER WALTER: Wouldn't it be better to have them all within the one level of oversight so you can actually build a cohesive program that addresses therapeutic need?

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THE HON. ENVER ERDOGAN: Yeah, I think some of the programs are coming from different perspectives. So different expertise are needed. So you might have some health glazed - you might have some with, you know, a crime prevention angle. So it's the design of the programs. But I do hear your comments, Commissioner Walter, about trying to make, I guess, a more - I won't call it a uniform approach, but have one kind of line of sight, so to speak, yeah. I hear you.

30

COMMISSIONER HUNTER: Sorry, we're talking about therapeutic as well and we're talking about health outcomes as well. Yet it's across a range of portfolios. And we've previously heard, it's very siloed. So how do we get the best outcomes for the children that are involved in the criminal justice or youth justice detention? Like, how do we get that if everything is a bit siloed and you've said everybody is coming from a different angle, how do you get the best outcome for the kids?

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THE HON. ENVER ERDOGAN: I think it's a case-by-case basis so the reason why, I guess, children end up in our system is varied. So I guess it's about understanding the child's needs and tailoring a program for them. So the best program may be a health program. The best program may be a crime prevention angle. So I think there's no easy answer to that. But I think it's definitely something that I've heard at this Commission that we need to look at and try to make sure that there's a clearer line of sight and responsibility.

45

COMMISSIONER HUNTER: Do you all meet together for your views across the system and what - because it's the system that we're talking about, for better outcomes for these children?

5 THE HON. ENVER ERDOGAN: Yeah. I think there's formal and informal channels about the way, I guess, this work is done. Obviously formal channels are Cabinet and Cabinet committees but informally - and between departmental level as well, so many of the portfolios we've talked about and the witnesses we've seen fall under the Department of Justice and Community Safety, so that's Attorney General, Minister for Police, my
10 portfolio responsibilities, solely in one government department. Then we have obviously got the department, I guess the Minister for Child Protection as well, so it's a completely separate department, you're right in that sense. At a departmental level they work together as well as needed, formal and informal. So I'm sure they've got meetings. I'm not involved in those meetings, where they regularly kind of share the issues that crossover, but they are
15 in different portfolios, so there are official informal and - informal ways of discussion.

COMMISSIONER HUNTER: It's clearly not working. So if we are talking also about therapeutic needs, then health needs to come into that as well. Where are these wraparound services for those most vulnerable children? You have talked about
20 intergenerational trauma. These kids have underlying needs rather than a criminal response. So it feels like we're punishing them for having trauma.

THE HON. ENVER ERDOGAN: I see that perspective and a lot of the children that do come into our care do have a difficult upbringing. You know, I've seen the evidence, yeah,
25 and I know from the briefings I've received many of the children have mental health or disabilities as well. So there is those health needs. I saw the Commissioner for Youth Justice's evidence on this issue. The fact that there is - I see there is case management of each individual but I think more needs to be done definitely in making sure we get those services to these young people sooner because that's when you will see better outcomes if - -
30

COMMISSIONER HUNTER: Would we be talking about early intervention needs for these children?

35 THE HON. ENVER ERDOGAN: Yeah, I think early intervention and because we know to - a broader statistic where these children are coming from, over half the children that have a contact to youth justice are coming via child protection. For Aboriginal children that's three-quarters. So I think what we're talking about is early intervention but I think - I go back to - if we start off with my witness statement, I talk about the Royal Commission
40 findings that Colonisation has left Aboriginal people in a disadvantaged position in society. So economically, socially, culturally. I think we're seeing that play out in the Criminal Justice system, or by the time those young people make interaction with the youth justice system. So I think the issue is about a whole of government supporting Aboriginal children as they grow up, even before they even make contact with youth justice. So it's
45 about what are the factors, why are young people coming into contact with our system. It's because of, you know, disengagement with education. It's poor health outcomes. It's possibly lack of support for families at the beginning for young mothers. So I think that's the area. Not to make excuses, but I think you're talking about youth justice and custodial settings, that's the end point of the end of the Criminal Justice system. So definitely the

settings before need to be looked at because I don't want Aboriginal children to come into contact with our system.

5 COMMISSIONER HUNTER: And, just as you said, we go back to Colonisation and the systems are still western systems that are punitive and we've known this and we still haven't had change so I'm hoping that we can see some change in your time as Minister.

10 THE HON. ENVER ERDOGAN: Yeah, I definitely appreciate that, Commissioner Hunter. And your points I've seen in other hearings, your point about a tailored service that meets the needs of the Aboriginal community instead of just one-size-fits-all approach.

15 COMMISSIONER LOVETT: I think from my point of view - just jumping on in here - we're talking about programs, therapeutic or not, but at the end of the day, the government needs to make sure that we are respecting our people's human rights and cultural rights, addressing systemic injustices and addressing the systemic racism. I think that's really the crux of, you know, what we're trying to achieve here and I think that, you know, I just want to bring us back to those important things. Yes, there is mental health in families but again it comes back to the ongoing systemic injustices our people have faced, and, you know, there's - you know, we have still got a lot to unpack in that and there's a lot
20 of work to do, to address those issues that ultimately lead to our people being overrepresented in the justice system.

25 MS MCLEOD: Minister, you said that the reasons for interactions with youth justice are varied and used the term "criminogenic", which I understand to mean the origin is in the crime.

COMMISSIONER BELL: Where did this word come from? I really - what an ugly word to describe the human endeavour involved.

30 MS MCLEOD: If you accept, Minister, that the origin of First Nations people's interactions in a very significant number of cases, a very high proportion of cases, rests in systemic injustice, trauma, mental health, disability, as have been noted, then surely the language should change.

35 THE HON. ENVER ERDOGAN: Yes.

40 MS MCLEOD: Just can I come back to the delivery of these diversionary or therapeutic programs. They can include a program known as the ROPES or right of passage program. Are you familiar with that program?

THE HON. ENVER ERDOGAN: I know - I've heard of the name of the program but I'm not across the detail of it.

45 MS MCLEOD: Okay. And other diversionary programs offered by various organisations in the community.

THE HON. ENVER ERDOGAN: Yes.

50 MS MCLEOD: Commissioner Lovett asked you a question about those programs and investment in those programs. Can I just ask, from a ministerial point of view, what

oversight does your department have about the success of those programs and what measures are in place to evaluate that success?

5 THE HON. ENVER ERDOGAN: I think the programs - obviously a lot of the programs are funded by government. So they have KPIs, depending on what the program is. I think broadly speaking in the adult correction system, if I may, one statistic we look at is recidivism rates, how many people have actually been rehabilitated through that program. Some of the measures are statistical but I think others are not as easy to measure because it's about connection to culture and country. It depends on the goal of the program. There has been some discussion. South Australian Wirkara Kulpa and the work that's been done through that, it's about Aboriginal designed and delivered programs. So I mean there's a - from a Corrections or Youth Justice perspective, so that's some of the statistics that people usually turn to about success, is about reducing reoffending and helping people turn their lives around. But I think it's more than that. It's not as measurable statistically as that communication to culture and wellbeing, but it's - so some of the measures are different but I think what we're seeing is, that I can share, is that the programs that are Aboriginal led are seeing better outcomes.

20 COMMISSIONER LOVETT: Have you had conversations with the Aboriginal Justice Caucus?

THE HON. ENVER ERDOGAN: Yes. Yes, I have. I met with Minister Harrison, co-chair.

25 COMMISSIONER LOVETT: So we aren't able to measure the metrics around connection to culture and country, you were saying.

THE HON. ENVER ERDOGAN: It's not as straightforward. Of course we - yes.

30 COMMISSIONER LOVETT: So if it's not straightforward, what conversation have you had with Caucus around how government would effectively monitor that, because that's really pivotal. In every single thing we have heard, whether it be people coming before us, us sitting here, connection to culture, country, community, is key. So I think that, yeah, the question is how many conversations or what conversations have you had with Caucus given we are at AJA4 now, so 20 plus years, yeah, what conversations are happening around how we actually measure, you know, and it's not an intangible. That's a pretty easy metric to measure, in my view.

40 THE HON. ENVER ERDOGAN: Yeah, I haven't had the opportunity personally to have those discussions, but I know our department does have regular conversations about this. But I will - definitely I'll take your point on board, Commissioner Lovett.

45 COMMISSIONER WALTER: Can I also come back to the Wirkara Kulpa. I'm looking at the goals and the outcomes for that now and as somebody who is a researcher, I find these quite extraordinary because they're so vague. So outcomes for goal 4.1 is "Aboriginal organisations are supported and enabled to deliver youth justice programs and services". Well, that's sort of just an aspirational statement. It isn't actually something that can be measured. It isn't a KPI. So yes, and even in the ones that sort of says less Aboriginal children in detention, well, by how much? By when? None of that detail is there. So it makes it almost impossible to evaluate the success of these and, given this is a strategy for

10 years, I would have thought there would have been something much more specific that you could measure your progress against.

5 THE HON. ENVER ERDOGAN: There was some - there is some targets as part of Wirkara Kulpa about reducing the amount of Aboriginal young people in contact with youth justice and based on Wirkara Kulpa they're on target to reduce the amount of Aboriginal young people in contact so - -

10 COMMISSIONER WALTER: But is 1 per cent enough? I mean, I guess that's my point. How much is - -

15 THE HON. ENVER ERDOGAN: I think, broadly speaking, we don't want to see any young person in an Aboriginal custody setting or in contact with the youth justice system. I think that's - you're right. That's the goal. An element - it is probably aspirational, I've read Wirkara Kulpa since taking on the ministerial responsibilities, but I think it's achievable. I think if we get the settings right, and there's a whole-of-government approach I think we can make sure at the bare minimum Aboriginal people are not overrepresented in these settings but really the ultimate goal should have no Aboriginal person, especially a young person, a young child in these settings.

20 COMMISSIONER WALTER: Minister, I will agree with that but, however, on your current outcomes as per this 10-year agreement there is no way of measuring that you were making sufficient progress over those 10 years. So my point is that if you want - anywhere, if you want outcomes you have to have KPIs, proper KPIs and measurable yardsticks that you have to meet and it's not in here.

COMMISSIONER LOVETT: Could I just say, a vision without a plan or strategy in how to get there is just an illusion.

30 MS MCLEOD: Minister, can I invite your response to Commissioner Walter's question and Commissioner Lovett's statement about the need for measurable outcomes.

35 THE HON. ENVER ERDOGAN: Yeah, I agree. I've read the - like I said, the Wirkara Kulpa and I think it needs more clearly defined targets and I think all the work we do in this department should be measurable to, as much as possible, objective targets that we can demonstrate to the Aboriginal community the work that's being done and progress that's being made.

40 COMMISSIONER LOVETT: Can I ask, just can you just explain to us what is self-determination? How would you describe self-determination for Aboriginal people and here in Victoria?

45 THE HON. ENVER ERDOGAN: I think that's a question that I've reflected on quite a bit because of my cultural upbringing. My parents are, in fact, Kurds from Turkey. So I'm quite, I guess, familiar with the topic of that national liberation struggles and self-determination is an issue that I - my personal aspect have an interest in. So when I look at self-determination, there's no example of it in Australia, I look at the United Nations Charter as a starting point which is about Aboriginal people determining for themselves their own status, their own political, cultural, economic development. So when I try and embed that down from the United Nations Charter, down to Australia, down to

Victoria, I feel as though self-determination is about Aboriginal people being - making decisions about matters that affect them. That simple. So it's about - it is not about consultation. That's part of it, but it's really about decision-making power, and that's a fundamental right of our Indigenous people, the Aboriginal people.

5

COMMISSIONER LOVETT: And in the five months that you've been had those portfolios what have you done to enable the transfer of power and resources to enact that aspiration?

10 THE HON. ENVER ERDOGAN: I think since taking on the portfolios, you are talking on a good point, I come at a time when I feel there's opportunity. We have had a Cultural Review into adult custodial settings. I think - I read that report very closely and I think there's opportunities. What I've asked for is having more Aboriginal people as part of, I guess, like I said, the design and delivery of services to Aboriginal people, but trying to
15 look at ways - and obviously it's been a short time, but going forward where we can embed more Aboriginal decision-making. I think that is probably the best way to realise elements of self-determination. But obviously the way self-determination looks in a corrections setting, we need to take the feedback from the Aboriginal community because exactly, it's up to our Indigenous people to tell us how they see it, kind of, how they would like to
20 frame the relationship in our State. But I think I see my role - I guess I've come in at a time when things are changing. We have hired more Aboriginal staff. We are looking to co-design new senior executive roles where Aboriginal people are at the table in making those decisions, not just being consulted.

25 COMMISSIONER LOVETT: So, from that response, we haven't transferred any power and resources under true self-determination to the community: yes or no?

THE HON. ENVER ERDOGAN: I think there is a great investment in programs run by ACCOs but there's a lot more that needs to be done.

30

COMMISSIONER LOVETT: Yes, I still - -

THE HON. ENVER ERDOGAN: I think the transfer of power is a good point, Commissioner Lovett. I think what our government has said is some of those matters of
35 transfer of power are matters for the Treaty process. So I think those - so formal transfers of power, I mean that's why we have a Treaty process - to get to the truth.

COMMISSIONER LOVETT: I total understand Treaty as a proud Gundiṯjmara/Kerrupmara man. I totally understand what Treaty means and what it will be
40 for our people, but I just want to be really clear on that. I don't need to be told what Treaty is or what it's not, yeah. So I'm still grappling with have we transferred power and resources to community?

THE HON. ENVER ERDOGAN: I haven't seen a transfer of power in the - -

45

COMMISSIONER LOVETT: That's it. That's it. Thank you.

COMMISSIONER BELL: Counsel, just on the Cultural Review, the Commissioner for
50 Corrections gave evidence to the Commission a couple of weeks ago that she did not take issue with the findings of the Cultural Review and she understood the government did not

take issue with the findings of the Cultural Review. I'm not talking about the recommendations, that's another matter. Could you confirm that the government does not take issue with the findings of the Cultural Review or not?

5 THE HON. ENVER ERDOGAN: Yes, we accept the findings of the Cultural Review.

COMMISSIONER BELL: Thank you.

MS MCLEOD: I'm sorry, you accept the findings?

10

THE HON. ENVER ERDOGAN: We absolutely accept the findings.

MS MCLEOD: Can I come back to paragraph 24 and your final portfolio, Minister for Victim Support. Can I ask you, do you perceive a tension here holding a portfolio for Corrections and Youth Justice dealing with offenders and also with victim support, and if you do, how do you manage those tensions internally?

15

THE HON. ENVER ERDOGAN: Yeah, I think there is a tension in our justice system about the need for victims and the broader community to feel - to be safe and feel safe as well as understanding that the long-term safety of community is serve best when people have the treatment they need and the rehabilitation they need. I think the long-term community safety is achieved through that way. So there is a tension.

20

MS MCLEOD: If I may say so, that is a fundamentally important recognition in terms of the long-term interests of the public, the long-term interests of victims of family violence, lies in addressing the root cause of offenders. Would you agree with that?

25

THE HON. ENVER ERDOGAN: That's right, Counsel Assisting.

MS MCLEOD: Are you aware that the numbers of First Nations women who are both victims and placed in custody are increasing at an alarming rate over the last few years?

30

THE HON. ENVER ERDOGAN: Yes, I've been made aware of that.

MS MCLEOD: And in terms of their incarceration, particularly on remand, that they reflect those women's increased number of interactions with police. Would that be fair?

35

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: Those interactions have led police to charging women in many instances who themselves are complaining or reporting violence against them. Are you aware of those statistics generally?

40

THE HON. ENVER ERDOGAN: I wasn't aware of that aspect.

45

MS MCLEOD: Okay. The figures are broadly in the figure of 40 to 50 per cent but since 2008 and particularly since the introduction of the bail reforms, the number of Aboriginal and Torres Strait Islander women in prison has almost doubled. Right now it's around 40 to 50 per cent of people in prison are unsentenced or waiting a court hearing or trial. So just to offer you that statistic. And we have heard in evidence before the Commission

50

including the Attorney-General's evidence that the State knew when it introduced these bail law reforms, that that would be a consequence for First Nations People. Are you familiar with those?

5 THE HON. ENVER ERDOGAN: Yes. I did see that. May I add - -

MS MCLEOD: Yes.

10 THE HON. ENVER ERDOGAN: - - on the point about my portfolio Victim Support, I will add that Aboriginal people are overrepresented also as victims of crime, statistically that two and a half - two and a half time more likely to be victims of crime. We know that understates the true picture of the level of victimisation of Aboriginal people. I know my discussion with Aboriginal Justice Caucus, Mr Harrison shared with me that general distrust of law enforcement by community and that's why that figure is a - would probably
15 be a gross understatement of the level of victimisation of Aboriginal people in our State.

MS MCLEOD: Victorian Aboriginal Legal Service's CEO, Nerita Waight, has said it's indisputable that these laws that increase remand rates harm women, many of whom are victim survivors of family violence, also impact on the principle of respect for family life
20 under Convention on the Rights of the Child. So these policies and reforms undertaken by the government back in 2018 and continuing have a significant effect on women, First Nations women, their interactions with the justice system and, in fact, many of them themselves are victims of family violence as are their children. So do you accept that as a broad proposition?
25

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: That would be undesirable and a matter of concern for you, wouldn't it?

30 THE HON. ENVER ERDOGAN: I don't want to say - like I said, in an ideal setting you wouldn't have women in that state being in custodial settings. But in terms of the broader bail reform, I think the Attorney-General, I felt in her testimony she answered it. The bail laws were made before my time in Parliament so I wasn't privy to the reasons behind them but I think the impact is clear. So a disproportionate effect on Aboriginal people, men and
35 women.

MS MCLEOD: Can I just turn to some of the acknowledgements that you make in your statement, starting perhaps at paragraph 9. Paragraph 9 and in your opening statement this morning, you've acknowledged injustices that Aboriginal Victorians have suffered and
40 continue to suffer because of Colonisation. In paragraph 10, you acknowledge the overrepresentation of Aboriginal people as victims of crime but underrepresentation when it comes to accessing victim supports; the potential for the justice system to be re-traumatising for victims of crime.

45 Paragraph 12, you acknowledge the strength and resilience of Aboriginal people in the face of those historical and ongoing injustices. In paragraph 15, you acknowledge that a lack of custodial and transition supports such as drug and alcohol programs, housing, health care and employment contributes to a high risk of reoffending. And can I just draw breath at paragraph 16. In particular you note the state has a duty to ensure that Aboriginal people
50 who come into contact with the corrections and youth justice systems are treated in a way

that recognises and responds to the intergenerational impacts of systemic and structural racism, is culturally appropriate and safe and promotes self-determination. And Commissioner Lovett asked you what that meant in terms of your understanding about self-determination. You recognise this has not always been the case, it's not always the case now and that more needs to be done to ensure that corrections and youth justice systems are culturally appropriate and safe for Aboriginal people. We must do better to reform the Criminal Justice system and improve justice outcomes.

5

So just reflecting on those statements and pausing there for a moment: you accept that when people are incarcerated they lose their liberty but not their other fundamental human rights.

10

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: You agree that corrections has an obligation to act compatibly with the rights of incarcerated people.

15

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: And that those principles should guide operations including the work of all employees and contractors.

20

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: Are you familiar with the United Nations Standard Minimum Rules for the Treatment of Prisoners?

25

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: Are those principles embedded in all of your operational systems manuals for both public and privately operated correctional facilities?

30

THE HON. ENVER ERDOGAN: It's my expectation that they are.

MS MCLEOD: Has there been any review of the facilities' operations, procedures, policies and outcomes to ensure that those rules are being upheld?

35

THE HON. ENVER ERDOGAN: Well, the most recent review is the Cultural Review - -

MS MCLEOD: Yes.

40

THE HON. ENVER ERDOGAN: - - into the adult custodial system. It's a wide-ranging review which finds a number of failings in terms of the cultural safety of our custodial settings in our state.

45

MS MCLEOD: And, as you've just indicated to the commission, you accept the findings.

THE HON. ENVER ERDOGAN: Yes, do I.

MS MCLEOD: And are the recommendations under consideration? At the moment, is that where - -

5 THE HON. ENVER ERDOGAN: We have accepted to - and we are incorporating, I think - we are trying to plan how - because it's 86 recommendations, plan how we go about implementing as many of them as we can, and some of them are under consideration, but
26 we are planning to do in the short-term, so straightaway. That was about hiring more Aboriginal Wellbeing Officers, for example, designing a new Assistant Commissioner For Aboriginal Services, together with Aboriginal Justice Caucus, and a whole bunch of others
10 in terms of the complaints framework, in making improvements straight away we've committed to, but there's others that we are looking for media and long-term changes and review, you know, possible review and change of the legislation, but it's definitely a lot of work.

15 COMMISSIONER BELL: Has there been a public announcement about what is to be done immediately as against what is to be done later?

20 THE HON. ENVER ERDOGAN: Yes, I can provide that list. So we've committed 26 of the 86 that we're doing in the short-term.

COMMISSIONER BELL: Thank you.

MS MCLEOD: I'll come back to the cultural review in a moment. Just setting the context here, the Premier in his letter to the Chair of the Commission providing the government
25 response on child protection and criminal justice, DPC.0005.0001.0002, noted as you have the ongoing injustices in both those systems, criminal justice and also child protection, and he described the overrepresentation of First Peoples in these systems as a source of great shame for the Victorian government.

30 THE HON. ENVER ERDOGAN: Yes, I agree with that.

MS MCLEOD: Yes. You noted in your opening statement that the deaths in custody resulting from critical and unacceptable failings within our institutions and systemic injustices as well.

35 THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: Both acknowledged. I want to offer you an opportunity to answer a question I put to your colleague, the Minister for Child Protection, on Friday and
40 Commissioner Hunter may have already asked you this. I put to her that - this is transcript 846 at line 39:

45 *"We've heard evidence about the pipeline from child protection to youth justice as a significant component of a child's expectations of outcomes once they enter the system, and the impact that has on families and their lives ongoing beyond interactions. There's no opportunity or little opportunity for children to age out of antisocial behaviours."*

I then asked her:

"If you were designing a system to care for children who had been exposed to trauma, violence, intergenerational trauma, you wouldn't create a system that locked them up and deprive them of their rights, would you?"

5 And she answered "No". Can I ask you the same question. Do you agree with her?

THE HON. ENVER ERDOGAN: Yes, I do.

10 MS MCLEOD: And in terms of this tension - take a step back. It appears now we have political will to address the critical failings of the system. If I can put that in a broad sense, you'd agree with that?

THE HON. ENVER ERDOGAN: Yes, I do. Broadly speaking, yes.

15 MS MCLEOD: But there's also this perception that that very support, the direction of resources towards those supports, will somehow impact upon public safety and victims of violence, particularly family violence. So I want to ask you broadly - you have mentioned long-term outcomes. How do we explain to people that this is better in the long run to invest in therapeutic and diversionary outcomes, given that there is still a public
20 conversation around safety and concern?

THE HON. ENVER ERDOGAN: Yeah, I think it's also - the type of offending also I think is also - what I've noticed in my discussions with victim support groups, that that seems to cut through as well, in terms of they understand for lower level offending those
25 people are going to be back in the community, even if they are sentenced to a custodial setting, in a relatively - well, within months or years and it's best that, for all of us, to break that cycle, for rehabilitating, providing pathways to lead healthier happier lives upon people's release. I do think that there is an element of community sentiment for higher level offending is not - there's not as much sympathy because I think the trauma caused to
30 victims is lifelong in those circumstances, in many cases. So I do make a bit of a difference between the type of offending and I think the community sentiment from victims' groups.

35 MS MCLEOD: Expecting that the work of a commission like this can assist, how do you and how do those holding public office address this public concern and shift the public - -

THE HON. ENVER ERDOGAN: Yeah, I think the role that we have, especially in relation to Aboriginal people, is explaining to the public the social determinants of incarceration better, understanding that people - you know, people don't deliberately set
40 out to do wrong things, but some of the life circumstances, the trauma they carry affects their behaviour. And we need to break that cycle. So I think it's - it's really an educational piece and I think as public officials, as a member of Parliament I have that responsibility, this Commission has that responsibility, but we all carry that and I think it really is sharing that to people and explaining what are the social determinants of incarceration and kind of
45 the - I guess how those people's trajectory has gone and then so they can see that there's actually - many of the times people that are offending are also victims themselves. And there must be opportunities for the State to intervene earlier on, much earlier, much before they get into the Criminal Justice system to try and break that cycle.

5 COMMISSIONER HUNTER: Can I just ask, you talk about - you spoke in your apology about intergenerational trauma and that happening at the hands of the State. So what is the State doing or putting in place to rectify intergenerational trauma because it's still going on since Colonisation and it was in your apology and we keep talking about it and it feels like, from my perspective, and from community, and we have heard this before, the community safety is in the best interest of the white community that the definition is because it's definitely not in the best interest of the Aboriginal community.

10 THE HON. ENVER ERDOGAN: I think the government - I'll talk in my area, but in Corrections I guess the government is investing in programs that, I guess, re-engage people with employment opportunities, connection to their culture and country.

15 COMMISSIONER HUNTER: Where's the trauma response? Where's the trauma response, because I feel like it's very punitive and we're looking at punishing people because they have trauma.

20 THE HON. ENVER ERDOGAN: I think that's - you could say that's the origins of the Corrections system and that is the old model and I think the Cultural Review acknowledges that, that we are going through a transition right now from the old model where corrections facilities were viewed as a place to punish people to more rehabilitative. So we're kind of embedding that through the programs or facilities we're building in our custodial settings like at Dame Phyllis Frost where there's an Aboriginal healing and it's opened, you know, a new trauma informed reception area, but I do hear you loud and clear on the point about the system is seen as purely punitive and it shouldn't be and we need to change that, we need to change that mindset.

25 COMMISSIONER WALTER: Excuse me, Minister. You've talked about serious crime and low-level crime. Do you have a breakdown of, say, Aboriginal women, for example, who are in custody at the moment, whether they be on remand or sentence, what the proportions are that fall into - I presume it's serious, low-level and mid. I don't know what the categories are.

30 THE HON. ENVER ERDOGAN: I don't have that information with me but I'll see what we can provide.

35 COMMISSIONER WALTER: And I think - we haven't - I don't know whether we have got it as well, but I think the vast majority are there for low-level and if you are going to be educating the public, perhaps that's something that needs to be reinforced.

40 THE HON. ENVER ERDOGAN: Yeah, and a high level of remand population. So people, you know, I believe in the presumption of innocence so they haven't been found or convicted of any offence at that stage as well. I think that's important to accept too.

45 MS MCLEOD: If the data indicates all of the evidence and all of the data points to community safety actually being achieved through these diversionary and therapeutic programs, isn't that the case that those holding public office need to be making?

THE HON. ENVER ERDOGAN: Yes, I do.

MS MCLEOD: Yes. And I take it you appreciate how important it is for those holding public office at the highest level to continue to make the case for these reforms so that they take the public with them.

5 THE HON. ENVER ERDOGAN: I agree. I think community sentiment is key to have lasting change.

MS MCLEOD: And it's about explaining to the community that locking people up, including children, does not make them safer.

10

THE HON. ENVER ERDOGAN: In most cases that's true.

MS MCLEOD: Can I just come briefly to the question of the interactions with Corrections and others within the justice portfolio broadly. Where does your portfolio sit within justice and the broader machinery of government responsibilities on justice issues generally?

15

THE HON. ENVER ERDOGAN: Yeah. So I guess obviously the most senior or lead Minister is the Attorney-General in terms of law reform, but in matters that impact my portfolio, that is in particular around correction facilities, you know, there's a task force, a Cabinet task - or subcommittee where these matters or significant policy matters are discussed. But also I think just direct contact within the department. So if there's going to be changes for example to bail laws, I guess our section or Corrections will be consulted because there will a flow-on effect to our portfolio but there are periodic meetings, formal and informal, with justice ministers that occur.

25

MS MCLEOD: Now, we're aware of a Cabinet subcommittee called the Justice Reform Task Force. I don't want you to tell me about the work of that committee except in the broadest non-protected sense. Does Corrections sit on that task force?

30 THE HON. ENVER ERDOGAN: Yes, they do.

MS MCLEOD: So your department would then also sit on the interdepartmental senior officials subcommittee that supports that.

35 THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: There's also a high level secretaries interdepartmental committee or group that meet to talk about justice reforms generally.

40 THE HON. ENVER ERDOGAN: That's right, and because, I guess, Minister for Police, Corrections and the Attorney-General are all in the same department, it's the one department secretary.

MS MCLEOD: In terms of, if the Attorney-General was looking for input into a policy reform such as the bail laws, raise the age of criminal responsibility, issues of that nature, she would seek input from your department and from you.

45

THE HON. ENVER ERDOGAN: Yes, that's right. She - from the department and would obviously - and myself and my office directly.

50

MS MCLEOD: And that would be an opportunity, no doubt, for you to express a view supporting investment in alternative diversionary outcomes for those in the justice system generally.

5 THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: Okay. Can I turn to responsibility for prisons and correctional centres and just to map out for those following the state of play in Victoria. Victoria has a system of public and private operators managing prisons in this State, correct?

10

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: There are 11, I think, although I might have the number wrong, publicly operated adult prisons or correctional centres, and people can move around those centres, depending on operational requirements and their requirements.

15

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: For men, there's Barwon, Beechworth, Dhurringile, Hopkins, Langi Kal Kal, Loddon, Marngoneet, Melbourne assessment and metropolitan remand and there's also a single community based transition facility, the Judy Lazarus Transition Centre.

20

THE HON. ENVER ERDOGAN: Yes.

25 MS MCLEOD: You are familiar with that centre?

THE HON. ENVER ERDOGAN: Yes, I am, but I haven't had the opportunity to go there.

MS MCLEOD: You're aware that's a centre that provides programs and a supervised pathway to the community for up to 25 men who are assessed as having high transitional needs. Obviously, with the numbers limited at 25, that can only serve a very limited number of men in the community?

30

THE HON. ENVER ERDOGAN: Yes.

35

MS MCLEOD: Are there plans to expand the sort of program offered at the Judy Lazarus Transition Centre?

THE HON. ENVER ERDOGAN: I haven't been briefed on that, on whether there's plans.

