



TRANSCRIPT OF DAY 9 – PUBLIC HEARING

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MS SUE-ANNE HUNTER, Commissioner
DISTINGUISHED PROFESSOR MAGGIE WALTER, Commissioner
MR TRAVIS LOVETT, Commissioner
THE HON ANTHONY NORTH KC, Commissioner

MONDAY, 22ND OF APRIL 2024 AT 10.00 AM (AEST)

DAY 9

HEARING BLOCK 6

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<THE HEARING COMMENCED AT 10.11 AM

CHAIR: Good morning. Welcome to today's hearing which is a continuation of the Land Injustice Hearing Block 6. I would like to invite Commissioner Hunter to give the Welcome to Country, please.

COMMISSIONER HUNTER: Thank you, Chair. So I would like to acknowledge we are on the land of the Wurundjeri, pay my respects to Elders past and present, acknowledge all those who have come before us to give us voice here today, and, as I say in most of my welcomes, Wominjeka means to come with purpose and I hope that is what happens today. So Wominjeka and welcome to the lands of the Wurundjeri.

CHAIR: Thank you, Commissioner Hunter. May we have appearances, please, Ms McLeod.

MS McLEOD SC: Thank you, Chair. My name is McLeod. I appear with Mr Tony McAvoy this afternoon - this afternoon's witness and Ms Weinberg here this morning to assist you. Thank you, Commissioner Hunter for your welcome. We acknowledge this hearing today is proceeding on the lands of the Wurundjeri and we acknowledge ancestors and Elders and their ongoing fight for justice.

MS COGHLAN KC: Thank you. I appear for the State of Victoria and for Minister D'Ambrosio today with my learned junior, Mr McDermott. Thank you, Commissioner Hunter, for your welcome. And we acknowledge the owners of the traditional land we are meeting today, the Wurundjeri people. We pay our deep respect to Elders past and present, but we also extend those respects to other First Peoples who are present today or otherwise watching online. We acknowledge that sovereignty has never been ceded and we continue to come with purpose. Thank you, Chair.

MS McLEOD SC: Thank you, Chair. If the Commission pleases, I now call today's first witness, the Honourable Lily D'Ambrosio MP, Minister for Climate Action and Energy and Resources.

CHAIR: Thank you. Welcome, Minister, welcome.

MS McLEOD SC: Minister, could you please tell the Commission your full name.

THE HON. LILY D'AMBROSIO: My full name is Liliana D'Ambrosio.

MS McLEOD SC: Minister, you hold the positions of Minister for Energy and Resources, Minister for Climate Action and Minister for the State Electricity Commission; correct?

THE HON. LILY D'AMBROSIO: That's correct, yes.

MS McLEOD SC: Do you undertake to give the truth to this Commission to the best of your knowledge?

THE HON. LILY D'AMBROSIO: I do.

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MS McLEOD SC: Minister, you prepared a witness statement dated 8 March 2024; correct?

THE HON. LILY D'AMBROSIO: Correct.

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MS McLEOD SC: And are the contents of that statement true and correct?

THE HON. LILY D'AMBROSIO: They are correct.

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MS McLEOD SC: If the Commission pleases, I tender that statement at this time. Minister, you were the coordinating minister of the department DEECA which has also submitted a response for request for information from the Commission; have you read that response?

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THE HON. LILY D'AMBROSIO: I have.

MS McLEOD SC: I also tender that document, thank you, Chair. Minister, I understand you want to make an opening statement to the Commission. Please go ahead.

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THE HON. LILY D'AMBROSIO: Yes. Thank you so much and thank you. I make this statement to complement my witness statement and I do so in order to provide more personal reflections to the Commission about self-determination, and I do this with purpose. Thank you to Commissioner Hunter for the Welcome to Country this morning. I would like to begin by acknowledging the Traditional Owners of the land upon which this important work is being undertaken, the land of the Wurundjeri people and pay my respect to their Elders past and present. I want to acknowledge the Elders in this room, their leadership, their courage and their knowledge. I want to acknowledge all First Peoples who have been heard by the Commission. I also would like to acknowledge the work of the Commission and the Commissioners who have led this truth-telling process into historical and ongoing injustices experienced by First Peoples in Victoria.

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I was born in 1964 which meant that I was assured of a right to vote in adulthood, unlike Aboriginal adults, and that my life expectancy would be far greater than that of Aboriginal children of the same age, and that my pathway to an education was well-lit and clear, because I had good secure housing and family connections, unlike that of many Aboriginal children of similar age.

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As teenagers, my friends and I were too often preoccupied by discussions of our own identity when we should have understood better that we were really the fortunate ones. I failed to understand that for First Peoples, they knew who they were: they

were the First Peoples. They knew that they belonged to the land, and the land belonged to them as custodians. They had their own laws and systems, but our laws, the laws that I inherited and which favoured me, formally nullified Aboriginal laws and took away their land, took away their self-determination, their livelihoods, stewardship of their land, their health and wellbeing, and tore families apart.

Who benefited? I and my generation did and the generations before me and those since. I recognise that I am privileged to be an elected Member of Parliament. Further, I am a long-standing member and have seen and been involved in parliamentary and government decision making since 2002. I have held several department folios since 2014, including resources, climate action, energy, industry and environment.

I acknowledge and take responsibility for the fact that change towards self-determination has been too slow. Whilst many positive changes have been made, nowhere near enough has been done for First Peoples to be able to claim, "We are nearly there". Bigger steps must be taken, and sooner. I take responsibility for my role as an elected member and Minister during this period, and commit to the Commission today that I will work harder and do more, all that I can to enable First Peoples to effect self-determination to repair the enduring damage of dispossession so they themselves can shape and decide their futures. Thank you.

MS McLEOD SC: Thank you, Minister, for that statement. Could we please bring up your witness statement which appears, I believe, in the - behind tab 1 of your folder. Could we have that brought up on the screen at paragraph 14. So, Minister, you have made a number of acknowledgements and expressed recognition of various things in your opening remarks. Can I invite you to read out also this paragraph 14.

THE HON. LILY D'AMBROSIO: I read the following:

"I am mindful of the impact that the work of government in relation to the energy and resources in climate action portfolios which I am responsible has on Country and on culture and in turn on the spiritual emotional and physical wellbeing of First Peoples. I have reflected on the significant responsibility I carry to listen to the voices of First Peoples which have echoed across the generations in speaking about what country means to them, both in the past, now, and for their future. Throughout my years as Minister, I have witnessed how institutional Western culture embedded systems of government, have stood as barriers to self-determination, barriers which have existed for more than 200 years. I have immense respect for how resilient First Peoples are and have had to be in their continuing advocacy for their rights, recognition and for change."

MS McLEOD SC: Thank you, can I invite you to turn to page 5 and paragraph 21. Can we have that brought up on the screen. And invite you to read paragraph 21 and 22.

THE HON. LILY D'AMBROSIO: "My commitment to First Peoples' self-determination also reflects my personal and heartfelt acknowledgment of the devastating intergenerational consequences of the dispossession of First Peoples of and from their Country. This dispossession has had destructive effects on culture, including cultural practices, language and the important responsibility to connect with and care for Country. It has also upset the important balances between First Peoples and their traditional Country. I acknowledge that these consequences are a direct result of colonisation, and the establishment of the State of Victoria - I apologise - the establishment of the State of Victoria and its successive laws, policies and practices."

"The reality of horrific violence and state-sanctioned systematic dispossession of Country and culture are truths which must be told and these truths should be continue to be told through the work of the Commission and beyond. This history and the systems that caused it continue to harm First Peoples today. As a Minister for of the State, I am responsible to effect the systematic changes necessary to address these effects."

MS McLEOD SC: Thank you, Minister. Can I just pause there and ask you, I take it you accept that dispossession from lands, as we have heard in this Commission, was, at the time, unlawful?

THE HON. LILY D'AMBROSIO: Yes.

MS McLEOD SC: And that the destructive effects of this dispossession include dispossession from the right to live on and use resources associated with the land?

THE HON. LILY D'AMBROSIO: Yes.

MS McLEOD SC: Can I invite you to turn to paragraph 44. Page 10, and would you read 44, please.

THE HON. LILY D'AMBROSIO:

"I also acknowledge that certain legislation retains legacies of legal frameworks from colonial times and is therefore informed by outdated and paternalistic assumptions about First Peoples' culture and rights that reflect English legal concepts. For example, whilst ownership of gold has been proclaimed to be the property of and subject to control by the Crown by Lieutenant Governor La Trobe on 16 August 1851, legislation, governing royalties, mines and minerals was put in place by the English Parliament in 1855 and minerals other than gold were the subject of State control through legislation passed in 1860. These remain our resources - sorry - these remain our resource legal and policy frameworks to this day, for example, as is reflected in the Mineral Resources (Sustainable Development) Act 1990 Victoria."

MS McLEOD SC: And 47, please.

THE HON. LILY D'AMBROSIO: "The legacy of the colonial structures I outline above continues today. The State of Victoria continues to maintain ownership of Victoria's minerals and petroleum until the resource is lawfully removed from the land under a licensed lease, permit or authority to explore for, mine or otherwise
5 extract the resource, with royalties paid to the State on resources extracted. There are also several statutory powers that I may be called upon to exercise as Minister with responsibilities under such legislation, relating to the grant or the refusal to grant different types of licences, declarations or exemptions for mining exploration, development and retention."

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MS McLEOD SC: Thank you, Minister. I just want to take a little moment now to consider the historical rights and legislative framework for the use of resources, and those matters that are within your portfolio responsibility. You've made some statements today about the history of this State, and as I mentioned, Yoorrook has
15 heard evidence about the unlawful actions of squatters' possession of lands prior to statehood and the Crown assertion of title to those lands as a mechanism to maintain squatters' claims to land.

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I want to explore those topics within your portfolio responsibilities. And you wanted to, I think, point out paragraph 41 and 42 of your statement. If we can go back on the screen, please, to paragraph 41 and 42. Would you read paragraph 41 for us, please.

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THE HON. LILY D'AMBROSIO: "I acknowledge that the legal reality of British sovereignty was the State-sanctioned dispossession of First Peoples' land and waters on a devastating scale. The dispossession was fuelled in large part by the quest for wealth in the form of what the colonial state conceptualised as resources for the creation of wealth, including gold and other metals and minerals and rich pastures to enable large scale agriculture including wool production. History shows that these were viewed as riches for easy exploitation for settlers and the colonising state alike
30 and were treated as such in accordance with the imported legal systems and processes."

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MS McLEOD SC: And 42.

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THE HON. LILY D'AMBROSIO: "In these ways, it is clear to me that First Peoples were dispossessed of resources which were considered of value in the colony by the same legal concepts and frameworks which enabled them to be dispossessed of their traditional lands."

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MS McLEOD SC: Can I invite you to read the reflection you set out at paragraph 46.

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THE HON. LILY D'AMBROSIO: "I've reflected on this history and the legacy I carry, and can see that for Victoria to move into a more just and equitable future, we must address the ongoing nature of dispossession and the injustices that this continues to perpetrate."

MS McLEOD SC: Minister, do you accept that - perpetuate. I am sorry, did you read "perpetuate"?

THE HON. LILY D'AMBROSIO: Yes, shall I read it - my apologies.

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MS McLEOD SC: Your statement finishes "perpetuate" rather than "perpetrate".

THE HON. LILY D'AMBROSIO: I apologise.

10 **MS McLEOD SC:** That's okay.

THE HON. LILY D'AMBROSIO: I will read it again.

MS McLEOD SC: Thank you.

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THE HON. LILY D'AMBROSIO: Yes. Thank you:

"I've reflected on the history and the legacy I carry, and can see that for Victoria to move into a more just and equitable future, we must address the ongoing nature of dispossession and the injustices that this continues to perpetuate."

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My apologies again.

MS McLEOD SC: Thank you, Minister. Minister, just pausing there, you accept that Victoria's wealth today depends on our historical seizure of lands and particularly for sheep farming?

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THE HON. LILY D'AMBROSIO: Absolutely.

MS McLEOD SC: And historical extraction of resources, particularly gold in this state, and there has never been an accounting for lands taken unlawfully from our First Peoples?

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THE HON. LILY D'AMBROSIO: That's correct.

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MS McLEOD SC: Likewise, there's never been an accounting for the resources taken from those lands?

THE HON. LILY D'AMBROSIO: Yes.

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MS McLEOD SC: Do you accept that these facts compel governments to secure the economic prosperity of First Nations people from these resources?

THE HON. LILY D'AMBROSIO: Can you just repeat that?

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MS McLEOD SC: Do you accept that these facts compel governments, the governments of Victoria, successive governments, to secure the economic prosperity

of First Nations people from these resources, lands and other resources associated with lands?

THE HON. LILY D'AMBROSIO: Yes.

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MS McLEOD SC: Over the centuries, Minister, turning back to this historical framework, over the centuries, can you tell the Commission, please, which minerals have been the principal resources exploited within Victoria?

10 **THE HON. LILY D'AMBROSIO:** Yes. There have been several minerals and resources that have been exploited in Victoria. Primarily, they have been gold and coal, petroleum - that is oil and gas - extracted minerals from quarries on Crown land, including sand, stone and gravel. Other minerals have included antimony, base
15 minerals and mineral sands, and certainly we've also had geographical storage for petroleum and carbon dioxide.

MS McLEOD SC: We'll come back to carbon dioxide in the context of climate change in a moment, but gold and coal in terms of value, accepted?

20 **THE HON. LILY D'AMBROSIO:** Yes.

MS McLEOD SC: I want to take you back to the discovery of gold at the time of statehood and ask you to explain how, historically, the exploitation of minerals and resources within Victoria dispossessed First Peoples of their access to those
25 resources.

THE HON. LILY D'AMBROSIO: Certainly, the discovery of gold in 1851 triggered reactions from the colony at the time for the very fast, rapid exploitation of the resource. And the Victorian Government began offering rewards for anyone who
30 found gold within a certain proximity of Melbourne, 320 kilometres. And over a six-month period, gold was discovered in the key areas of Clunes, Ballarat, Castlemaine and Bendigo, and these areas, of course, were the Countries of Wadawurrung, DJAARA, Dja Dja Wurrung, Taungurung - and Taungurung Countries. In fact, rewards were offered in the order of 200 pounds, and that
35 commenced a massive pushing of Traditional Owners from their land in order to exploit the resources.

MS McLEOD SC: And just to understand that, 200 pounds reward in 1851 was a
40 huge sum of money.

THE HON. LILY D'AMBROSIO: It was probably a king's ransom, yes.

MS McLEOD SC: And that reward that was offered enticed people of all skillsets, all professions, to leave work in the centres - city centres developing at that time and
45 move on to those Countries in search of gold?

THE HON. LILY D'AMBROSIO: Yes. And in fact, I think it did also lead to a massive immigration wave to the colony at the time. Yes, I would agree with that.

MS McLEOD SC: At that time, how was gold managed in terms of the ownership?

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THE HON. LILY D'AMBROSIO: Well, certainly not very well. It was a very unregulated system at the time where, effectively, inducements or - were - offered by the State, and individuals were encouraged to explore for gold without any mindfulness whatsoever in terms of the land - the ownership of the land that was to be exploited. Now, at the time in terms of how the resources were understood or regulated, ownership of gold was proclaimed to be the property of and the subject of control by the State - the Crown, I should say. And over a period of time, legislation was put in place in 1855 by the British Parliament that governed the management and control of Crown land in Victoria including royalties, mines and minerals.

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MS McLEOD SC: And how else were those minerals other than gold subject to State control?

THE HON. LILY D'AMBROSIO: Well, the use and the gathering of minerals other than gold were subject to State control through legislation that was passed in 1860, and this allowed for leases of Crown land for mining any mineral other than gold, which included live or dead timber, gravel, stone, limestone, salt, guano, shell, seaweed, sand or brick earth not exceeding seven years. As I said, gold was exempted from that.

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MS McLEOD SC: So there's a footnote in your statement to this legislation, just for the Commissioners' benefit, the 1855 legislation governing the management and control of Crown land in Victoria including royalties, mines and minerals, that you've mentioned which dealt with gold, was an Act to enable Her Majesty to assent to a bill as amended from the legislature of Victoria to establish a Constitution in and for the colony of Victoria 16 July 1855, and so that is an Imperial Act, and then in 1860, an Act regulating the sale of Crown lands and for other purposes, 18 September 1860, just for the record. Both of those were Imperial Acts, recognising that Victoria was a colony of the Imperial Government at the time.

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THE HON. LILY D'AMBROSIO: Yes.

MS McLEOD SC: Now, what happened in 1891 in terms of ownership of land above and below the surface?

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THE HON. LILY D'AMBROSIO: Until 1891, consistent with the British common law, ownership of land including all that lay above and below the surface, excluding gold and silver, which continue to be reserved in the Crown. In 1891, that changed. The colonies from that date, 1891, the colonies deviated from English common law by legislating to give the Crown enduring property in - or right to any metal or minerals in or under the land, irrespective of ownership of the land, increasing and

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strengthening the Victorian legislature's ownership and wealth derived from mineral resources.

5 **MS McLEOD SC:** Now, just to be sure, I assume there was no negotiation with First Peoples in relation to those assertion of ownerships.

THE HON. LILY D'AMBROSIO: That's correct.

10 **MS McLEOD SC:** Those two pieces of legislation. Okay. Now, coming to the estimated amount and value of gold removed from the goldfields in current day terms, are you able to tell the Commission - give us a number of the volume of gold extracted since 1851 from Victorian lands?

15 **THE HON. LILY D'AMBROSIO:** Thank you. And - and to that point, gold continues to be extracted in Victoria. To date, more than 2,400 tonnes has been extracted in Victoria, so beginning from 1851. The value of that in today's terms of all of that, this - the value based on weight to the current spot price of gold is about \$287.4 billion.

20 **MS McLEOD SC:** So 287.4 billion dollars' worth of gold, presumably benefiting all Victorians through State assertion of ownership, but there has never been an accounting for that wealth for First Nations people, has there?

25 **THE HON. LILY D'AMBROSIO:** That's correct.

MS McLEOD SC: So what happened to that wealth? Where was it transferred?

30 **THE HON. LILY D'AMBROSIO:** The wealth, effectively, of gold, there were no royalties that were payable to the State from gold extraction up until 2020, so during all of that period from 1851 until 2020, the wealth of that gold was transferred to individuals who mined it.

35 **MS McLEOD SC:** And then the economy depended on their spending it wherever they spent it.

40 **THE HON. LILY D'AMBROSIO:** Absolutely, that's correct. And we - we know that with the finding of gold and therefore its extraction and the wealth that came from that, there was a great boom in building construction and - and the broader wealth throughout the economy that all people benefited from at the time. But certainly Traditional Owners were not included.

45 **MS McLEOD SC:** Just in terms of how the State benefited from the extraction of that gold, you said that there were no royalties. When were royalties introduced on gold?

THE HON. LILY D'AMBROSIO: Only very recently, in 2020, were royalties imposed on gold extraction.

MS McLEOD SC: So State revenues prior to that time were indirect through various taxes and the issuing of licences.

5 **THE HON. LILY D'AMBROSIO:** Absolutely, thank you. Yes, certainly with the wealth extracted and claimed by individuals. Of course, that wealth circulated through the economy and government was able to extract benefit indirectly through taxation, and certainly of permission-ing regime that existed at the time.

10 **MS McLEOD SC:** And certainly, the income derived from licences was historically controversial, for example, leading to the Eureka Stockade in Victoria.

THE HON. LILY D'AMBROSIO: That's correct.

15 **MS McLEOD SC:** Nevertheless, the State continued to benefit from the payment of licensed fees where those licence fees were paid?

THE HON. LILY D'AMBROSIO: Precisely.

20 **MS McLEOD SC:** So royalties since 2020, what's the regime now? So the - I'm still asking you about where the wealth was transferred and the various aspects of the legal framework for royalties for gold. Minister, we're talking about the historic and legislative frameworks still.

25 **THE HON. LILY D'AMBROSIO:** Yes.

MS McLEOD SC: And under that history, I was asking you about estimated and amount and value of gold, and to then where was wealth transferred.

30 **THE HON. LILY D'AMBROSIO:** Yes, you're - you're asking for the royalties since 2020; is that right?

MS McLEOD SC: Yes.

35 **THE HON. LILY D'AMBROSIO:** So royalties from 2020 and ongoing are royalties go to the State in consolidated revenue.

MS McLEOD SC: The royalties since 2020, is my understanding correct, that they are not paid on the first 2,500 ounces that a licensee produces in a single year.

40 **THE HON. LILY D'AMBROSIO:** Yes, that's correct, yes, that is the threshold for royalties to be paid. It has to reach that threshold.

45 **MS McLEOD SC:** And I don't have the spot price of gold available to my hand, but is that also - can check that number, but is that also a considerable sum in today's terms?

THE HON. LILY D'AMBROSIO: Well, yes, and if you like, I am happy to provide some information about how much has been collected by the State since the royalty on gold was introduced in 2020. And - so since the royalty was introduced in 2020, \$149.4 million in royalties from gold has been received by the State.

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MS McLEOD SC: Okay. Just stay with that figure for a moment. The licensee obtains the total benefit of the first 2,500 ounces of gold extracted each year, and that is a policy position to reflect the risk/reward ratio for those seeking to extract gold from Country?

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THE HON. LILY D'AMBROSIO: Yes, that's correct. You would imagine that in 2020 and leading up to that date, there was views taken within government, I suppose, that - that typical word that we use around balancing interests and risks in that it was struck - it was deemed by government that that was the right point from which royalties could be applied.

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MS McLEOD SC: And that reflects the historical position that there was encouragement of individuals to take up the risk of mining and investment in their mining activities in order to reward the State generally?

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THE HON. LILY D'AMBROSIO: That's correct.

MS McLEOD SC: Okay. But none of that sum, either the 2,500 ounces, is directed towards First Nations or anything above that.

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THE HON. LILY D'AMBROSIO: That's correct.

MS McLEOD SC: By way of royalties.

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THE HON. LILY D'AMBROSIO: That's correct.

MS McLEOD SC: First Nations peoples do not benefit in any direct way from royalties acquired through the extraction of gold, do they?

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THE HON. LILY D'AMBROSIO: That's correct.

MS McLEOD SC: So in a brief - could you just give us a brief overview of the legal framework for royalties for gold and the Acts - I think you just started to mention, first is the Mineral Resources (Sustainable Development) Act 1990.

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THE HON. LILY D'AMBROSIO: Yes, there are several laws or Acts that govern, broadly, the exploration of mining and mineral resources and including gold. They are the Mineral Resources (Sustainable Development) Act of 1990, Mineral Resources (Sustainable Development) (Mineral Industries) Regulations of 2019 and Mineral Resources (Sustainable Development) (Extractive Industries) Regulations of 2019.

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MS McLEOD SC: And that 2019 - those 2019 regulations provide for the calculation of royalties for gold currently at the rate of 2.75 per cent of the net market value of gold produced under the licence.

5 **THE HON. LILY D'AMBROSIO:** Correct.

MS McLEOD SC: And as you have mentioned, the first 2.5 thousand ounces exclusion is set out in those regulations.

10 **THE HON. LILY D'AMBROSIO:** Correct.

MS McLEOD SC: Royalties on gold are generally payable for each financial year; is that correct?

15 **THE HON. LILY D'AMBROSIO:** Yes.

MS McLEOD SC: Unless a notice is issued requiring some different period.

20 **THE HON. LILY D'AMBROSIO:** That's correct.

MS McLEOD SC: Okay. Now, in terms of that regulation, are you aware of what prompted these Acts to - and regulations - to be introduced and to be known as sustainable development legislation and regulations? Are you aware of that history or -

25 **THE HON. LILY D'AMBROSIO:** The history for the naming of - of these instruments?

30 **MS McLEOD SC:** Yes. Yes.

THE HON. LILY D'AMBROSIO: Well -

MS McLEOD SC: It was a question without notice; I apologise.

35 **THE HON. LILY D'AMBROSIO:** No, I appreciate that. Look, I suppose, naming of legislation and regulatory instruments can serve a number of purposes. One is that they can effectively be what they say they are, in terms of the name. In other respects, it is also potentially to give assurance that sustain - these - these activities are done, in this case, in a sustainable way.

40 **MS McLEOD SC:** So, "sustainable" meaning that they will be available for future generations?

45 **THE HON. LILY D'AMBROSIO:** That is - that could potentially be one interpretation of that, but yes, definitely.

MS McLEOD SC: Okay. Now, I'm just checking, you were a member of government, an executive member of government at the time these Acts were passed, but you may not have had portfolio responsibility for these Acts. Is that correct?

5 **THE HON. LILY D'AMBROSIO:** That's correct, not in those periods.

MS McLEOD SC: Now, in terms of depth limitations of the grants of freehold titles, what is the situation – I will ask you this and then just ask you whether I am correct. Land titles created before 1891? We are still on the history piece.