40

MS MCLEOD: Okay. Do you know whether those transitional support services are successful in terms of those people's recidivism or at least re-presentation before police?

THE HON. ENVER ERDOGAN: I haven't been provided the brief directly on the Judy Lazarus Transition Centre.

45

MS MCLEOD: Perhaps we can follow up on that.

THE HON. ENVER ERDOGAN: Yes.

50

MS MCLEOD: You are responsible for the Western Plains Correctional Centre.

THE HON. ENVER ERDOGAN: Yes.

5 MS MCLEOD: And the Commission heard now - it's more than a week ago - that this facility is sitting empty at the moment.

THE HON. ENVER ERDOGAN: Yes.

10 MS MCLEOD: That was intended to take the swelling remand population and also those under sentence of imprisonment.

THE HON. ENVER ERDOGAN: Yes.

15 MS MCLEOD: The decision to build the Western Plains correction centre was very much based on the fact of the increased prison population and increased remand population at the time.

20 THE HON. ENVER ERDOGAN: Yes. I don't want to speculate because I wasn't the decision-maker at the time. So obviously because it's coming in - that facility was completed in November. I took on my responsibilities in December. And obviously it's - our prison population has actually decreased in the last two years. So I did try to look back, and when I looked back I can see there's a number of, I guess, bail reforms, 2013, 25 2018, the parole changes, so there's a number of changes that have happened in the lead-up, so I can't - I'm not sure what the single reason for the construction of the facility is, but it's clearly to accommodate people in modern facilities.

30 COMMISSIONER BELL: You draw attention to the 2013 bail reforms. The Commissioner for Corrections also drew attention to those as part of restrictions which were significantly expanded in the 2018 reforms. Are you able to give any detail about that or - -

THE HON. ENVER ERDOGAN: I don't want to reflect - -

35 COMMISSIONER BELL: I would understand if you couldn't but I just - -

40 THE HON. ENVER ERDOGAN: Yes, I don't want to reflect on it, what I did see is even before the 2018 reforms it seems to be the parole population is increasing, so I don't know if that's decision-makers at a judicial level or other levels of government, you know, responding to public interest or community sentiment, what I say, might I dare say. So we have seen an increase in population even before the 2018 bail, but obviously that significantly increased further - -

45 COMMISSIONER BELL: It increased further.

THE HON. ENVER ERDOGAN: Yes.

COMMISSIONER BELL: Thank you.

50 THE HON. ENVER ERDOGAN: But there was a trend, yeah.

MS MCLEOD: In fact, I think the evidence was that it was predicted that judicial officers, with the bail reforms, would move from something around - I haven't got the figure handy, but around 40 per cent of matters coming before judicial officers would be placed on
5 remand and the expectation of those designing the bail reforms was that this would jump to 100 per cent. 100 per cent, because of the reverse onus and other provisions of the bail reforms. Yeah, I will find the source. Are you familiar with those - with that evidence?

10 THE HON. ENVER ERDOGAN: Not with that evidence, that specific evidence, yeah.

MS MCLEOD: I'll come back to that.

COMMISSIONER BELL: Counsel, I would doubt that.

15 MS MCLEOD: Just staying with the Commissioner for Corrections' evidence which is transcript page 390 and following, the indication was that it seem to have cost around - the evidence was that it would cost around \$1.1 billion to build that facility. That's consistent with your understanding?

20 THE HON. ENVER ERDOGAN: Yes, I've been informed because it was already built when I took on my responsibility that it cost \$1.1 billion.

MS MCLEOD: There was ongoing funding of 36 million per annum, I think was her
25 evidence - -

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: - - to maintain the integrity of the infrastructure and that that included
30 protective works to stop people trying to break in.

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: That construction commenced in February 2020, is that correct?

35 THE HON. ENVER ERDOGAN: Yes, that's when it commenced.

MS MCLEOD: And, as Commissioner Bell asked, that's a direct result of the spike of numbers of people on remand.

40 THE HON. ENVER ERDOGAN: Well, not just remand. I think the prison population was increasing when I tried to - it was before my time.

MS MCLEOD: Yes.

45 THE HON. ENVER ERDOGAN: And the decision to commence Western Plains, I've tried to get the information, may have been made before the bail laws were actually changed, but clearly the population was increasing and I'm sure that the bail reforms was a consideration in commissioning that prison.

MS MCLEOD: And, as has been noted, the Attorney spoke about the situation pre the 2018 reforms and after the 2018 reforms. Now, you weren't a minister at the time but you may have some insight since coming into the portfolio: was there a decision taken to build the Western Plains facility instead of trying to understand the reasons for the spike in numbers and investing in cheaper - more effective solutions or was it decided that both would happen or was there no consideration given to those things?

MS COGHLAN: Well, I object to the questions. In terms of the inquiry into whether it's - relates to Cabinet deliberations are not something this witness could comment on.

MS MCLEOD: I'm not inviting you to consider, to tell us - -

COMMISSIONER BELL: Could you ask again in a way that clarifies that point.

MS MCLEOD: Yes. Are you able to tell us, without referring to Cabinet deliberations, was there a consideration given to investing in a new facility of 1,250 beds back in 2019 at a cost of \$1.1 billion and, or rather than, invest those moneys or some of those moneys in therapeutic and diversionary programs?

THE HON. ENVER ERDOGAN: I can't really answer that because it's going back to, I guess, the decision-making at that time but, broadly speaking, what I can talk about is I don't see that - those two propositions don't exclude each other. So I think you need the early diversionary investment but you also needed the investment - if you're going to have custodial settings in model facilities because what comes out of the cultural review is you need settings for cultural spaces. You need modern health services provided on site and I've been out to Western Plains. It genuinely is a modern brand new prison, state of the art. Its physical building and design has, I guess, brought in contemporary thinking of design into place. So you can do both and you should do both. If you're going to have custodial settings, you want people housed in modern facilities.

COMMISSIONER WALTER: What are you going to do with Western Plains?

THE HON. ENVER ERDOGAN: I think the goal is to operationalise it in due course. Right now because we haven't had the increase in prison population that they were expecting in 2018 and because the numbers have almost stabilised at the moment, I'm not sure how much of that is the COVID impact, but the long-term plan is now to hire people and eventually operationalise it.

COMMISSIONER BELL: Seems logical to close down some of the old one which have been found to be culturally inappropriate and transfer prisoners and services to the new one.

THE HON. ENVER ERDOGAN: Thank you, Commissioner Bell, and I think there is an element of - I've gone and visited about nine of the custodial settings in our state, and I think there's an element - there's ageing infrastructure. You decommission older units, I guess use the newer facility and I think that's what I would like to see and I think there's planning going around that.

COMMISSIONER BELL: Well, the longer that that takes, the more unsafe, uncultural activities and experiences are happening in ageing prisons. Is that not correct?

THE HON. ENVER ERDOGAN: I think we should use our newer facilities with the appropriate cultural spaces as soon as possible.

5 MS MCLEOD: So this is, in your mind, a replacement facility rather than an additional facility for an expanded prison population?

THE HON. ENVER ERDOGAN: Yes, I think at the time, I think they were predicting an expanded population but the way I see - when I look at the system since coming to the portfolio, that it should replace ageing infrastructure.

MS MCLEOD: Yes. Do I take it from your answer that - obviously the population of Melbourne is - of Victoria is expanding. Do I take it that your answer does not detract from your commitment to reduce the numbers in the corrections facilities altogether?

15 THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: Thank you. Including disproportionately Aboriginal children and their families.

20 THE HON. ENVER ERDOGAN: In particular the disproportionate impact and overrepresentation of Aboriginal people.

MS MCLEOD: Would it be useful before a huge investment of public funds such as this to conduct an impact assessment on Aboriginal people and their families of the investment of funds in a public project like this?

THE HON. ENVER ERDOGAN: I can only talk to the projects that we're starting off now, so to speak and I know that, you know, in, I guess, everything we do, the importance of embedding Aboriginal involvement is key in all the work we do. And I have seen that commitment at a departmental level because whenever they talk about matters that I'm briefed they talk about the impacts and I guess their discussions with Aboriginal Justice Caucus going forward. Like I said, I don't want us to speculate about what was the - what was in place at the time when they made that specific decision, but I know now that's how it's done. Every decision that's made by the department, Aboriginal community through the Aboriginal Justice Caucus is consulted.

MS MCLEOD: It's clearly a matter for Cabinet, Minister, as to whether this Commission is provided with further information about those deliberations, so if there's further information to provide for us, I'm sure the Commissioners would welcome it. Can I come to women then. We have two facilities, Dame Phyllis Frost and Tarrengower, and both of those facilities, as I understand it, include *Living with Mum* arrangements.

THE HON. ENVER ERDOGAN: Yes, they do.

45 MS MCLEOD: Do you know what numbers are available to women in those prisons, what numbers those can accommodate?

THE HON. ENVER ERDOGAN: I understand before COVID the maximum children they had in custodial settings was 23, but right now it sits at two.

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MS MCLEOD: And do you know how many mothers you have in the system?

5 THE HON. ENVER ERDOGAN: I don't have that information with me right now. Happy to provide that.

MS MCLEOD: I assume it would be more than 23. What ages are permitted to be in the *Living with Mum* program?

10 THE HON. ENVER ERDOGAN: Yeah, the child must be below school age. That's the requirement. And the mother must be the primary carer. And I understand the other criteria, broadly, that the best interests of the child be considered.

15 MS MCLEOD: Do you know how the best interests of the child is being considered by child protection workers or is that a matter for another portfolio?

THE HON. ENVER ERDOGAN: I think in terms of that level of operational detail, I usually don't get involved in that level but I can get that information for you.

20 COMMISSIONER WALTER: Can I just recheck the statistics. Was it 23 currently?

THE HON. ENVER ERDOGAN: No, so before COVID I understand there was up to 23 children.

25 COMMISSIONER WALTER: But now it's two.

THE HON. ENVER ERDOGAN: Now it's two at the moment.

30 COMMISSIONER WALTER: Two.

THE HON. ENVER ERDOGAN: I understand that there were difficulties during the COVID period which may have led to that decrease because what had happened, because of all the COVID protocols, children coming in, it would be difficult for them to, say, go and visit your grandad or mum or other family and come back in. There was a lot of
35 difficulties around that arrangement. So yeah, I think two.

COMMISSIONER WALTER: The COVID limitations have been lifted for a while now and a lot (overlapping speech).

40 THE HON. ENVER ERDOGAN: They've been lifted for a while, yeah.

COMMISSIONER WALTER: And a lot of women - -

THE HON. ENVER ERDOGAN: Yes, and the Corrections system was still applying. It
45 was still in application up until the beginning of the year, in terms of - for staff and visitors, in terms of you had to be vaccinated, for example. And even now staff still need to be vaccinated. So there's still some COVID protocols in correctional settings. But you're right: mostly they've been removed. So I guess we'll need to see if that number
50 increases again.

MS MCLEOD: So what's the total capacity; not numbers but capacity?

THE HON. ENVER ERDOGAN: I was told that they could - that number, around that 23 number.

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MS MCLEOD: 23, and that that was fully subscribed before COVID?

THE HON. ENVER ERDOGAN: Not fully subscribed. They said that there's no actual cap but they could accommodate more, because the way that they're housed is in the more cottage units and there's a number of cottage units in place at Tarrengower and at Dame Phyllis Frost. So the cap has to be slightly more than that. It depends on the capacity. They'd have to, I guess, rearrange the placement of prisoners, but the capacity of the cottage placements. But they said there was no cap. So if there was more, they'd be able to accommodate more than 23. That's what I was informed from the - -

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MS MCLEOD: The cottage placements I assume are lower minimum risk type arrangements, or not necessarily?

THE HON. ENVER ERDOGAN: Not necessarily, not necessarily, yeah. At Tarrengower they are.

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MS MCLEOD: And they are - when you say "cottage", more like a house?

THE HON. ENVER ERDOGAN: Yeah, they're like a self-contained unit.

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MS MCLEOD: Yes, and including kitchen facilities.

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: And arrangements so children can attend preschool activities, if need be?

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THE HON. ENVER ERDOGAN: Yes.

COMMISSIONER HUNTER: Can I just - we asked the Minister for Child Protection, speaking about the mothers because we've heard evidence that they're not having access with their children and so they said, "We're not hearing from child protection workers". She suggested I put it to you because it seems to be a Corrections problem that child protection workers can't access parents.

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THE HON. ENVER ERDOGAN: Yeah.

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COMMISSIONER HUNTER: So - -

THE HON. ENVER ERDOGAN: I did see that evidence and so I did inquire about it and I'm told that there's no - there's no systemic challenges to child protection contacting parents. So that's what the department tells me. So - but I will take that on board and follow up, definitely, because -

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COMMISSIONER HUNTER: Both systems here, do they understand that it's better for the parent and also the child to have contact? It's just common sense. And so we've got

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5 the Child Protection Minister saying, "It's not our problem" and then we've got you saying there's no barriers. How siloed is this that parents can't get access? We're hearing from women inside Corrections, saying - actually this is a really good example - one woman telling another woman how to have access with her children. She should also already know this.

10 THE HON. ENVER ERDOGAN: I know back - well, in pre-COVID in 2020 there were Family Engagement Workers that we employed to assist women in contacting their children in the prison settings and some of that work was for them to organise and assist women in that process but definitely I accept - when I asked the department about that on Friday I was told that there isn't - from their end there isn't an issue people contacting, to facilitate that contact, but I'll take that on board.

15 COMMISSIONER HUNTER: So that was during COVID you had people assisting and then - -

THE HON. ENVER ERDOGAN: No, they're hired now; there are Family Engagement Workers.

20 COMMISSIONER HUNTER: But where recently, whilst in - we went and did prison visits, hearing that women are not getting access to seeing their children or they don't know where they are, and particularly men, children going into permanent care, they've said we will never see our children again.

25 COMMISSIONER BELL: That is what we were told.

30 THE HON. ENVER ERDOGAN: That's very confronting. I do know, like I said, the same Family Engagement Workers in the men's system as well is available to assist men contacting their children. I know there's like a program around Read Along with fathers but I didn't hear that direct evidence. But you have informed me so I'll follow that up.

COMMISSIONER BELL: Minister, would you accept that there are a range of human rights that come into play in relation to this issue?

35 THE HON. ENVER ERDOGAN: Of course.

40 COMMISSIONER BELL: Without being exhaustive, the right of the child to protection in their best interests, the right of the child to family, the right of the prisoner to family, the right of family of the prisoner to the family, including the prisoner. Cultural rights which are expressed through interaction between Aboriginal children and their parents and kin. Other rights. Would you accept are called into play?

45 THE HON. ENVER ERDOGAN: Yes, I think she should be an important consideration in the decision-making.

COMMISSIONER BELL: Are you satisfied that those rights are understood and applied in this setting?

50 THE HON. ENVER ERDOGAN: I think human rights considerations I think in all Corrections settings and in youth justice are always difficult because there's usually

balancing human rights obligations in the Charter and I remember the Commissioner's evidence, testimony that you've just, Commissioner, talked a bit about in the youth justice setting but across the board so I think the decision-makers I know they always grapple with it, because there's an element of discretion in which I guess interests are paramount and I know they always grapple with and it's not an easy decision to make, balance all that out.

COMMISSIONER BELL: I accept that a balancing of rights or, more correctly, interests protected by the rights are required but my question was whether you're satisfied that the fact that the rights are engaged and what they mean is actually understood and applied within the Corrections system because I doubt it, on the evidence which we have received.

THE HON. ENVER ERDOGAN: And I've been listening to the evidence given at this Commission. I think there's definitely more work to be done about informing staff and everyone in our system and going up a level in senior leadership as well about the human rights charter and responsibilities that endows on us and making sure there was a front of mind in the application of that discretion. But I think the point that Commissioner Hunter made about access to children, I will look at that because I think that shouldn't be happening. It should be pretty straightforward actually. There should be a straightforward process. The way it has been explained to me that there's a straightforward process there are Family Engagement Workers that assist prisoners but I will look into that matter, Commissioner Hunter.

COMMISSIONER HUNTER: It's not working. Thank you.

MS MCLEOD: Just to stay with this number of 23 down to two because of COVID, are you able to tell us now or can you tell us subsequently what steps have been taken to either reunite those families, those mothers and children, and do you have any oversight as to what's happened to those children within the child protection system?

THE HON. ENVER ERDOGAN: I don't have that information with me.

MS MCLEOD: Yes. Has - you would expect active steps being taken to reunite those children?

THE HON. ENVER ERDOGAN: Yes, definitely.

MS MCLEOD: Okay. And coming back to the Western Plains issues, the government is currently proceeding with a significant spend on ageing and replacement infrastructure in the prison system generally.

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: Including current constructions and renovations at a number of prisons?

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: That's in the hundreds of millions of dollars.

THE HON. ENVER ERDOGAN: Hundreds of millions of dollars, yes.

MS MCLEOD: Can I ask - I was going to suggest the Commission have a break in a moment, but I want to ask you when we return about the proportionality of that spend compared to the investment in programs that actually will keep people out of prison. Thank you. Commissioners, is that an appropriate time for a break?

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CHAIR: Yes. 15 minutes?

MS MCLEOD: Thank you, Chair.

10 CHAIR: 11.15. Thank you.

<ADJOURNED 11:01 A.M.

<RESUMED 11:20 A.M.

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CHAIR: Thank you, Counsel, this session of Yoorrook Justice Commission has now resumed.

20 MS MCLEOD: Thank you, Chair. Minister, I wanted to follow up with two things that we discussed before the break. The first was the number of *Living With Mum* places available that has dropped from 23 to two, on your estimate, and I asked you about what has happened to reunite those families. Do you know what's happened to the use of those units in the meantime, so those 21 placements?

25 THE HON. ENVER ERDOGAN: Yes, just to clarify so there were 23 people in - 23 children.

MS MCLEOD: I see.

30 THE HON. ENVER ERDOGAN: So there's actually no cap on the amount of children.

MS MCLEOD: Yes.

35 THE HON. ENVER ERDOGAN: And I understand there's never been a capacity issue. But in terms of the use of the cottages that they would house them, I guess other prisoners are being placed there at the moment but that could be changed depending on need.

40 MS MCLEOD: So other prisoners have the advantage of a cottage placement at the moment, advantage in the sense they have greater facilities available to them.

THE HON. ENVER ERDOGAN: Yes.

45 MS MCLEOD: And that they would have to be displaced to remove mothers back with their babies.

THE HON. ENVER ERDOGAN: Potentially. Not all the cottages are being used because obviously our prison population is less than our capacity. So I know I was at Tarrengower not that long ago and I noticed that many of the cottages are empty at the moment.

COMMISSIONER BELL: Just for clarification, the cottages would not be cottages in which the women would be alone with their children. These are communal facilities where other women might be in the cottages?

5 THE HON. ENVER ERDOGAN: Yes, possibly.

MS MCLEOD: Coming back to the spending, the Commissioner and yourself, you have touched on the spend on Western Plains of \$1.1 billion and I understand that the government has committed to a \$1.8 billion investment in the 2019-20 budget to provide flexible prison capacity, deliver programs to break the cycle of reoffending and keep people out of prison. I assume that's over the forward estimates?

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THE HON. ENVER ERDOGAN: That's right.

15 MS MCLEOD: There's also a note that there's approximately 800 million to expand capacity and upgrade infrastructure at five Victorian prisons including Barwon and Marnongneet. Are you aware of that program?

THE HON. ENVER ERDOGAN: I know, yes, there's a number of upgrades happening across our custodial settings.

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MS MCLEOD: So these are significant investments of public funds. If we add the 1.1 and the 800 million, we get close to \$2 billion worth of investment in infrastructure.

25 THE HON. ENVER ERDOGAN: Yes. As I stated about Western Plains, we aim for investing in, I guess, the modern facilities to cater for, I guess, the needs and so that service can be better provided. Most recently I was at Dame Phyllis Frost and I was able to see the new reception area we built which was trauma informed and allows more access for legal services and more use of technology so, I guess, there's less invasive procedures in place.

30 COMMISSIONER HUNTER: Can I just ask how you make it trauma informed in a correctional facility.

THE HON. ENVER ERDOGAN: Well, I mean - -

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COMMISSIONER HUNTER: It's sort of cross-purposes there.

THE HON. ENVER ERDOGAN: Yeah, I think it's about reducing the amount of trauma, so making the environment as less confronting as possible - as possible, recognising it is a custodial setting.

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COMMISSIONER HUNTER: Have you gone through those prisons as a visitor?

THE HON. ENVER ERDOGAN: Yes, I've visited, yes, Dame Phyllis Frost. I've visited Loddon, Middleton and a number of other prisons, yes.

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COMMISSIONER HUNTER: It's quite confronting. It's quite - I guess when we were there, I wouldn't call it trauma informed at all. It was very busy. It was very, if you haven't been there before I would say very triggering, very scary, banging of the doors. It's not - -

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THE HON. ENVER ERDOGAN: Yeah, I was referring to the new reception area we built at Dame Phyllis Frost as trauma informed, but obviously a lot of the other infrastructure is, I guess, legacy infrastructure.

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COMMISSIONER HUNTER: The reception area would be which part?

THE HON. ENVER ERDOGAN: There's a new reception area been built at Dame Phyllis Frost.

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COMMISSIONER HUNTER: Is that where you would go through, like when you go through?

THE HON. ENVER ERDOGAN: Yeah, you're first entry point in the system so there's a brand new building that's just been commissioned.

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COMMISSIONER LOVETT: So it's not opened yet?

THE HON. ENVER ERDOGAN: I understand it was supposed to be - it's planned to be opened now.

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COMMISSIONER LOVETT: We were there three weeks ago.

COMMISSIONER HUNTER: Yeah, so that would be the entrance we went through?

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THE HON. ENVER ERDOGAN: It was - I will get back to you on the exact date of when it was supposed to be opened, but when I visited it was supposed to be opened by now. If we're talking about the same space, that is.

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COMMISSIONER HUNTER: Can I ask just about, you've got Dame Phyllis Frost, you've got Barwon, you've got Marngoneet, you've got no transport that goes to and from there, basically. When people get let out, how do they commute from this area to back home, for instance?

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THE HON. ENVER ERDOGAN: Yeah, I think that's the release planning that's done, so I think one of the points, I guess - that will go all into that release planning, about where you're going to stay, your transport, what are you doing, what's your plan in terms of employment and otherwise, how are you going to be treated out in the community because you might have - -

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COMMISSIONER HUNTER: You get let out and you're in this space in the middle of nowhere really. It's a \$50 cab fare to Lara which is the nearest - if you get let out on a weekend - I think there's a shuttle bus maybe a couple of times a week, but if you get let out on a weekend there's nothing. And we've heard people that have been let out with no money. They have to wait until Monday because their money can't be released. They can't find a way to wherever they're going. I'm just wondering what happens to them.

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THE HON. ENVER ERDOGAN: Yeah, I thought that would be part of their release planning. So that would be all planned for about where they can go.

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5 COMMISSIONER HUNTER: We've heard evidence that it's not planned very well. We've heard from a mother who got released, had to find her own way but then had no money because the money couldn't be released until the Monday and she was let out on the Saturday, so she had nothing from the Saturday through the Monday. Nothing. So there is no planning according to some of the evidence we've heard.

10 THE HON. ENVER ERDOGAN: Well, that shouldn't happen. That should be part of the release plan, in terms of your transport, you know, your accommodation, that should be just standard.

COMMISSIONER HUNTER: So how do we review that? How does that hold people accountable?

15 THE HON. ENVER ERDOGAN: I'll feed that back if that's what's happening.

COMMISSIONER BELL: Do you believe that prisoners are released into stable housing, is that your understanding?

20 THE HON. ENVER ERDOGAN: I think housing is - the need for accommodation is one of the key factors.

COMMISSIONER BELL: But my question was: do you believe that when prisoners are released that they are released in circumstances where they have a home to go to?

25 THE HON. ENVER ERDOGAN: I think finding appropriate accommodation has been a problem for prisoners upon release. I think a number of reports say that, yeah.

MS MCLEOD: The answer to - -

30 COMMISSIONER LOVETT: A number of other times there has been the visitations of correctional facilities where people are being released on the weekend and not having access to a payment as well. So I think Monday to Friday they can get access to a payment if they're released during those days, but on Saturday and Sunday they can't and they have to go back to the facility on Monday to get a payment or just - -

35 THE HON. ENVER ERDOGAN: Yeah, that shouldn't be happening.

MS MCLEOD: It's certainly not the intention of Corrections that people should be released and be homeless and impecunious, is it?

40 THE HON. ENVER ERDOGAN: No.

45 MS MCLEOD: Can I go back to the question of spending. We discussed the spend on Western Plains of \$1.1 billion and the ongoing annual spend of 36 million to keep the infrastructure secure. I'm aware there's also a budget commitment of \$1.8 billion on infrastructure which includes the various programs that I mentioned, and approximately close to 800 million to expand the current prison capacity at five prisons. So given the numbers there on physical infrastructure we're talking, which potentially are in the billions and I understand those numbers might need to be confirmed, we're talking about billions of

dollars being spent on physical infrastructure. What's the comparative number that's being spent on therapeutic and diversionary programs?

5 THE HON. ENVER ERDOGAN: It's difficult to provide a breakdown of that because some of it comes out of base funding and some of it is only program-based where you'll get an annual budget for, so I don't have an exact figure for the total amount of programs.

10 MS MCLEOD: Can you tell the Commission whether it's millions, tens of millions, hundreds of millions.

THE HON. ENVER ERDOGAN: I don't want to speculate on the full quantum, but it's a significant sum as well. It's not just in my portfolio. Some of it's in early diversionary work, some of it's in crime prevention, some is in other portfolios as well.

15 MS MCLEOD: If I suggest that it's nothing near the order of magnitude that's being spent on physical infrastructure, would that be correct?

20 THE HON. ENVER ERDOGAN: We have made significant investments in physical infrastructure across our custodial settings, I guess to modernise the facilities.

MS MCLEOD: I take it the answer to my question is yes?

THE HON. ENVER ERDOGAN: Yes.

25 MS MCLEOD: Just coming back to the prisons within your responsibility, there are private prisons also operated that you have ministerial responsibility for.

THE HON. ENVER ERDOGAN: Yes.

30 MS MCLEOD: They include Fulham, Port Phillip and Ravenhall and Ravenhall has a special mental health service. Is there dual oversight of that facility with mental health?

THE HON. ENVER ERDOGAN: Yes, Forensicare provide services at Ravenhall also.

35 MS MCLEOD: Forensicare also operate Thomas Embling.

THE HON. ENVER ERDOGAN: Yes.

40 MS MCLEOD: And is that again within your portfolio or is that mental health?

THE HON. ENVER ERDOGAN: Minister for Mental Health is in charge of Thomas Embling.

45 MS MCLEOD: As a general proposition do you agree that an effective criminal justice response needs to consider the underlying causes and circumstances of offending behaviour?

50 THE HON. ENVER ERDOGAN: Yes, we need to look at the social determinants of incarceration.

MS MCLEOD: And most people in custody have complex issues and backgrounds of trauma.

5 THE HON. ENVER ERDOGAN: Yes, that's the evidence and testimony I've heard at this Commission and I understand that.

MS MCLEOD: Are you aware that the prison environment itself can lead people to, to use your word, criminogenic behaviour, exposure to that system itself?

10 THE HON. ENVER ERDOGAN: Yes and it can have a traumatising effect on people.

MS MCLEOD: Okay. And that suggests that the rehabilitative intention of imprisonment is being undermined.

15 THE HON. ENVER ERDOGAN: It could be undermined. However, it can also assist people as well, or some people that come in contact with the youth justice and adult custodial system, it may be the first time that they're diagnosed with a chronic health condition that should have been, I guess, picked up in the community before they ended up in criminal justice and they ended up in corrections.

20 MS MCLEOD: So the custodial setting is an opportunity for people to access health and other services that they need.

25 THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: Do you have a view - I know you've only been there five months - but do you have a view that that opportunity is being fully realised?

30 THE HON. ENVER ERDOGAN: I think improvements can be made.

MS MCLEOD: In what way can improvements be made?

35 THE HON. ENVER ERDOGAN: I think some of it we're already making. So the improvements to primary healthcare services. I want to also take this opportunity to acknowledge Veronica Nelson, family and friends and community. I think the Coroner's report into the passing of Veronica Nelson demonstrated where there could be improvements to health services in custodial settings and, as has been evidenced in this Commission, we've got new health contracts that are going to provide a higher level of primary care to prisoners across the board but in particular Aboriginal prisoners.

40 COMMISSIONER HUNTER: Can I just say, I just want you to know one of those women said to me in that prison it should not take a death to get adequate healthcare for a woman in prison. They knew that this was coming and they are so scared that it's going to be them next. Now, you can say you put something else in, but who monitors it, does it work, because we don't want this to happen again and we knew all those findings, we already knew. We know. So I don't want this to happen again. The community doesn't want this to happen again. So we just can't wait for another death for things to happen. You need to be proactive. You've made the apology. And start looking deeper. Because every time we have to bring up a death to get change, it's not good enough. It's actually heartbreaking

and we, as Commissioners, have heard these stories from those families. I don't want to hear another one in this time this Commission's happening. It's disgraceful.

5 COMMISSIONER WALTER: All of the women that we spoke to when we went to Dame Phyllis Frost, I think all of them had unresolved health issues that they talked about during - it was only four weeks ago. So it was difficult for them to access. They had to fill out forms to be able to see a nurse or a doctor. Sometimes it would take weeks for that to come through, if at all. All of them, or quite a few of them were in pain, that has not been treated for unresolved health issues.

10 THE HON. ENVER ERDOGAN: Yeah and I will be looking closely at, I guess, the new health providers at Dame Phyllis Frost, being Western Health, but even the private operator for the men's system, see how they perform, and I think, yeah we don't want to see what happens to Veronica happen to anyone else in custodial settings.

15 MS MCLEOD: Just coming back to private prisons, I asked you before the break whether it was your - whether the principles, the UN Standard Minimum Rules for Treatment of Prisoners, the Mandela rules, were embedded in your operational systems, public and private, and you said it was your expectation that they were.

20 THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: So private prisons you would expect to comply with those rules?

25 THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: Are private operators subject to the same oversights as public?

30 THE HON. ENVER ERDOGAN: Broadly speaking, yes.

MS MCLEOD: So the Commissioner for Corrections has the capacity to enter and review their operations?

35 THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: Are they subject to Auditor-General oversight?

THE HON. ENVER ERDOGAN: Yes.

40 MS MCLEOD: And are they subject to Freedom of Information requests?

THE HON. ENVER ERDOGAN: Yes.

45 MS MCLEOD: If, as we understand has occurred, those operators are claiming commercial-in-confidence as a reason for non-disclosure of materials under - of Freedom of Information requests, is that something that would be of concern to you?

50 THE HON. ENVER ERDOGAN: Yes. I would have an interest in that. I think there's a public interest in that.

MS MCLEOD: There are clearly - is a need for accountability and scrutiny of the operations of these facilities, isn't there?

5 THE HON. ENVER ERDOGAN: Yes and there is obviously contracts in place which manage their performance.

MS MCLEOD: That brings me to the next question. What accountability and oversight do you have of performance of those contracts by contractors?

10 THE HON. ENVER ERDOGAN: Yes, so the department managers, they set key performance indicators and service delivery outcomes that they would like to see. But, broadly speaking, the other principles under the Corrections Act, Ombudsman, IBAC, WorkSafe, they still have powers over private prisons as they would public prisons. In terms of oversight, there's a number of mechanisms and I guess if there's failings they could be - there will be penalties.

MS MCLEOD: So you mentioned service delivery there. The contractual requirements mandate health services delivery.

20 THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: Do they mandate cultural services?

25 THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: How do you know that those delivery of requirements are being met?

30 THE HON. ENVER ERDOGAN: I personally would get briefed from the department who manage the actual day-to-day contracts and operational matters from the Commissioner if there are any issues, but broadly speaking if there are issues, it would be brought to my attention and there could be - and it probably would come to my attention where there has been - I guess, there hasn't been up to standard and then there's a process in which a charge notice can be issued to a private operator.

35 MS MCLEOD: If there is a pattern of claiming commercial-in-confidence by private operators so that the public don't get to scrutinise the behaviour of private operators, clearly there's a missing piece there in terms of accountability, would you agree?

40 THE HON. ENVER ERDOGAN: I would - my expectation's that they should be open with that information.

MS MCLEOD: Because improvements can come from public scrutiny.

45 THE HON. ENVER ERDOGAN: Yes, definitely.

MS MCLEOD: But if people can't see that KPIs are being met or not being met by those private operators, then we've got a hurdle to accountability; agree?

50 THE HON. ENVER ERDOGAN: I agree. It's about what level of detail of information can be provided. I think that's when we get into - I think it's the broader - they still are

private companies and they will have probably some information that it's understandable they don't reveal. But as much as possible, like we do with the public prisons, they should provide comparable data.

5 MS MCLEOD: Does the department set standards of acceptable management behaviour practices?

10 THE HON. ENVER ERDOGAN: In terms of the way the department operates is, the way it's been explained to me, it's all based on what the contractual kind of list of obligations are.

MS MCLEOD: So a contract might specify that lockdown, isolation, solitary confinement are acceptable, for example?

15 THE HON. ENVER ERDOGAN: If it's done a lawful way?

MS MCLEOD: Yes.

20 THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: Yes. And what KPIs are set around the use of those behaviour management techniques?

25 THE HON. ENVER ERDOGAN: I think - I don't have that level of operational detail with me because usually when it comes to me it's usually after there has been something's happened but I can provide them.

30 MS MCLEOD: If a facility was using lockdowns, for example, as a way of managing an individual's behaviour that was perceived as a threat to other residents or staff and overusing those tools, that would be of concern, I gather?

THE HON. ENVER ERDOGAN: Yes. I think as a broad principle my view is issues of isolation or other forms of, I guess - should be a matter of last resort.

35 MS MCLEOD: Yes, so I'm really asking a question about the efficacy of your oversight of those tools. Do you feel you have enough information or your department is scrutinising those behaviours - sorry, the use of those tools sufficiently to tell you whether the system is working as it should?

40 THE HON. ENVER ERDOGAN: Yeah, as I said, the Commissioner regularly briefs me on issues that are of concern.

45 MS MCLEOD: Is it a matter of tweaking contracts if you're unhappy or is it a matter of legislative reform or how would you address this if issues came to light that suggested there was an overuse of these tools?

THE HON. ENVER ERDOGAN: Yeah, I think there's - yeah, it depends how serious the misconduct is. Obviously, the most serious charge, the government still reserves the right to terminate contracts and I think depending on, I guess, what is revealed in terms of the

level of - if there is misconduct or misbehaviour, then I think all options would be considered, you know, well, should be considered.

5 MS MCLEOD: Lockdowns obviously have an impact on the delivery of services to individuals who are detained. So there might be a behaviour of an individual but there's an impact with a lockdown on all individuals' ability to access services; do you agree.

THE HON. ENVER ERDOGAN: Yes.

10 MS MCLEOD: I'll come back to that topic.

COMMISSIONER BELL: You mentioned Coroner McGregor's decision and findings. Have you had the opportunity to read it?

15 THE HON. ENVER ERDOGAN: Yes, I have.

COMMISSIONER BELL: Right. Well, that's a long document and a big read so obviously you have regarded that as a significant thing to do.

20 THE HON. ENVER ERDOGAN: Yes.

COMMISSIONER BELL: You will have noticed the significant importance placed by the Coroner on the State's adherence to human rights obligations as part of the way forward.

25 THE HON. ENVER ERDOGAN: Yes.

COMMISSIONER BELL: Do you accept that with respect to the Corrections system also?

30 THE HON. ENVER ERDOGAN: Yes. Human rights should always be front of mind.

COMMISSIONER BELL: The Coroner found significant violations, several in number, at several different points in the system, suggesting a lack of understanding and certainly a lack of application of human rights at those various points. Do you accept those findings?

35 THE HON. ENVER ERDOGAN: Yes, I do. I did read that section of the report.

40 COMMISSIONER BELL: I asked you earlier about whether you were satisfied that the Corrections system and those involved in working in the Corrections system understood and applied human rights and I think the answer that you ended at was that you had some work to do in order to ensure that that is so.

45 THE HON. ENVER ERDOGAN: Yeah, I think that was reflected on the Corrections space, but I know in other government spaces as well that it's been obviously 16 years since the Charter was implemented in Victoria and I think at all levels of government I think there is value in, I guess, in reviewing the Charter, seeing how it's being applied and making improvements - -

COMMISSIONER BELL: Yes, okay.

50 THE HON. ENVER ERDOGAN: - - the way it's applied.

COMMISSIONER BELL: On a whole of government basis?

5 THE HON. ENVER ERDOGAN: Yeah, I think there is. I think there would be value to that and possibly speaking outside my portfolio, but as to my personal view.

COMMISSIONER BELL: Well, people in the Corrections system, prisoners going in and coming out are affected virtually by the whole of government, aren't they?

10 THE HON. ENVER ERDOGAN: Yeah, the staff are, the prisoners are. They are all affected.

COMMISSIONER BELL: All right. Now, accepting what you've just said about the need for there to be a review, a recharge, is this language fitting okay with you?

15 THE HON. ENVER ERDOGAN: Like I said, it's not in my portfolio responsibility.

COMMISSIONER BELL: In your, only within - I'm talking about your portfolio. The words recharge, review, are they sitting well with you in terms of human rights endeavour?

20 THE HON. ENVER ERDOGAN: Yeah, the way they are being implemented and how those difficult decisions - because I've seen it does weigh on staff, are being implemented should be, yes.

25 COMMISSIONER BELL: All right. Well, we're talking in the realm here of endeavour and of intention. How are you going to go about achieving this? How are you going to go about reviewing and recharging adherence to human rights in the corrections system?

30 THE HON. ENVER ERDOGAN: Yeah, I think it's about that staff training piece. I know it's been talked about in this - in these hearings in the last couple of weeks quite considerably about cultural awareness and broadly speaking about human rights principles (overlapping speech).

35 COMMISSIONER BELL: I'm including cultural rights, I think you understand. I'm including cultural rights in this stream of questioning. Please go on.

40 THE HON. ENVER ERDOGAN: Thank you for that, Commissioner Bell. That's right, I think it's about the staff training pieces there and it's about ongoing training and that was a recommendation about Cultural Review but also the Coroner about that. So a better understanding of cultural rights of people in custody, particularly Aboriginal people, I think is key. I know some work has to be done about how we better train people and how we try to embed it in an ongoing way. I think that's going to be key I think to the success because you can either take everyone along with you. If you're going to make the conditions for people in custody better, you need to have the staff, because they're usually

45 the frontline and a lot of their discretionary decisions that impact people are made by staff. So I think that's - I think the key is to educate people, train them, and it's ongoing, it's continuing, it's not just set and forget. It needs to be done and reminded regularly of those responsibilities.

50 COMMISSIONER BELL: Thank you.

MS MCLEOD: Chair, thank you. For the ease of those coming back to your evidence, I might just mention the critical reports. The findings of the Coroner's Court of 30 January 2023, BAL5.1000.0001.1992. The response to recommendations from the
5 Attorney-General and the Victorian Government, 20 April 2023, BAL5.1000.0001.1923 and the response from Victoria Police, 24 April 2023, BAL5.1000.0001.1975.

So I was about to leave the adult prison system and turn to youth justice. In terms of youth justice facilities in the State - sorry.

10 COMMISSIONER WALTER: I have one question. Telephone calls. That was a big thing when we were in there. The huge expense that it is for somebody to ring a mobile number. It doesn't seem to have been updated since the early 2000s when most people had a landline. None of the people we spoke to knew anybody with a landline any more. So to
15 communicate at all with their family they had to take on \$12 telephone calls when they weren't even receiving that much per day.

COMMISSIONER BELL: Short ones.

20 COMMISSIONER WALTER: Yes, and short ones, so can you give us an idea of what you can do about this.

THE HON. ENVER ERDOGAN: Yeah, no I appreciate that and I did see that come out, because the importance of connection to family is key and we have heard that in the
25 testimony, especially of lived experience of people that have appeared at this Commission. So I've taken that on board, and my first reaction, because it came up a number of times in this Commission, what we can do - I understand they have set contracts in place in terms of that because, obviously, the technology used, some they can record, some they can't, but that charge is excessive and that's clear. So I am looking and seeing what I can do to try
30 and change that, but I think that's - yeah, definitely falls in my portfolio responsibilities and I've heard loud and clear the importance of connection to family, community and so something has to be done and looking at what can be done.

COMMISSIONER LOVETT: Have you - Minister, have you personally had any
35 engagement with Aunty Donna Nelson?

THE HON. ENVER ERDOGAN: I personally haven't. The department secretary did meet with her and explained to me her meeting, but I personally haven't met Aunty Donna.

40 COMMISSIONER LOVETT: Do you think that that would be a really good thing that the government and you, being the Minister, should make the time to meet with Aunty Donna?

THE HON. ENVER ERDOGAN: Yes, I think I'd be happy to meet with Aunty Donna. Up until now, I think it's been a very sensitive time and I felt like - that I would definitely
45 appreciate that opportunity.

COMMISSIONER LOVETT: We were talking earlier about the billion dollar investment in the prison that's sitting idle, and whilst we're talking about custodial settings but government has also got a broader Aboriginal procurement strategy on engaging
50 businesses, Aboriginal businesses. You know, we find ourselves in the poverty end rather

than managing wealth. What investment out of that 1. - well, that \$1 billion investment has gone to Aboriginal businesses?

5 THE HON. ENVER ERDOGAN: I don't have that breakdown but I can get that because I know there was procurement policies about engaging First Nations People in the building of that premises. So I am aware that there was a policy around engaging Aboriginal businesses. I'm not sure what proportion of that \$1 billion that went to Aboriginal businesses, but I will endeavour to get that and provide that to you.

10 COMMISSIONER LOVETT: Do you have a personal commitment to supporting Aboriginal businesses in your portfolio as Minister?

THE HON. ENVER ERDOGAN: Yes, I think we should. It's the right thing to do.

15 COMMISSIONER WALTER: Should or do?

THE HON. ENVER ERDOGAN: It's the right thing to do.

20 MS MCLEOD: Yes, yes.

THE HON. ENVER ERDOGAN: We should do that, yes.

MS MCLEOD: And is that currently in place?

25 THE HON. ENVER ERDOGAN: Yes, we have got a social procurement policy around engaging First Nations where possible but I think there's obviously more we can do, and the sentiment that Commissioner Lovett has expressed has been expressed to me before by people in the First Peoples' Assembly and others.

30 COMMISSIONER LOVETT: Because a lot of the times around government procurement, it's - a lot of it is catering and things like that, where a lot of our services, our businesses are qualified professionals, whether it be building, whether it be consultancy and so forth as well, so I think that not only having, I guess, a government having, I guess, the aspiration around, you know, contracts awarded to Aboriginal businesses but also dollars spent, which is a different conversation. You'd probably - would you agree?

35

THE HON. ENVER ERDOGAN: I agree.

40 COMMISSIONER HUNTER: Can I just asked, you mentioned earlier the social determinants of incarceration and it's not a test. I just haven't heard of the social determinants of incarceration. Could you break that down?

THE HON. ENVER ERDOGAN: Yes. It's just there's a law reform inquiry, a federal one in 2018, that talked about some of the factors that caused people to, I guess, get involved in the Criminal Justice system and end up in incarceration. They looked at issues around the health outcomes, the educational outcomes, the employment, the level of, I guess, discrimination or ostracisation from society, the housing situation, their family situation, all these factors play out and seem to be quite common themes that come across in people that end up in incarceration. So a lot of them, exactly, their health is in poor condition.

50 They have disengaged with education early on in life so, again, they don't have the skills I

guess in many regards. It affects some of their decision-making. They come from homes - their victims of crime and I guess abuse themselves many times, so there's all these factors. So there's the report on it. It's also the cultural review, I came across it in the Cultural Review so that Cultural Review kind of reflects on that report as well. So yes,
5 Corrections Cultural Review will reflect on the social determinants and list them in more detail.

10 COMMISSIONER HUNTER: If we've got a list of social determinants of incarceration, shouldn't the government be investing in rectifying those or putting investment into those areas so people aren't incarcerated? And my understanding is, without looking, and this would be understanding social determinants of health, one of those would be being a First Nations person.

15 THE HON. ENVER ERDOGAN: Yeah, I think the Royal Commission in '91 said that, that the Aboriginal people - and touching on the point that Commissioner Lovett made - is that they find themselves in a disadvantaged position in society and that's wealth, that's economic, that's socially, it's culturally. Colonisation has left Aboriginal people in a worse position so then the outcomes are played out.

20 COMMISSIONER HUNTER: I know. We keep saying this, because of Colonisation. How many years has it been and no one is actually addressing it. This is why we are here again today, because no one is addressing what has previously happened and the trauma that amounts, particularly when you have already got intergenerational trauma, you've been in foster care, you've been in prison, you're kicked out of school. Like, we know all this.
25 Why are we not investing in these social determinants rather than being punitive at the end and locking people up? It doesn't make sense to me.

30 THE HON. ENVER ERDOGAN: Yeah, our government would say - like, we do have programs about building more social housing, more investments in health services.

COMMISSIONER HUNTER: We've got a housing crisis though.

35 THE HON. ENVER ERDOGAN: That's right, but obviously there's obviously a lot more that needs to be done. So there's investment being done, but is it meeting demand? No it's not, so I think there's more that needs to be done in these areas around housing - -

COMMISSIONER HUNTER: It's not only demand, it's needs.

40 THE HON. ENVER ERDOGAN: - - especially targeted to Aboriginal people, that's clear.

45 COMMISSIONER HUNTER: Particularly addressing the adverse effects of Colonisation on our people. That's why we have got all this overrepresentation. It's the trauma and we're just not addressing it. We're just using punitive approaches again and again and we are seeing exactly the same outcome. Things have to change. And I understand you have only been in the position five months but we will be watching and I hope by the end of this Commission things have started to turn around.

50 MS MCLEOD: Just for the record, Minister, are you referring to the Australian Law Reform Commission Pathways to Justice Inquiry Into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples published in 2018?

THE HON. ENVER ERDOGAN: Yes, I am.

5 COMMISSIONER BELL: Can I pick up on an aspect of Commissioner Hunter's
questioning and it refers to the issue of homelessness. I took you to this issue before and I
think where you've ended in your answers was that there was a problem there with
prisoners being released into homelessness. Can I ask you how high on the order of
magnitude you would characterise this. Is this a really serious problem? Is it a shameless
10 situation? Is it something that we need to do more work on? How do you morally
categorise this?

THE HON. ENVER ERDOGAN: Yes, I think housing is one of the biggest issues,
especially affecting Aboriginal people in our custodial settings. So that's why our
government even before I got in, they invested in the Maribyrnong Residential Facility to,
15 I guess, house men as they transition out. There's a number of programs, Baggarrook is
another one that VALS runs. There are a number of others. But obviously a lot more
needs to be done. It's one of the main reasons - because I was trying to look for some
statistics at how - -

20 COMMISSIONER BELL: This is a social determinant of incarceration, isn't it,
homelessness.

THE HON. ENVER ERDOGAN: That's right, and it's seen as, Commissioner Hunter
reflected, there's a housing issue broader in society but obviously again disproportionately
25 affects people in incarceration and people in incarceration are disproportionately
Aboriginal people. So I guess that flows on, so I think that piece is one that should be a
focus in terms of housing, particularly for Aboriginal prisoners making sure they have
access to affordable, accessible, stable accommodation. It's one of the main reasons why
people are denied parole for example, is housing for Aboriginal people.

30 COMMISSIONER BELL: Well, that's an insufferable situation, isn't it, truly insufferable,
that people who would be eligible for parole to go back into the community, to
recommence their lives, to re-join their family, to enjoy culture, to be contributing
members of the community can't do it because of lack of housing. That is truly
35 insufferable.

COMMISSIONER HUNTER: How much did we spend on the new prison?

40 THE HON. ENVER ERDOGAN: \$1.1 billion.

COMMISSIONER HUNTER: It's not even accommodating anybody?

THE HON. ENVER ERDOGAN: At the moment, that's right.

45 COMMISSIONER BELL: Would you accept that there's, again, a human rights dimension
to this homelessness issue as it impacts on prisoners?

THE HON. ENVER ERDOGAN: I think housing is a very - you know, we've got a
Minister for Housing and it's a more broader social issue in Australia and in Victoria we
50 need to look at.

5 COMMISSIONER HUNTER: Again, it's silos. It's the government that's in charge. It's siloed. This siloed approach that we'd had for years is not working. You need to get your act together and work together because, you know, everybody is sitting up there, saying well, that's not under my remit. Actually it's under all of yours.

COMMISSIONER BELL: Do you see the story that I shared at the last hearing about Uncle Jack Charles?

10 THE HON. ENVER ERDOGAN: Yes, I did. Thank you for that reflection. It was a very timely reminder.

15 COMMISSIONER WALTER: I would just note that in your evidence it says that absence of suitable accommodation was a factor in 75 per cent of parole being denied decisions affecting Aboriginal people.

THE HON. ENVER ERDOGAN: That's right, Commissioner.

20 COMMISSIONER WALTER: That's huge.

THE HON. ENVER ERDOGAN: It's - -

COMMISSIONER WALTER: It's keeping people in jail.

25 THE HON. ENVER ERDOGAN: I think it's the single biggest factor that I've observed in those parole application processes for Aboriginal people.

30 MS MCLEOD: Can I just pick up the discussion about parole. Parole is when a prisoner spends the final part of their sentence in the community under supervision.

THE HON. ENVER ERDOGAN: Yes.

35 MS MCLEOD: And are you aware that the intention of parole is to provide - promote public safety by supervising somebody and supporting their transition from prison rather than having an immediate release?

40 THE HON. ENVER ERDOGAN: Yes, it has a community safety aspect because people, although whilst on parole, they will still be, I guess, under some sort of supervision order and they are still being able to be monitored to see they're complying into transitioning into the community.

45 MS MCLEOD: The Pathways to Justice Inquiry by the Australian Law Reform Commission that you just mentioned indicates that people who complete parole are less likely to reoffend and return to prison than those who do not have parole or are straight released, right? But in recent years the evidence and submissions that this Commission has heard is that it's more difficult to secure parole because of changes to the parole system. Are you broadly aware of the impact of the Callinan review and the changes that have flowed from that?

THE HON. ENVER ERDOGAN: Yes, there's different categories of offences such as serious offenders are treated differently and I think it's similar to - not similar, but, yeah, there has been a number of changes to parole (indistinct).

5 MS MCLEOD: The Victorian Aboriginal Legal Service's submission to this inquiry indicates that the decline in parole has disproportionately affected Aboriginal people and Aboriginal people are less likely to be granted parole than non-Aboriginal prisoners. If parole is successful in transitioning people from their sentence and reducing recidivism, would you be open to reviewing the system of parole to ensure that it's meeting its
10 objectives and having - and changing that disproportionate effect on First Nations People?

THE HON. ENVER ERDOGAN: Yeah, I would be open to looking into improvements that can be made to the parole system.

15 COMMISSIONER HUNTER: Can I ask, with the parole system, on those parole boards are there Aboriginal people or First Nations?

THE HON. ENVER ERDOGAN: On the board, off the top of my head - I'll need to get back to you on that.
20

MS MCLEOD: On the Parole Board?

COMMISSIONER LOVETT: Yes, there is Aboriginal representation on the Parole Board.

25 THE HON. ENVER ERDOGAN: But I'm not sure if they're involved in every single decision process though. Because the way the board meets is there's a board, but then sometimes you have three board members making the final decision so - -

COMMISSIONER HUNTER: Could you get back to us on that.
30

THE HON. ENVER ERDOGAN: Yeah, I will get the full detail of that and how it operates as well.

COMMISSIONER HUNTER: That would be great. Thank you.
35

MS MCLEOD: Just to polish off, on the number of facilities that you are responsible for, there are youth facilities, Malmsbury and Parkville.

THE HON. ENVER ERDOGAN: Yes.
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MS MCLEOD: They're the two facilities in the State with Cherry Creek to come online - -

THE HON. ENVER ERDOGAN: Yes.
45

MS MCLEOD: - - later this year or - -

THE HON. ENVER ERDOGAN: No, in the coming months. I'm very hopeful we are talking months away, within the next three months.
50

MS MCLEOD: And will Cherry Creek have services - will Cherry Creek accommodate those on remand as well as those who are on detention orders?

5 THE HON. ENVER ERDOGAN: I think the idea is that it be more focused on people that are sentenced, but it will probably have some remand as well.

MS MCLEOD: If those who are sentenced spend less than six months at a place like Cherry Creek, there's obviously an impact on their ability to access the services that Cherry Creek is offering.

10 THE HON. ENVER ERDOGAN: Yeah, I think it's different because for young people, six months is a lot longer period of their life. So I think there's a lot you can do in six months to change people's, I guess, trajectory, so to speak. So I think - Cherry Creek is a new model. That's why I don't - like, different from Western Plains. Cherry Creek is a
15 kind of realisation of, I guess, the Armytage/Ogloff review about having a multi-disciplinary approach, more based on mental health support, behavioural support, you know, vocational skill training for young people. So trying to incorporate all of that. So it is a new model and it's a higher model because of training of staff as well. I know that our
20 Commissioners share that and I think - so the staffing models and Certificate IV in which cultural awareness, for example, is a module as part of the training but, again, like I said, it's not set and forget, within 12 months the staff, they're expected to undertake further cultural awareness training upon starting their role. So it's supposed to be, you know, a
25 flagship, a trendsetter across the country, really. And so I'm excited actually. I'm excited that there's more young people, but the point is that they're going to be able to facilitate in a modern facility that meets their needs, that's the goal.

MS MCLEOD: And if children, young people, are in Cherry Creek for a short period of time, there's obviously an opportunity there for them to access these programs as well.

30 THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: They should be able to access them even if they're only there for a short time?

35 THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: Yes, okay.

40 COMMISSIONER LOVETT: Just in relation to Cherry Creek, beyond cultural awareness and cultural safety training, what tailorised cultural programs will be embedded in that facility to enable our people to get meaningful help and support?

THE HON. ENVER ERDOGAN: I think there's a cultural space for Aboriginal people. I'm envisaging Elder involvement also with the young people there. But in terms of the
45 details of those programs, I'm happy to provide that, but what I'd like to see is Aboriginal community controlled ACCOs involved, not only in the health service delivery, but also in just, I guess, growing the connection to country for those young people.

50 COMMISSIONER HUNTER: How do you grow connection to country when you are incarcerated and not on your country?

THE HON. ENVER ERDOGAN: I think it's probably a question for - what I want to say is, I guess, greater cultural awareness that is a key in terms of people knowing, I guess, their history because some of the young people that I've heard, their Aboriginal but they may not have had that, I guess, that knowledge or learnt that previously. And I guess that's probably something to do with the education system. Bu they - so the first time they kind of recognise their self-awareness, so to speak, is in those settings, unfortunately. I think it's about just elders sharing their knowledge with them, but I do take your point about that, yeah.

10

MS MCLEOD: You would be aware in a general sense that medical advice that consistently states that children in the youth justice system in Australia have high rates of neurocognitive impairment, trauma, mental health issues.

15 THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: Those issues increase markedly - sorry, those issues markedly increase the vulnerability of those children; do you agree with that?

20 THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: And additionally, those children are more likely to be disengaged with educational systems.

25 THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: Particularly those issues are acute for First Nations children coming into contact with police and the youth justice system.

30 THE HON. ENVER ERDOGAN: Yes, all the data shows that.

MS MCLEOD: Are you aware of the advice of the Royal Australian College of General Practitioners' submission to the Counsel of Attorney-Generals to this effect:

35 *"Children aged 10 to 13 years old in the youth justice system are physically and neurodevelopmentally vulnerable. Most children in the youth justice system have significant additional neurodevelopmental delays. Children aged 10 to 13 years old in juvenile detention have higher rates of pre-existing psychosocial trauma which demands a different response to behavioural issues than older children.*

40

And then the college categorically states:

"It is inappropriate for 10 to 13 year olds to be in the youth justice system."

45 I'm just seeing if we've got a reference for that advice. So given that and given your intention to move to a Cherry Creek type model where students - sorry, where children can access those services, the government is not yet immediately moving to raise the age of criminal responsibility to 12 which suggests a punitive approach rather than a therapeutic approach. Is that fair?

50

THE HON. ENVER ERDOGAN: No, we are moving to raise the criminal age of responsibility to 12.

MS MCLEOD: Yes.

5

THE HON. ENVER ERDOGAN: But then the stage 2 is the raising to 14.

MS MCLEOD: Yes. So 12 later this year, some time?

10

THE HON. ENVER ERDOGAN: No, 12 will be obviously introduced - the plan is to introduce legislation the second half of this year and be in place by middle of next year. That's the goal.

15

MS MCLEOD: So is there some way recognising that foundational principle that children interacting with youth justice have these vulnerabilities that bring them there, is there some way short of the legislative program that you could direct as a government, could direct police not to deal with these children in this way?

20

THE HON. ENVER ERDOGAN: I think that's - some of that work's already being done, I feel, because the numbers that are coming into contact with the youth justice has, especially I've noticed in my time just looking at statistics over the last few years in youth justice, in custodial settings of that 10, 11 year old and even 12 year old, has significantly reduced. And I suspect that some of that is through the early warning and cautionary and kind of discretionary measures that can be taken to kind of get young people, not - yeah, in the formal youth justice - into the formal youth justice settings.

25

MS MCLEOD: So is that a matter for police? We leave it to police to - -

30

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: - - exercise that discretion in the meanwhile?

35

THE HON. ENVER ERDOGAN: That's right. It's not in my portfolio, but I've noticed - there's obviously what's caused the decrease. It may be some that is explained through the pandemic but I suspect some of it is probably through the practices that are taking place outside of the youth justice setting but I'm not seeing them.

40

MS MCLEOD: You would be concerned as the Minister for Corrections to ensure that those children weren't inappropriately placed in a youth detention setting when their trauma is what takes them there?

45

THE HON. ENVER ERDOGAN: Especially for that - as we know, the younger the cohort, the more likely that they're going to potentially - (1), grow out of those issues, those behavioural issues that they're displaying and (2), that you've got the best chance of turning, I guess, their trajectory around, so - -

50

MS MCLEOD: And then, as you mentioned, 12 and 13 year olds need to delay until 2027 or until safeguards are put in place, appropriate safeguards. Have you or your department had input into what those appropriate safeguards look like yet?

THE HON. ENVER ERDOGAN: I think the Attorney-General was obviously - and I did see her testimony, so she was the lead Minister from a government perspective and she did try to, I guess, have a national approach to raising the age because I think uniformity in these kind of justice area is a positive, but that wasn't possible. So in terms of the
5 alternative service model that we were looking at, the government - the Attorney-General has announced that we're going to effectively appoint an expert panel to review what supports can be provided to young people. I don't want to pre-empt that work but what I - my observation five months into the role is that it needs to be - you need to look at - I don't want to pre-empt that committee, but look at the - take into account the
10 intergenerational trauma that Aboriginal people face and also the different approaches from different minority groups and their own experiences. So you might need something tailored.

MS MCLEOD: So I'm interested in your input or your department's input into what those self-guards look like because we are told we have to wait until 2027 or beyond for those safeguards. So given that the medical advice and the advice of many others including legal groups, the Law Reform Commission and others, is to raise the age immediately to 14 with no exceptions, what work is being done to fast track those safeguards so that you could bring in the age of 14 sooner?
20

THE HON. ENVER ERDOGAN: I think there has been a lot of work, even before my time, about options. But I think - I think it's an element of raise the age to 12. See how, I guess, the alternatives to youth justice are operating and get the alternative service model correct because I envisage that even if someone is 13 years old, there's a likelihood more than not, that the initial contact that someone in the community may make may call police and so police need to have an option to, I guess - and someone else to engage with those children at that early stage to make sure they get the support. But I don't want to pre-empt because the Attorney-General has announced that we're going to set up a panel to look into all these issues and advise us. So I haven't received that advice about what or how it should be and again I'm going in with a pretty open mind to this but I do - I know that, and I see the Attorney-General's evidence as well and it was something that I know this Commission raised and I know a lot of Aboriginal - I will say yes, that's what the medical profession said and some of the legal institutions but I think most importantly when we are talking about this issue at Yoorrook, a lot of the Aboriginal organisations said that to me as well. They would like to see the age raised to 14 immediately. That was communicated by First Peoples' Assembly, Justice Caucus, Djirra and many organisations I have spoken to, and I understand that some of them probably left disappointed, but I think a cautious approach - I support the Attorney-General's position of a cautious approach, staged first 12, let's see how that's working, let's see what the panel comes back with in implementing that.
40 But I do want to make - that is still quite significant; I know to people watching, that we're the first state jurisdiction to commit to 14. That's going to take a bit more time to get there.