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THE HON. LILY D'AMBROSIO: Yes.

MS McLEOD SC: I haven't come to the current day yet; I'm just asking you about depth limitations on grants of freeholds. Land titles created before 1891 are unlimited in depth and apparently extend to the centre of the earth; correct?

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THE HON. LILY D'AMBROSIO: Correct.

MS McLEOD SC: So if we had the technology, whoever had the technology technically has the ability to extract an unlimited – except by the dimensions of the globe.

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THE HON. LILY D'AMBROSIO: Yes, correct.

25 **MS McLEOD SC:** Land titles created after 1891 are subject to what limitation? Is it 50 feet?

THE HON. LILY D'AMBROSIO: I am looking for my detail, but I believe that that is the case.

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MS McLEOD SC: Okay. So previously, unlimited down to the centre of the earth for all those titles that persist today that were created before 1891. Since 1891, land beneath land titles is considered Crown land below 50 feet.

35 **THE HON. LILY D'AMBROSIO:** Yes.

MS McLEOD SC: Or 15 metres, roughly. So coming today to the State of Victoria's continued assertion of ownership of minerals and petroleum – can we come to today. Minerals and resources, am I correct, remain the property of the State until those resources are lawfully extracted.

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THE HON. LILY D'AMBROSIO: Correct.

MS McLEOD SC: And I think you mentioned in your opening paragraphs that the extraction of those resources is done via a licence or a permit or a lease or authority to explore in the first place and then to extract the resource.

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THE HON. LILY D'AMBROSIO: That's correct, yes.

MS McLEOD SC: And a fee might be paid for exploration, but a royalty is paid based on extraction volumes.

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THE HON. LILY D'AMBROSIO: Correct.

MS McLEOD SC: And the mechanism for setting those royalties depend on what is being extracted and their value.

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THE HON. LILY D'AMBROSIO: That's – that's correct.

MS McLEOD SC: Okay. Can we come to the mineral and resources sectors generally. Just to catch up, the Crown has asserted ownership of all minerals since colonisation; correct?

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THE HON. LILY D'AMBROSIO: Yes.

MS McLEOD SC: And resources vested in soils and stones have been vested with private landholders or the Crown for Crown land.

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THE HON. LILY D'AMBROSIO: Yes.

MS McLEOD SC: So if squatters took possession illegally of lands, at some point in time the assumption was that they also had title back in 1851, for example, to the core of the earth for all those resources below their lands.

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THE HON. LILY D'AMBROSIO: Correct.

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MS McLEOD SC: We will come to water later, but do you know whether that also applies to water, subject to current regulations for water?

THE HON. LILY D'AMBROSIO: Look, no, I'm - I'm not aware of that, but happy to find that information if needed.

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MS McLEOD SC: That's okay. We'll come back to that with the Water Minister. The State authorises licensees to access those resources, and in turn those licensees pay royalties to the State, as I've said, on the basis of what's extracted. Correct? In other words, the economic benefit derived by the State to the exclusion of First Peoples from these resources generally has been significant, in the realm of billions of dollars.

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THE HON. LILY D'AMBROSIO: Yes.

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MS McLEOD SC: And you have mentioned the legislative framework for mining of mineral resources, those Mineral Resources (Sustainable Development) Acts and

Regulations. In terms of the exploration, mining and quarrying of what is known as earth resources, is there a regulator who oversees that activity?

5 **THE HON. LILY D'AMBROSIO:** Yes, there is, within Resources Victoria, which is located in DEECA. There is the earth - sorry - the Resources Regulator.

MS McLEOD SC: More than 5,000 licences have been granted under the minerals legislative regime; is that correct?

10 **THE HON. LILY D'AMBROSIO:** That's correct.

MS McLEOD SC: And to your knowledge, approximately 40 per cent of Victoria is the subject of exploration licences?

15 **THE HON. LILY D'AMBROSIO:** Yes.

MS McLEOD SC: People may not know this - their properties they think they hold in freehold, or freehold properties absolutely, may be the subject of exploration rights by third parties.

20 **THE HON. LILY D'AMBROSIO:** Yes.

MS McLEOD SC: And those exploration rights allow people to enter land and explore?

25 **THE HON. LILY D'AMBROSIO:** Yes, that's correct.

MS McLEOD SC: And then, subject to later approvals to extract approvals, regardless of those freehold titles?

30 **THE HON. LILY D'AMBROSIO:** That's correct. There are, if you like, requirements for consultation, engagement, before someone can just, you know, exercise to enter someone's land, but that is, generally speaking, correct.

35 **MS McLEOD SC:** And the engagement and consultation that is required is with freehold owners not First Nations owners.

THE HON. LILY D'AMBROSIO: That's correct.

40 **MS McLEOD SC:** Aboriginal title or recognition of Aboriginal connection to Country is not something that has to be considered when allowing exploration or extraction of resources.

45 **THE HON. LILY D'AMBROSIO:** Excuse me. Certainly, the regulatory system we have, that's correct, not required by those.

MS McLEOD SC: I want to come to numbers in terms of volume of production and revenue generated. Do you have those numbers handy?

THE HON. LILY D'AMBROSIO: I do, yes, I do, thank you.

5

MS McLEOD SC: So total royalties paid to the State for mineral, stone and petroleum resources since 2010 - these are some numbers that your office has provided - sorry, your Department has provided to us. Those royalties since 2010 amount to more than \$1 billion; is that correct?

10

THE HON. LILY D'AMBROSIO: Correct.

MS McLEOD SC: Can you give us the number of royalties from gold since gold royalty was introduced some three and a bit years ago?

15

THE HON. LILY D'AMBROSIO: Certainly. So for - in terms of royalties received from the extraction of gold, \$149.4 million.

MS McLEOD SC: So in a period of three and a bit years, \$149.4 million of royalties going to the State.

20

THE HON. LILY D'AMBROSIO: Yes.

MS McLEOD SC: In terms of royalties from other minerals including coal for that period?

25

THE HON. LILY D'AMBROSIO: For coal, royalties have been received in the order of \$885.6 million.

30 **MS McLEOD SC:** And is -

THE HON. LILY D'AMBROSIO: Apologies, that includes - well, it's categorised as other minerals, but primarily it is coal.

35 **MS McLEOD SC:** And royalties from sandstone and gravel on Crown land?

THE HON. LILY D'AMBROSIO: \$79.5 million in royalties.

40 **MS McLEOD SC:** The note from the department mentions that extraction from Crown land - are there royalties paid from sandstone and gravel extraction on private land?

THE HON. LILY D'AMBROSIO: I will - I will seek confirmation of that if I may. I'm sorry, I won't - I don't know the answer to that straight off.

45

MS McLEOD SC: Okay, royalties collected by the State for all of these - sorry.

THE HON. LILY D'AMBROSIO: No, no, please continue.

MS McLEOD SC: If you had an answer, please continue.

5 **THE HON. LILY D'AMBROSIO:** I thought I did, but I - I didn't, I'm sorry.

MS McLEOD SC: Royalties collected by the State for these activities go into consolidated revenue; is that correct?

10 **THE HON. LILY D'AMBROSIO:** That's correct.

MS McLEOD SC: They provide for various State-funded activities in accordance with the budget process?

15 **THE HON. LILY D'AMBROSIO:** That's correct.

MS McLEOD SC: We have a table the Department has provided in relation to the production volumes over the same period volumes. Can you just give us the number for gold in terms of the production units?

20

THE HON. LILY D'AMBROSIO: Thank you. Yes, the production units of gold were 4,555,572 ounces.

MS McLEOD SC: For silver?

25

THE HON. LILY D'AMBROSIO: 71,039 ounces.

MS McLEOD SC: For antimony?

30

THE HON. LILY D'AMBROSIO: 36,421 tonnes.

MS McLEOD SC: For mineral sands?

35

THE HON. LILY D'AMBROSIO: 3,448,844 tonnes.

MS McLEOD SC: If the Commissioners please, we'll get you this table. For industrial minerals?

40

THE HON. LILY D'AMBROSIO: 9,463,593 tonnes.

MS McLEOD SC: For coal?

THE HON. LILY D'AMBROSIO: 482,485,000 tonnes.

45

MS McLEOD SC: And for all other commodities?

THE HON. LILY D'AMBROSIO: 75,351 tonnes.

MS McLEOD SC: Extractives?

THE HON. LILY D'AMBROSIO: They would be - sorry, yes, 802 million tonnes.

5

MS McLEOD SC: And condensate produced?

THE HON. LILY D'AMBROSIO: 1,064,538 condensate barrels, in other words.

10 **MS McLEOD SC:** Okay. Now, just turning to gas, gas is obviously extracted from Victorian lands?

THE HON. LILY D'AMBROSIO: Yes.

15 **MS McLEOD SC:** Can you give us the numbers for gas produced and injected?

THE HON. LILY D'AMBROSIO: Yes, thank you. Gas produced is 145,033 million standard cubic feet in total.

20 **MS McLEOD SC:** Yes.

THE HON. LILY D'AMBROSIO: And injected, is that -

MS McLEOD SC: Yes.

25

THE HON. LILY D'AMBROSIO: 159,346 million standard cubic feet.

COMMISSIONER NORTH: What is injected, gas injected?

30 **THE HON. LILY D'AMBROSIO:** I am not aware of that, I'm sorry, but let me get -

MS McLEOD SC: Can we provide that after the break?

35 **THE HON. LILY D'AMBROSIO:** Yes, I'm happy to come back. Thank you.

MS McLEOD SC: And likewise, the CO₂ production.

THE HON. LILY D'AMBROSIO: Yes. 446,012 tonnes.

40

MS McLEOD SC: So just on that, what is the status of fracking as an extraction technique in Victoria?

45 **THE HON. LILY D'AMBROSIO:** Fracking is not permissible according to the Constitution of Victoria. Fracking was banned in Victoria in 2017, and in 2021 the Constitution Amendment (Fracking Ban) Bill of 2020, which is when it was

introduced, was passed and that prohibits the - the exploration and extraction of fracked - of fracked gas on shore.

5 **MS McLEOD SC:** And just staying with oil and gas for a moment, to explain the current regime, the state authorises licensees to access petroleum oil and gas products, doesn't it?

THE HON. LILY D'AMBROSIO: That's correct.

10 **MS McLEOD SC:** And in turn, those licensees pay royalties to the State based on the volume extracted?

THE HON. LILY D'AMBROSIO: Correct.

15 **MS McLEOD SC:** The framework for royalties for petroleum also assumes Crown ownership of those resources?

THE HON. LILY D'AMBROSIO: That's right.

20 **MS McLEOD SC:** There is no - currently no mechanism that would allow First Nations people to participate in that generation of wealth based on their traditional ownership of those lands; correct?

THE HON. LILY D'AMBROSIO: That's correct.

25 **MS McLEOD SC:** And in terms of mines, the majority of historic mining occurred, as you mentioned, in Central Victoria, but mining has occurred across the entire State.

30 **THE HON. LILY D'AMBROSIO:** Absolutely. And we can simply refer to the Latrobe Valley, the Gunaikurnai Country, where significant amounts of coal has been extracted and continues to be, so -

35 **MS McLEOD SC:** In terms of oil, gas and coal, are First Nations people broadly - you've said they're not participating in the wealth; are they participating in the land management at some level?

40 **THE HON. LILY D'AMBROSIO:** Some level, but I would certainly describe it as very - very embryonic, and I simply reflect on the fact that there are processes of rehabilitation of lands. Obviously this is once the land has been scarred, and certainly Traditional Owner communities have made very - you know, very firm views about the damage that has been done through mining activities. But in recent times, there has been an acknowledgment of the importance of Traditional Owner conversations and involvement in at least the rehabilitation processes of - of land that has been
45 mined.

MS McLEOD SC: The Environment Minister was asked some broad questions around this, but I take it you accept that extraction activities damage land, and that land is irreparably changed and altered.

5 **THE HON. LILY D'AMBROSIO:** Definitely, yes.

MS McLEOD SC: And that those benefiting from the extraction of resources may have some obligation to remediate lands, but there has no - been no effective restoration of the environment of Victoria as a whole.

10

THE HON. LILY D'AMBROSIO: If we consider the - the historical exploitation of the land and the resources over - since the 1800s, certainly Victoria is dotted with unrehabilitated holes in the ground, if you like. There have been attempts made to secure - secure the more dangerous, if you like, physically dangerous mines over
15 periods of time, investments made. However, we are coming to terms with the magnitude of that, but have made some steps to - into the future to avoid the massive risk and liabilities falling on the State for rehabilitation of mining.