MS MCLEOD: Given that these children are ending up in your youth justice system, in the interim - -
45

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: - - could I invite you to let this Commission know in due course, if you don't know at the moment, what options are available to have police exercise their cautionary discretion, their discretion to caution.
50

THE HON. ENVER ERDOGAN: Yeah, and I don't want to pre-empt, but I think it was in my witness statement because I can't say much more than what I've included into my witness statement, is that there's a new youth justice bill that we're working towards and some of these issues about, I guess, having a nuanced approach, a nuanced framework I talk about in my witness statement, that all the matters that are being considered in the drafting of that legislation, like I said, I don't want to pre-empt the discussion about it because it needs to go to Cabinet and get Cabinet approval and go through the formal processes there. But I think some of those issues about the early warning cautionary, I guess, alternatives to custodial settings will be - you know, some of that will be part of the youth justice bill preparation.

MS MCLEOD: And is that - -

THE HON. ENVER ERDOGAN: It may be incorporated, there's no decision made.

MS MCLEOD: Without holding you to anything because - -

THE HON. ENVER ERDOGAN: Yeah, that's right, because there's no Cabinet process yet so - -

MS MCLEOD: And there's a competing legislative agenda.

THE HON. ENVER ERDOGAN: Yeah.

MS MCLEOD: But without holding you to that, is the aim for that to come in this year?

THE HON. ENVER ERDOGAN: Yes, the goal is to introduce to Parliament in October. That's the goal.

COMMISSIONER HUNTER: Could I just remind while we are going through this Cabinet process and all the adults are making decisions, these are children. And I don't know if you know any, you know, 13 year olds, because that's my daughter's age, the last thing I would want for her is if she makes a mistake and doesn't understand it, to end up in a youth detention facility or to be in police custody. Look, we're all adults here making decisions about these young children, but we've got to remember they're children and how we treat them affects the rest of their lives. And if we're going to talk about these social determinants of incarceration, we're adding to them at a very early age so this trajectory doesn't look good. Again, where's the therapeutic approach, I would say rather than the punitive approach? They're children.

MS MCLEOD: Can I move now to the topic of remand. There are two major reforms under consideration. The first the attorney told us is reform of the Bail Act. And tell me if you need another break.

THE HON. ENVER ERDOGAN: No.

MS MCLEOD: Okay. The first is the reform to the Bail Act and the second is a program that child protection have some input into, the decriminalisation or addressing

criminalisation of young offenders in residential care. You are familiar with that framework?

5 THE HON. ENVER ERDOGAN: I am. I know the existence of the framework and that the work's being done, usually at departmental level. So I know of its existence and its operation but I haven't personally been involved as yet in (indistinct).

10 MS MCLEOD: So given those two major pieces of work, designed to reduce the exposure of young people in the child protection system to youth justice and also to reduce numbers overall of people who are refused bail, can I put some numbers to you and then check whether you have an update for me.

THE HON. ENVER ERDOGAN: Yeah.

15 MS MCLEOD: The evidence before the Commission according to data supplied by government is that in the year ending June 2022, 1,190 people were held in prison custody without having been sentenced. That is DJCS.0016.0001.0033. We note - so that was the number June last year. Do you know what those numbers are today?

20 THE HON. ENVER ERDOGAN: Is that the youth justice figure?

MS MCLEOD: That is - no, sorry, that's the overall number. It may be particularly youth justice. I would need to check that.

25 THE HON. ENVER ERDOGAN: The figure of people in Corrections at the moment as of Thursday was 6,461 people - -

MS MCLEOD: Yes.

30 THE HON. ENVER ERDOGAN: - - of which over 40 per cent were remand - remandee population.

MS MCLEOD: And do you have a break down for the numbers in the youth justice system?

35

THE HON ENVER ERDOGAN: Yeah, the number was down to 91 on Thursday.

MS MCLEOD: Do you know what ages those children are?

40 THE HON. ENVER ERDOGAN: Yes. In terms of - no 10 to 12 year olds, one 13 year old, five 14 year old and all the others, so outside the six to 85 that are in custody are above 14.

MS MCLEOD: So on the numbers, one under the age of 14?

45

THE HON. ENVER ERDOGAN: Yes. As of Thursday, in custody, and there's one in community. So it's a very - it's a very low number.

50 MS MCLEOD: So it hardly points to a need to protect against one person in terms of raising the age of criminal responsibility, does it?

THE HON. ENVER ERDOGAN: The numbers do fluctuate. I know last month it was sitting at about six, for example, that figure of 13 year olds but it is a very small number.

5 MS MCLEOD: And yet the policy delay is to 2027 to deal with those numbers?

THE HON. ENVER ERDOGAN: I think it's about getting the alternatives set up because what this data may not show - and I guess I should - is that there's more in the community but there's also a lot that early on are diverted away and so I guess if you don't have a
10 criminal responsibility, what would be the response is what some have said.

MS MCLEOD: But diverted away because the court says not proven, not found - -

15 THE HON. ENVER ERDOGAN: Possibly.

MS MCLEOD: - - undertakings, bonds.

THE HON. ENVER ERDOGAN: Possibly. Or just cautions and warnings done at a
20 discretionary level.

MS MCLEOD: So just to come back to this question: if the outcome of the criminal
justice process including the courts is that there is one child currently aged under 14 in
youth detention - -

25 THE HON. ENVER ERDOGAN: That's right.

MS MCLEOD: - - would you agree with me that hardly points to a need to delay to 2027,
in terms of numbers, the age of criminal responsibility lowering.

30 THE HON. ENVER ERDOGAN: Yes, I think that figure with fluctuate very quickly
because we're coming at - as I said, it is a very low figure as of Thursday and I think post
pandemic we've seen the numbers decline a bit and seeing the trend. I think there's also
recognition of possibly the level of offending so - as well. So I think it's taking a measure
to a cautious approach with this is probably the right way to go.

35 MS MCLEOD: So whether it's six or whether it's one, you would agree with me those
numbers are relatively very low.

40 THE HON. ENVER ERDOGAN: Very low.

COMMISSIONER HUNTER: Then why are we waiting so along?

THE HON. ENVER ERDOGAN: I think the Attorney-General has articulated it, just
about getting the alternative service model so less 13 year old and 12 year olds are
45 (overlapping speech).

COMMISSIONER HUNTER: These are full numbers. These alternative models - and
we're talking about medical evidence that says don't incarcerate them. We're talking about
really low numbers. These are programs probably that are already are out there and they're

small numbers. I don't see why we would have to wait that long when all the evidence suggests this is not okay.

5 THE HON. ENVER ERDOGAN: I think the work about bringing forward - the common law recognises the fact about the cognitive or the ability for young people to, I guess, have a mens rea when committing an offence, so I mean that work is crucial as well, about making sure that the doli incapax principle is kind of brought forward earlier so young people don't have to, I guess, get involved in the formal criminal justice (indistinct).

10 COMMISSIONER HUNTER: That's if they have good legal advice, am I right, or a lawyer that (overlapping speech).

15 THE HON. ENVER ERDOGAN: Well, I think that's right. I think we're looking trying to make (overlapping speech).

20 COMMISSIONER HUNTER: That's a bit different than a program, I think. So if we're going to talk about laws, half the time they probably don't have legal representation or very limited legal representation and then you're talking about changing laws that they have no idea about. These services are to a small number of young people, children really, that don't even understand, have trauma and we're just going to re-inflict trauma and we go back to the social determinants of incarceration and we're adding to them. I don't understand.

25 THE HON. ENVER ERDOGAN: I think there is a bit of community concern about the level of offending. So the factors that we have such low numbers is a reflection that we - genuine custodial settings are a last resort in the youth justice system and they should stay that way.

30 COMMISSIONER HUNTER: Again it comes back to community safety. Whose community safety are we looking at? White community safety? Because it certainly doesn't apply to Aboriginal community safety. I just want to leave it there, with that comment.

35 MS MCLEOD: So has the work been done yet to estimate the range of numbers or the different scenarios in terms of safeguards that need to be put in place to lower the - sorry, to raise the age of criminal responsibility?

THE HON. ENVER ERDOGAN: In terms of - could you actually just ask that again.

40 MS MCLEOD: Yes. Sure. The numbers you gave were one currently under 14.

THE HON. ENVER ERDOGAN: One in community.

45 MS MCLEOD: Yes. I'm sorry, one in custody.

THE HON. ENVER ERDOGAN: One in custody and one in community at the moment under a community supervision order.

50 MS MCLEOD: Yes, so one in custody under the age of 14 and one under community - supervision.

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: Also your responsibility.

5

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: Previously the number was six.

10 THE HON. ENVER ERDOGAN: Yes, in custody and it was about another six in community.

MS MCLEOD: Has any modelling been done so far to provide an estimate of the numbers going forward? Are we talking about modelling for 10, 100, 200 children in youth justice?

15

THE HON. ENVER ERDOGAN: From time to time the department does brief me on potential numbers on - you know, based on trajectory, post-COVID of what the numbers may be - -

20 MS MCLEOD: Yes.

THE HON. ENVER ERDOGAN: - - if the existing settings were to stay, yes. So I've been briefed on potential - yeah, if the settings would stay the same, what would be the custodial population for young people, I've been briefed on that.

25

MS MCLEOD: And what are those numbers?

THE HON. ENVER ERDOGAN: Possibly a slight increase post-COVID pandemic because obviously the pandemic meant that people - there was less activity which meant less incidents. So it was predicted that it might be a slight increase.

30

MS MCLEOD: So we're talking double digits?

THE HON. ENVER ERDOGAN: Yeah.

35

MS MCLEOD: Just coming back to remand and leaving youth justice, but the figures supplied by the Department of Justice Agency Response noted:

"In the same period which is the year ending June 2022, 735 Aboriginal men and women were discharged from prison having been held in custody without being sentenced to a term of imprisonment. On average a state of 38 days for women and for men about three months."

40

So these are people who are held innocent until proven guilty - -

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THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: - - and you are aware that the agency response also indicates that most of the women on remand are held for minor offences.

50

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: So where there would be an outcome of non-custodial disposition, fines, charges not proven and similarly. When you consider the impact on the lives of these women and their families and the flow-on effects to child protection if they're separated from their families by placing them on remand, do you agree that these numbers represent a profound impact on a very vulnerable demographic?

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: It suggests, does it not, that the programs designed to keep First Peoples away from custodial settings are either not working or there's insufficient efforts and resources being directed to those programs to keep them away from the Criminal Justice system.

THE HON. ENVER ERDOGAN: Irrespective of intention, the outcomes are poor.

MS MCLEOD: The evidence of Commissioner Strong, WR.HB5.0004.0242 - sorry, 02492 - I'll just check that number - her evidence was on 1 May we had 822 Aboriginal people in the adult custodial system which represented 12.5 per cent of the prison population. Of those 822 Aboriginal men and women, 48 per cent were unsentenced. On Monday, the breakdown was 783 Aboriginal men in the adult system which is 13 per cent of the total male population. Of those Aboriginal men, 49 per cent were unsentenced. And she said this represents an increase in the First Peoples prison population over the last 12 months but a decrease in the female First Peoples prison population over the same time.

So given those rates of pre-sentencing of holding people on remand and the impacts upon families as we've heard through the child protection system, should more be done to bring those numbers of people, Aboriginal people, on remand down?

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: Are the bail reforms enough or is more needed?

THE HON. ENVER ERDOGAN: The bail laws, in terms of the bail laws, I think the Attorney-General's explained that it's about rebalancing them. I think it's a recognition that in 2018 the bail laws were obviously - the pendulum swung too much one way and now there needs to be a rebalancing and that will have an impact on Corrections and I'm hopeful that will see a decrease, a significant decrease on the remand population.

MS MCLEOD: Those sorts of statistics were well-known before the Coroner's finding in the Veronica Nelson inquest, weren't they?

THE HON. ENVER ERDOGAN: In terms of?

MS MCLEOD: The overrepresentation.

THE HON. ENVER ERDOGAN: Yes. Yes. Since I've been in the role, everyone has been - in the department has been aware of the overrepresentation and the disproportionate impact those laws have had on Aboriginal people.

5 MS MCLEOD: Can I just turn to the government response strategies. We have mentioned the bail reform. Is the current strategy to meet overrepresentation of First Peoples in custody known as the Reduce Offending and Keep People Out of Prison Strategy or ROKPOP?

THE HON. ENVER ERDOGAN: ROKPOP, yes.

10 MS MCLEOD: That's the current strategy.

THE HON. ENVER ERDOGAN: Yes, that's to reduce crime (indistinct).

15 MS MCLEOD: The central aspect of that strategy is to reduce the number of people imprisoned both in the sentence cohort and on remand via the introduction of diversionary and non-carceral options for sentencing.

THE HON. ENVER ERDOGAN: Yes.

20 MS MCLEOD: Will the strategy involve a review of the Sentencing Act and sentencing principles?

THE HON. ENVER ERDOGAN: The majority of the Sentencing Act falls within the Attorney-General's portfolio, so I think it's probably - -

25 MS MCLEOD: Check with her?

30 THE HON. ENVER ERDOGAN: If you check with her, yes, about the plan because obviously she has a lot of law reform that she is working on currently. So yeah, probably a question for her.

MS MCLEOD: I will be corrected if I'm wrong, but the Sentencing Act currently does not include any ability to take into account a person's First Nations status in the Sentencing Act itself.

35 THE HON. ENVER ERDOGAN: I believe that's the case but, again, I'll stand to be corrected with that too.

MS MCLEOD: And we should ask the Attorney about those things (overlapping speech).

40 THE HON. ENVER ERDOGAN: Yes, I think the Attorney-General is best placed to answer that, yes.

MS MCLEOD: Yes. Are you familiar with the operation of the ROKPOPs?

45 THE HON. ENVER ERDOGAN: Yes, I am.

50 MS MCLEOD: And a question of interest to the Commission: what is the status of the development of mapping or monitoring indicators concerning the ROKPOPs targets and goals?

THE HON. ENVER ERDOGAN: I guess it sets a target of an overall imprisonment rate of 130 per hundred thousand population - -

MS MCLEOD: Yes.

5

THE HON. ENVER ERDOGAN: - - by 2031. The reason why that figure, I understand, was set was it means that if you have that figure of, I guess, incarceration, making sure you keep it below that figure, you won't need to build any new prisons or expand the capacity even as the population grows.

10

MS MCLEOD: Will that target be sufficient to meet the 15 per cent target under the Close the Gap strategies?

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THE HON. ENVER ERDOGAN: Well, I think that strategy is more broadly for the population, ROKPOP. I think in terms of Closing the Gap strategy and, more broadly, I think eliminating the representation of Aboriginal people in custodial settings and criminal justice should be the goal. And I think there's a lot more that needs to be done to reach that. And some of it, again, needs to be done, not to make excuses, before people end up in Corrections, because by the time they are in Corrections, they are already part of that statistic that they have been incarcerated. It's about early on, from the first day they're born all the way through.

20

COMMISSIONER WALTER: So is there a solid plan to do that?

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THE HON. ENVER ERDOGAN: I think in terms of a plan to reduce the incarceration and overrepresentation of Aboriginal people, I think there's - one has been, for example the bail law was an example where we have seen the disproportional effect on Aboriginal people. I can't speak to what other ministers are doing in their portfolio, but in my portfolio - in youth justice I'll say we are looking at some sort of recognition of Aboriginal self-determination potentially as part of the youth justice. Well, again, I still - I need to go through the formal channels, but I think an acknowledgement of, I guess, the position that Aboriginal people has been left in in other legislation, I can't comment because I'm not in charge of those legislation, but the legislation I'm in charge of, I'm looking at how we can incorporate that.

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COMMISSIONER WALTER: I'm a bit stunned that given the size of the overrepresentation, the length of time that this has been in existence, the number of reports that have been written about this, that there isn't actually a plan in place there.

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THE HON. ENVER ERDOGAN: Well, the Corrections Cultural Review talks about some sort of recognition of - that the disadvantage that Aboriginal people find themselves in.

COMMISSIONER WALTER: Very late.

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THE HON. ENVER ERDOGAN: So the legislation that I'm looking to bring to Parliament is the youth justice bill. It still needs to go through all the process, but that is one thing I am actively considering in terms of the drafting about recognition.

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COMMISSIONER WALTER: Is there any urgency, Minister?

THE HON. ENVER ERDOGAN: Definitely. It's my priority for this, yes, to get the youth justice bill because obviously we know the earlier we make change, the earlier it will impact the trajectory and the life outcomes for young people in our system.

5 COMMISSIONER LOVETT: You mentioned self-determination in that work.

THE HON. ENVER ERDOGAN: Yeah, I think - yes, I think our youth justice team is, you would have seen the Commission and the Deputy Secretary appear, the work of Aboriginal Justice Caucus about - and they've done already some of that work, they've told me about how we can kind of have some sort of recognition of, yeah, I guess the disadvantage or self-determination, depends - I think they are still working on - I haven't seen a draft (overlapping speech). I've asked them to - I've asked them to come to me because I think it's coming through that, there needs to be something that recognises Aboriginal people disproportionately affected and the legacy of Colonisation. How that's articulated, a lot of work needs to be done. I think Aboriginal Justice Caucus is probably going to inform. Sorry, Commissioner.

COMMISSIONER LOVETT: Yes, I mean I think it's - as I said to the Minister for Child Protection, we are trying to transfer a broken system. It's not self-determination hand balling the system that's currently there to, you know, supposedly work with our communities in a sense. So I think it's an inclusion model but certainly not self-determination model that will probably be proposed by the government.

THE HON. ENVER ERDOGAN: I will take that on board when I actually see what's been drafted and take that away and I guess there will be an opportunity for me to directly face the community at that time because that will be my main priority for this, is that legislation - -

COMMISSIONER LOVETT: And I would hope that I will be pleasantly surprised that the government commit to self-determination and do a redesigned youth justice system based on the true principles of self-determination. Thanks.

COMMISSIONER BELL: You will be familiar with the statement of recognition that's in the Child Protection Amendment Bill.

THE HON. ENVER ERDOGAN: Yeah.

COMMISSIONER BELL: Yes. Does that attract as a possible source?

THE HON. ENVER ERDOGAN: Yes, those kind of - I said I don't want to get down to specifics but yeah, the same kind of principles, or similar principles.

MS MCLEOD: In the correction - to reproduce that in the Corrections space?

THE HON. ENVER ERDOGAN: No, in the youth justice bill, potentially.

MS MCLEOD: Thank you. Can I come to the cost of incarceration. You mentioned life outcomes. That's evidently a cost.

THE HON. ENVER ERDOGAN: Yes.

5 MS MCLEOD: But in terms of dollars, the Productivity Commission Report that you mentioned earlier, Australia's prison dilemma, the research paper provided, costs - it costs \$421 today to keep someone in an adult prison, which is around \$154,000 per year. And is my number correct; around \$5,000 per day to keep a youth in the youth justice system?

THE HON. ENVER ERDOGAN: Yes.

10 MS MCLEOD: Every time bail is refused, if the average stay is around six months, that's an additional cost to the State of around \$75,000 if my maths is correct.

THE HON. ENVER ERDOGAN: Every day?

15 MS MCLEOD: So every time someone's bail is refused under the current bail laws, every time someone is placed on remand - - -

THE HON. ENVER ERDOGAN: Yeah, I'd say - -

20 MS MCLEOD: - - if they're there for about six months, that costs around \$75,000.

THE HON. ENVER ERDOGAN: Over \$75,000, that's right.

25 MS MCLEOD: Yes, and what we know is that the bail changes introduced in 2018 are driving thousands, if not tens of thousands of new or unique offenders into the system. Do you accept that?

THE HON. ENVER ERDOGAN: Yes.

30 MS MCLEOD: So the policy design to keep the community safe as a result of a terrible and horrific event has created thousands, if not tens of thousands, of new or unique offenders in the system.

THE HON. ENVER ERDOGAN: Yes, it has.

35 MS MCLEOD: Would you accept that that outcome alone is an abject failure?

40 THE HON. ENVER ERDOGAN: I think - and this is where the competing policy interests come into play - for some of the people in remand, remand is appropriate. I'm not saying the people for the low-level offending, because obviously the community does need to feel safe and there's the risk that if they are not in remand, they will be back in the community reoffending for some cohort, but definitely the pendulum, as the Attorney-General stated here, has swung and we're making corrections - we are making changes to rebalance it back because, obviously, the disproportionate fact - and we understand that people that probably didn't need to be in remand were put remand and so
45 that hasn't worked.

50 MS MCLEOD: The expectation was before these reforms were brought into - put in place, the expectation was that bail refusals by magistrates would jump from between 45 per cent - would jump from 45 per cent to 100 per cent. Are you aware of those - of that modelling?

THE HON. ENVER ERDOGAN: No, I'm not aware of that modelling.

MS MCLEOD: The reforms were pursued, assuming I'm right, knowing those facts.
5 Numbers of unique offenders in the system and the cost to the State of pursuing those reforms.

THE HON. ENVER ERDOGAN: Yeah.

10 MS MCLEOD: Assume I'm right about that.

THE HON. ENVER ERDOGAN: Yeah, okay.

MS MCLEOD: I just want to ask for your insight into how we future-proof the reforms
15 that you're committed to undertaking and that the government is committed to undertaking, how do we future-proof those against the inevitable law and order campaigns?

THE HON. ENVER ERDOGAN: I think broadly not specifically about bail, but I think
broadly with any change we make from an Aboriginal perspective is embedding
20 Aboriginal decision-making at all levels. I think that's a key broad policy. So I know this Commission talks about consultation with communities and some expressed frustration that consultation alone is not enough because you can hear us and you still do what you want to do and that's a sentiment I've heard from the community. So I think it's about embedding Aboriginal decision-making is one way and I think if people see that operating,
25 that's the way you can kind of - it's much harder to scale that back once Aboriginal people making decisions for themselves. I mean, that's the way I look at it. I've tried to think of it from a government decision-making process, how can we make the outcomes better for Aboriginal people? I mean, it's by having Aboriginal people make - it's empowering them to make the decisions for themselves. That's how I'm trying to frame it, because obviously
30 we are talking about a concrete proposal, but how would we ensure that laws stand the test of time. Because you're right, Counsel Assisting, there's an element of community sentiment, and we have seen other jurisdictions, you know, every day you open the paper, there are different issues in different settings in different States that's happening. That's quite different from Victoria. And we need to make sure that whatever change we make
35 lasts and that's why I said it's continued effort and I think one key goal should be to - well, it's empowering of Aboriginal people to have a greater role in whatever system you have and more power, effectively.

COMMISSIONER LOVETT: Power and authority.
40

THE HON. ENVER ERDOGAN: Yes, Commissioner.

MS MCLEOD: So you've described these proposals as nation leading in terms of raising
45 the age. What I'm trying to get at is how to you embed the public conversation around this so that when the inevitable pressure comes and the public point to concerns about public safety, you're already ready to meet that argument?

THE HON. ENVER ERDOGAN: Yeah. I think that's a really good question and I think
50 there's more work that needs to be done in informing people of the long-term - yeah, the long-term benefits to everybody. I think what happens in Corrections and custodial

5 settings a lot of the time, because it's out of the public view, a lot of people unless they're directly impacted, they don't really consider these issues and so it's very easily - for opportunistic people to shift public sentiment on these issues, but I think it's just that informing people - but I think embedding systems which empower Aboriginal people and seeing that that actually works and leads to better outcomes is the best demonstration and so have the proof to show people that this works.

10 MS MCLEOD: And it can't be left to Aboriginal-led organisations or commissions or lawyers groups and human rights groups, can it? It has to be a whole-of-government embrace of these proposals.

THE HON. ENVER ERDOGAN: That's right, whole of government has responsibility.

15 COMMISSIONER HUNTER: Can I just say in that sort of community education piece that you're talking about, can we be really clear because this is the feedback and the online saga that people say. Let's be really clear: just because people commit a crime, they should not die in prison.

20 THE HON. ENVER ERDOGAN: Definitely not. But I think the issue that Counsel Assisting thankfully raised was the issue that law and order - and I recall before my time in this Parliament, you know, we've had shadow Attorney-Generals that have tried to demonise minorities for political gain before. So we have seen this happen again and I want to make sure we don't leave an opportunity for those people, so that's why that education piece is key so people are aware that what these people are - I guess, whenever there's the next demonisation campaign towards people, that we always remember that it's in everyone's interest that there's - first of all the impacts are -

25 COMMISSIONER HUNTER: I think the important thing is that everybody has human rights, as Commissioner Bell has pointed out.

30 THE HON. ENVER ERDOGAN: That's right, human rights and must be treated with respect and dignity and an appreciation of the cultural - I guess the intergenerational trauma that Aboriginal people as well in understanding - -

35 COMMISSIONER HUNTER: That has been inflicted on by the State.

THE HON. ENVER ERDOGAN: That's right, by the State of Victoria.

40 COMMISSIONER HUNTER: Thank you.

MS MCLEOD: Minister, I want to ask you about the Safer Prison, Safer People, Safer Communities final report of the Cultural Review. You have mentioned this already. This is a review of the adult custodial system. The reference for the transcript is DJCS0008.0001.0001. Now, in December last year, the expert panel reported on the adult custodial correction systems. This is not yet publicly available, as I understand it.

45 THE HON. ENVER ERDOGAN: No. We are - we published the report in March, in late March.

50 MS MCLEOD: Yes.

THE HON. ENVER ERDOGAN: So it's a public document.

MS MCLEOD: Thank you. What's the - -

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THE HON. ENVER ERDOGAN: I believe at the time when we handed it, or when Yoorrook requested it, at that stage it wasn't public but it is a public document and is a government response.

10 MS MCLEOD: I see. Thank you for that. What's the current timeline for the government response to this report?

15 THE HON. ENVER ERDOGAN: So we responded at the same time we released the report and as I shared with Commissioner Bell earlier, we've committed to doing 26 of the basic recommendations straight away, and then obviously looking to how we can do the others because they will need to be sequenced and some just need to see if they are compatible with existing systems. So more work needs to be done in relation to the others.

20 MS MCLEOD: So just to be absolutely clear, and tell me if you don't know so we will check along the bar table, has the government response also been published?

THE HON. ENVER ERDOGAN: Yes.

25 MS MCLEOD: Okay. One object of that review was to examine and strengthen accountability for cultural safety for Aboriginal people. That's the responsibility of Corrections.

THE HON. ENVER ERDOGAN: That's right.

30 MS MCLEOD: Under the Victorian Government Aboriginal Justice Agreement, there's a commitment to various objectives and outcomes for First Peoples including addressing the drivers of offending, support to reintegrate justice programs that are culturally safe, responsive, inclusive and effective and trauma-informed programs, and an increased Aboriginal workforce. So those are all commitments of the Aboriginal Justice Agreement.

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THE HON. ENVER ERDOGAN: Yes, I'm committed to that as well.

40 MS MCLEOD: We touched on the Corrections Act before but as I understand it, the Corrections Act has not followed the model of the Children, Youth and Families Act and specially recognising the rights of First Peoples with specific Aboriginal sentencing principles, and assuming that I'm right about that, has there been consideration to amending that Act to rectify that?

45 THE HON. ENVER ERDOGAN: Yeah, so we are. So the department - I've asked the department to look into, I guess, obviously the cultural review which is the largest document and - that I've had the opportunity to be involved in because it was delivered just as I took on the role, to look at the legislative framework, in particular the Corrections Act and see improvements being incorporated via the recommendations that have been made. So seeing what can be changed in our legislative framework. So they're going to do a
50 review of the legislation.

5 MS MCLEOD: Just touching on some of the findings of the review, would you support the creation of a statutory positive duty in the Corrections framework, legislative framework to require explicit consideration of cultural rights and cultural safety for First Peoples who are incarcerated?

THE HON. ENVER ERDOGAN: I did see that recommendation and it seems like something that should be considered, yeah.

10 MS MCLEOD: In terms of those cultural rights, the cultural review has noted that those include being on or close to country, accommodated together with other First Peoples where appropriate, providing healthcare in a manner that's culturally sensitive, the ability to form relationships with and access elders. This is if you have got the review around page 470.

15 THE HON. ENVER ERDOGAN: What page, sorry?

MS MCLEOD: 470.

20 THE HON. ENVER ERDOGAN: 470.

MS MCLEOD: The ability to form relationships with and access, Elders I mentioned, access family and family supports, cared for by staff with appropriate training, provide a custodial setting free from racial discrimination and harassment. Now, that's a bit of a long list. That same finding articulated an accountability gap between those commitments and how they are being implemented in the system. I will let you turn that up, page 470. See under the heading Existing Corrections Policy Framework.

25 THE HON. ENVER ERDOGAN: Yes, it sounds (indistinct).

30 MS MCLEOD: That's that list they I just read then. So do you accept the findings for the cultural review that there's an accountability gap between those written commitments and the experiences of First Peoples in the corrections system?

35 THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: What actions is the department taking to bridge that gap?

40 THE HON. ENVER ERDOGAN: I think that's about having a larger Aboriginal workforce but most importantly I think having that elevated at an executive level and an Assistant Commissioner that looks into Aboriginal services, so Aboriginal designated role, I can say that role is being designed together with Aboriginal Justice Caucus and they will have a very - yeah, will have a say in who is appointed to that role and that's expected to be this year.