MS McLEOD SC: And that's not just the physical risk of a big hole to the State, but
20 also the use of toxic chemicals and processes being residual in those places?

THE HON. LILY D'AMBROSIO: That's - that's correct. So as a point by way of example, there are rehabilitation obligations required of the three - the three coal
25 mines in the Latrobe Valley, and we are working through the rehabilitation strategy of that, and also engaging with Traditional Owners in terms of what can healing can potentially look like. Having said that, the owners - well, the current owners of these mines, these three declared mines as they're referred to in legislation, are required to update their rehabilitation plans and present them to the State over the course of the
30 next year or two.

30

COMMISSIONER HUNTER: Can I just ask, who holds them accountable for those rehabilitation plans?

THE HON. LILY D'AMBROSIO: The Earth Resources Regulator within DEECA.
35

35

COMMISSIONER HUNTER: And has there ever been any repercussions for not doing at this point, do we know?

THE HON. LILY D'AMBROSIO: If we're talking about coal mining,
40 rehabilitation is something that is relatively new, because these mines have existed now for some time. Although there is an ongoing requirement for progressive rehabilitation, if you like. Progressive rehabilitation of an operating mine continues. So a part of the mine is extracted, and then moves to extraction within the broader footprint, they move away from that, there is supposed to be progressive
45 rehabilitation undertaken. Bonds are paid to - as - if you like, as a surety for that progressive rehabilitation of mining activity with - to do with - to do with coal, and other resources also.

COMMISSIONER HUNTER: Is that in conjunction with First - Traditional Owners of the lands that they're -

5 **THE HON. LILY D'AMBROSIO:** No, certainly not up until very recently. We do expect that the declared mine owners of the - of the coal mines take on the engagement with Traditional Owners in terms of what their final rehabilitation plan -

COMMISSIONER HUNTER: It's not mandatory.

10

THE HON. LILY D'AMBROSIO: I will check on whether that is mandatory for the declared mines, but generally speaking, it is not mandatory throughout the resources sector in terms of rehabilitation.

15 **COMMISSIONER WALTER:** Minister, I'm just a bit - and perhaps you could explain it to me. It seems that First Peoples of Victoria have been totally excluded from any of the benefits of all of these mines. I'm just a bit perplexed why they have been brought in now at the problem end?

20 **THE HON. LILY D'AMBROSIO:** I cannot contend - I cannot dispute that at all, and the question is why, and the fact is we have failed for decades to acknowledge that the land that was about to be exploited and was exploited came at - to - with no benefit to Traditional Owners and certainly was despite Traditional Owners.

25 **COMMISSIONER WALTER:** I'm just - again, I'm just a bit concerned, some of the problem, having got no benefit, some of the problem is being now transferred to Traditional Owners?

THE HON. LILY D'AMBROSIO: The problem - yes, we are now presenting, if I
30 may, if I've understood that correctly, we are just presenting what we think is an opportunity to Traditional Owners to be engaged in a process that is after the fact, in terms of trying to remove some of the harm that the exploitation of land resources have created. I acknowledge that, and I acknowledge that it is far too late, but what I hope to achieve myself personally, and I want to be able to take the learnings and the
35 journey that we've had thus far with renewable energy in terms of the early engagement, the early opportunities, the early views of Traditional Owners and benefit-sharing from the renewable energy system that we've got underway, my intention as the Resources Minister is to take that approach to apply also to future exploration and extraction of - of minerals so that there is an absolute - well, firstly,
40 that there is meaningful engagement with First Peoples, that we take into account a - in the determination of granting of leases, the values of First Peoples in terms of their Country but also community benefit.

COMMISSIONER WALTER: I guess my main point is, it seems - I'm just
45 wondering, is there actual real benefit-sharing, not symbolic, not about caring.

THE HON. LILY D'AMBROSIO: Yes.

COMMISSIONER WALTER: For First Peoples to be involved in rehabilitation and other things, rather than just being brought in rather than - at the problem end, they inherit the problem rather than any of the benefits?

5

THE HON. LILY D'AMBROSIO: Yes. Yes. I would say that I can certainly point to a grant here and there, but that's not the answer to it, and I acknowledge that. That is not good enough, and there is a lot to be done, and - and I would say that the resources sector is probably the one that is the most underdone in acknowledgment in actually turning things around, so that we actually do deliver real benefits for Traditional - for Traditional Owners.

10

COMMISSIONER LOVETT: Minister, my questions will address the revenue from gold and other minerals, and the illegal - illegal possession of land. I'd just like to ask you to read out again some of those figures, more so in the monetary value, so I think it was 287 billion in gold. Can we just, high-level, read out those figures again, please.

15

THE HON. LILY D'AMBROSIO: Yes -

20

COMMISSIONER LOVETT: Monetary value.

THE HON. LILY D'AMBROSIO: In today's terms, the gold that has been extracted in Victoria based on weight to the current spot price of gold is \$287.4 billion.

25

COMMISSIONER LOVETT: Any of the other minerals as well, please, Minister.

THE HON. LILY D'AMBROSIO: Yes.

30

MS McLEOD SC: Minister, if you need to, we can go to the DEECA revenue paper for those numbers.

THE HON. LILY D'AMBROSIO: Thank you. I think I have found it, thank you so much. Between - if it is between 2010 and 2023, other than gold which was a global one, but if you'd like I'm happy to talk about gold between 2010 and 2023. Gold, \$149.4 million in royalties. Minerals including coal, primarily \$885.6 million since 2010. And for sandstone and gravel, \$79.5 million in royalties.

35

COMMISSIONER LOVETT: Thanks for that. What steps has the government taken to return any portion of that wealth to First Peoples? There's a lot of money there.

40

THE HON. LILY D'AMBROSIO: It is a lot of money. And very little, if any - certainly no royalties have gone directly to Traditional Owners. Royalties that are collected by the Department goes directly to consolidated revenue.

45

COMMISSIONER LOVETT: But the high probability is very little, if any has gone back to TOs, Traditional Owners.

5 **THE HON. LILY D'AMBROSIO:** Not - not that you would say is some type of acknowledgment that - that wealth has been extracted for the State.

COMMISSIONER LOVETT: Minister, what would be required to have TOs ready to participate in that wealth?

10 **THE HON. LILY D'AMBROSIO:** What would be required would be firstly an acknowledgment by the State, by government, like myself, to - that things have to be done differently. There is an opportunity that we are developing right now, which is a strategy for critical minerals, and critical minerals is obviously a future-looking set of opportunities, and what I intend to do is not repeat the mistakes of the past.

15 However, there were deliberate mistakes and errors and judgments made, but that the critical minerals strategy where Victoria is actually having - has identified a bonanza, if you like, of potential minerals of significant value globally that can contribute to renewable energy development and other types of production.

20 My intention is to embed within a critical mineral strategy, development of that, of course in consultation with Traditional Owner communities, concept of community benefit-sharing, Traditional Owner benefit-sharing, but also, of course, a proper - properly formally recognised set of rules around what does meaningful engagement mean, what does permissioning mean, what does - what can - what can
25 be derived from a forward-looking strategy for self-determination purposes. And that is about shifting power and resources ultimately to Traditional Owners.

COMMISSIONER LOVETT: And you touched on this, but would you want to elaborate any further on how can the government secure the economic prosperity of
30 Traditional Owners or First Nations people of Victoria using this wealth?

THE HON. LILY D'AMBROSIO: Well, we have to acknowledge that - and more than acknowledge, acknowledging in the first instance, that Traditional Owner First Peoples cannot possibly be able to secure what self-determination means for them
35 and - and choices without having an embedded and - how can I put it - reliable economic - source of income, revenue for themselves over a period of time - a long period of time for them to be able to deal with capacity and capability, and to be able to plan for how they can best utilise any wealth that does come to them, either through processes that I hope to deploy, through renewable energy processes what
40 the future might be in mineral extractions, and also ultimately through treaty. So we need to facilitate and enable First Peoples to have that ongoing secure revenue stream over a long period of time so that the governance piece for Traditional Owners which I often hear from them, is - is one that they must be able to create for themselves for them to then be able to use that as a - as a springboard to really
45 develop up their own economic prosperity in the future.

COMMISSIONER LOVETT: I just want to make one last comment as well. You mentioned the word "capability". We've got a lot of talented people, a lot of capability. I think the main thing that we really need to focus in on is capacity. We don't have the resources to strengthen the capacity, but we certainly as a people have
5 the capability to be able to contribute in all facets of our cultural rights and our expression and so forth. Thanks.

THE HON. LILY D'AMBROSIO: Thank you.

10 **MS McLEOD SC:** Minister, you would recognise, following on from that question, there's not just a need to secure the income on an enduring basis, so that it can't be a lump of money that just disappears and TOs have to rock up year on year with their hands out, but it has to be an investment in capacity as well.

15 **THE HON. LILY D'AMBROSIO:** Well, yes, and that is what you need to be able to actually shift power meaningfully, by ensuring that there is that enduring revenue and resourcing, absolutely. You know, we're kidding ourselves as a government if we think that self-determination can be achieved through - through more tentative
20 arrangements when it comes to wealth, wealth sharing, and that is something that I know that through - and - and I think if I may, I know that - and I - I tend to use the word "journey" a lot. I know we have to do more than go on a journey, because we have got to now start delivering outcomes and results that people can judge us by, absolutely. What I can say, though, my commitment and the commitment of DEECA
25 know that we've got to get on with it, I know that we have a lot of frameworks and policies in place and they all come from a very important place because it's not just what we do, why we do it and how, but we've just got to get on and actually create that meaningful revenue stream, revenue base that is enduring to enable First Peoples to really, truly take control of their future and be able to make the choices for
30 themselves.

COMMISSIONER LOVETT: With those large amounts of figures that you have expressed to us here today, as an individual, how - like, how does that sit with you, sitting here and saying - this is two weeks in a row that we have heard Ministers
35 come before us. And we're talking - I am not just talking dollars and cents here. We're talking billions of dollars that our people have been shut out of being able to generate, prosperity and economic independence and wealth. Like how does that sit with you, Minister?

40 **THE HON. LILY D'AMBROSIO:** It sits terribly uncomfortably, but, you know, that is an understatement and I don't know that I can say it in any way that could really describe - I mean it's horrifying. Probably that is the best word. It is horrifying and unforgivable that we have allowed this situation for many of us benefit from it at the expense of First Peoples, and - and it continues, because we have not fixed it.

45 **COMMISSIONER LOVETT:** Yes.

CHAIR: I find it striking that it's taken this Truth Commission to get to a conversation like this about what is possible from the wealth of this country. And we all - we all know, we know it's 150 years of welfare, so-called protection, child protection and all of the pipeline effects of that into the welfare system. And that has institutionalised social workers mainly, the people that talked about our policies, we need a different kind of approach, different mindset. We don't need pretty reconciliation action plans. We actually need strategies devised with our people, with Traditional Owners people in place.

10 I mean, it is - for me, it's a stark moment, a contrast, because any other conversations about welfare have sat inside the state at some committee level, but sort of didn't go anywhere in big - in any big commitments. And this is just a stark reality about how far we have been ignored in our spaces for this time. I'm sorry it is a statement, but I have to make it, but it's so stark.

15 **COMMISSIONER LOVETT:** It seems to be. I mean, we've heard evidence around squatters and illegal activity, illegal, you know, stealing of land, and a lot of unregulated industries, sectors, but our people are regulated and have been regulated since arrival.

20 **CHAIR:** We are even hearing regulation after the fact to accommodate mining and all of that, you know. It's -

25 **COMMISSIONER LOVETT:** Our people are still being regulated is the point that I am making here. We are overregulated. How can we be self-determining if we are overregulated and can't be able, you know, to find breaks to be able to generate wealth or even just to be able to keep our families together?

30 **CHAIR:** Thank you for those figures. I think that's -

35 **COMMISSIONER WALTER:** Can I just add too, sorry. We have heard over the last two weeks a lot of future aspirations about what would be different, very little of what can happen to date. How can First Peoples listening in here feel this is more virtue signalling rather than actually a real - and I am loath to use the word "commitment" because we can't bank commitments. We have commitments constantly that never get fulfilled. Why would First Peoples have any faith that things are going to be different?

40 **THE HON. LILY D'AMBROSIO:** If I may, yes, and I - I'm saying and I will say a whole bunch of things today, and ultimately that's well and good, but the proof has to be in the evidence and the transparency and - and outcomes. What I will say, though, is that my commitment and my government's commitment, and I can say this, there are some Cabinet matters - matters before Cabinet that I can say to you very clearly today that in terms of potential for wealth sharing and enduring wealth sharing, we are very much looking at embedding, in a legal sense, benefit-sharing arrangements from infrastructure projects around transmission infrastructure but also Renewable Energy Zones and projects that are built. And I am committed to achieving that, and

I am - I am hoping that it won't be too long before that is - that becomes very evident to the Commission and to all First Peoples. And - and my commitment is to seek to apply the same approach to future extraction of resources, the approach being that it is not just about the revenue sharing, it's also about informed consent and - and the principles that are certainly embedded in the United Nations Declaration for Indigenous Peoples. So that is something that is guiding my approach, the Department's approach and Government. And as I said, earlier, I know resources has been - we have been a laggard there, even though we are not anywhere near perfect in terms of renewable energy, but my commitment is to bring that up to speed, and so that you can actually start to see and know that this will happen. Now, I'm sorry, that was not a very eloquent way for me to answer, I apologise.

COMMISSIONER NORTH: Minister, the renewable energy strategy framework principle, whatever it is, is a program which I think has a timeframe of ultimately producing something a long way into the future. Is it 10 years or so before - is that roughly the time frame? I think I remember 2038.

THE HON. LILY D'AMBROSIO: Yeah. Well, if I may - thank you, Commissioner. If I may, we have made it -

COMMISSIONER NORTH: I can - just a focused answer on the timing, because I've got other questions that lead from that.

THE HON. LILY D'AMBROSIO: Of course.

MS McLEOD SC: Depends on the renewable, Commissioner, depends on the renewable. Because we are talking about a number of - solar and wind.

COMMISSIONER NORTH: Say wind. I think wind is what I was looking at.

THE HON. LILY D'AMBROSIO: Well, there are - so there are ongoing - there is an ongoing pipeline, if you like, say, to do with wind. There is onshore wind which is being developed and built every - almost every day, there is some project that has either been approved through planning or under construction, but certainly what needs to be built between now and 2035 in Victoria -

COMMISSIONER NORTH: Okay. That is the date I think I was.

THE HON. LILY D'AMBROSIO: The date, yes.

COMMISSIONER NORTH: Okay. 2035, let's focus on that.

THE HON. LILY D'AMBROSIO: Yes.

COMMISSIONER NORTH: So the community benefit payment that you're talking about relates to that program which will be online, if you like, in over 10 years from now?

THE HON. LILY D'AMBROSIO: Well, yes, but the commencement of that will be subject to some further discussions that we're in with First Peoples.

5 **COMMISSIONER NORTH:** There won't be any money flowing through the community benefit for more than 10 years.

THE HON. LILY D'AMBROSIO: No, no, that's not correct.

10 **COMMISSIONER NORTH:** True?

THE HON. LILY D'AMBROSIO: And I apologise, I can only say so much because some of it is Cabinet in confidence and it hasn't been through that process yet. But the intention is this, is that if I may - this is what I have been able to say
15 publicly thus far, is that with new transmission projects which will start to be built in the next two or three years, they have to be established and built, certainly there is the Victorian VNI West which is a massive transmission project in Western Victoria. There's also Western Renewables Link. There's also transmission which is coming in to connect up offshore wind energy. There's also a community benefit that we are
20 looking to embed through renewable energy project development themselves. They are the ones that will be built sooner than transmission because, yes, transmission does take a long time to be built and it's only once they're built that benefits start to be derived. However, each renewable energy project once it is captured by this legal architecture that we're working on, will have embedded in it a community benefit
25 arrangement of Traditional Owners.

COMMISSIONER NORTH: But we are talking about years rather than months in - for the first flow of money?

30 **THE HON. LILY D'AMBROSIO:** Yes, because it's subject to declaring the renewable energy so it is subsequent legislation, definitely yes.

COMMISSIONER NORTH: But it is years, not months.

35 **THE HON. LILY D'AMBROSIO:** It won't be 10 years. It'll be less than that, a lot less than that.

COMMISSIONER NORTH: Well, the principles embedded in that concept is that there should be a share or a revenue stream that goes to First Peoples; is that so?
40

THE HON. LILY D'AMBROSIO: Yes.

COMMISSIONER NORTH: We've been talking about extraction industries that go back to the beginning of Victoria. Why is it that - or is it the position that any - that
45 this principle should be applied to those old-style extractive industries, gold, coal, gas? I mean, you're talking - do you get the point? We're talking about future projects that are years away, but we have in front of us right now the figures you have given

us of actual money being, flowing through the system right now. If the principle is right for renewables, why isn't it right for gold extracted today?

5 **THE HON. LILY D'AMBROSIO:** It is right for both, and I acknowledge that the resources sector, we have not, as a government, had the clearer eye as we have had towards renewables, and that is got to change.

10 **COMMISSIONER NORTH:** But it seems to me, isn't it much easier to apply the principle of what is happening now than to something where you've got to negotiate the whole, you know, the whole - the engineering, for instance, of wind farms and then that seems to be a - it's a very major project as you have say, transmission systems. But we've got, like as we sit here now, I think Commissioner Hunter the other day pointed out in relation to child protection, whilst we are sitting here another child is taken away. Whilst we are sitting here today, there's coal being
15 extracted, gold being extracted, and I don't quite follow why the same thinking doesn't apply in those extractive industries right now.

20 **THE HON. LILY D'AMBROSIO:** Right now. That - that is our failing. I mean, I'm not even making an excuse for it, but I will say that my aim is to work towards turning that around and having those conversations within government around how we can do that and in doing that as soon as we possibly can.

COMMISSIONER NORTH: But there's nothing underway, is there?

25 **THE HON. LILY D'AMBROSIO:** No, only to the extent that I have been able to share thus far that we will be developing a critical minerals strategy -

30 **COMMISSIONER NORTH:** No, I am talking about the existing extractive industry.

THE HON. LILY D'AMBROSIO: That's correct, not - not any that is sanctioned by the government. There are arrangements in place between individual extractors and Traditional Owners, but they are certainly not required.

35 **COMMISSIONER NORTH:** There's no current government attention to this obvious source of community benefit.

40 **THE HON. LILY D'AMBROSIO:** Not - not other than what I've probably indicated.

COMMISSIONER NORTH: You have said that none is.

THE HON. LILY D'AMBROSIO: Yes.

45 **COMMISSIONER NORTH:** Failing. So there is not even a discussion about it despite the fact that it seems to be the obvious way of doing something immediately.

MS McLEOD SC: To be fair to the Minister, Commissioner, there was a mention of Cabinet in confidence discussions that we won't ask the Minister directly about beyond the indication you've given.

5 **COMMISSIONER NORTH:** I didn't understand that to be in relation to this subject matter. In any event, we can leave it there. I would be assisted to know about annual figures. What you've given is royalty figures for these, if I can call them, traditional extractive operations, figures that date for the last 14 years from 2010. But it would be, I think, useful to know in relation to each of the commodities that you
10 have mentioned what the annual royalties are, because, at least from my own thinking, that is the figure that I would be asking, well, even a very tiny proportion of that would flow as a direct revenue flow would seem to be in according with the principle applied to the forthcoming -

15 **MS McLEOD SC:** Can I suggest, Commissioner, we have behind tab 11 a paper that is called the resources paper. I was going to come to that and the details of the revenue set out in that. But I was going to suggest, Chair, that we have a short break before picking up that revenue stream, and the - it's annexure B to that document. But I was going to suggest a short break. Before I do that, there was one thing I
20 wanted to loop back to before I lose it, so, Commissioner, with your permission, if we can come back to that revenue figures after the break.

COMMISSIONER NORTH: Yes, well I - whatever suits.

25 **MS McLEOD SC:** And renewables generally. Yes. So there is one question I wanted to pick up from the earlier discussion, Minister, and that is around remediation of mines before we move on from that topic. You said in terms of remediation of mines, that depends, of course, on - we're talking about orphan mines and remediation obligations generally. First of all, the successful remediation of
30 mines depends first on the adequacy of the environmental bond that is lodged, whether that's a paper or a sort of online entry only or a cash deposit, depends on the adequacy of that bond in the first instance and depends obviously on the solvency of the operator?

35 **THE HON. LILY D'AMBROSIO:** That's correct.

MS McLEOD SC: Now, if the bond is inadequate or the operator is insolvent, or wound up for whatever reason, the burden falls upon government to attend to the environmental remediation of those mines. Correct?

40 **THE HON. LILY D'AMBROSIO:** That's correct.

MS McLEOD SC: Not only on government but on landholders and on First Nations people who depend on their connection to Country. Correct?

45 **THE HON. LILY D'AMBROSIO:** That's correct.

MS McLEOD SC: Yes. And would you accept that Traditional Owners are perhaps least - sorry, are disproportionately impacted by those mines and are also least able to address those remnant environmental impacts?

5 **THE HON. LILY D'AMBROSIO:** Yes, definitely. And if I may - and bonds have not taken into account, well, what is it that we are seeking to rehabilitate, when it comes to damage of the values of land and cultural heritage.

MS McLEOD SC: Yes.

10

THE HON. LILY D'AMBROSIO: All of those matters are certainly not captured by bonds.

MS McLEOD SC: And there is a capacity to require an environmental bond to factor in those requirements, isn't there, with changes to legislation - regulations?

15

THE HON. LILY D'AMBROSIO: Certainly there is always an ability to do that.

MS McLEOD SC: Is that something you would be open to considering?

20

THE HON. LILY D'AMBROSIO: I - I certainly - not being able to speak on behalf of my Cabinet, but certainly I would be very - I would be very - how can I put it, prepared to look into that to see if there is something that can be done to better reflect the real harm that has been done through extractive industries. So I'm very happy to be able to do that.

25

COMMISSIONER HUNTER: Can I just make a comment on that. How do you put a number or a figure on a bond for spiritual connection to land that is broken, for sacred sites that are desecrated, for our cultural connection, not only ours but generations to come that's been severed due to the broken or breaking of Country? How do you rehabilitate those things and how do you put a bond to them?

30

THE HON. LILY D'AMBROSIO: Thank you, and that - that's - certainly with - with mining, that is already underway. I mean, certainly, how do you capture something that has been lost? I appreciate that. I think with any new approvals from any new mining activities, the point really is to try - to do the best we can to avoid harm in the first place.

35

COMMISSIONER HUNTER: We lose our totems within these processes at points which is our connection, and that will affect generations. I am also thinking about the generations that were lost, of the stuff that I'm learning now that I should have been handed down due to desecration of sites, of language, due to dispossession of our land. They're things we are never going to get back that you cannot ever put a monetary value on. It is just sad. I think it was more of a comment than a - because it is something that, you know, we can sit here and talk about monetary values, and we can talk - but I think about my ancestors and what they passed down which was completely lost, or even our ancestors are lost due to desecration of their burial sites.

40

45

And I just - we talk about bond and, you know, rehabilitation, but there's stuff we're never, ever going to get back.

5 **MS McLEOD SC:** So, Chair, is that a convenient time for a break? I will come back to Commissioner North's questions around revenues and also the renewables sector generally.

CHAIR: 11.45.

10 **<THE HEARING ADJOURNED AT 11.34 AM**

<THE HEARING RESUMED AT 11.50 AM

15 **CHAIR:** We have resumed.

MS McLEOD SC: Yes, thank you, Chair. Minister, one of the things I asked you about before the break is in relation to revenue from private land from extractables. Did you have an answer to that over the break?

20 **THE HON. LILY D'AMBROSIO:** Yes, thank you. And thank you for the opportunity to have sought that answer. Now, revenue from private - so if we look at quarries, given that private land is deemed to be anything down to 15 metres below the surface, there's no royalty that is applied or applicable or collected for up to 15
25 metres below. Once it is beyond 15 metres, it then ceases to become private land and so called Crown land; that's when royalty is payable. So I think on that one I know that there may have been some - no, I think there was also part of that question was around revenue generated permissions, or - there's some revenues that are generated from permissions, and - but effectively, it's very much - well, it's actually less than a
30 cost recovery basis. So there's no real net, if you like, net revenue that the State collects from the actual issuing of grants and licences and - and permits.

MS McLEOD SC: When you - just to understand that, when you say it is a cost recovery basis, does that mean the people - the person or body with the permit asserts what their costs are, and then there is an adjustment for that?
35

THE HON. LILY D'AMBROSIO: No, the State, the Resources Regulator, the State, determines what the costs will be for a permit application or licence application, et cetera. That gets charged to a proponent and that is the money that is received for it. It doesn't cover 100 per cent of the cost of actually administering, if
40 you like, that regime.