45 MS MCLEOD: So could you just repeat what is the current proposal?

50 THE HON. ENVER ERDOGAN: An Aboriginal - how can I say - an Assistant Commissioner for Corrections Victoria for Aboriginal Services. So that's senior executive. So you'll have the Commissioner, and then you'll have an Assistant Commissioner, an

Aboriginal designated role. That role will look at all the services provided to Aboriginal people, how that actually operates in practice. Again, I'm not framing because the roles and descriptions are actually going to be designed together with Corrections Victoria with and Aboriginal Justice Caucus and even the appointment of that Aboriginal designated role will be done together with the Aboriginal Justice Caucus, I understand so that their views will be -

COMMISSIONER LOVETT: What kind of power and authority do you foresee that role having?

THE HON. ENVER ERDOGAN: That kind of level of Commissioner would have the power to, I guess, directly report to me and government because my - usually I deal with, yeah, the deputy secretaries and commissioners, and that's on a regular basis, on a weekly basis. And I expect that person would have that kind of authority to communicate what's happening to Aboriginal prisoners because obviously I've heard, and some of the stories I've heard in the Cultural Review and read were appalling, that they don't happen again.

MS MCLEOD: You address at paragraph 62 of your statement, if you have got both documents open in front of you.

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: Paragraph 62 on page 13.

THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: "In addition to actions already underway", do you have that paragraph?

THE HON. ENVER ERDOGAN: Yes, I have.

MS MCLEOD:

"Government and DJCS will work with Aboriginal communities and stakeholders to deliver meaningful change."

So, in terms of what that meaningful change might look like, what do you contemplate being undertaken by way of that meaningful change? For example, is there a program that's intended to address training to staff within the Corrections system, to measure and explore the operation of bias including unconscious bias, things of that nature?

THE HON. ENVER ERDOGAN: Yeah, I think there is. So what the - so some of it in the short-term can be brought to fruition, such as more staff and having this new Assistant Commissioner role. Some of it, the staff training piece, is something I've asked - I want to look at what we can do to obviously enhance that level. Currently the training, I saw in evidence from the Commissioner is three-and-a-half hours upon starting. So, clearly inadequate. So - and that's what the Corrections report revealed. So I'm trying to see how we can design that to have that training in place with as much as possible minimising operations in doing that. So going away doing that work. I think in the longer term I think some of it is genuinely bigger picture about where you see Corrections and custodial settings. And the Cultural Review, I kind of recognise that we are going towards a model

of an old school kind of punishment mindset to rehabilitation. That really needs to be embedded further, and that kind of cultural safety for Aboriginal people. So I think there's a lot of work that needs to be done out of that.

5 MS MCLEOD: And has that work started?

THE HON. ENVER ERDOGAN: Yes, that work's started. So 26 of the 86 recommendations we're doing straightaway and the others just planning on how we can do it and go about it.

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MS MCLEOD: Would you be content to give us a bit of a report card in the future on how are you tracking against the Cultural Review?

THE HON. ENVER ERDOGAN: Yes, I'm happy to provide an update.

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MS MCLEOD: At pages 483 to 486 of that Cultural Review, there is noted that:

"First Peoples' Corrections staff have experienced racism within the workplace."

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You would agree with me that that is occurring, that's intolerable.

THE HON. ENVER ERDOGAN: Unacceptable in any workplace.

MS MCLEOD: And how is that being addressed?

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THE HON. ENVER ERDOGAN: I guess, I mean staff training, better - people having confidence to make complaints. What was evident was that from a lot of Aboriginal staff members and culturally diverse staff members they felt that their complaints would go nowhere anyway. So they're looking at that. And I think you also touched on a point that I wanted to address, was about the point about bias as well. And bias plays out differently in different systems. You know, it can be the way, you know, judges use their discretion in sentencing. It can be in the Corrections system, some of the decisions are - there's a lot of discretionary staff such as the use of force.

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So I think we are reviewing those rules as well. What's interplaying in that decision-making before making those kind of decisions. So we are looking at all these different discretionary - and we need discretion in the system because I think the alternatives are mandatory decision-making that doesn't necessarily lead to better outcomes, but making sure the use of those discretions, there's a - yeah, there's a cultural awareness and overlay that's considered and, like I said, I think the key is to have Aboriginal decision-makers where you can in all these processes.

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COMMISSIONER LOVETT: Are you saying that there's - you are thinking about an element of independence where staff that can go?

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THE HON. ENVER ERDOGAN: Yeah, I think just looking at the complaints framework, how it currently operates and who it goes to, how is it followed up, and people - you know, I think there's a lot more work to be done. We have seen this in uniform workforces as well, so when I saw this report, I kind of compared it to like other reports that have been done to the military and police force across the country. So people feel

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confident that if they raise a complaint it's actually going to be looked at and taken seriously and there's an approach to protecting, I guess, the victim, you know, the staff member who has faced that kind of behaviour and, yeah, it's appalling.

5 COMMISSIONER LOVETT: And we've heard from Chief Commissioner Patton from Victoria Police, express his openness should the government support independence oversight. Would you say the same for these types of processes, in particular prisoners who also have similar complaints, there's some independence there.

10 THE HON. ENVER ERDOGAN: Yeah, I think so, definitely. I think we should look at that, that complaints framework about how we can make sure it's the safest possible - one of the Corrections Cultural Review recommendations was about a - some sort of separate, kind of, a custodial operations, a spectra kind of model, so independent oversight. And I said - when I told the department as part of reviewing the legislation to see what's possible
15 within the existing framework or is there a need for a new framework and all that. So I'm going in - like I said, I've come into the role relatively five months, into the role. I'm in with an open mind. I just want to see improvements. I want to see better outcomes.

MS MCLEOD: I just want to move to the topic of health services, delivery of health
20 services and to touch on this in a light touch way. Commissioners may have some more questions. In your statement around paragraph 156 to 157, you note the new specification in requests for tender for delivery or primary health services to provide culturally safe primary healthcare and rehabilitation outcomes aimed at addressing overrepresentation and you mention the accompanying health services quality framework. I'm sorry, I will wait
25 for you to catch up.

THE HON. ENVER ERDOGAN: Yeah, I'm just looking at that. Yes.

MS MCLEOD: So in 156, 157.

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THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: Yes. And around 160 to 163, the requirement on service providers to work closely with the ACCOs, ACCHOs and various other Aboriginal organisations to
35 ensure cultural safety training for providers and completion of an Aboriginal health risk review. Now, I just want to put some key headnote facts for you and then take you to some of the reports that Commissioners had when they were visiting prisons and invite your reflection on those. The Commissioners heard evidence that there are high rates of intellectual disability within the adult First Peoples prison population. There are
40 difficulties with the assessment of those disabilities and witnesses from the Department of Justice provided evidence that between 40 and 50 per cent of Aboriginal young people in custody were diagnosed with mental health issues such as anxiety and depressive disorders. More than 70 per cent of Aboriginal men incarcerated in Victoria have a mental health issue and 92 per cent of First Nations women imprisoned have also been diagnosed.
45 So they're the headline and somewhat shocking statistics and I want to take you to a summary of a site visit by Commissioners to Dame Phyllis Frost on 20 February this year. The document is BAL5.1000.0001.0114. On page .0015, section 3. There's a summary of the issues around healthcare with participants noting problems seeing psychologists, problems getting pain medication, accessing drug rehabilitation program, poor care coming

into prison with treatment being described as degrading and inhumane. So are you aware broadly of the nature of those issues?

5 THE HON. ENVER ERDOGAN: Some of those also come out in the Cultural Review as well - -

MS MCLEOD: Yes.

10 THE HON. ENVER ERDOGAN: - - and also the Coroner's report as well about the custodial settings. What I can say is what my reflection in this role is that the level of health service provided to people in custody, it's not the same as what's in the community. That's clear. And it doesn't necessarily have to be the same because it does need to be different because the people that we're - are in our custody, in our care, they have a higher need, to put it frankly, of services because they are coming to us with that - yeah, with
15 chronic health, physical and mental health conditions. Either some of it is being treated in the community but a lot of it is not so we're having to pick that up and the level and type of care that is being offered is different. So theoretically in the community you might have access to everything, but that's - a lot of the people that we're seeing, when they're in the community, they're not accessing their services anyway.

20 MS MCLEOD: So in summary, if there's higher need in this population there should be higher services, a high level of service.

25 THE HON. ENVER ERDOGAN: Yes, that's what's needed, right.

MS MCLEOD: In that Dame Phyllis Frost visit as well, further down the page, 0116, participants spoke of their experiences including racism, experiencing racism directed at them from prison officers and they even said participants reported that things that happened to Veronica Nelson happened every day in the prison system but only get
30 noticed when it results in a death.

Now, I take it that you would find a comment like that to be shocking, if that's the case.

35 THE HON. ENVER ERDOGAN: If that's the case, that's terrible.

MS MCLEOD: Do you believe there's a level of under-reporting?

40 THE HON. ENVER ERDOGAN: That's what the Cultural Review says. It says that people in custody sometimes feel - don't feel comfortable reporting or else they fear, I guess, a punishment or that they will be mistreated in response. So that's what the Cultural Review says and I accept the findings of the Cultural Review.

45 COMMISSIONER HUNTER: And that's exactly what we heard. Some were worried about coming to talk to us about fear of reprisal or what might happen.

THE HON. ENVER ERDOGAN: Yeah, that's what the Cultural Review says and that shouldn't be happening.

50 COMMISSIONER WALTER: And certainly with health, if they put in a form to see the doctor, they were afraid of hassling too much about it even though they were in pain if

they felt that that was - they reported some custodial officers - their script threw away, their application.

5 THE HON. ENVER ERDOGAN: Yes, and I think one of the issues that were - yes, and that was identified. So part of the short-term stuff they were doing, was doing a workforce integrity Assist Commissioner's role, so to really have a close eye on integrity in the workforce and see what's going on. Get a closer look at it in terms of exactly, so those kind of issues about if people are being mistreated, et cetera, can be escalated and responded to in a timely way.

10 COMMISSIONER HUNTER: They are worried about going for day-to-day things about annoying the officers. One said they would just go like this. You know, these are people that are incarcerated with severe health issues, some of them. All they've got to think about is those problems and in that, a therapeutic response would be extremely helpful.

15 They are in charge of those people's lives and they're just getting dismissed and they don't want to upset the apple cart because, God knows, they won't get anything if they do. I can't imagine living like that.

20 THE HON. ENVER ERDOGAN: It shouldn't be happening.

MS MCLEOD: The findings of the Coroner into the death of Veronica Nelson included critical findings of her medical assessment examination and treatment at Dame Phyllis Frost, and there was also public exposure of a culture within Corrections staff that there should be a suppression, if I can use my word "suppression" of that information to

25 Corrections and the Coroner. Do you accept that?

THE HON. ENVER ERDOGAN: Yes, I do.

30 MS MCLEOD: That also is absolutely intolerable, would you agree?

THE HON. ENVER ERDOGAN: It shouldn't be happening.

MS MCLEOD: So what do you do to address that?

35 THE HON. ENVER ERDOGAN: Yeah, I mean you need to bring these issues to light, and obviously we've got new processes in place where it shouldn't come to an Aboriginal death, obviously the Coroner has evolved a lot earlier, but I think internally, like I said, it's greater awareness, greater transparency, having people dedicated to look at these issues, like the new Assistant Commissioner for Workforce Integrity will need to, about make

40 sure of the culture changes. And I think having a more diverse workplace is another element. If the workforce is more reflective of the people in there usually you might see change. So I did notice, my first prison visit was at Loddon-Middleton. I noticed definitely yes, there is a contrast in the people, in our custodial settings and staff that work there in terms of their backgrounds, not culturally but also I guess the way of life, et cetera.

45 So I think that's a key piece as well. If people can see that people in there are just like them in many regards, you might get rid of that unconscious bias that's playing out, or deliberate bias that playing out, racism. So I mean that may go some way in terms of the workforce and the workforce education.

MS MCLEOD: Chair, I've just noticed the time. If the Minister's content to press on, I haven't got much more, but if the Commissioners are content to press on, or would you like a short break? Minister, I should ask you as well?

5 THE HON. ENVER ERDOGAN: Commissioners, I can continue.

COMMISSIONER BELL: Happy to continue, but it's clear we're not going to be able to resume at 1.30.

10 MS MCLEOD: Yes. Thank you, Commissioner Bell.

COMMISSIONER BELL: And the next witness needs to appreciate that.

MS MCLEOD: Yes. Thank you, Commissioner Bell.

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THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: Thank you. So are you just - we were talking about Veronica Nelson and my question is really, does it take a death in custody and the review of the Coroner before these issues are taken seriously or have you committed pre-emptively to look at those issues?

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THE HON. ENVER ERDOGAN: I've only come into the role five months, so I guess it's hard for me to reflect on the decision-making in the past, but for me I want to be proactive. I want to see improvements and I want to see better outcomes. So I think the discussion we had earlier was really helpful, to hear from the Commission about the need for targets that are objective, KPIs that we can measure and we can monitor. Try and embed them into all our systems would be a good approach and we have some of that but obviously more needs to be done.

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MS MCLEOD: In the case of Aunty Tanya Day, I understand she was in police custody, not Corrections custody, but initially - I'm not sure if you're aware, but initially the Coroner decided not to pursue an inquest into her death and was - this is Coroner Ian Gray - and was ultimately persuaded he should do that and then Caitlin English, Coroner English took charge. But it shouldn't take the Coroner deciding whether or not to investigate a death in custody for these issues to be flushed out, should it?

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THE HON. ENVER ERDOGAN: No, definitely not and I think that is - reading Veronica Nelson's report, that was one of the most disheartening aspects, you have a people who already distrust our institutions and then when they feel it's not being properly investigated how are you going to embed change and build confidence? That's the key. If Aboriginal people and the rest of Australian people are going to walk together, how do you build trust when they feel as though people - issues such as this are being covered up.

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MS MCLEOD: Another broad issue which emerged from the visit to Malmsbury Youth Justice Centre on 21 February BAL5.1000.0001.0111 related to staff departures and lockdowns as a result of lack of staff capacity. And you may be aware there was a publication on the weekend in The Saturday Paper by a whistleblower who was concerned that staff numbers were impacting on the use of operators' decisions to use what are benignly known as behaviour management techniques or management principles generally

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including lockdowns, isolation, solitary confinement. So at Malmsbury, I will just tell you what was reported to commissioners and then invite your comment:

5 *"Detainees spoke of the high rate of staff departures with 10 to 18 out of 40 leaving Malmsbury resulting in detainees being kept in their rooms for longer periods being unable to attend classes and education."*

10 So this is a real issue where the ability of the State to provide a workforce, a Corrections workforce, is impacting on the health and other outcomes of detainees.

15 COMMISSIONER BELL: It was worse than that. There was significant periods of lockdown for significant periods of time and these are young people and you spoke earlier about the Mandela rules and your expectation that these would be applied. These are not consistent with the Mandela rules.

20 THE HON. ENVER ERDOGAN: I didn't see that article, but I know the - it's a longstanding issue and a point that the Aboriginal community has made to me as well. I want to be clear, isolation should never be used as a form of punishment and as a matter of last resort. I did see our Youth Justice Commissioner's evidence, you know, that staffing issues have led to the need for more lockdowns, and I'm hoping with Cherry Creek coming online, in the next three months. that we won't have those issues at Malmsbury at Cherry Creek because it's a new model, different levels of engagement and there's a higher pay grade as well.

25 COMMISSIONER HUNTER: You have to get the staff there though to stop this.

30 THE HON. ENVER ERDOGAN: Yes, and so with Cherry Creek coming and we will look at the system I think - I'm hoping that we will be able to alleviate these issues sooner rather than later. But when I came in, I recognised that the operating - I asked the Commissioner why it is the case. The reason given was it's a tight labour market, it's hard to, I guess, attract people.

COMMISSIONER HUNTER: It's not the children's fault.

35 THE HON. ENVER ERDOGAN: The issue is once there's a - obviously a shortage of staff, they need to balance all the rights that the Commissioner set out (overlapping speech). I don't want to see it happen. I don't want to see young people kept in lockdown. It just shouldn't happen. I think with Cherry Creek in the next few months, I think there's an issue that we can look at down the track and I think there's an opportunity to stop it from happening with the new facility coming into work.

COMMISSIONER BELL: These practices involve human rights violations, don't they?

45 THE HON. ENVER ERDOGAN: There has been a lot of reports about that. There's been a number of reports over years. One of the earliest reports I read about isolation was from 2017, so it's obviously been going on for a number of years.

COMMISSIONER HUNTER: Same Four Walls.

5 THE HON. ENVER ERDOGAN: That's the report, that's right, Commissioner. So there has been a number of reports about these issues. So up until I've come in, there's obviously an ongoing issue. I want to see it fixed. I'm hopeful that Cherry Creek is that opportunity, you know, more trained staff, I guess, you know, new facilities, different model of working, hopefully we can attract and keep the staff we have.

10 COMMISSIONER HUNTER: Yes, hopefully not, then the children are still going to be isolated. And if we haven't learnt anything from this report, what are we doing? Because we keep seeing the same things again and again. It's not their fault that we can't - or you can't attract the staff. So that they - and the human rights violations, not to mention them continue - continuation of trauma on these children.

15 COMMISSIONER BELL: At Malmsbury, the Chair and I met with a number of young people who gave us direct evidence of the length of time that they were being locked down. It was disturbing to hear and they were going back into a similar situation, and I consider the situation that they conveyed to us to be absolutely intolerable, to involve human rights violations and to represent a failure of the government properly to staff its prisons so that that does not occur.

20 THE HON. ENVER ERDOGAN: I think the lockdowns are one where there are measurable figures on the use of lockdowns because it's documented, so I would like to see that drop, a big significant drop, and I guess that's one KPI that I will be monitoring as Minister and asking the department and Commissioners what's being done, what needs to be done but I think with Cherry Creek there's an opportunity to hopefully - to correct a lot of that. I'm hopeful.

30 COMMISSIONER HUNTER: Just so you know, just so you're aware, when we went to Barwon men were talking about when they were locked out for certain amounts of time and then they just fall back into the main sort of prison area and what that does to their mental health. They were able to articulate that because they would say, "I would want to be locked up again", because the noise and the level of stimulation happening that I wasn't used to for long periods of time. That would be worse on a child because they couldn't articulate that.

35 THE HON. ENVER ERDOGAN: Of course, and their mind and body is still developing, so we don't want to harm their development, yes and their growth so that's (overlapping speech).

40 COMMISSIONER HUNTER: The response to trauma is relationship and being in good positive relationships but isolating them, it's counterproductive. I just want to add that from a trauma perspective.

THE HON. ENVER ERDOGAN: Thank you, Commissioner.

45 MS MCLEOD: I want to come at this from a slightly different angle which is the risk assessment management, risk management. In 2022 you would be aware that there was a riot that broke out at Banksia Hill in Western Australia.

50 THE HON. ENVER ERDOGAN: Yes. I think there was one last week as well, yes.

MS MCLEOD: And in 2017 a riot broke out at Malmsbury Youth Justice Centre.

THE HON. ENVER ERDOGAN: Yes, I remember the public reporting. I didn't have knowledge of it beyond what was reported.

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MS MCLEOD: Before your time.

THE HON. ENVER ERDOGAN: Before my time, yes.

10 MS MCLEOD: You would agree as a general proposition that these riots place the safety of corrections officers and detainees at risk and can lead to serious injury and major damage to infrastructure.

THE HON. ENVER ERDOGAN: Yes.

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MS MCLEOD: The Department of Justice has been exposed to prosecution in relation to the Malmsbury riot and was fined for failing to protect workers under work health safety laws. Are you aware of that?

20 THE HON. ENVER ERDOGAN: Yes, I do understand WorkSafe was investigating it, yes.

MS MCLEOD: And reports of those riots indicate high staff turnover and poor management contributing to unsafe workplaces. In terms of - there has been numerous reports and comments about the failures of high security approaches and the use of these management tools, the impacts of these management tools on the population and on staff. So including the Victorian Auditor General's Office noting detention was not having an impact on reoffending rates, young people in juvenile justice centres had not been receiving the rehabilitation services they were entitled to and that a focus on security had impaired their access to education and health services. Former head of the Parole Board, Judge Michael Bourke, saying - he was head of the Parole Board for 12 years said:

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"A high-security approach had failed and a rehabilitative, less restrictive approach was needed."

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Noting the high percentage of detainees with cognitive disorders. The Ombudsman found that 40 per cent of lockdowns at Malmsbury were due to staff shortages and called for solitary confinement to be banned. And this year in March, The Age reported on 14 teachers who raised concerns in December about isolation practices with one teacher citing in their resignation letter that they had lost count of the numbers of times students were locked in their rooms for 22 hours or more a day without meaningful human contact. So the kneejerk reaction to these sort of riots may well be to be tempted to impose harsher penalties for those involved but they might also involve a review of the risk management processes, and I will come to my questions about that. Tell me if you're not across this material because we didn't ask you specially about these matters in your statement.

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THE HON. ENVER ERDOGAN: About the risk assessment procedures?

MS MCLEOD: Yes.

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THE HON. ENVER ERDOGAN: I'm not across the detail of the policies.

MS MCLEOD: In a general sense, you would be aware that risk assessment is essential to guiding decisions relating to infrastructure operations of detention centres.

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THE HON. ENVER ERDOGAN: Yes.

MS MCLEOD: And it's essential to mitigate duty of care concerns around staff and around detainees.

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THE HON. ENVER ERDOGAN: Yes, as a former personal injury lawyer I'm acutely aware of the importance of that.

MS MCLEOD: The processes generally setting the objectives, seeing what risks are in place to achieve those objectives and then managing those risks.

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THE HON. ENVER ERDOGAN: Yeah.

MS MCLEOD: Most basic. Where the systems have failed in the past, I suggest, is because, in a number of cases, the objectives have been set at too high a level of generality and there's a confusion of risks for consequences and let me explain what I mean by that. Self-harm is treated as a risk factor and not a consequence of the failure of the systems that are meant to protect against self-harm. So if you're not across this, perhaps we can ask some follow-up questions. But would you agree that misidentifying behaviours resulting from trauma as risks and then seeking to manage those risks with controls, disciplinary controls, fundamentally misunderstands that they are a consequence of the failure of the systems to protect against trauma. Now, that's quite a weighty question.

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THE HON. ENVER ERDOGAN: It is.

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MS MCLEOD: So tell me if you would like to follow-up.

THE HON. ENVER ERDOGAN: I will take that on notice, if I could, Counsel Assisting.

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MS MCLEOD: Finally, I want to run past some recommendations past you for your comment and if you wish to supplement your response here, you would be welcome to do so, noting the pressure of time upon you here today. The Law Council conducted a Justice Project including chapters on Aboriginal and Torres Strait Islander Peoples and prisoners and detainees in 2018. Their recommendations included a range of recommendations around the need for diversion and therapeutic responses. We have already addressed that, but I take it that broadly - I would invite you to look at those recommendations and respond - broadly you are in support of investing in diversionary and therapeutic processes?

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THE HON. ENVER ERDOGAN: Yes, definitely.

MS MCLEOD: Those are also the recommendations of the justice reform initiative. Are you aware of that?

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THE HON. ENVER ERDOGAN: Yes, I am. The public reporting of it, I am.

MS MCLEOD: Yes. You're aware that the finding of that initiative which is led by former very senior judges and others in the system is that justice is failing as a deterrent; in other words, a punitive response is failing as a deterrent generally.

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THE HON. ENVER ERDOGAN: I mean, there is an element of deterrent of a Criminal Justice system where offenders are held to account. That's, again, the victim support stakeholders tell me. So I think there is always a balancing act in terms of what effect that deterrent is with broad objectives of minimising or making sure people are at least as possible in custodial settings.

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MS MCLEOD: Minister, could I ask you reflecting on your comments this morning and the Premier's comments about injustice in the system, to ask what you consider to be the priority work for Corrections going forward?

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THE HON. ENVER ERDOGAN: I think Corrections, the key priorities is making sure that everyone - obviously Corrections doesn't necessarily decide who comes into our system. So addressing the overrepresentation of people in incarceration, we need to do our best to obviously give people an opportunity to turn their lives around and - but in terms of, from the prospects of this Commission, my number one priority is making sure that cultural awareness piece acknowledgement and prisoners are treated fairly and free from any discrimination. I think that's my priority. So that all prisoners - and as part of that, have better access to services they clearly need, whether that be cultural, health, education, make sure those programs are accessible as much as possible. I think that's my priority. So the treatment - making sure everyone is treated fairly because clearly it's not the case at the moment.

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COMMISSIONER LOVETT: What about in the victim space, your other portfolio?

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THE HON. ENVER ERDOGAN: I think the victim space is very important because Aboriginal people are overrepresented and we know they're not - yes, and there's obviously, one, getting the piece about Aboriginal people not being reluctant to report when they're victims; and two is providing appropriate support, clearly, they're also not taking up support services as much. So we are working on an Aboriginal victims of crime strategy, going to be released next year, so I want to see what comes out of that, what we can do to help Aboriginal people, because they're not reporting it. They're clearly victims more than two and a half times more, they're clearly not reporting because they don't trust authorities. And two, when they are, they are not seeking our help. So they're like victims, there's VOCAT and there's a whole bunch of different support frameworks. They're not accessing that as well. So, yeah, yeah, I want Aboriginal people to feel - that's why I see that whole distrust in institutions is an important piece.

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COMMISSIONER LOVETT: With the development of that strategy do you commit to a meaningful monitoring evaluation framework?

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THE HON. ENVER ERDOGAN: Yes, because it's still at early stages and I've come in now, I will pass that feedback - and I - exactly, I think what's clear from these hearings is that people want to see measurable targets, that we can say tick, that's been fulfilled or not and say no it's a cross and it's wrong.

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COMMISSIONER LOVETT: People including yourself, yes? (Overlapping speech).

THE HON. ENVER ERDOGAN: Including myself. I want to see that too because sometimes - -

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COMMISSIONER LOVETT: Great.

THE HON. ENVER ERDOGAN: - - it's very easy to be caught up in obviously that - the language of the - the bureaucratic language instead of actually outcomes, measurable outcomes.

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MS MCLEOD: I'm just going to check whether the commissioners have any final questions or remarks and then invite you, Minister, if there's anything you want to say in closing.

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COMMISSIONER BELL: Not I.

COMMISSIONER LOVETT: As a proud Victorian, yeah - -

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THE HON. ENVER ERDOGAN: Yes.

COMMISSIONER LOVETT: - - what are your thoughts and what do you want to see under Treaty?

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THE HON. ENVER ERDOGAN: I think we've said - what I want to see under Treaty is a situation where Aboriginal people determine for themselves which areas of the system or creation of their own systems they would like to have control over and decision-making powers over. I mean, so Treaty is about an agreement between two peoples and making sure that agreement is, I guess, as fair as possible, that's probably very high level, because I think the details of that is up to First Nations People to express, yeah, how they would like that arrangement because there is a clear imbalance of power.

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COMMISSIONER LOVETT: And what power or authority and resources do you think, in your portfolio, that that would entail?

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THE HON. ENVER ERDOGAN: I think our government is committed to negotiating in good faith, so I think all options should be on the table, I wouldn't rule anything out, but I think it could be complete, you know, running of certain programs for Aboriginal prisoners complete from start, from entry point to exit potentially. It could mean a whole bunch of stuff but, again, it's up to Aboriginal people I guess to articulate that to the government and have those, I guess, the Treaty negotiations incorporated into that, but that doesn't mean we wait for that, but I think those kind of principles in Corrections.

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COMMISSIONER LOVETT: And you have recognised the ongoing systemic injustice perpetrated from the State of Victoria to our peoples, First Peoples. Do you have any comments around what kind of redress or reparations that that would entail through the Treaty process?

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THE HON. ENVER ERDOGAN: Yeah, I think the logical expansion and acceptance that Colonisation has left our Aboriginal people in a disadvantaged position, and I think I shared earlier I was a personal injury lawyer. I will take those principles, that the logical extent is that you - the person that has been wronged is - tried to bring them back to a position where they would have been otherwise. I mean, that's more of a common law principle about, you know, other stuff, but I think as a government these are all stuff that - we've said we will negotiate in good faith, that we should have that discussion. That's a matter that member of the First Peoples' Assembly has raised with me in the past as well, that they would like to see recognition not just in words but in actual action and resources.

COMMISSIONER LOVETT: And I think, you know, just more of a comment around deeply considering that, because I mean under the Treaty Negotiation Framework, once the Treaty Authority is set up, interim agreements can be negotiated and without talking for our elected group of people, that I assume that conversations will start pretty quick on the Treaty process more broadly.

THE HON. ENVER ERDOGAN: Thanks for that, Commissioner.

COMMISSIONER LOVETT: One more. Is there anything you would like to say to our Victorian Aboriginal community out there who are listening in today? We have talk about a number of - you know, a lot of sorry business that's happened at the hands of the State but also, you know, a lot of our people are overrepresented and sitting in correctional facilities, whether it be youth justice or the adult prison system. So is there anything you would like to say to them listening in?

THE HON. ENVER ERDOGAN: Yeah, I just want to reiterate, yeah, a sincere apology for the harm caused and continue to be caused in our corrections and youth justice settings. I think there must be an end to the Aboriginal overrepresentation in our system. What's clear is that the impacts of Colonisation are ongoing and there needs to be a whole-of-government response to correct that injustice. And I just want to express that my view, I know that reform and change has been too slow for too strong. I'm committed to doing better and I've learnt a lot through this process and that's why I look forward to your Commission's work and I want to thank each and every one of you. I've seen what a challenge it is - and I could imagine some of that is probably re-traumatising for many of you, but I will look forward to receiving your findings, your recommendations on how I can make the Corrections and the Youth Justice systems better. Thank you.

COMMISSIONER LOVETT: Just one final comment. Thanks very much for the response. It's great to see the level of knowledge that you have around self-determination. We have asked that question quite a lot and the responses have been quite varied, I'll say, so - -

THE HON. ENVER ERDOGAN: Thank you, Commissioner Lovett. Thank you, Commissioners, Chair, Counsel Assisting.

MS MCLEOD: Is there anything further you wish to say, Minister?

THE HON. ENVER ERDOGAN: That's all, thank you.

CHAIR: Could I add my thanks to your speaking with us today and also the manner in which you've done it. I detect a desire to do better and we look forward to perhaps an encounter next year where we will hear more from you.

5 THE HON. ENVER ERDOGAN: Thank you, Chair Bourke. Thank you, Commissioners.

MS MCLEOD: Thank you, Minister. Chair, that concludes the Minister's evidence. We need to take a short break and I can manage the witnesses who are due to come. Would 2 o'clock be appropriate?

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<THE WITNESS WITHDREW

CHAIR: Right. We will adjourn until 2 pm. Thank you.

15 <ADJOURNED 1:27 P.M.

<RESUMED 2:06 P.M.

MS MCLEOD: Chair, the next witness is Raylene Harradine, the Deputy Secretary, Aboriginal Self-Determination and Outcomes Division, Department of Families, Fairness and Housing.

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<RAYLENE HARRIDINE, CALLED

25 CHAIR: Yes. Welcome, Raylene, welcome.

MS HARRADINE: Thank you.

MS MCLEOD: Ms Harradine, do you undertake to give truthful evidence to this Commission?

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MS HARRADINE: I do.

MS MCLEOD: Commissioners, Raylene Harradine's opening statement was included on the tender list this morning. We now have a document number. Just pardon me for the housekeeping. The document identification number is DFFH.0012.0001.0005. Ms Harradine, I understand you would like to make an opening statement?

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MS HARRADINE: I would. Good afternoon. Martinga Kalinga Murrup. I honour my ancestors. Today as we gather to discuss matters of great importance, I would like to take a moment to acknowledge the land on which we are meeting today, the Wurundjeri people, and pay my respects to their Elders, past and present. I thank the Commission for welcoming us to the Wurundjeri Country. I also acknowledge Traditional Owners throughout Victoria and to those that are here in the room with us here today, in particular Chair, Professor Bourke, and Commissioner Lovett from Wergaia, Wamba Wamba and Kerrupmara Gunditjmarra countries respectfully. I acknowledge Commissioner Hunter from Wurundjeri and Ngural Illum Wurrung. Commissioner Walter from Palawa and Commissioner Bell. I acknowledge First Peoples who have shared their stories to this Commission. I honour their bravery to share your truth. It is your voice that will assist

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this Commission to drive all of us to make necessary change for First Peoples, children and families to thrive, connect to their country, culture and communities.

5 I am an Aboriginal woman of Victoria. With me I bring my ancestors and all people
 which I am proud of. My mother's country, the lands of the Wotjoballuk, the lands of the
 Yung Balug Dja Wurrung and my father's country, the lands of the Latje Latje
 north-west Victoria as well as my connections to the Ngarrindjeri. I was fortunate to be
 born on country and have always resided and worked on country. My grandmother is one
 10 of the most profound influences in my life. Since childhood she has been a constant source
 of wisdom, support and strengthening for my and my family. A staunch and determined
 Wotjabulluk woman who showed me what it meant to love and care and protect your
 family.

15 My uncle was also an important role model in my life. I remember him conducting
 important cultural practices and traditions when I was young, such as traditional burns in
 the landscape. We call it Djandak Wi. It was a couple of weeks ago I was on country with
 my grandson watching him conduct Djandak Wi and I too participated. A proud moment
 for me to see our people's traditional practices alive.

20 Another proud moment for me is right now. This is a moment I have not taken on lightly.
 I know that I am here on the shoulders of those before us and our ancestors. I know that
 I'm here to give yet another important contribution to the Commission's inquiries and to
 assist in creating a legacy for those who come after us.

25 I recognise the gravity of this important moment in history and the role each of the
 Commissioners have in facilitating Australia's first truth-telling process. I am here with
 over 20 years' experience working and delivering outcomes for First Nations Peoples in
 Victoria, locally and state-wide. I have a unique understanding of working within both
 Aboriginal community controlled organisation and government agencies. Along the way, I
 30 have been fortunate to have worked with and learned from many deadly, formidable First
 Peoples, particularly within the Victoria Public Service including Andrew Jackomos and
 Terry Garwood. What I have learnt is how to facilitate and amplify our voices to influence
 and enable decisions that will deliver positive outcomes for our peoples.

35 Today, I am the Deputy Secretary for Aboriginal Self-determination and Outcomes
 Division in the Department of Families, Fairness and Housing. Our Division is a critical
 pillar of the department's structure. We have a cross-cutting function in supporting and
 enabling the many portfolios, including housing, family violence and children and
 families.

40 Among other things, the advancement of self-determination and strengthening the
 necessary foundations to take on big and transformative change that will come with Truth
 and Treaty. Our Division is still in the establishment phase and we are focused on
 identifying our priorities and operating model with all those that we work with and for.

45 As a division, self-determination is our guiding principle. And our authority not only
 comes from my appointment as the Deputy Secretary and the member of the department's
 board of management, it derives from over 60,000 years of sophisticated systems of lore,
 kinship and cultural practices and traditions. I have a deadly formidable team. My senior
 50 executive team comprises of myself and three executive directors. All of us are First

Peoples and three of us are Aboriginal First Peoples women and three of us are Victorian Traditional Owners, each bringing our unique experience and skill set and 100 per cent commitment to achieving positive outcomes for our people.

5 Overall, our division has 12 executive positions that are designated for people who identify as Aboriginal and Torres Strait Islander. The department's leadership was clear, that in order for this division to succeed, it needed to be Aboriginal-led. At the same time, there are 85 staff positions in total in our division who bring passion, commitment and dedication to the division's purpose.

10 Starting at the very top of the department and cascading throughout it, my team and I work alongside our colleagues in other divisions to deliver the critical work here and now while advancing self-determination and strengthening foundations for the future. Critical issues such as unacceptable disproportionate overrepresentation of First Peoples children in the children and family service system is one that our division has inevitably prioritised. I see important work occurring across the children and families system.

15 Some of this I led while the CEO of Bendigo and District Aboriginal Cooperative. I also see the important work that needs doing to ensure that all First Peoples children subject to protection orders and placed in care are transitioned to an Aboriginal Community Controlled Organisation, ACCO, and to support ACCOs more to make decisions for First Peoples children.

20 In my experience, both working in ACCOs and now back in the Victorian Public Service, I have to say I see a strong commitment to self-determination. When I was a chair of the Victorian Aboriginal Children and Young People's Alliance which comprises 15 Aboriginal Controlled Organisations, I experienced at that time a department willing to work with ACCO representatives at their pace to deliver important and key priorities such as Aboriginal children in care.

25 Equally, I see the need to reform the current children and families system to enable an Aboriginal end-to-end children and family service system. Having seen firsthand the struggles of First Nations families and children, I am well aware of how significant the challenges are and how much work is still to be done. It is a great honour to be able to speak to you in my capacity as Deputy Secretary.

30 In my role I am committed to amplifying First Peoples' voices across the department and driving real and tangible outcomes in the present while strengthening foundations for the future. Our division is responsible for leading and coordinating the department's response to the Yoorrook Justice Commission, including partnering with other divisions in the department to implement the relevant recommendations.

35 This is history in the making with self-determination and truth and justice provides an opportunity for the department to truly acknowledge and assist in addressing the wrongs of the past, learn from the mistakes and move forward in a genuine and equal relationship with First Peoples of Victoria so that all First Peoples children and families thrive.

40 In closing, I would like to particularly acknowledge and extend my sincere thanks to the Commissioners. Your unwavering strength and leadership has made it possible for us to embark on this journey of historical change. The emotional burden incurred from your

role in hearing these painful truths cannot be overstated. And my gratitude to you is profound. I thank the Commissioners for the opportunity to engage in this truth-telling process. Thank you.

5 CHAIR: Thank you. Thank you very much, Raylene, and may I pay my respects to your ancestors. We are neighbours of course. So welcome again.

MS MCLEOD: Thank you very much for your opening statement. Can I just check with you, Ms Harradine, would you prefer I call you Ms Harradine, Deputy Secretary or Aunty?
10

MS HARRADINE: Ms Harradine will be fine.

MS MCLEOD: Ms Harradine, you have indicated that you are the Deputy Secretary, Aboriginal Self-Determination and Outcomes Division in the department and that you've held that role for approximately six months.
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MS HARRADINE: Yes.

MS MCLEOD: You mentioned that prior to that appointment, you were the CEO of the Bendigo and District Aboriginal Corporation, the BDAC.
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MS HARRADINE: Yes.

MS MCLEOD: And how long did you hold that role at BDAC?
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MS HARRADINE: Probably nine and a half years.

MS MCLEOD: You are well-placed to comment on the operation of the department from the outside and also in the last six months from the inside in your senior role. Do you feel well-placed to be able to comment in that six months or - -
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MS HARRADINE: It depends on how detailed you want it to be, yeah.

MS MCLEOD: The Commission has heard extensive evidence from Mr Alisandratos and also from the Child Protection Minister about programs. As a senior First Nations employee of the department, Commissioners would respect your unique insights into the culture and operations of the department. So it's those aspects that I invite you to address today; just your observations on the outside and the inside in that last six months.
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MS HARRADINE: From the last six months?
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MS MCLEOD: Yes.

MS HARRADINE: Okay. Because I'm relatively new to the department, I have to say that when this opportunity came up to apply for this position, it was something I didn't take lightly. It was something I really thought about. But it was - I can talk about when my previous role as the CEO of - and my role as the Chair of the Alliance. There was real strong, you know, appetite for the department to want to work with the ACCOs, particularly community around the pieces of work and I think that really demonstrates through the section 18 or ACAC, we call it.
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5 So I was a part of that sort of - if we think about it from BDAC's point of view in pushing that, you know, this was a priority because what we had, and is evident that our children, our First Nations children, don't really fare that well within the child protection system. So it was key for me that if we're looking at true self-determination, it was one of the pieces of work that I was really keen to progress and had the support of the board and the community. And this was also - wouldn't have been - would not have been able to achieve this if it didn't have the support of the department as well to be able to progress that piece of work.

10 I think - so that's probably from my outside point of view. In applying for the position initially, I could see the massive change that was - that had been sort of occurring over the last probably 10 years or more, and for me, it was very attractive to apply for this position so that I could just sort of further advocate and be an influencer within the department, particularly around the reforms that were happening at that time.

15 So - and so, for me, I haven't drilled right down to the operations of child protection but from where I sit, I think it's - it's - I think everyone in the department - the Division has been set up and to be, you know, around true self-determination, it needed to be
20 Aboriginal-led. So thinking about who would take up that position, but then also what is the work that needs to progress through that. And, in my - you know, the last six months of being involved in the department, I feel quite at ease sitting at the table with the other Dep Secs and having the support of the Secretary to progress the work that we need to do.

25 MS MCLEOD: Can I ask you specifically about role of First Nations staff within the department. Would you agree that it's critical that First Nations Peoples are employed by the department as agents of change and to reflect community voices within the system?

30 MS HARRADINE: Yes, I would agree.

MS MCLEOD: Is there anything you would like to say specifically about the role of the First Nations staff and staffing challenges?

35 MS HARRADINE: Yes. I think if we're looking at making changes within the department but also bringing everyone along as a part of that journey, it's important that Aboriginal people do play a critical role in the department, because when I think about the range of staff that we have and the diversity that they all come from various tribal backgrounds, if I can say it like that, cultural backgrounds, each and every individual brings expertise in either their lived experience or their skill set to the department. And I think that, for me,
40 it's really important so it's not just one person's point of view, it's actually as - we work as a collective.

45 MS MCLEOD: Is it important, Ms Harradine, that First Nations People are present within the department, not just to represent the experiences of First Nations People and their interactions with the child protection system, but the child protection system more broadly? So not just First Nations Peoples experience of those systems, but people's experience more broadly?

50 MS HARRADINE: Yeah, it is true because I think it just shows that thresholds, particularly around what is an expectation of when - if you think about when someone goes

out to make a judgment on someone, it is - it's based on, I suppose, their own sort of perception. But then if you have First Nations People employed in positions of that, it's always important because they understand what the cultural elements are, then also understand the culture. What's the driver for some of the issues that are - you know, that
5 may arise as part of, with child protection I think. And we know that poverty is a major contributor to some of our communities; access, location. I think about geographically, we have smaller pockets of communities across Victoria and sometimes there are not opportunities there, but then how do we create that environment.

10 MS MCLEOD: Is there anything you would like to tell the Commission about the expectations of the department, about the level of cultural awareness amongst First Nations employees and assumptions about that?

MS HARRADINE: Yes. That can be challenging, actually. Everyone comes with their
15 own sort of - either they've grown up in a cultural setting and some may not have because of their - you know, what's happened to their - to them prior, or if they - it depends on their circumstances. And I think there is - sometimes there is pressure sometimes put on First Nations staff just in regards to the - I think the expectations that we know everything about Aboriginal culture and all - you know, what we should be doing.

20 And I think that can actually create a bit of a - a bit of - it can actually create an environment where some staff may not feel safe just in terms of that. So I think - and I have seen it, you know, and also playing out in other organisations, not just in the department, but in - you know, when we have other organisations that you work in, it's
25 assumed that if you're an Aboriginal person you know every answer or - around Aboriginal culture and that can be really challenging.

I think the other thing is what we have too, we carry the - a bit more of a burden just in regards to our communities' expectations compared to just our employee. So some staff,
30 you know, if you're out there and you're in particular in roles and you're working, there can be community expectations. So it's how do we support staff to be able to feel, you know, feel comfortable but then also what do we need to put in place for that.

COMMISSIONER HUNTER: Can I just ask, would it also be correct if we talk about
35 Aboriginal staff in the roles that you were just talking about. They're also expected to teach in some form, so to teach others about culture whether they want to or not. Would that be a fair assumption?

MS HARRADINE: I think you need to - so you're talking about - -
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COMMISSIONER HUNTER: So you bring your lived experience and you're a First Nations person, you bring your lived experience and you're in one of these roles, and you carry the burden, one, of being a First Nations person but those around you that aren't, there's an element of - that you are expected to know it all but also to help educate others,
45 put that burden of educating others around issues within your day-to-day - or people coming to you with those questions.

MS HARRADINE: Yeah, and I can't speak on behalf of others but I can - sometimes I am questioned around certain things and if I can't - if I'm unable to, you know, explain what
50 that is, I might think about, you know, talking to someone else or referring them to

someone else. So - but it's also having the ability to be able to do that too, and that's one of the - you know, it's like knowing who is, you know, carries more culture or knowledge around certain things. And that's something that, as a team, we - you know, I'm leading the division, it's like one of the things is working as a team so that we do work collectively and because I'm always about going back working, like our ancestors and how we work collectively. It's not just about one person making a decision or talking it through. So it can be challenging and we do have - you know, within the department, there's the corporate area and we do - in there we do have Aboriginal First Nations People that work in there. So they are part of the developing and considering what cultural awareness training is within the department.

So it's not like we have the Division that's separate. There are elements of Aboriginal people - First Nations People within the department that are in specific areas.

15 COMMISSIONER HUNTER: Thank you.

MS HARRADINE: I don't know if I've answered your question or not but - -

20 COMMISSIONER HUNTER: I think it was - you know, I think we've all had it from some point of view where you actually become the educator and I was just wondering how much of a load that would be in that role, just in the government system in general.

25 MS HARRADINE: And it can put pressure on our young people too coming in and that's important that we have some sort of pathway where it's - so we don't put our young people under pressure because that can be a really - you know, that could have an effect on whether they want to work in the department or where they want to work. So it's just making sure that we have that clear pathway to be very support - have a supportive environment so that, you know, these things are considered.

30 COMMISSIONER HUNTER: Thank you.

35 COMMISSIONER LOVETT: I just want to recognise as well early on, it's not in your statement but I'll call it out, that you are also a Public Service Medal recipient and I think that's really important to note that and I think as well - I think you were one of four and the only Aboriginal woman to receive the public service medal. So I just wanted to recognise that - -

MS HARRADINE: Thank you.

40 COMMISSIONER LOVETT: - - because that's really important. In your Division, are you responsible for reporting on Closing the Gap targets or achievements towards the targets and also through the VAAF as well?

45 MS HARRADINE: Yes, I am. Our Division has responsibility. We - target 12 is the children in care, the numbers, the rates, that's particularly around Closing the Gap and with VAAF we have to report to that as well. So there are elements that, yeah, we're involved in and that's through the various governance structures that we either participate in internally or externally with other departments.

COMMISSIONER WALTER: Does the department have the data and systems to allow you to know that the data you're measuring, both the VAAF and the Close the Gap, is accurate?

5 MS HARRADINE: As far as I'm area, I think we do. Yeah, I'm sure we do. What we get - what's provided to us and how we work in with community too. So it's not just about reporting up, it's also how we are the conduit and we work with communities as well to make sure that, yeah. So all the data that is inputted that we - is true and correct, it can be delayed though. Some of the data, like if you think about it's not immediately so it's like
10 some of it might be just a little bit, a few - you know, a bit delayed in that aspect. But mostly, through the mechanisms that we have we use that as the place where we report, but then also it gives us the opportunity to look and see what the drivers are and then also what do we need to look at for the future. And being only six months in the position, there are a lot of elements, or areas that I'm involved in.

15 As the Deputy Secretary of the - this Division, I don't just hold one portfolio. We're involved in a range of areas that we - our team works with.

20 MS MCLEOD: And you mentioned in your opening statement housing, family violence, children and families.

MS HARRADINE: Yes, that's just some, yep.

25 MS MCLEOD: The division has some responsibility as per its name for Aboriginal self-determination and outcomes. What do you see are the key requirements to enable that to happen?

30 MS HARRADINE: It's around community consultation, if we're looking at self-determination. And for us to drive anything, it's always - it's not the department's view, it's actually going out, talking to community. And we do that through various forums. We have an Aboriginal Strategic Governance Forum, which is co-chaired by our secretary and an Aboriginal person. And that's made up of representatives from around the State. That is one mechanism that we use around self-determination.

35 There are some pieces of work that we have been doing over the little while just around systems transformation. So leading into self-determination. So these are the - there's a lot of - if I think about it, what we're working in, it's a massive web as such and everything's connected but it's like making sure that we - yeah, we always communicate with
40 community around their views because if we're looking at self-determination it is about the community's self-determining what's going to work for them. And so then how do we, as, in my role, have an influence in that to make sure that it's either resourced well or we'd look at some of the systems and how we can support communities to do that.

45 MS MCLEOD: So you mentioned communications and obviously partnerships with Aboriginal organisations and the community more generally. What's the role of ongoing resourcing and, as in funding, and cultural awareness and competency amongst the department. So those two things. First of all, what's the role of funding, the commitment to ongoing funding as we undertake the project of self-determination?

MS HARRADINE: With - I see that with the establishment of this Division, there is a commitment from government, or from our department, to be able to resource and, like I said, the position - I've only been in it for six months. The division has only been established in August last year. So it's relatively new. We do have the support of the department to be able to undertake resourcing and ongoing, as we identify. And at the moment, the leadership team that I spoke about earlier that we are currently looking at our - the operations of our division from a strategic point of view, seeing - identifying what positions we have, what mandate do we have, what are we involved in. So we're doing this whole sort of exercise around business mapping for our division. So that then we will look at what does that mean externally or internally for resourcing and particularly around cultural awareness training but then also the other elements that we want to do, we need to undertake as part of our responsibility.

MS MCLEOD: In terms of the work towards Treaty and self-determination, has your Division started work yet on consideration of issues around transfer of power and reparations?

MS HARRADINE: I'm not sure if I can - I think we are - as a Division we've started discussing it in just with our leadership team. We do have - I have a dedicated Executive Director particular for Truth and telling, Truth and Treaty. So - and this was something that when I came into the position, I had two Executive Directors at the time. As part of - I always look at what's there whenever I move into something, and what's going to be effective and what do we require. So, as part of that, I looked at, particularly with the Yoorrook hearings, Treaty and then we've got policy and innovation, and then we have got community and partnership.

So we have one ED that was doing policy and innovation and Treaty and Truth. I looked at that, and for me that's too much responsibility on one ED to do all of that piece of work. So, in saying that, I put up a business case to our secretary to increase our EDs to split those two, two responsibilities so - and that was approved. So we have started as that team is, they've been focused on work here at the moment but they are considering Treaty as well, as part of this process.

COMMISSIONER BELL: This Commission will make recommendations in this area both for immediate reform and for matters to be put in Treaty. Is it your area which will consider those at first instance?

MS HARRADINE: It will be. As a department, we'll - I think we'll all sit down and have a look at the recommendations that come out from your - from this process, and then it will be our responsibility, I think, and I would like our team to sort of lead that, but also work right across our Division - our department to make sure that it's not just putting the burden on our division, it's actually seeing - because it's amazing, like, if you look at the department and for various divisions, they all have responsibility but they also have levels of expertise which is probably, from my point of view, operational-wise it's like how do we leverage off each other.

COMMISSIONER BELL: Thank you.

MS MCLEOD: The Commission has heard evidence in relation to the need for early interventions in the child protection system and I wanted to ask for your insights into the need for culturally appropriate wraparound services and early intervention.

5 MS HARRADINE: I can talk - my experience particularly in this area is from my previous role, but I see it's one of the elements that I think for the department, particularly with child protection, is that it's not just a child protection as undertaken in the past. It needs to be more cohesive. It needs to be more holistic in approach, particularly when our First Nations children come into the system. And I think that's one of the - where I would
10 love to see in the future is a service, because if a family or child does not choose to attend an ACCO, well, then, there are other elements or organisations where they can access, because true self-determination is about determining where - what you would like to do, where you would like to receive a service. So that for me is crucial.

15 MS MCLEOD: I take it that you would be very concerned to see that the requirements of the legislation in terms of Aboriginal family-led decision-making in terms with cultural plans in terms of the input of ACCOs before placement decisions are made are all very important principles in the legislation that must be upheld.

20 MS HARRADINE: Yes, I do. I've seen it in action and I've seen the positive outcomes.

MS MCLEOD: Yes. And is there anything more that you wish to say about improving the systems approaches to families by placing families in the position of power through those measures and other measures?

25 MS HARRADINE: I think - I do believe that, and my observation is, that I mentioned that AFLDMs do work and I can talk from a place of - as an Aboriginal woman, I've been a part of an AFLDM and that's where all the players come - all the people come together, to make a decision and talk through what is in the best interests of the child that they're either
30 related to or they're involved with. And AFLDM is really - you know, that includes the department as well as the Aboriginal organisations and the family members and also other interested community people who want to ensure that a child does grow up culturally well, but also have those wraparound services. I'm not sure if I'm sort of responding to your questions very well, that one anyway. So - -

35 MS MCLEOD: Is there a recognition in the department, and please say if you're not aware of it - that there will be a need for these early interventions or primary measures as well as tertiary measures for a period of time?

40 MS HARRADINE: Yes, definitely. I think at the moment the way it is - ACCOs and community demonstrate it well and if I think about smaller communities, like in Portland and Windamara, their numbers of children aren't that high in those areas because they run cultural activities and community events. So early intervention may look at - completely
45 different for one community to another but then what does that - you know, I think it just benefits the children in the community because I think before they even get into the statutory system, I think, for me, it's, from a cultural point of view, it's just - we need to get back to - and I know communities are doing things the old way so - and making sure that every life of a child in a community is brought along but also knows who they are
50 culturally.

MS MCLEOD: Am I right in assuming that there is a degree of a burden of expectation on First Nations staff that they will be able to solve things internally and externally? So the department staff think that First Nations staff will be able to solve things and community do too, and, if so, how do we manage that burden of expectation?

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MS HARRADINE: To tell you the truth, I - that is - that's a big task and it's something that we need to work through as a department, particularly how do we - and - but to do that well we need to talk to our Aboriginal staff, First Nations staff, just in relation to what that looks like and, yeah, that is - yeah, it is on my mind but it's something that, you know, we need to work through.

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MS MCLEOD: The Minister gave evidence to the Commission - I've lost track of time now, but it's - the Minister for Child Protection - last week, thank you, Friday - and was asked some questions about the path towards Treaty and ensuring that Aboriginal organisations weren't set up to fail inheriting a system that was fundamentally flawed. So does your work of your Division work with a consciousness that that can't happen and what work are you doing around that?

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MS HARRADINE: We - as a department, we work with the - there's another division within the department. We are working closely as equal partners in relation to what that would look like. We are a part of the Aboriginal Children's Forum, as part of that. So it's working with the Aboriginal community organisations and community to make sure that they don't fail and putting in what we can particularly around resources, if we need to, but the consultation that we have with, and engagement, you know, just is just critical to the way forward. So, yeah, we don't want to see anything fail. If anything, we are really mindful that we want to see that Aboriginal organisations are taking the lead in particular around doing what's best for children who come to their attention, either it's at the early, you know, earliest or if it's in the statutory area. So that's - and that came out of the - it's the work that's been occurring over the last probably 10 years or more, particularly around the Children's Act in 2005 changing things, the system so that an Aboriginal organisation could take over, authorisation of children, but then also looking at expanding on it. So it's not just about the statutory, it's about also identifying what the front end is.

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And we have met - we have been meeting with the Aboriginal organisations as part of the Koori Caucus for the ACF. They actually have given us a bit of a blueprint earlier this year around what they see as a priority for them working with children and families. So - and I think the Minister would have spoken about that on Friday; that, you know, she's had conversations with them around an end-to-end service and what that looks like for them. Because one fit might not fit another organisation and community. So it's like but then how do we - you know, what do we need to do. So we are doing those early discussions and those other - so looking at how - what are the opportunities.

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MS MCLEOD: The Commission has been focused on failings and breakdowns and the need for change. Is there another side to the story that you would like to tell, the good news side of the story to encourage First Nations People to participate in the child protection system as staff and as workers?

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MS HARRADINE: Yeah, I always think about, for myself in particular, and for other Aboriginal people, I think - I think I spoke about it earlier in my opening statement about I stand on the shoulders of my ancestors before me and the people who we've had - a lot of

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people who have been - done the hard yards and the right of self-determination has been going on for many years from our people to get us to this point.

5 I'm very fortunate to be able to be - in this point of time to be able to pick that up within the department and then carry that so that I can do the best that I can with the team that we have to make change. And I think that sort of has showed or demonstrated through - we've had a number of Aboriginal people who are applying for jobs within this department now which would never had happened in the past. So I think everyone's seeing the change that's happening, particularly how we can make a difference and it's not just about, you
10 know, dragging people along, it's about bringing people along as part of their journey.

So I - the department has the appetite to work with our Division. It was set up because it came out of - there was a need, and all of the work before it. But I just feel very, very
15 honoured and privileged to be able to sit here today to say that the next few years are going - we're going to see change. It might be slow change, but we want to make a change to the system so that our communities and children can thrive for the future. So we leave a legacy just similar to what's happening today with the Yoorrook Commission hearings and the truth-telling. This is a point in time that will hopefully resonate and also be a turning
20 point for our communities to be able to stand proud but change some of the systems as well because that's my aim, is to - going into this role it wasn't just to keep the seat warm. It's actually to make a difference.

And I think my track record says it all because I've been involved in many reforms before. This is another reform which I'm really - I'm looking, you know, for the challenge but also
25 there's going to be good and bad times, and good and bad discussions. But I think, if anything, it's going to be a process where we need to bring everyone along and particularly our First Nations People because I think this is an opportunity where I see the department, I would like to see it as an employee, you know, choice for people to come - Aboriginal
30 people to come and work in the department because we want to create that environment. So it's safe, they're going to get so much benefit out of it, but then also working with community is really important. So it's not about we're sitting in the ivory tower as such, it's actually we're sitting there, we are work working alongside our communities.

CHAIR: Raylene, could I ask you to do something. Travis mentioned your Public Service
35 Medal and I was struck by the size of the operation you had at Bendigo. Would you like to just describe that a little bit and how that gave you some very good experience for where you've been and where you're going?

MS HARRADINE: I did start work relatively late in my life. However, I think one of the
40 key things is with my Public Service Medal I received that when I was in the Department of Justice because I did that - same as I am doing now - I worked with community and it's about making a difference. So I was involved in the RAJACs, the AJAs, so development of Koori Courts and all that. So a lot of work that's happened. But then going into an
45 Aboriginal organisation, as such, that role I kind of didn't aspire to go into. However, you are put where you are put when - you know, when, as you're guided. And in that position I totally enjoyed the experience and I really enjoyed working with community at that level as well to make a difference.

I think they just opened up a kinder on Friday which they launched which I was a part of
50 and in securing all of that and so that's one aspect of the BDAC when I was there, and I

only left last September, or October. But building up the capacity of the community, but also building up the capacity of the organisation to deliver the services that they have. So, for me, it's really important that I leave some - I don't mean to, but I leave a legacy behind for someone else to pick it up and carry it. And that's what I want to do within the
5 department, is I've got a really - like I said, a real deadly team around me at the moment and the numbers will increase, no doubt, when - as the work progresses. But I want to build their capacity up so that they can be the best that they can too because it's not just about me, it's about us as a collective.

10 So that's my approach and I always work like that. So - and I was really honoured to receive the Public Service Medal at that time and I don't sort of go around sort of bragging about it either but yeah, it's something I do have. So thank you.

MS MCLEOD: Are there any other questions or comments from Commissioners?

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COMMISSIONER LOVETT: Probably more a question around Treaty readiness. So you've talked a little bit about kind of working with the mob and stuff. So without going into any detail, is the department doing any or seeking your advice or your Division's advice around Treaty readiness sort of preparations?

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MS HARRADINE: We have actually started thinking about that, and just in terms of how do we get the - our department ready for Treaty? We have - I think we've reached out to have various people come and talk to the department in relation to it. The other aspect is making sure that we mobilise the team to be able to do that piece of work as well and I
25 think we've got - we've got a pretty good team that will do that but it's - we need to start from - you know it is - it's new and we don't know - I always think, I don't know what this is going to look like in the future, what Treaty will look like. What does that mean for our department? What does it also mean for community, but all of the other, you know, parts of community that are - that make up Victoria.

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So we are - you know, we have started thinking about that. We have started actioning what we need to do within the department to get the right people to come in, give us the right advice, but then also what policies and practices do we need to put in place. So it's - for me, when I do anything, it's always looking at it from a business point of view,
35 where do we need to start and looking at what the risks are and those sort of things.

COMMISSIONER LOVETT: And you've got a massive mandate as part of your leadership and what you have got to do driving transformation and change and reform across the department. What are you - that you haven't shared already - what are some of
40 the other barriers that you see that ultimately may impede your success?