MS McLEOD SC: Thank you. Commissioners, I wanted to turn now to the Department response in terms of the revenues. The department provided some information in response to a request for information. This should be, I hope, behind
45 tab 11 in your folder, the revenue paper. Sorry, tab 10, I think it is, not 11. Sorry, tab 11. Just for the Commissioners' purpose, it's the revenue paper for you, Minister.

THE HON. LILY D'AMBROSIO: Yes.

MS McLEOD SC: This document has a number of annexures as well, including - and we will come back to this - annexure B concerning
5 self-determination frameworks and annexure D which sets out the annual revenue obtained by the State over each financial year for each commodity; correct?

THE HON. LILY D'AMBROSIO: Yes.

10 **MS McLEOD SC:** Okay. So starting with the paper itself - pardon me, I'm just making a note to come back to some other matters. Starting with this paper itself, if we turn to page 3, point - 2.3, Hypothecated Revenue. 2.3, if we could bring that up on the screen. This is page 3 of 18.

15 **THE HON. LILY D'AMBROSIO:** Yes.

MS McLEOD SC: If we could zoom in, please, under the heading 2.3 Hypothecated Revenue. There are two paragraphs there. First of all what is hypothecated revenue?

20 **THE HON. LILY D'AMBROSIO:** Well, hypothecated revenue is revenue that is collected by the State which is collected and then tied to a specific purpose in terms of its use. That is my understanding of hypothecated revenue as distinct from revenues that are collected from a specific purpose. That goes into a consolidated
25 fund.

MS McLEOD SC: So we talked this morning about funds that go into the consolidated fund. This is talking about those hypothecated revenues which are prescribed to be used only for certain purposes.

30 **THE HON. LILY D'AMBROSIO:** Yes.

MS McLEOD SC: And the Department manages a number of trust accounts which are set out in - under that heading 2.3, various trusts and trusts that were managed before the various changes to machinery of government, and you note there
35 collectively the balance of those funds. Could you tell us what that number is, please.

THE HON. LILY D'AMBROSIO: Yes, for the financial year 2021 to 22, there's - the value of the moneys held in these trust funds by DEECA was in the order of - I think I'm reading it correctly -
40

MS McLEOD SC: 1.28 billion.

THE HON. LILY D'AMBROSIO: One million - no, sorry, 1,281,536,000.

45 **MS McLEOD SC:** Yes, and that represents a single year.

THE HON. LILY D'AMBROSIO: One financial year, that's right.

MS McLEOD SC: Okay. If we turn to page 10 of this document. Under section 4 there is set out a table of key revenue streams for the Victorian Government from natural resources-related revenue; correct?

5

THE HON. LILY D'AMBROSIO: Yes.

MS McLEOD SC: So on page 10, for example, royalties, extractive industries, quarries on Crown land, and then in the right-hand column we see:

10

"Do Traditional Owners primarily benefit from revenues?"

There's a dash. Come back one column to the left:

15 "Overall revenue and fund use."

So for example, this extractive industries quarries, 7.8 million into consolidated revenue for that particular line item; correct?

20 **THE HON. LILY D'AMBROSIO:** Correct.

MS McLEOD SC: Just so I understand it the dash, "Do Traditional Owners primarily benefit from revenue", indicates no.

25 **THE HON. LILY D'AMBROSIO:** That's correct, zero.

MS McLEOD SC: So for each type of resources revenue collected by the Victorian Government set out under section 4 on pages 10, 11 and 12, for each of those sums, the answer is zero or no to the question, "Do Traditional Owners primarily benefit from revenue?"

30

THE HON. LILY D'AMBROSIO: That's correct.

MS McLEOD SC: And just to pick some examples, for example, royalties, the second line item, royalties from gold on private and Crown land where annual production is in excess of 2,500 ounces, the figure is 42.8 million into consolidated revenue collected to provide for State-funded programs and services, do Traditional Owners primarily benefit from this revenue? No.

35

40 **THE HON. LILY D'AMBROSIO:** That's correct.

COMMISSIONER NORTH: So in my arithmetic that adds up to around about just over \$200 million a year, roughly speaking.

45 **MS McLEOD SC:** All of those columns, Commissioner?

COMMISSIONER NORTH: Sorry?

MS McLEOD SC: All of those entries?

COMMISSIONER NORTH: Yes.

5

MS McLEOD SC: Yes.

COMMISSIONER NORTH: So if one was looking to a principle of community benefit, then that might be a figure that would give you an annual basis upon which to even apply a small percentage to Indigenous communities in aid of self-determination, which seems to be what lies behind the renewable projects far into the future.

10

THE HON. LILY D'AMBROSIO: Yes, Commissioner.

15

COMMISSIONER NORTH: Thank you.

MS McLEOD SC: This column relates to 2021/2022, this analysis. Is it also the case that currently Traditional Owners do not primarily benefit from any resources revenue collected by the Victorian Government?

20

THE HON. LILY D'AMBROSIO: Yes, it continues to today.

MS McLEOD SC: And that you are currently discussing that situation with your colleagues; is that - you can tell us?

25

THE HON. LILY D'AMBROSIO: I think that is the extent that I can say that.

MS McLEOD SC: If we stay with this document and turn to annexure D, within the same tab, do you have a document that has this orange heading along the top like that?

30

THE HON. LILY D'AMBROSIO: Yes.

MS McLEOD SC: So annexure - sorry.

35

COMMISSIONER NORTH: Is this annexure D?

MS McLEOD SC: Annexure D, yes. Do you see that page of the annexure which is headed - it's the entry - in my bundle, it's the second page. I'm not sure if it's your first page, Minister. The box is headed DEECA Resources Victoria, then we're looking at royalty, extractive industries, quarries on Crown land.

40

THE HON. LILY D'AMBROSIO: Yes.

45

MS McLEOD SC: Final column there, the nominal sum, is expressed to be 79.5 million; I understand you want to correct that number?

THE HON. LILY D'AMBROSIO: Yes, thank you. I'm sorry that that's an error. The actual figure is \$87.4 million.

5 **COMMISSIONER NORTH:** What's the nominal sum?

THE HON. LILY D'AMBROSIO: If I may, the nominal sum is each financial year from 2010 to financial year 2023, that's the aggregate of the income revenues from quarrying.

10

MS McLEOD SC: So just -

COMMISSIONER NORTH: The total of all of those years?

15 **THE HON. LILY D'AMBROSIO:** Correct.

MS McLEOD SC: Just to reiterate that, so Commissioners are following, each sum under the orange heading, 2010, and then for each year broken down, 2010 to 2023, sets out a number representing the royalty paid for the various line entries, extractive industries, gold, coal and so on. And then as we go across the page, we get to the nominal sum which is the total of those over that period of time. Correct?

20

THE HON. LILY D'AMBROSIO: Correct, yes.

25 **MS McLEOD SC:** And oil and gas - let me just find that. The total for that period of time, which is 2010 to 2023, is 41.6 million?

THE HON. LILY D'AMBROSIO: That's correct.

30 **MS McLEOD SC:** The last financial year, 2023, the sum was 7 million?

THE HON. LILY D'AMBROSIO: That's correct.

35 **MS McLEOD SC:** Okay. Now, when we come to the entry for renewables, we - this table tells us DEECA does not collect revenue from renewable energy.

THE HON. LILY D'AMBROSIO: That's correct.

40 **MS McLEOD SC:** So just pausing there, there is no royalty paid for renewable energy, whether that be solar, wind, geothermal, hydro, any sort of renewable?

THE HON. LILY D'AMBROSIO: Exactly. So effectively for the electricity sector, there are no royalties.

45 **MS McLEOD SC:** Okay. Now, I want to come back to the investment in renewables and come back to our discussion about that, and the document - the rights and legislative framework document, sorry, to ask you about power generation, and the

State's transition away from coal. So we can leave that annexure for now, unless Commissioners have specific questions about those entries.

COMMISSIONER NORTH: No, thank you.

5

MS McLEOD SC: So in terms of power generation in Victoria, Victoria is committed to the transition away from brown coal as a source of energy production; correct?

10 **THE HON. LILY D'AMBROSIO:** That's correct.

15 **MS McLEOD SC:** And our current electricity system, if I can frame it and summarise - correct me if I am wrong - our current electricity system relies on power generators to supply consumers with electricity. Historically, that has included the major operations in the Latrobe Valley, but in future we will be looking at renewables across the State?

20 **THE HON. LILY D'AMBROSIO:** That's correct, primarily coal, and a little bit of gas.

MS McLEOD SC: Our electricity system relies on those power generators to supply consumers with around 55 terawatt hours of electricity per year.

25 **THE HON. LILY D'AMBROSIO:** Correct.

MS McLEOD SC: In 2023, Victoria's brown coal power stations generated around 60 per cent of that?

30 **THE HON. LILY D'AMBROSIO:** Yes, about 59 per cent.

MS McLEOD SC: And that was compared to 84 per cent in 2014.

THE HON. LILY D'AMBROSIO: That's correct.

35 **MS McLEOD SC:** So that number is coming down, and it is largely due to the closure of Hazelwood Power Station in 2017.

40 **THE HON. LILY D'AMBROSIO:** And - and also the expansion of renewable energy production, because that then affects - it has a displacing effect, if you like, on fossil fuel generation, so those two things together, so primarily the closure of Hazelwood, correct.

45 **MS McLEOD SC:** That expansion of renewable energy has been accelerated so the transition to close Yallourn Power Station was four years ahead of schedule, approximately?

THE HON. LILY D'AMBROSIO: Hazelwood not really. I mean, the owners of Hazelwood Power Station, ENGIE Energy, made the decision to close within a matter of months of - of the announcement, so it was very unexpected in that regard, although it had been intimated for a number of years that it could close.

5

MS McLEOD SC: And for Yallourn?

THE HON. LILY D'AMBROSIO: Yallourn was - Yallourn - the owners of Yallourn is Energy Australia, and the date of the closure of 2028 was a date that was nominated for Energy Australia and also obtained within a structural agreement with DEECA, with government, to ensure that there was a - a smooth closure, if you like, of that power station.

10

MS McLEOD SC: In terms of other closures, in September 2022, AGL announced it will close Loy Yang A Power Station in 2025; that was about 10 years earlier than previously indicated?

15

THE HON. LILY D'AMBROSIO: Yes, that's correct. And again, there was also a structured agreement between AGL and the Victorian Government.

20

MS McLEOD SC: Alinta Energy's closure for Loy Yang B power station is 2047?

THE HON. LILY D'AMBROSIO: That is their licensed end date, if you like, but yes, but that is correct.

25

MS McLEOD SC: And they're currently exploring options to retro fit that plant to run on biomass.

THE HON. LILY D'AMBROSIO: That is what they indicated.

30

MS McLEOD SC: Since 2014, the government's renewable energy policies and programs have seen a rapid expansion of renewable energy in Victoria, and just tell me if I am correct: 25 large-scale wind and 35 - sorry, 34 large-scale solar projects commissioned?

35

THE HON. LILY D'AMBROSIO: That's correct.

MS McLEOD SC: And a further 17 large-scale wind and solar projection under commission or under construction?

40

THE HON. LILY D'AMBROSIO: That's correct.

MS McLEOD SC: But the closure of these power stations creates considerable challenges for government; correct?

45

THE HON. LILY D'AMBROSIO: That's true.

MS McLEOD SC: Nevertheless, you would accept that there needs to be, in the renewable sector, continuing commitment for the opportunity for First Nations people to participate in the management of and benefit of wealth from these activities?

5

THE HON. LILY D'AMBROSIO: Yes.

MS McLEOD SC: By between 2014 and the end of 2023, Victoria's commissioned large-scale wind capacity increased almost fourfold, rooftop solar capacity increased from less than 1 gigawatt to around 4.4 gigawatts, and around 1.4 gigawatts of large-scale solar capacity was commissioned. Is that correct?

10

THE HON. LILY D'AMBROSIO: Correct.

MS McLEOD SC: Sorry, 1.1 gigawatts. To finish these numbers, as of March 2024, Victoria has 1.7 gigawatts of large-scale wind and solar projects under construction or commissioning and a further 6.8 gigawatts of large-scale wind and solar projects with planning approval but not yet commencing construction.

15

THE HON. LILY D'AMBROSIO: Yes.

20

MS McLEOD SC: What does that mean in terms of -

COMMISSIONER NORTH: Sorry, are those projects government-owned or private, the wind ones?

25

THE HON. LILY D'AMBROSIO: The - sorry - those are all privately owned. There will be some that have - that are still privately owned but are facilitated by a number of auctions and contracts that have come out of auctions that the government has run to help incentivise the build, ultimately they are private sector investment. Commissioner, if I may elaborate on that, one exception, just recently towards the end of last year, the State Electricity Commission has announced a partnership with a private sector investor to build a - a large battery system in Victoria, and there will be more - there will be a greater share of State-owned investment and portion of renewable energy that will be built between now and 2035.

30

35

MS McLEOD SC: So that investment in renewables, particularly in Victoria wind and solar, has seen the share of renewable energy in Victoria's electricity generation profile increase from around 10, 10.8 per cent, 2014, to more than 38 per cent in 2021; correct?

40

THE HON. LILY D'AMBROSIO: Correct.

MS McLEOD SC: And are you able to update that number today or what the projected numbers are?

45

THE HON. LILY D'AMBROSIO: Yes, I am. In fact, during the course of last year, once we've understood the whole of the year in terms of electricity generation, electricity generated from renewable sources amounted to just over 39 per cent in Victoria.

5

MS McLEOD SC: Now, we have noted in the annexure D document that no annual renewal - annual revenues collected by the Victorian Government as of yet?

THE HON. LILY D'AMBROSIO: That's correct.

10

MS McLEOD SC: So how does the State benefit from - and it may not - from the use of lands, wind, sun and other forms of renewable energy generation?

THE HON. LILY D'AMBROSIO: As a government, we have not made a determination for any royalties to be - to apply to - to renewable energy projects, whether they are generation or storage technologies. We are, though, as I've talked about, made decisions around the concepts of community benefit-sharing to be associated with those projects.

MS McLEOD SC: So you mentioned generation and storage.

THE HON. LILY D'AMBROSIO: Yes.

MS McLEOD SC: In what way - let's start with generation - is it contemplated that community will benefit from the generation of renewable energy?

25

THE HON. LILY D'AMBROSIO: So what - so what I - I have indicated public - what the government has indicated publicly is that through the build of new transmission infrastructure and new renewable energy projects, whether they be generation projects or storage projects, that there would be an element of community benefit-sharing as a result of those projects.

30

MS McLEOD SC: And when you talk about community, you're talking about Victorian community?

35

THE HON. LILY D'AMBROSIO: Two, in fact, two discrete benefit-sharing arrangements, if I can put it that way. One is for a broader regional local community and a separate one for Traditional Owners.

MS McLEOD SC: Could you just explain that separate one for Traditional Owners and what will happen there?

40

THE HON. LILY D'AMBROSIO: I - I'm not able to give you explicit details because they're matters that are before Cabinet.

45

MS McLEOD SC: Yes.

THE HON. LILY D'AMBROSIO: But I - I believe that once we are able to publicly talk about those, once we have gone through, of course, proper engagement with Traditional Owners themselves, because of how this will operate, and ensuring that there's - we have taken into account the views of Traditional Owner
5 communities, that I have confidence that we will be able to show that the system that we will have in place will go to that very question of a longer term enduring revenue stream for First Peoples.

COMMISSIONER NORTH: (Indistinct).
10

THE HON. LILY D'AMBROSIO: Thank you, Commissioner, yes, that's what I am saying. It is about having that transfer of power and resources. That is ultimately vital to be able to achieve the self-determination.

COMMISSIONER NORTH: Minister, can I just ask you this as a bit of a micro question, maybe you don't know it, but the coal that's mined, is that - that's being used to generate power, but is it also exported or used elsewhere?
15

THE HON. LILY D'AMBROSIO: Commissioner, with the particular physical nature of the brown coal resource in - in Victoria in the Latrobe Valley principally, because of its physical makeup, can't be exported, so hence we've never had a coal export industry, unlike some other States where they've had black coal, which is not combustible. So I think that's really the point; brown coal is highly combustible. It's really only ever been used for electricity generation, electricity generation.
20

COMMISSIONER NORTH: I notice the royalty revenue from coal has not decreased in the last five or six years, whereas the amount of renewables to generate electricity has. So how is that explained?
25

THE HON. LILY D'AMBROSIO: Well, there was a period a handful of years ago where the actual value of the royalty increased.
30

MS McLEOD SC: Just coming back to self-determination and the questions around that, Minister. In your witness statement, you state in paragraph 17 that, for you, self-determination and Country are interwoven.
35

THE HON. LILY D'AMBROSIO: That's correct.

MS McLEOD SC: And at paragraph 18, you state you:
40

"...support First Peoples' right to self-determination as reflected in UNDRIP as key to First Peoples' opportunity to empower and enable themselves to achieve what they aspire to for their country."

45 So I take it you would accept, Minister, that the Victorian Government should be funding programs to enable self-determination by First Peoples and Traditional Owners in the energy and resources sector?

THE HON. LILY D'AMBROSIO: Yes, I do.

MS McLEOD SC: Paragraph 19, you state that in your portfolios, this means:

5

"Broadening and strengthening the meaningful partnerships with Traditional Owners across the state."

10 So do you accept that self-determination is more than just meaningful partnerships?
It can be meaning handing over control completely?

THE HON. LILY D'AMBROSIO: Absolutely, and I realise that certainly we have gone from an inclusionary conversation to partnership, but it's really about - self-determination's about that transfer of power and resources ultimately.

15

MS McLEOD SC: I want to ask you some questions about the status and funding for self-determination programs in your portfolio just to touch on these. Referring to the DEECA response, annexure B, thanks. This is back to tab 10, Commissioners. So the Department was asked - sorry, I'll wait until you have got that, Minister.

20

THE HON. LILY D'AMBROSIO: I've got that, thank you.

MS McLEOD SC: The Department was asked to identify all current and recent policies, roadmaps, strategies and so on concerning supporting First Peoples' rights and interests in connection to Country, insofar as land, water and natural resources and other aspects are concerned, and we know that you are able to speak to some of those. And then for each self-determination and other policy and framework, set out various policy commitments, what their implementation status is, barriers and so on. Okay?

30

THE HON. LILY D'AMBROSIO: Yes.

MS McLEOD SC: So some of these you can speak to. If we come to paragraph - sent you on a wild goose chase, Minister, I'm sorry. Just - so before we get to that annexure B and to frame this, the response document - sorry, the RFI response, which is tab 10 for Commissioners, tab 10 for Commissioners at paragraph 10. Do Commissioners have the document?

35

COMMISSIONER NORTH: This is under the heading Natural Resources, is it, Ms McLeod?

40

MS McLEOD SC: Correct, and it's on the screen, minister.

THE HON. LILY D'AMBROSIO: I'm sorry, I'm a bit behind everyone. Is that number 10?

45

MS McLEOD SC: Paragraph number 10 of the RFI response document.

THE HON. LILY D'AMBROSIO: I have got that, thank you.

5 **MS McLEOD SC:** That's all right. I was in the wrong place too. You have already noted this in paragraph 10:

"There is no specific funding to support First Peoples' self-determination in result to earth resources activities in addition to the Native Title Act and TOS Act assessment resourcing."

10

But you note earth resources do include engagement in consultation as part of project planning; correct?

THE HON. LILY D'AMBROSIO: That's right.

15

MS McLEOD SC: So the limit of it at the moment is conversations?

THE HON. LILY D'AMBROSIO: Yes.

20 **MS McLEOD SC:** Then we look at paragraph 13 of that same - on that same page in terms of energy. There is a reference to:

"...grant funding programs to support Traditional Owner engagement in the energy transition."

25

\$1.1 million for Traditional Owner renewable energy program announced in November 2020; right?

THE HON. LILY D'AMBROSIO: Yes.

30

MS McLEOD SC: Is that a one-off \$1.1 million?

THE HON. LILY D'AMBROSIO: Yes.

35 **MS McLEOD SC:** And Registered Aboriginal Parties, so those organisations who had secured RAPs, were eligible to apply for grants of up to 100 thousand.

THE HON. LILY D'AMBROSIO: That's correct.

40 **MS McLEOD SC:** And this Traditional Owner renewable energy program, of which it looks like nine RAPs have received funding totalling 900,000 for a range of renewables, is the extent of grant funding supporting Traditional Owner engagement in energy transition. Is that correct?

45 **THE HON. LILY D'AMBROSIO:** Yes, yes, and I'm thinking that there may be some additional funding, again one-off, for the purposes of offshore wind energy engagement. But in terms of these grant programs. I think that that is the extent of it.

But I - I can come back to you to make sure I haven't got those last comments incorrect. I will come back to you on that one.

5 **MS McLEOD SC:** And the funding for those projects is due to be delivered by June 2024; correct?

THE HON. LILY D'AMBROSIO: That's correct.

10 **MS McLEOD SC:** June 2024, projects to be delivered by that time, yes. I'm sorry, the funding has already been allocated of 900,000 for projects to be delivered by June 2024; is that how I understand that?

15 **THE HON. LILY D'AMBROSIO:** I think funding - some of this is about funding being given, transferred over in some instances.

MS McLEOD SC: Okay. So just to be clear about that, each project was able to obtain up to 100,000?

20 **THE HON. LILY D'AMBROSIO:** That's correct.

MS McLEOD SC: And the total of 1.1 million of grant funding has not been allocated; 900,000 has been allocated.

25 **THE HON. LILY D'AMBROSIO:** Yes.

MS McLEOD SC: Does that mean nine projects?

30 **THE HON. LILY D'AMBROSIO:** If you allow me an opportunity to see if I can find that answer for you -

MS McLEOD SC: I was just looking at 13(a).

THE HON. LILY D'AMBROSIO: Sorry, you have referred to 13(a)?

35 **MS McLEOD SC:** It's up on the screen if that is any help.

THE HON. LILY D'AMBROSIO: My apologies, so nine - nine RAPs have received funding totalling that amount.

40 **MS McLEOD SC:** Yes.

THE HON. LILY D'AMBROSIO: And the question is, the difference between that and \$1.1 million; is that correct?

45 **MS McLEOD SC:** Yes so we have got something like 300,000 - sorry, 200,000 if my maths is right, sitting unallocated?

THE HON. LILY D'AMBROSIO: Yes, what I will need to do is come back to you so that I can answer that properly -

MS McLEOD SC: Yes.

5

THE HON. LILY D'AMBROSIO: - as to whether that left - that difference, if you like, is left in reserve for other Traditional Owners to be able to access, or whether it's explained in some other way.

10 **MS McLEOD SC:** Okay. So -

THE HON. LILY D'AMBROSIO: I just want to be sure on that if you will allow me.

15 **MS McLEOD SC:** No problem. If you wouldn't mind letting us know as well what is going to happen to the money that is unallocated or not used in the part of delivery of that process. Will it just go back into consolidated revenue or go somewhere else? Are you able to tell Commissioners what practical benefits have been delivered using under the TOREP program to Traditional Owners in a broad sense.

20

THE HON. LILY D'AMBROSIO: It will - in a broad sense, the program has - had - was evolved after engagement with Traditional Owner communities as about what they identified as their needs to equip them to be able to plan for their own economic benefits that that could - that could be derived from renewable energy build that needs to happen in Victoria, and each Traditional Owner group would have their - their own approach to this. It would enable them to engage on Country with in amongst themselves and to develop up plans for themselves. I know that - that - sorry - that there is some further info that is more specific, if that is what you are seeking, if you allow me a chance to identify that.

30

COMMISSIONER HUNTER: We're talking about that 100,000? Sorry, Minister, are we talking about that 100,000? So out of that 100,000; is that what we are talking about.

35 **MS McLEOD SC:** 100,000 for the Traditional Owner Renewable Energy Program, these were the grants that were made to now nine RAPs.

COMMISSIONER HUNTER: Minister, is that enough? Is that enough given all the -

40

THE HON. LILY D'AMBROSIO: It is nowhere near enough.

COMMISSIONER HUNTER: Do you think First Nations people are more adversely affected with climate change, given our relationship to the land?

45

THE HON. LILY D'AMBROSIO: Absolutely, climate change and our - as colonisers, our contribution to that, has - has devastated many Traditional Owner communities and the lands that they are -

5 **COMMISSIONER HUNTER:** And if climate change continues the way it is going, it will be a second dispossession for First Peoples, so that 100,000 -

THE HON. LILY D'AMBROSIO: Whether it is 100,000 or a million, it's still nowhere near enough.

10

COMMISSIONER HUNTER: But it's only 100,000.

THE HON. LILY D'AMBROSIO: Individually, I understand. Yes, I totally agree, and I know that this is - whilst this is a start, it's a small start and my - my aim and
15 my government's aim is to not repeat the mistakes of the past and to actually establish a system that - soon I'll be able to talk more about - that will actually provide a far more meaningful acknowledgment of the - the wealth that must be given to Traditional Owners from the land.