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MS HARRADINE: Not enough staff.

COMMISSIONER LOVETT: Yes.

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MS HARRADINE: Particularly at the moment there's a workforce issue, as we all know, and we don't want to be going out there poaching staff from Aboriginal organisations, but then also how do we make sure that we have the right staff. What else do I think about?

COMMISSIONER HUNTER: How do you that - sorry, Commissioner Lovett. How do you do that because we've all seen it because we have all worked in orgs, government pays much better, help you get qualifications. How do you do that without taking away from the community orgs that are struggling?

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MS HARRADINE: That is a really good point, because it is a challenge because we don't want to - and from my point of view, I don't want to go out and, you know, steal staff from ACCOs that really need and do well, so it is looking at - there could be opportunities around secondments or even just joint activities. You know, I don't know what that might look like, but that's one of the key things we will consider as part of our business strategy for our Division. It's like how do we make the most of the workforce. And sometimes, you know, we'll get non-Aboriginal people too who will come and work and they have the relevant skill set. But they don't - you know, they're not a First Nations person. But we're not a division that is just totally Aboriginal, you know, First Nations People. So - and, you know, I don't think in the real world that will ever happen because you need to have - we don't have enough Aboriginal people in - that cover various areas. So might in the future but, yeah. It is a challenge though. It's something that we are really mindful of and really considered about, like, we don't want to - you know, we don't want to cause issues with community either. So it's - yeah, I think it's either working in the workforce, employment opportunities. But then it starts back from education as well. So opportunities, because some of our First Nations People don't want to work in child protection. They might want to work in other parts of the department. So you would have to - need to make it attractive and the pay parity is correct and you brought that up. That is a significant factor in this as well. So - -

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COMMISSIONER LOVETT: Great.

MS MCLEOD: Any other further questions or comments from Commissioners?

COMMISSIONER HUNTER: Can I just ask you personally, what's the most challenging thing as a First Nations woman in Victoria going to work in the department?

MS HARRADINE: For me?

COMMISSIONER HUNTER: Yeah.

MS HARRADINE: I actually don't have a challenge. I love going to work. I really enjoy getting up in the morning. I know I've got what I'm - and, like I said before, I don't - I'm not in positions where I dread going to work. I usually apply for positions and - that I really enjoy working in. I think the only thing is, I think sometimes as an Aboriginal woman I think it's the - sometimes there's expectations on a woman or sometimes - I'm not really a feminist, but sometimes females are not looked on as - sometimes it's a competing factor with males sometimes. So, yeah. But personally, from my point of view, I don't feel I have any challenges.

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I think because I stand strong in my culture and I know who I am, I don't have any issues and I can walk in any world. But I've also been very fortunate to have people who are around me, Aboriginal leaders, and some of them that have - well, I can always ring and get advice from. So if I didn't have that, that would be a challenge to seek some advice.

So I do have people I can talk to or catch up with, and real strong Aboriginal people. So that's my sort of - that gives me the strength.

5 COMMISSIONER HUNTER: A really good story around keeping cultural connection right there. So thank you.

10 COMMISSIONER LOVETT: Is there anything else - there's sort of a bit of prep to come here today. Is there anything else that you would like to share with the Commission before that you haven't been able to have the opportunity to say today or - -

15 MS HARRADINE: I think I was a bit nervous about coming, I have to - I'm being honest because this is truth-telling. However, I think for me sitting here and being able to talk about my experience because I think sometimes it can be challenging for some people when - if they've had really negative experiences. I haven't grown up with a silver spoon
20 in my mouth. I have had - you know, I've had a life, as everyone else growing up being born into a small community, being exposed to alcohol and all those sort of factors. So - and then other experiences as I sort of have grown.

25 But, for me, it's like I think I want to make a difference and I know that - and that's the driver for me. It's about I don't want to see a child without their family. I don't want to see someone go hungry. I want people to be treated like we should all be treated and it does come back to human rights and the fact that we all should be thriving as a society in Victoria, particularly our First Nations People. So I want to make a difference just there. And I think, yeah, it's - yeah. I don't want my great grandchildren or my grandchildren to
30 sort of, you know, have bad experiences. I want to, you know - and I think really education is starting to put true facts in the historic history in the books and in their curriculum which is really good. And I think one of the things that I really like is that we've got kinders that have cultural practices in them too, and it's not just for Aboriginal children, it's for non-Aboriginal children. So we're going to have people that grow up
35 who, you know, are proud of the First Nations People. I'd love to see at some point where we get to a point where like culture, First Nations People, are recognised in every - in our systems and that's from government down. I would love to - you know, I don't know if I'll see that in my lifetime, but it would be something, and language is everything too. So we practise language and practices where our men can go out and do their business and our women can too. So that's my sort of -

COMMISSIONER LOVETT: Deadly. Thank you.

40 COMMISSIONER BELL: Thank you.

MS MCLEOD: Thank you, Ms Harradine. Those are the questions I have for Ms Harradine. If there are no further questions.

45 CHAIR: No. We thank you very much, Raylene. Thank you and we look forward to seeing you of course as things progress.

<THE WITNESS WITHDREW

50 MS MCLEOD: Thank you. Feel free to stay there for a moment, Ms Harradine. I propose to take a short break now before we call the next witness, Mr Adam Reilly.

CHAIR: Thank you. 10 minutes, 15 minutes, what do we want?

MS MCLEOD: 10 minutes is sufficient.

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COMMISSIONER BELL: 10 minutes.

CHAIR: 3.15. Thank you.

10 <ADJOURNED 3:05 P.M.

<RESUMED 3:14 p.m.

15 MS MCLEOD: Commissioners, I call our final witness for today,
Mr Adam Reilly.

<ADAM REILLY, CALLED.

20 MS MCLEOD: Mr Reilly would like to read an opening statement which is found at
DFFH.0012.0001.0001. After Mr Reilly has read his statement, I will tender the document
so it can be made available.

CHAIR: Yes.

25 MS MCLEOD: Mr Reilly, you are the Executive Director of the Wimmera South Region
for the Department of Families, Fairness and Housing.

MR REILLY: Yes.

30 MS MCLEOD: And do you undertake to give truthful evidence to this Commission?

MR REILLY: I do.

MS MCLEOD: You would like to read an opening statement?

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MR REILLY: Yes, thank you.

MS MCLEOD: Yes, can I invite you to do that now.

40 MR REILLY: Thanks, Counsel. It is a privilege to be meeting here today on the lands of
the Wurundjeri people. I pay my deep respect to the Elders with us, and for their strength
and bravery over so many years. I am very mindful that the opportunity for Aboriginal
people to be able to speak our truth in a safe and respectful way here is only possible
because of the sacrifices and labour of those who have come before us.

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I particularly pay my respects to our First Nations children, including those Koori kids who
have had contact with the child protection system, and indeed those who right now while
we are speaking are living in State funded facilities away from their families and country.

I come before the Commission today as a proud Murrawarri man, and as an executive in the department responsible for child protection. I'm acutely aware of the evolution and history of the department that I represent. We identify now as the Department of Families, Fairness and Housing. I understand that the use of the words "families" and "fairness" can be very triggering, especially for Aboriginal people when, within that department, we carry the portfolio of child protection.

I want to acknowledge that we are also known by other names. In our history, we have been known as the Department of Social Welfare. We have been active contributors to the Aborigines Protection Board. We have been known as the Department for Neglected Children, and most commonly in community we have been and are often still known as "The Welfare".

For the actions of the department in our long history and to this day, I extend my deepest and genuine heartfelt apology to my Aboriginal brothers and sisters and your families across the various Koori nations that may be listening today. I am deeply sorry for the harm, for the pain and trauma the department in all its iterations and throughout all of its history has caused for you, your families and your ancestors.

My commitment today is that I will speak my whole truth in this Commission in the hope that we can start to right the many wrongs we know have been perpetrated against Aboriginal people. Before I touch on my observations working as an Aboriginal executive within the child protection system, I would like to state clearly who I speak on behalf of here today.

When a Murrawarri man travels on to the lands of other countries, we walk respectfully and lightly. I speak today on behalf of myself and not on behalf of any other Aboriginal people. It is, however, my genuine hope that the evidence I give will resonate with the experiences of Aboriginal child protection workers, Aboriginal Elders and Traditional Owners, and for me, most importantly, our Aboriginal families and children who are living within the bounds of the child protection system and may not have a voice in evidence giving today.

Commissioners, I have listened carefully to the evidence provided by a number of my respected peers and while the evidence I will provide from my own lens may differ in detail, it is my hope that my words are heard and received by those of us working in this space as being constructive. We will not agree on all things but I hope we can all agree that we must undertake drastic reform and significantly improve the way the system works.

To assist the Commission in understanding the lens through which I provide my evidence today, I thought it useful to take a moment to explain a bit about who I am and how I came to be before you. Like many Aboriginal public servants, I have my own personal experience of child protection, both when I was a baby through a cultural de-identifying adoption, but also supporting my own family in understanding and navigating the complex child protection system.

The experiences of loss of identity, connection to culture were highly detrimental to me throughout my early years, and I still to this day struggle with relationships, abandonment and attachment issues. Whilst some may say that what happened to me is unfair, I would

argue that it's nothing, nothing compared to the trauma and life-changing harm I have witnessed happening to our kids in statutory systems designed to keep them safe.

5 This year marks my 27th year as a public servant, it makes me feel quite old as I read that figure out. Much of my career has been working with Aboriginal communities all around Australia, with particular focus on the East Kimberley, Central Australia and the Top End.

10 I had the misfortune of being in Central Australia during The Intervention, and I again saw what happens when systems get things wrong. I've worked in multiple jurisdictions and the areas predominantly are within child protection and youth justice. I hold a Master's Degree in Public Administration and I was really keen to come to Victoria and work with the communities here and the various Koori nations in a progressive State with enormous potential.

15 I do want to pause there, just to acknowledge how warmly and welcome I've been made to feel as an Aboriginal person not from Victoria by the communities that I've worked with. It really helps when you miss home and you miss your family, to be so embraced and supported by the Aboriginal communities that I both work with and live with here in Victoria. So thank you to those people.

20 The importance of the work I've chosen to do became very clear to me when I was sitting with team members in my office in Adelaide, a staff member asked me what suburb my adopted parents lived in. I replied and the staff member started laughing and said, "Just so you know, you were probably carried around this office as a baby, just like the babies you see us carrying with you here now as the manager."

25 I decided that day I needed to pursue opportunities to make a difference for those kids in our systems who have not had a fair start in life. Another really powerful moment for me in developing my understanding of our child protection systems occurred when I started sitting as a respected person four years ago on Koori Court. When offenders appear, I always ask about their past. I always ask about their journey, their childhood and what led them to be in contact with the adult justice system.

30 Having sat in this space, it is so clear to me, as I look back at the pathway offenders have travelled, all of the critical and missed opportunities that, with the right understanding, cultural sensitivity and early intervention we would not be talking about possibly sending another Aboriginal person to jail. We would not have seen years of pain and trauma, not only for the offender, but their family and the impact of victims of crime. Added to this we would have saved millions of dollars, and I would argue in all probability the offenders would instead be strong, proud contributing members of our community.

35 From a child protection systems perspective, my lens is one of operational leadership. While I am classified as a senior executive in the department, I have taken steps to ensure that I remain grounded, connected to my teams, connected to our families and connected to our community.

40 Out of the 17 operational areas in our organisation, I am the only Aboriginal executive director with area responsibility. In fact, for a number of years, I was the only Aboriginal executive in our department of all when our staffing numbers were well over 4,000. I bring a strong desire for innovation and I have a healthy risk appetite. I have, with my

Aboriginal staff and some amazing non-Aboriginal child protection workers that I class as allies, demonstrated time and time again that community controlled and Aboriginal-led practice works. It is stronger, it is safer, it is cheaper, and far better for the people we are here to serve.

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While I agree and accept that part of the process of Yoorrook needs to be accountability, I very much wish to spend as much of my time as possible with you today talking about opportunities. There is so much community strength, knowledge power and resilience. There are so many resources that are not yet being used or are being disregarded. It is plain and clear to me where the deficits exist in our system, and while I stress this is my lens into this space, I do hope my contributions prove useful.

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Finally, while we focus today on the child protection system, it would be remiss of me not to mention that obligations in this space extend well past the statutory system. I believe shared responsibility must exist and be prescriptive across all departments and funded agencies. If any one authority is to be responsible for child protection, it is simple mathematics that it would need a workforce of well over 20,000 people. Not only would this be counterproductive but I believe the skill set of a statutory system does not suitably provide the key elements that are needed for successful delivery of early support, empowerment and intervention models.

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I welcome any and all questions the Commission may have for me today, and again I thank you for the invitation to speak.

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CHAIR: Thank you very much, Adam. Thank you.

MR REILLY: Thank you.

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MS MCLEOD: Mr Reilly, I do want to come back in the discussion with you to talk about those opportunities that you touched on in your opening statement. Can I start with the conversation about the deficits. I have indicated that the opening statement should be tendered. I tender that statement now, and that can be posted on the website.

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CHAIR: Thank you, Counsel.

MS MCLEOD: So, as the Executive Director for the Wimmera South West Region could I begin, please, by telling the Commission what are your role and current responsibilities?

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MR REILLY: Certainly. So in our organisation, particularly through an operations lens, we sort of see ourselves in, I guess, five bits which is not consistent with how the org chart is presented but it is operational standard language. So we see north, south, east and west as the sort of arms and legs parts of the organisation and we see what we call the centre, which is sort of all of those enabling services and policy and executive functions that sit over the top.

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I sit within the West Division and as mentioned, my patch is Wimmera South West, so it's the largest of the 17 areas around the State. It's some 60,000 square kilometres. And I rarely miss the opportunity to tell people that we did an assessment of just how far our staff travel, and each year we do two return trips to the moon according to our government vehicle logs. It's no small effort in terms of country covered.

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MS MCLEOD: There's a metaphor there somewhere.

5 MR REILLY: I believe so. Within that patch I'm responsible for five officers and at the moment roughly 120 staff and four child protection teams. So the portfolios are predominantly child protection as well as public housing and a number of community facing funding arrangements and, as mentioned by Ms Harradine, the family violence responsibilities as well.

10 MS MCLEOD: Mr Alisandratos was taken to an organisational chart. I don't have the number handy but within that organisational chart where do you sit below the secretary?

15 MR REILLY: I'm a humble functionary, several layers below the secretary, Counsel. So the secretary in terms of the reporting lines through. The position reporting there is Mr O'Kelly who is the deputy secretary with overarching responsibility for operations. Under Mr O'Kelly is Mr Smith, the deputy secretary responsible for the west, and I report to Mr Smith as the Executive Director for Wimmera South West.

20 MS MCLEOD: And the Children and Families Branch is one of nine branches within the department?

MR REILLY: Yes.

25 MS MCLEOD: Of the direct reports to you, there are seven?

MR REILLY: That's correct.

MS MCLEOD: Three of whom are child protection leadership practitioners?

30 MR REILLY: Yes.

MS MCLEOD: Okay. Is there anything else you wish to tell the Commission, or share with the Commission, about your own journey to child protection work as a practitioner?

35 MR REILLY: I touched, I think, on that in my opening remarks but I think for me the introduction to the child protection space came from working with young people in youth justice. And it was clear, when I looked at our young people, particularly those kids where the offending was starting to get into the really serious space, there was a clear pattern and that pattern was that for many of them, the referral or the gateway into the justice system
40 came from child protection. So I was really fascinated and driven to work in that space. So that's, apart from what I previously stated, Counsel, I think that's probably the biggest driver.

45 COMMISSIONER WALTER: Mr Reilly, you meant that, yes they were in child protection but it was also, was that first interaction with the Criminal Justice system emanated from as well?

MR REILLY: That was the pattern I noticed, yes.

MS MCLEOD: In terms of shifting now to the experience of First Nations People within the department, can you offer the Commission your experience and observations about how it is for First Nations People working within the department?

5 MR REILLY: Yes, thank you for the question. I can, and I think due to a number of opportunities I've taken, I've been able to look through a number of different lenses within the organisation. Last year, and even building up to that, I was very active in supporting communities with the COVID-19 response. I was privileged to work on the project team supporting the development of the division that Ms Harradine refers to today. And I also
10 had the opportunity to be one of the members of the executive board for about three months last year.

I think, for me, through all of those lenses, I obviously had the operational lens that I mentioned before, I think of most value to the Commission would be what are the patterns or the trends that I see across all of those spaces. And, for me, I genuinely believe that
15 there is goodwill in the organisation. I genuinely believe people come to work with the intention to do good and to do hard work.

But I see varying degrees of cultural proficiency and, for me, probably the biggest fear and something that I need to remain proactive in, in terms of the child protection children that are within my gift, that power without knowledge can be extremely dangerous. And I don't say that with any disrespect to any of my peers. As I stated, they work genuinely hard and you don't know what you don't know. But I am concerned when I see some of our decisions being made where there is clinical assessment done but there is no cultural lens
20 into that space.

And I use language like "specialist" when I described what we need to provide in terms of that bare minimum training to our staff. And I think about with if I went to a GP and it was determined that I needed to have surgery on my brain, I would be really concerned if
30 the GP started performing that. And it's a crude comparison but I hope it makes the point. I would expect to see a specialist. The brain is a fragile, sensitive, very complex part of our body, and in the same spirit, I would like to think that we will get to a place where we understand the significance, the complexity, the fragility and the power that will come from culture and that we land at a place that says: yes, these clinical qualifications are
35 critical to do your role but if you're going to come in contact or in any way influence an outcome for an Aboriginal person or family, you need to satisfy us with these qualifications.

I say that from the western construct. I think the critical add-on to that for me is the
40 Aboriginal lens, and you cannot, in my humble view, provide a one-size-fits-all. The hybrid training I think would really benefit, includes connection to local community, understanding the history and the aspirations, the trauma, all of the factors that are important for the community you're working with. And we know because there are so many nations that the one-size-fits-all is not only disrespectful but it's not consistent with
45 our commitments to self-determination.

MS MCLEOD: Staying with your medical model for a moment, what are the signs and symptoms of a lack of cultural proficiency within the department?

MR REILLY: There are real-time examples. There was what I consider a near miss only weeks ago and it's not unique, but it sort of - it worries me because I do feel that we need a lot more Aboriginal people in positions where they can influence at least outcomes. So an example that I can refer to in a de-identified way was that, with the best of intentions, a part of the system had identified where one of the young people that I'm responsible for came from a particular country here in Victoria. The young person said, "I don't want to go back there" and with good reason and it was because there was trauma events.

And because of the level where the part of the system that made the decision is at, there was this clear view that that's this person's country so that's where they have to go. That's the rules. And I think as you become more competent and confident and connected to community, you have a greater sense of understanding of the significance of culture.

Now, I believe in all probability had we pursued sending that young person back, it would not only have put her in potential harm's way, and seriously impacted her wellbeing, but it could undo what I hope will be a really meaningful reconnection with culture when the young person is ready and they have the skills and the supports to assist them through that.

COMMISSIONER BELL: How old was the young person, Mr Reilly?

MR REILLY: In that case the young person has just turned 15, Commissioner.

MS MCLEOD: Without that -

COMMISSIONER BELL: It sounds like the young person's own wishes were overridden in this case.

MR REILLY: It's true, and I think some of the evidence from Commissioner Singh would support that. What I can say is with a couple of trusted people I did meet and had some Macca's with the young person which is often a safe and neutral place to talk, and I was so impressed at how articulate and insightful the young person was, with the quietest spoken voice. But I would be reluctant to go into too much detail, obviously, out of respect -

COMMISSIONER BELL: No more is needed, thank you.

MR REILLY: - of privacy.

MS MCLEOD: If I can generalise away from that example, it sounds like some assumptions or stereotypes were made about the needs of the child based on a level of understanding of cultural requirements at the general level without considering the nuance for that particular child; would that be fair?

MR REILLY: That's very fair but I think the complicating factor is everyone felt they were doing the right thing. They were doing their best and that's where it's difficult because whilst I feel frustration and, you know, I do butt heads regularly with some of my peers on these issues, when you step back from the specific issue, these are people that are on the journey with us and committed to doing the right thing, but we've not yet afforded them the tools to be able to understand the significance of the power and also the opportunities that exist with community.

COMMISSIONER WALTER: Mr Reilly, we have heard a number of times raised here the need for an accredited training program that people would need before they can work in this space. Is that something you would agree with?

5 MR REILLY: I definitely would. In fact, we have some data, and I'm not sure if the Commission has seen that yet so I won't refer to it too specifically, but the department, in its recent history, I'd go back maybe 12 months, partnered with one of the universities had developed a training module which I think about 500 of our staff have completed, which is really pleasing because this is master's level qualifications done in microcertificates.

10 COMMISSIONER WALTER: Yes.

MR REILLY: And, again, I say this is part of the potential further discussion in terms of a response, not, you know, that critical part about local community connection and
15 immersion. But what was really interesting is the clear pattern from the feedback of this, and it is powerful stuff in terms of the modules that staff are doing - is that, at completion, people were saying, "Why didn't I know this before?" So I think that's a practical real-time example. It's not to say that is the solution but that is something that could be useful in future discussions.

20 COMMISSIONER WALTER: I'm really pleased to hear you say it was master's level because so often we are told, and people are engaged to do very low level. My own experience I've been asked to do cultural awareness 101 repeatedly, but nobody ever asked for cultural awareness 102 since nobody graduates.

25 MR REILLY: Yes.

COMMISSIONER WALTER: So, yeah, I'm really pleased to hear that, and I would hope that the department pursues that so people might actually get a graduate certificate.

30 MR REILLY: Thank you, Commissioner. Can I just add, Commissioner -

COMMISSIONER WALTER: Yes.

35 MR REILLY: - In terms of that qualification, I actually - it's not just about a benefit for our families and our communities. It will actually assist our grossly overworked child protection workers with increased referral options, better connection in terms of kinship, and I think once you know what you don't know then the resources and the relationships that will come from that, I think that can only be good for all of our organisation.

40 COMMISSIONER WALTER: And to go back to your medical model, you wouldn't be happy with the brain surgeon that had a three-and-a-half hour course.

45 MR REILLY: No, and potentially online. Definitely not.

MS MCLEOD: With no evaluation. So, just to be clear, the program that you're speaking about is master's level. It's a certificate qualification available at that master's level of teaching?

MR REILLY: I would have to clarify that for you, Counsel, but my understanding is that it's pitched at the master's level.

MS MCLEOD: Yes.

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MR REILLY: And it's quite intensive. There's a lot of offline activity, a lot of face-to-face sessions, predominantly out of hours. And I am really pleased to be able to say I believe that at least one or more members of the senior executive board with their massive responsibilities and portfolios, have already started undertaking this as well. So that's the sort of trickle-down effect that would be really positive I think for our culture.

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MS MCLEOD: I think you said 500 staff had participated.

MR REILLY: That's correct.

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MS MCLEOD: Out of a workforce of how many?

MR REILLY: You're testing me, Counsel. I think we're sitting somewhere between two and 3000 at the moment but -

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MS MCLEOD: Whatever the number is, is the intention that this be rolled out to all staff?

MR REILLY: I think that's important because there are lots of parts of our organisation which you would describe as enabling services. They might go to a family's home, they might not see a family, but part of their decision-making may have bits of the power of the broader system. And I think that understanding is critical all the way through because when you look at, and I recall Ms Harradine's comments about the need to increase our Aboriginal workforce, well, you would want everyone in the health and safety and in the people and culture space to understand this as well. So it is - it will only bring richness to the organisation for anyone who participates.

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MS MCLEOD: Just coming back to the example you shared of the recommendation the child be sent back to country which, in this case, would be a risk factor and not a protective factor, does that also suggest there's a misunderstanding about how those risk assessment tools are applied?

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MR REILLY: I believe so, and that's one thing that I do celebrate in terms of the team of child protection workers that I work with. We have these open discussions and I've tried to create an environment where people can be curious and be safe in doing so. And it can be intimidating as a child protection worker. It's fair to say many child protection workers feel attacked from all sides; and in some cases, I understand the practice is questionable and I understand the damage that child protection workers have done. But having worked in that space so closely for so long, there is a strong appetite from those workers to do good. And I think it's remiss of us not to ensure they are afforded all of the training, which will better inform those current clinical assessment tools in a way that I think can only benefit, as I said, the workforce and our communities.

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MS MCLEOD: These child protection practitioners are making very difficult decisions. They're doing it without necessary training and cultural competency. It's obviously important that they be set up to succeed.

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MR REILLY: Definitely, and I think during the evidence from Mr Alisandratos there was discussion about the optimum workload for a practitioner to be able to perform their role appropriately. And I think for me I've sort of landed at 15 is a comfortable number of cases for a practitioner to carry. And the comment that we operate between sort of 15 and 18, I think from an operational perspective I'd even go a step further to say we need to include unallocated cases in that conversation. When we say that our staff are operating at, you know, perhaps 18 cases, that paints a picture where, you know, the pressure's on a bit but in the data that the Commission has received, and I'll use my area as an example, yes, my practitioners are carrying up to, say, 20 cases. But as a team we are operating at 140 per cent capacity. So a large number of children don't have an allocated worker, and none of my staff come to work and say, "This case is unallocated, I won't look at it." They will, of course, be involved and that needs to be considered when we talk about the workload for practitioners.

MS MCLEOD: Did you follow the evidence of Mr Alisandratos about unborn child, perinatal reports? Are there examples, that you are aware of, of women seeing the first person in the maternity suite, a maternal child health practitioner being a child protection worker?

MR REILLY: I am. I'm sorry, Counsel.

MS MCLEOD: And I was just going to say are you aware of examples where the system is in deficit in relation to unborn child reports?

MR REILLY: Yes, I can. And I think that links very much to the comment earlier about the responsibility in terms of shared responsibility and specifically articulated accountability across government and across the funded sector is really important. So I tested a community concern that was raised with me, maybe 18 months ago, to make sure that that concern was still contemporary, and I think as we, as a society, move in an ever learning and evolving direction we sometimes have to stop and remind ourselves and say, "Yep, I'm really comfortable with where we're at in terms of where we were 20 years ago". But in different parts of our society, we're at different levels. And I think it's fair to say that in regional Victoria there are some areas where we really do have lot of work to do particularly in terms of how we perceive and treat First Nations People.

The example I provide which concerns me around childbirth and pre-birth notification is that in 2023, where we are now, there are still mums in my area - I'm sorry, Aboriginal women, who are pregnant in my area, that when they go into labour, they get in the car and drive to another area to give birth. I just can't think of anything more stressful and horrific for someone who is about to have a baby than having to face a long and potentially dangerous drive if that's at night-time, because they believe, whether it's true or not, community believe or members of the community believe that somehow health and child protection are going to be in the room and are going to take their baby.

That, to me, is a real missed opportunity in terms of our engagement and messaging, not just with our ACCO partners but through Traditional Owners, to all of the families, to say: has this happened, let us investigate that and take action and let us make sure that the relationship is strong enough that our Aboriginal mums give birth where their supports and family are and are not fleeing to other jurisdictions.

MS MCLEOD: Well, that would cover interregional but also interstate movements?

MR REILLY: Yes.

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MS MCLEOD: And it would cover people not seeking health services at the point of delivery, I assume?

MR REILLY: To a degree, yes. We're very fortunate in that we have strong Aboriginal Health Services that are really pushing that message out. But when we talk about the cultural training for this organisation, we can only benefit Aboriginal people if that is provided in all of the organisations.

MS MCLEOD: Do you have any insight into how to build trust with Aboriginal mums, particularly perinatally, so that they see the intervention or the offer of child protection as a service rather than a threat?

MR REILLY: For two reasons I would say - I mean, yes, I think I do, but it's not for me to say, is the first thing. The second thing I would put forward is that it's not for the department to say. I think, as I mentioned in terms of early intervention and respectful engagement, the lights and sirens statutory response, we're not good at that generally. I think that sort of conversation - and really the child protection response to support any concerns that that expectant mother is facing, should be designed and really prescriptively delivered at the bequest of the families and the Traditional Owners from where that person comes from. Our role, if any, should be to support wraparound as directed, not to apply our clinical response to that situation.

MS MCLEOD: In terms of other difficulties in the system, the best interests of the child is the paramount consideration under the Act?

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MR REILLY: Yes.

MS MCLEOD: Do you see that the best interests of the child is not supported in many, or some, decisions made by child protection practitioners?

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MR REILLY: That's - I would say that's a fair assessment. But, again, with my focus on intent -

MS MCLEOD: Yes.

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MR REILLY: - there is no malicious intent, but that is the result, yes.

MS MCLEOD: And -

COMMISSIONER BELL: This is taking into account cultural considerations that are so important in the Aboriginal context?

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MR REILLY: That's right.

MS MCLEOD: And the Commission has heard evidence about the impact of unconscious bias and racism within the system. Do you believe that the steps the department is taking to address those unconscious biases that affect subjective decisions, do you believe the department is addressing those effectively at the moment?

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MR REILLY: With the greatest respect to my peers and to the organisation I'm proud to work for, the answer is no. And it's not a criticism. It's basically an observation because, as I said, we don't know what we don't know. Once we do know, we'll look back and say, "Oh, yeah, why didn't I know that", the same as our participants that are undertaking these qualifications are saying. So it's not a criticism but I think - and I'd be confident that the department will receive it as an opportunity to explore proactively.

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MS MCLEOD: Can I move to the cultural competency question, the awareness and training within the department. We've heard evidence that the department provides cultural awareness training, and Commissioner Walter asked you some questions about that. The expectation is that all child practitioners will undertake the training. First of all, are you aware of what proportion have undertaken that training, and if it's just the module of three-and-a-half hours, whether that's effective?

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MR REILLY: I'm not because I've not seen that data. But whilst I take the comments made by Mr Alisandratos in terms of it is our expectations, our expectation that our staff will do that, we have to translate that into the reality of those workers in the field and their massive case load. So I would say - I think it would be fair to say that our participation in that is not as high as it could be.

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MS MCLEOD: You mentioned the master's level certificate training and the efficacy of that. Would you agree that cultural awareness needs to be built in as a core competency for child protection practitioners?

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MR REILLY: Yes, definitely.

COMMISSIONER WALTER: Can I just ask you another question on that. You've got new workers coming in who have recently graduated from university, done social work, psychological. Are universities preparing those - do they come with some cultural competence from their courses, in your observation?

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MR REILLY: There are various pipelines into child protection from various universities and, to be completely honest, I haven't looked into that as much as I perhaps could have. But I couldn't comment on that, I'm sorry.

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COMMISSIONER BELL: Can I ask you a question on the issue of specialisation. Is it convenient for me to do that now, Counsel?

MS MCLEOD: Yes, thank you, Commissioner Bell.

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COMMISSIONER BELL: I'm interested in your remarks about this, and I am wanting more information about how a specialised functioning within the department could work. There does seem to be a critical mass of cases. So we've got the first condition satisfied. And yet that large critical mass of particular cases, those concerning First Peoples families, are dealt with within the general workforce cohort. How could it work? I mean, I think

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we could start with the fact that you come from the biggest region. So you've got a large - you've got a critical mass perhaps. You can see why I'm working through the issue from an administrative point of view.

5 MR REILLY: Yes.

COMMISSIONER BELL: Could you develop some other ideas along these lines?

10 MR REILLY: Thank you, Commissioner. Absolutely. But I would preface that response by saying that I'm not a Victorian Traditional Owner, and it would not be appropriate as a public servant to prescribe or to say "You should do this." What I would offer graciously is that a number of Aboriginal child protection workers reached out to me after they became aware I would be giving evidence and they said, "As we, as an organisation, prepare ourself for system change and for what will come from Yoorrook and from Treaty and some clear direction at the time that is appropriate from the First Peoples' Assembly, 15 what are some of the things we could do". Now, we could immediately start looking at bringing a case load together and bringing those Aboriginal child protection workers.

20 COMMISSIONER BELL: Streaming them.

MR REILLY: - and the structure together to stream in real-time for a three, six, 12 month period, what are the different outcomes. And I think most Aboriginal people would already know the answer to that before - before we tested it. The only other thing was you made comments, Commissioner, that really resonated with me and that was the branch and 25 roots rebuild.

COMMISSIONER BELL: Yes.

30 MR REILLY: That, I think, is probably the most exciting potential into the future and I think that is one where people such as myself and so many Aboriginal child protection workers, both that we still have and many that we've lost, would just be so eager to be part of that conversation. Not to come in and say: this is what you should do, but these are things that we've learned, if that assists in the design and the expectation, and how can we ensure that we are held accountable in that process as well.

35 COMMISSIONER BELL: A coherent and well-managed specialist function would presumably involve leadership; it wouldn't just be flat. You need a leadership and people in the middle and people at the baseline, I am assuming. Would you have enough workers who are Aboriginal to populate that workforce?

40 MR REILLY: I think in terms of the critical roles and the family-facing roles, yes.

COMMISSIONER BELL: Yes.

45 MR REILLY: I think we would - and I'm mindful that, you know, some previous commentary from witnesses have said that we may never get to the place where we have Aboriginal people in all roles. I actually don't share that view, and some things that I've seen in other jurisdictions and even here that on have worked is when you have a specific task or function that needs to be performed, and at that point in time there's not an 50 Aboriginal person that can be identified that is suitable, you temporarily appoint a subject

matter expert and the best qualified Aboriginal person to shadow and mentor. And that arrangement should last no longer than two years. And then the non-Aboriginal person who is championing the development of their Aboriginal colleague steps away and does something else.

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That's where I see that significant reform piece happening. So, in that sense, we could achieve a full model but I would say at a guess, Commissioner, we'd probably get to about 85, 90 per cent of that structure with our current Aboriginal numbers.

10 COMMISSIONER BELL: Without having to fill up somewhere.

MR REILLY: Yes.

COMMISSIONER BELL: Yes.

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COMMISSIONER HUNTER: Am I correct in thinking, didn't we previously have Aboriginal teams at some point within the department? I know Northern, and so they used to only have Aboriginal children.

20 MR REILLY: That's definitely correct, Commissioner. That was before my time. I think, and I'm only speculating, but I think some of the challenges of that model is that the enabling services and the other parts of the organisation that those teams may need to connect with, would be non-Aboriginal staff and may not have that cultural competency or confidential capacity to provide the appropriate response. So whilst it's better to have an
25 Aboriginal staff member supporting Aboriginal families, if that's what the family want, it can be detrimental and it could create a churn of workers if that team is not connected correctly and culturally throughout all of the hierarchy of the organisation.

30 MS MCLEOD: Can I move now to the opportunities question. The Commission has heard evidence about the cultural support plans; the fact that they are missing in a high proportion of cases; the fact that they are generic or not sufficiently detailed or individualised to the child; the fact that they're not reviewed annually; the fact that they are filed and not acted on. That's a broad brush summary of the issues that have been raised with the Commission. What are the opportunities here, in your view, for cultural support
35 plans to do the work they're intended to do?

MR REILLY: Thank you, Counsel. This came up at Task Force 100, and I think, we'd be looking - it was pre-COVID so we're going back a couple of years. But when we looked at Wimmera South West with the Aboriginal Children's Commissioner and their team, we
40 decided to try something a bit different. We thought - and one of the things, and with the greatest respect to my metro colleagues, country people are really good at stuff, and one of the things that we're really good at is making things work. So we put our heads together with the local Aboriginal Community Controlled Organisations, and I'm thrilled we have five and soon to be six in that space. And we said we know that these rich documents that
45 can really help both the case plan for the practitioner but also the young person and their family are just not being utilised. We also were really mindful that different parts of the statutory system require one of these plans, and it can be traumatising for a family to retell their story over and over for this document that may end up in a filing cabinet.

We committed to a trial of one cultural support plan, and the commitment under that trial was that the plan remained the property of the family and the young person. And through an MoU - and I'm really proud in terms of education when they came on this journey, Justice came along on this journey for youth justice purposes, all of the ACCOs as you
 5 would expect, and any other service that the family wanted to connect to - by being a signatory, you committed to Aboriginal community oversight of your compliance with what you've agreed to. And the key, the fundamental deliverables were that that plan had to be a fluid document. It had to remain contemporary.

10 So, for child protection, my direction to my teams was that every time you have a professionals meeting or a care team meeting that plan has to be on the agenda and has to be referred to. The data, or sorry, the statistic we haven't spoken to greatly is the review, or the annual review, of the plans, as you mentioned, Counsel. And, for me, that's
 15 problematic in itself because what I see without that cultural understanding and critical training that staff need, is the plan becomes an administrative burden.

So the quality of that plan is often questionable. So we talk about, you know, 20 per cent not complete or 30 per cent, and that's concerning, but I don't think that's the true story. The true story is of those - and in my case it's 85 per cent and that slipped, we normally sit
 20 in the mid 90s so I will be looking at into that when I get back. The quality of those plans, are they adding value for the young person? Is it ensuring all the parts of the system more broadly that have contact with the young person and the family are doing the important things that have been articulated in that plan? It worked well. As I understand a similar
 25 trial was conducted at VACCA and Auntie Muriel would be able to speak to that. But both trials were about ensuring that the plan was a live document and not an administrative process.

MS MCLEOD: Is there a departmental appetite for rolling out that pilot further?

30 MR REILLY: Look, honestly, at the time there was - there was administrative resistance in terms of undertaking the pilot. There are numbers, a large number of people in our organisation that lean into the Aboriginal Affairs space in child protection. And when, you know, the troublemaker from out in the west says, "Oh, he's up to something again", that
 35 can be very triggering for people, and I own that. But in terms of true self-determination, this request was from our community, and it was what we wanted to try, and it worked. So I think once the department could see that there was some value in this, there was an appetite to do more. I suspect the breaker or the roadblock in terms of that progressing and expanding was probably mostly linked to COVID and we haven't yet revisited that.

40 MS MCLEOD: Your division at least, your district or your area at least, I take it you have an appetite to revisit that pilot?

MR REILLY: I do. And what's really pleasing and is one of the good news aspects of the information I can provide today, is that the West Division which I refer to, there are five
 45 Executive Directors. I am the only Aboriginal Executive Director. But the others I treat - I genuinely believe are allies for me to succeed in my role and for Aboriginal people. And in that West culture, we have a deputy secretary, I touched upon before, Mr Smith, who has created a culturally safe space and expectation within the leadership team that not only do we celebrate having Aboriginal executives at the table but we make sure that we carve
 50 out time to have tough conversations.

5 And we openly explore - and for my non-Aboriginal colleagues in a really curious and respectful way - those tough things that people aren't always happy to talk about, and that's things like privilege, subconscious bias. And it's a positive and privileging position to be in, to see the change and appetite for some of our non-Aboriginal executives coming along on that journey is quite powerful.

10 MS MCLEOD: Can I invite your comment in terms of opportunities for reform in the criminal justice child protection interaction. You've been a member of the Koori Court. Do you still sit on the Koori Court?

MR REILLY: Yes, whenever I can, yes.

15 MS MCLEOD: So what are the opportunities there for reducing the risk of a child in child protection coming into contact with the Criminal Justice system? Are there programs that you can highlight that, in your experience, have been very successful?

20 MR REILLY: There are a number of programs but I would like to link this response to the other conversation I've been listening to which is around data.

MS MCLEOD: Yes.

25 MR REILLY: So we hear a lot about the data that's produced, but there's a lot of the story that happens which is not captured in our data, and a lot of that sits outside of the statutory system. I think it would be safe to say, based on the information I've received from Aboriginal communities and particular ACCOs, that our system would be completely overwhelmed if not for all of the, and often unfunded, work that happens in community by community, where families are supported and do a complete culturally appropriate and safe diversion from child protection into other services.

30 I would not be best placed to speak to those services in terms of what they are and what they offer, but the further back along the continuum towards that long journey to adult justice we go, the better. So I would go as far as the prenatal care, early childhood engagement, a really significant amount of work in terms of upskilling our educators to ensure that they respond appropriately to trauma-informed behaviours and have that cultural overlay in their capacity, and again acknowledging their workload as well. There are lots of programs that are successful but I don't believe I'm best placed to describe them in detail.

40 COMMISSIONER WALTER: And you're saying there that the data to capture those big contributing factors to success just aren't there? And, of course, you would be aware with Closing the Gap Pillar 4, that governments, including State Government of Victoria, have signed on to providing Aboriginal communities with the data they need for nation rebuilding?

45 MR REILLY: And in addition to that, Commissioner, that's a conversation that comes up regularly at the Aboriginal Children's Forums as well.

50 MS MCLEOD: So, just to be clear, this is underreported early intervention work by Aboriginal organisations, data around those early interventions?

MR REILLY: I would probably use slightly different words. It is the reporting framework that the Victorian Government uses -

5 MS MCLEOD: Yes.

MR REILLY: - currently does not include reporting on some of those really successful and often unfunded early intervention opportunities.

10 COMMISSIONER WALTER: It's not enough indicators and not enough of the right indicators?

MR REILLY: Yes.

15 COMMISSIONER HUNTER: That would be the same as kids in out-of-home care what you're reporting against, not seeing actual outcomes but seeing numbers. I know some of the wording is "bums in beds" and things like that, yeah?

MR REILLY: Yeah, and if you look at the way the system is structured, I would really
20 strongly argue that some of our best carers are the kinship carers. And the way that the funding and the supports are structured, they're right down here, and there are often kinship placements made within family without even having to come to the statutory system. And you think about not only the reduction in trauma and, you know, pain and cost having had that child come into the system but staying so strongly connected with family, and that's
25 often unsupported as well. So it is a very -

COMMISSIONER HUNTER: Would they receive access to services that kids in out-of-home care would be - or kids that are in kinship care placements by the department without coming into the system?
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MR REILLY: I think that's one of the criticisms from community is that there is inequity in that space. They would be entitled to the normal allowances from the Commonwealth and services there, but there are services which are quite prescriptive in terms of who is eligible. But I think that is another potential huge opportunity in terms of how about we
35 broaden that up to encourage and support family self-placing and kinship.

COMMISSIONER HUNTER: Can I just ask your view - and sorry, Counsel, if I'm just taking you off track here. What is your view about treating the underlying issues? Do you think they get treated within out-of-home care, the underlying issues for the family, the
40 child, the parents, whilst the kids are in care?

MR REILLY: No. The overwhelming standout issue for me in terms of underlying issues, and I get there are many complex factors, but for me it starts with poverty. That is the most frequent trend for me in terms of the big issue. And everything else snowballs. It's
45 fascinating but heartbreaking. So, no, the system was not built, designed or equipped to address the poverty issue. But that's where, when we talk about shared responsibility with a broad response, we can start tackling that. And with an appetite to address those really fundamental underlying issues, I think we can make some real headway. But again I say that as a Murrawarri man on Victorian country, these are my observations and that

conversation should be led in any decisions through First Peoples, the various Koori nations.

5 COMMISSIONER LOVETT: In your experience, just under the key word data, and under the government's commitment to self-determination reform around data sovereignty and transferring data back to community, have you got any thoughts or examples around, you know - quite a lot of data is coming out of your department, the department you work for, has any transfer of data been given back to the mob?

10 MR REILLY: Yes. We did a response for the floods in Shepparton, and I took a team up there to test what would an emergency response look like if it was an Aboriginal only response, if we sat that right alongside the mainstream response. And we worked very closely with Rumbalara and our commitment from the start was that we will gather data for this but we will hand it back to you as soon as we have finished gathering it, we will not
15 keep a copy, and any requests that we have we will come back to you. And that was a way that we could demonstrate sovereignty. I think, for me, the biggest challenge around our data and it's one of the strongest criticisms I receive from community is that when you own the data you own the narrative. And for me, what we are missing and we could really benefit from is external oversight of our data and practice, where that data is tested. And
20 one performance indicator that comes up quite frequently at the Children's Forums relates to kinship placements and the data appears on the screen and it's beautifully presented. But the data says - for me, the way the data appears indicates that the number of Aboriginal children going to non-Aboriginal placements is not the responsibility so much of the department but for ACCOs and community for not finding placements.

25 But I would argue that community have a strong and opposing view to that, and that is that, "You haven't come and spoken to us" or "You haven't engaged respectfully." If we can get that right and it links back again to the training, those outcomes will be, you know, significantly different. And by having data validation with external oversight, we won't
30 make those assertions because it will be tested before it's released. If you look at where the data is sourced, it's from our online database, and the only data going into that is from our practitioners. So I think that, again, is an example of the criticality of the training and competency.

35 COMMISSIONER LOVETT: And you gave an example then particularly around the floods, around where that worked well for the mob, and that would have been advocating - so was there any internal conversations with you about how do you apply those principles and the learnings from that in the department, around being able to transfer more of that kind of macro state around data?

40 MR REILLY: Whilst - no, is the answer.

COMMISSIONER LOVETT: Okay.

45 MR REILLY: But we were encouraged and supported to participate.

COMMISSIONER LOVETT: Yep.

50 MR REILLY: But I think the reason why there wasn't that curious inquiry afterwards comes back to we don't know what we don't know.

COMMISSIONER LOVETT: Yep.

5 MR REILLY: So huge learnings and really powerful data that we collected in terms of the number of people that would have been potentially in harm's way had that response not connected with community. And, again, taking full direction from the local community, we didn't go there to do, we went there to comply with direction from community. And it worked and it worked beautifully. But I think had our organisation had more of that cultural competency, yes, there would be more rich discussions about what we learned.

10 COMMISSIONER WALTER: And you would probably - and this is probably off the record - that the national Federal Government is about to release a Framework for Governance of Indigenous Data, which has been quite some time coming and quite bumpy in its - but - so there is work happening at least at the national level and perhaps it needs to happen at the State level.

15 MS MCLEOD: You mentioned the Aboriginal Children's Forum there: do you participate in that forum?

20 MR REILLY: We don't as operational executive directors. We usually receive an invitation if it's being held in our patch but I advocate as the Aboriginal operations ED for the department, I like to be there to learn from conversations in other areas. So I do regularly attend.

25 MS MCLEOD: You mentioned the data coming up on the screen. Does that make it difficult for you to track the data and analyse what it means?

30 MR REILLY: It is well presented. I will give our bean counters credit where due. The data is very well presented and we do have handouts. But, for me, it is a very western approach to having the conversation about the issue. I think what's missing is the stories behind that data.

35 MS MCLEOD: Commissioner Singh made reference to the need for - well, the desirability of her having input into the type of data that's stored and shared. Did you follow her evidence on that topic?

MR REILLY: No, I didn't, but I have had conversations with the Commissioner, and I would agree with that sentiment.

40 MS MCLEOD: Is there any other observation that you would like to make today about the Aboriginal Children's Forum?

45 MR REILLY: There were issues raised with me from a community perspective. So, from my observations, there have been some incredible achievements through the Aboriginal Children's Forum. But in the conversations I'm having with many of the people that I value and are important to me in various communities in Victoria, I feel there is an appetite for some either refresh or redesign of that process.

50 I am comfortable to provide additional information, but out of respect for those people, I would request that we did that in a closed session.

MS MCLEOD: We certainly need to make sure that case studies are de-identified and so on, yes. Are there any other matters that you wish to raise by way of observations on the operations of the systems, what's working, what's not working, opportunities?

5

MR REILLY: Yes, but I suspect we would be here all night if I kept going with the things that I'm passionate about. I would just like to, as a final remark - and I will of course answer any more questions - but I am absolutely committed to the success of the department that I am working with, because if we get that right it will have a profound impact on the lives of the people that we are here to serve.

10

My hope, having had a conversation today, is that for those community people who have had frustration and traumatic experiences with the department, I hope that they can see that, one, you have allies in this organisation, and I'm but one of many of those public servants, both Aboriginal and non-Aboriginal, we have some very strong non-Aboriginal allies that are fighting hard for better outcomes for our community. And I just hope that that gives people some comfort when we talk about the significant impact this organisation has had on families for so many years.

15

MS MCLEOD: Do Commissioners have any other questions or comments in closing?

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COMMISSIONER HUNTER: You just spoke earlier about the cultural training and you spoke of that example. How do you balance out between the child's voice, the rights of the child, the risk assessment and culture? Like, how do you get someone who's non-Aboriginal to weigh that up? What is it you do, because that appears to be the conflict there - when you're teaching them your culture and they just go by the book, but it's not weighing up the child's voice in that.

25

MR REILLY: It's a really good question and I think back to when practitioners first start, having come out of uni, they're very nervous and reluctant to interpret the legislation and the policy around any decisions and they stick to it by the book. But as they become more comfortable and confident, they become more - they have a healthier risk appetite to make decisions that are in the best interests of the child, weighing up all of the different factors that are at play. And I think if we get to a place where staff have the skills and qualifications and connection to community required to be able to make those decisions, plus access to a safe conversation source, experts that they can debrief with and have a conversation and say, "Look I've got this situation, this is my challenge", I think you will see a shift in that.

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COMMISSIONER HUNTER: Do you think something like the cultural clinical supervision type positions would be extremely helpful whilst you are getting to that point?

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MR REILLY: Absolutely. In fact, when we ran the project to design the new division, that was one item that was flagged as a high priority. What we had stated was that cultural supervision should be available for every Aboriginal employee, and that that supervision is based on what that employee wants to achieve out of those sessions. So it could be conversations about their career or training or, indeed, the more clinical, cultural side of the work that child protection workers undertake. But we see great value in that opportunity for staff, yes.

45

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COMMISSIONER HUNTER: Yeah, for non-Aboriginal people would be my -

MR REILLY: I'm sorry, Commissioner.

5 COMMISSIONER HUNTER: No, no, no.

MR REILLY: In terms -

10 COMMISSIONER HUNTER: The space about making those decisions where they're conflicted or where there's a risk or where the child's voice isn't being heard.

MR REILLY: Definitely, and I think as staff go along their journey of increasing their cultural knowledge they will become more curious, and having a safe space to have conversations like you described I think would be hugely beneficial.

15

COMMISSIONER WALTER: I'm interested in your comments about the Aboriginal Children's Forum because we heard from the state a lot of times when we asked, "Where is the accountability?" they would refer back to the Aboriginal Children's Forum. But when we asked further where is their authority, and to hold people to account, it wasn't there. So is it possible or does it need a whole, when you talked about governance of data before, perhaps there needs to also be a very different - I mean there's probably still a place for an Aboriginal Children's Forum but maybe the governance should be somewhere else and somewhere that's independent and with authority and not dependent on the department for their funding.

25

MR REILLY: I think so, and I think that's an important part of our journey in the public service as we prepare for the direction that will come from First Peoples' Assembly. It is - it is up to us to rethink about how we fit into the bigger picture. And whilst I would hope we could provide some enabling support that's not my call and nor should it be the department's call. It should be on the terms of the community, and that forum should take whatever form that the community thinks that it should.

30

COMMISSIONER LOVETT: We've heard - sorry, can I jump in? We heard a lot about ACCOs in the child protection space, and rightfully so, they're the ones that are working primarily with our people. But I've also heard you talk for the first time today around Traditional Owner groups' roles. Have you got any sort of further insights or where the opportunities might be around engaging our Traditional Owner groups in connection to country, culture, whether it be via the cultural plans that are being linked to these children?

35

40 MR REILLY: I would like to share a really quick story and I'm very aware of time.

COMMISSIONER LOVETT: We've got time. No, no, we've got time. It's important.

MR REILLY: I have - I call the children within our system that are really high risk, particularly Aboriginal children, we use language internally and "high-flyer" is language that I would use to describe a child that has frequent and daily incident reports, where they are placing themselves and others at risk. And it's trauma informed behaviour but it's still a reality that we need to deal with.

45

I saw, for me, a real pattern particularly with Aboriginal kids is they had no connection to Country. Their placements were facilities far away from family and a place that they call home. So really quickly with great support from Elders and leaders in the local Aboriginal community where we did the first trial, we pulled together a cultural camp.

5

Now, again, if you don't have the understanding of culture, you can't understand the significance that that sort of event can have for children. So, with much anxiety displayed from my valued colleagues around me, I sent 15 of my high-flyers on a cultural camp for three days. I asked for the child protection practitioners, the non-Aboriginal staff to attend and observe, participate in activities but observe. And I asked for the staff from the residential housing units to attend as well. We paid for all of it.

10

It was profound. Most of the kids would be sort of aged between maybe nine and 16. But for the three days with 15 high-flyers there was not one incident report. The kids were kids again. Their eyes were just wide open, listening to Elders' stories, participating in cultural activities, just having the best time, and they walked away with a strong sense of pride.

15

For me, it is critical to have our Elders and our Traditional Owners and community leaders as an active and directing part of the system. These camps should be as routine as any other kid going on a school camp. Their process to facilitate the camp was very difficult because it was a sort of square peg round hole situation but we made it work. But my hope is that we can learn from the benefits of these and make it more of a routine experience for our kids, because what we found from running a few of these camps is some of those kids are already showing signs of being leaders.

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25

They're looking out for the little ones, they're keeping an eye on people, seeing how people are regulating with their experience. It's powerful learning. So that's - that's something I would reference in response to your question.

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COMMISSIONER LOVETT: And recognising the sensitivity of this question, you not being a Victorian Traditional Owner but you've got a lot of knowledge and expertise in the child protection space. So, in your view, what - if you want to share with us - you've been thinking about Aboriginal outcomes for quite some time in child protection, and under self-determination we're looking at, you know, or under Treaty looking at redesigned systems in a sense. Do you have any thoughts or ideas around what that could look like?

35

MR REILLY: Can I ask, can you be slightly more specific? I haven't quite picked up on the question.

40

COMMISSIONER LOVETT: So, under Treaty, we will be looking for different outcomes under Treaty, in a sense, and I guess thinking about what new systems and structures would look like; what could a redefined child protection system look like for Aboriginal children?

45

MR REILLY: I think that I do have a lot of ideas in that space, and I have to regulate the enthusiasm -

COMMISSIONER LOVETT: Yeah, sure.

50

MR REILLY: - with my need to be respectful. I'll provide an example that is a key part of that but doesn't prescribe what I think the system should do for Koori children, and that is part of government is that we have a number of frameworks of accountability that exist. It's part of the western design of the system. One of those key factors is performance development plans. We all have one. That's a fantastic tool in terms of creating accountability at every level of government to ensure that the key commitments that are made to the Aboriginal community through the Treaty process, each of us as individuals in the public service understand our role in the machine and understand what we have to deliver, and that we are accountable for that. That's one opportunity I think would be really useful and it would really send that message to all of us individually, "You have a part to play."

The broader system and child protection opportunities, I really believe have to come, or at least we have to afford the opportunity for First Peoples' Assembly and for Traditional Owners and ACCOs to provide responses in that space. But I can say with absolute confidence every initiative that we've tried in the child protection space under the current system where we've handed power and control to the community have been hugely successful.

COMMISSIONER LOVETT: And, sorry, one more. As an experienced Aboriginal person working in the department, can you - have they sought your view around Treaty readiness conversations?

MR REILLY: I've not been approached about Treaty readiness, no.

COMMISSIONER LOVETT: Great. Thanks.

COMMISSIONER BELL: Just briefly and I hesitate to ask a question but I wanted to ask about the permanency provisions. I've read what you've said about your personal situation and I thank you for sharing that story. The Commission is concerned that the current provisions might be leading to the placement of a child in permanent care in circumstances where they are at risk of losing, perhaps completely, connection with their culture. I wonder whether you'd care to comment on the issues that that raises from your personal and professional perspective?

MR REILLY: Thank you, Commissioner. It is a very fraught conversation because, for me, it is balancing that need for any child to feel stable and connected to the people that are supposed to love them and care for them and to have a home, against what children may lose by not maintaining that strong connection to culture. And you're right, I did touch on that in my opening remarks.

I think, for me, and like a child of the 70s, adoptions were all the rage and they actually put a cap on how many you could have because everyone was so excited about the prospects. If I think back to that experience, it was a lot - whilst I was very fortunate, I was in a loving family and I was absolutely encouraged to be whoever I wanted to be and as soon as we became aware of cultural connections, every effort was made to immerse me in that experience.

But I can't help but think that it was more luck than system that caused that for me. So if there is a decision made to go to a permanent placement, particularly if that's with a family

that are either not Aboriginal or are not connected to the local community, I think some really stringent safeguards need to be in place and really strict criteria to be met to be able to demonstrate beyond any reasonable doubt that this is the only and best option.

5 I think the - and I completely understand the impact for children in having a disassociated connection, particularly if they've got a bond then with a potential long-term carer. But I do see the trade-off in terms of cause less harm or harm minimisation being that needs to be preserved for as long as possible until every conceivable effort has been made, firstly with the family but then obviously with kin.

10

COMMISSIONER BELL: Thank you. Thank you, Counsel.

MS MCLEOD: Are there any further questions from Commissioners?

15 COMMISSIONER WALTER: No.

CHAIR: No.

20 MS MCLEOD: Then that concludes the evidence of Mr Reilly. And it remains to thank you, Mr Reilly, for your evidence this afternoon. If you wish to take up a further opportunity to provide any follow-up on the matters that we've discussed or further matters, we will have a discussion offline about how best to do that, bearing in mind the Commission's timelines.

25 COMMISSIONER BELL: Are we not having confidential evidence from Mr Reilly?

MS MCLEOD: Could we just pause perhaps for two minutes to have that discussion?

COMMISSIONER BELL: Yes, certainly.

30

MS MCLEOD: So could we stop the live stream for a moment.

(Private session conducted)

35 MS MCLEOD: Commissioners, that concludes Mr Reilly's evidence for today and that concludes the hearing for Hearing Block 5, subject to anything further that may come from Mr Reilly.

<THE WITNESS WITHDREW

40

MS MCLEOD: Can I take this opportunity, Commissioners, to acknowledge that this Hearing Block has been two to three months for the entire Yoorrook team and to acknowledge, on behalf of myself and my co-Senior Counsel our gratitude for the support within very compressed timelines of the Counsel Assisting team, including myself and Mr
45 McAvoy and Tim Goodwin and Ms Sarala Fitzgerald with the assistance in this Hearing Block of Ms Lindy Barrett, Ms Julie Buxton, Mr Tom Rawlinson and Mr Nick Boyd-Caine; to acknowledge the work of our solicitors assisting from King & Wood Mallesons, particularly Emily Heffernan and Chris Holland and their teams; and on the State side to acknowledge the assistance of the State representatives led by Georgina
50 Coghlan KC and Assistant Victorian Government Solicitor, Alana Mitchell. It has

self-evidently been an enormous undertaking on behalf of all and we hope and trust it has assisted Commissioners in the work of this important block of hearings.

5 CHAIR: Thank you, Counsel. As you have noted, this is the end of Hearing Block
5 - excuse my voice, I'm sorry. I thank the Counsel Assisting team, the hearings team and
all Yoorrook staff for their hard work and assistance in supporting this process, especially
sound people, cameras, people in the room who support us. I would like to thank each
witness who appeared before the Commission and all those who assisted in preparation and
10 participation, including the legal representatives of the State, solicitors and counsel. The
Commissioners acknowledge your hard work and are grateful for the general goodwill
demonstrated.

15 I also thank all those, particularly community, who have attended the sittings in person or
who have logged in via the live stream to watch and support the hearings.

Yoorrook is Australia's first Truth Commission. This is historic and important work. It is
led by four First Peoples Commissioners with the powers of a Royal Commission and one
former Supreme Court Judge and is informing the parallel Treaty-making process in
Victoria.

20 The evidence Yoorrook has heard in the hearings conducted over the past 12 months will
inform the recommendations made in the Commission's Critical Issues Report on the Child
Protection and Criminal Justice systems. The report is due by the end of August.

25 Commissioners have said throughout these hearings that Yoorrook's work is conducted in
memory of our ancestors and all those who have contributed before us. We stand on their
shoulders and walk in their footprints.

30 The Commission's collective contributions will support the generations to come. Our
children will benefit. They will continue to shape the future of Victoria. I would also like
to thank those who have been following our hearings on social media and online. This is
important. This enables a greater shared understanding in the public. And, finally, I would
like to thank fellow Commissioners for their hard work throughout. Thank you all. Thank
you all very much. Thank you. This closes the session.

35 COMMISSIONER LOVETT: Thanks, Adam.

CHAIR: We are adjourned.

<ADJOURNED 4:36 P.M.