20 **COMMISSIONER HUNTER:** We've just heard from all the systems in government how long everything takes, and where - I mean, Commissioner North pointed out, we're still waiting. And I feel - I feel like, hearing all the evidence, that there is these little bits of money to just keep you going in the space, but I feel like
25 nothing's changed within the colonial structures and systems, and it's still just little piecemeal bits and pieces, as the Chair spoke about earlier, and it keeps us in a deficit, and it keeps us dispossessed of our lands, spiritually, emotionally, practising culture, and I personally am offended by 100,000.

MS McLEOD SC: Could we bring up 14, paragraph 14(a) and (b), please. Minister, this is a reference to the First Peoples' Adoption of Renewable Energy Program
30 funding, so could we zoom in on 14(a) and (b). Could you just explain to the Commissioners, please, what this is, the First Peoples' Adoption of Renewable Energy Program and the funding available and expended under this program?

35 **THE HON. LILY D'AMBROSIO:** Thank you. The - the design of the program is focused on enabling First Peoples to build capability to participate and benefit in the energy transition. It's as straightforward as that, because each Traditional Owner community will see the - the opportunities in a different way, and will wish to be able to make decisions around what and how they will be able to get that benefit, if
40 you like, for themselves.

MS McLEOD SC: So 960,000 was allocated to that FPAREP program; correct?

THE HON. LILY D'AMBROSIO: That's correct.
45

MS McLEOD SC: So far, five Traditional Owner Corporations have received just over half or under half of that, 450,000 of that funding.

THE HON. LILY D'AMBROSIO: Yes.

5 **MS McLEOD SC:** That program is due to be completed in June of next year; correct?

THE HON. LILY D'AMBROSIO: Yes, at this stage, yes.

10 **MS McLEOD SC:** Does that mean there's half a million dollars sitting in that fund unallocated with only a year to go, approximately?

15 **THE HON. LILY D'AMBROSIO:** Yes, that's correct. What I will say, though, is that the Department continues to engage with Traditional Owners who have not thus far sought to - an allocation, if you like, from that fund, and - and that is what we hope to achieve, is that that money goes out the door. Now, in terms of that deadline that has been referred to, if there is a need to push that date out to enable Traditional Owners to make - take full advantage of any funds that they apply for, then that - that will be done by me.

20 **COMMISSIONER LOVETT:** Minister, can I ask, what has been done in the Department to streamline the avenues for Traditional Owners to be able to get access to funds? Because this is another example, so we've got the 100,000 that the TOs have to apply for grants. Given the State's commitment, the Government's
25 commitment to self-determination or even the Victorian Aboriginal Affairs Framework, the VAAF, shouldn't there be an expedited or a sped-up process for Traditional Owners to move through the process to get access to the funds to, again, strengthen their capacity, not build capability, strengthen their capacity to be able to work through these processes and get - you know, engage with their people, because
30 just another example of them having to go through an exhaustive government process to get access to 100,000 or 200,000 dollars. We've heard across the State with the many - Traditional Owners engagement, over 850, over 30 groups, some being non-RAP groups as well, talking about funding and accessing grants in the Department, and some of the Traditional Owner groups have 40 to 50 contracts just with DEECA alone. So they're spending a lot of time in responding to government
35 reports and making sure government jump through all - they jump through all the hurdles for government, but government don't seem to be jumping through any hurdles to enable our people to be able to realise their cultural rights.

40 **THE HON. LILY D'AMBROSIO:** Sorry, is that - thank you. Thank you, Commissioner. I totally acknowledge that and I - I mean I cannot but agree with that, which is even more reason for there to be a system established that - that moves decision making and control from - from government, in this case, DEECA and also myself as Minister, to Traditional Owners. Because whilst we control and we have the power, and that disables Traditional Owner communities to be able to actually
45 fully shape what self-determination should be looking like and the choices that need to be made. And again, I point to what we're wanting to achieve in having that longer term community benefit-sharing arrangement in place, and that is what I commit to

do. Because I think that will go some way, some way, I am not saying it is going to be solving everything, but it will go, I think, some way to really coming to terms with this and doing something about it. There is a lot more that has got to be done, obviously beyond that in energy, also of course in resources that need a big catch up.
5 But my commitment is to do just that, so that we are not having this frustration.

COMMISSIONER LOVETT: I mean, well, you understand the tension that, you know, this is a more, I guess, a newer commodity that our people are – well, I guess, society, you know, renewables and so forth is a new sector, maybe been around a
10 while but certainly exacerbated in the last 15 years, and Traditional Owners still have so many systematic barriers in place, and yet it's only in the last 15 years that this is really ramped up, yet we have got all these barriers before us already. So you can understand the tension for Traditional Owners that they are feeling they are being shut out not only historical commodities but also future ones. I just wanted to make
15 that point, Minister.

THE HON. LILY D'AMBROSIO: Thank you.

COMMISSIONER WALTER: Can I just say, Minister, would you acknowledge
20 that announcements about future benefits to First Peoples, strategies, actually benefits, have benefit for the State?

THE HON. LILY D'AMBROSIO: I think that - well, yes, absolutely, because I think when we have a healthy community for everyone -
25

COMMISSIONER WALTER: I mean more the launch of the documents themselves and the promises and the commitments that are made, they actually benefit the State, don't they, and they provide access to the high moral ground -

THE HON. LILY D'AMBROSIO: Oh, I see.
30

COMMISSIONER WALTER: Like change is happening, commitment to change has been made.

THE HON. LILY D'AMBROSIO: Yes, and I know that there have been many documents, many commitments made, many of them come about because they are interrelated to an original document. I understand that, and ultimately the proof is going to be in - in showing the evidence and having evidence.
35

COMMISSIONER WALTER: Would you agree it's a double injustice when not only have First Peoples been shut out, but then the commitments that make change don't actually eventuate in the time frame that the State has committed and taken the benefit of, actually happening?
40

THE HON. LILY D'AMBROSIO: Yes, I agree, it's - we compound the injustice.
45

COMMISSIONER WALTER: And the benefit sharing, the wealth sharing, even if it be on high moral ground, again is shifted away from First Peoples to the State.

5 **THE HON. LILY D'AMBROSIO:** Yes, and I - my intention is to ensure that that community benefit is real, it's tangible, and it is one that is controlled by Traditional Owners.

10 **MS McLEOD SC:** Can I ask you to turn, Minister, to annexure B. If we could bring that up on the screen, thank you. And we have touched on - sorry, I will wait until you've got that.

COMMISSIONER NORTH: Is this supposed to be behind tab 10, Ms McLeod?

15 **MS McLEOD SC:** Tab 11.

COMMISSIONER NORTH: 11, is it?

20 **MS McLEOD SC:** So, Minister, we have touched on the Traditional Owner Renewable Energy Program, and also over the page on the First Peoples' Adoption of Renewable Energy Program, and just pausing on this table on the second page, the First Peoples' Adoption of Renewable Energy Program, it is noted in the column headed independent reviews and feedback, which is the second last column on the right:

25 "Due to this being a grant program, no formal review or feedback process has been undertaken of that program."

Correct?

30 **THE HON. LILY D'AMBROSIO:** Yes.

MS McLEOD SC: Then we come to VicGrid on the first page. Now, VicGrid, as I understand it, coordinates the planning of the energy - Renewable Energy Zones and modernisation of the energy grid; correct?

35 **THE HON. LILY D'AMBROSIO:** Yes.

MS McLEOD SC: Victoria is not the owner of the electricity transmission system, is it? That's privately owned?

40 **THE HON. LILY D'AMBROSIO:** That's correct.

MS McLEOD SC: So in addition to the FPARE program, under the heading VicGrid, there is a number of specific programs identified that are intended to support First Peoples' rights and interests in and connection to Country; correct?

45 **THE HON. LILY D'AMBROSIO:** Yes.

MS McLEOD SC: So for example, under VicGrid we see, the top of the page, 240,000, or .24 million, to Barengi Gadjin Land Council to support engagement concerning the interconnector, the VNI West.

5

THE HON. LILY D'AMBROSIO: Yes.

MS McLEOD SC: We see 560-odd thousand to DJAARA, Balaki Wuka; that's also concerning the interconnector.

10

THE HON. LILY D'AMBROSIO: Yes.

MS McLEOD SC: And the delivery of 1.3 million to GLaWAC. What is GLaWAC?

15

THE HON. LILY D'AMBROSIO: Gunaikurnai Land and Water Aboriginal Corporation.

MS McLEOD SC: To support their engagement with offshore wind. However, there is - there - the new SEC has not commenced any program, as I understand it, to support First Peoples' rights and interests in connection to Country, has it?

20

THE HON. LILY D'AMBROSIO: No, no, it hasn't yet. It's - it's quite embryonic. However, the SEC in its business constitution contains, and also in its 10-year strategy, three commitments around engagement with Traditional Owners in terms of projects they will be invested in.

25

MS McLEOD SC: I will come back to what that participation looks like in a moment. Just staying with the numbers and adding up the total amount of funding for programs supporting First Peoples' rights and interests and connection to country, including unallocated grants, it's around 4.162 million - sorry, yes, 4.162 million available from those various grants. Is that - I'll be corrected if I'm wrong. Does that sound in the order of magnitude?

30

THE HON. LILY D'AMBROSIO: I - I take it that's correct, but certainly that is the flavour of it.

35

MS McLEOD SC: When you consider the amount of revenue the Victorian Government receives from energy and natural resources, which we've discussed adds up to more than \$1 billion, the amount of self-determination program funding received is comparatively very small. Would you agree?

40

THE HON. LILY D'AMBROSIO: Yes, I would.

MS McLEOD SC: Annexure B also refers to a number of broader self-determination frameworks and programs and barriers that exist for full implementation of many of those policies in column 4 in this document. And just

45

touching on some of those on page 8, for example, under the heading the Pupangarli Marnmarnepu Owing our Future - sorry, I probably savaged that - Self-determination Reform Strategy on page 8, it's noted:

5 "Overarching barriers include the need for sustainable funding reforms, government budget cycles where funding is sought, but budget cuts determine priorities that may not align with Traditional Owner Corporations' needs and aspirations. This extends to the political context and government processes that are system-heavy and do not allow for TO contribution".

10

So generally, would you agree that the priorities of Traditional Owners are sometimes in direct conflict with DEECA priorities?

15 **THE HON. LILY D'AMBROSIO:** Yes, Pupangarli Marnmarnepu is a commitment around self-determination, but certainly there are sometimes areas where the interests of the department collide with interests of Traditional Owner people.

MS McLEOD SC: Where that happens, in a broad sense, DEECA prevails; correct?

20 **THE HON. LILY D'AMBROSIO:** Yes, because that's where the power is.

MS McLEOD SC: How do we adjust that, create justice and equity?

25 **THE HON. LILY D'AMBROSIO:** The goalposts have to be shifted, and that means that the - for Traditional Owners to seek - to be able to determine what self-determination means and choices, extracting that from a government that itself still holds the decision making and the power, that's got to shift, and breaking that nexus is vital. And therefore it is so important that the economic independence for this, that is an enduring - provides an enduring revenue stream for Traditional
30 Owners will allow - enable them to play on a - without one arm tied behind their back. And that is why it is vital that we provide that, enable that change through, for example, community benefit program that we will be delivering, and then of course the importance of ensuring that the resources sector - we play a very fast catch-up there.

35

COMMISSIONER WALTER: Excuse me. The Owing Our Futures Self-Determination Report, that's due to finish next year and you have got four very big outcomes in there, like outcome 4, for example, is - the old name:

40 "...is accountable and transparent in its efforts to transfer relevant decision-making powers and resources to Traditional Owners and Aboriginal Victorians.

You've then got outcome indicators, outcome measures. Will those four outcomes be achieved by 2025?

45

THE HON. LILY D'AMBROSIO: I think we - we will work as hard as we can to do that. But I will say, though, that I realise it won't be achieved by then, and I - I

also will say that the Department is also acknowledging that, and there will be a refresh of that document an I know, Commissioner Lovett, you know, your - your - you know, your initial involvement in the self-determination strategy, we have not done anywhere near - we have not delivered anywhere near what we say
5 we would in that five-year strategy, and we have to try harder and work harder and get better outcomes.

COMMISSIONER LOVETT: Just for the record, it's Pupangarli Marnmarnepu which translates to "owning our future". I think I always say this, but language is
10 really important. Minister, what's it going to take, in your view, around being able to - we have a lot of barriers for Traditional Owners and Aboriginal Victorians, but, Minister, what's it going to take to truly transfer power and resources to enable Traditional Owners to be prosperous, to ultimately achieve self-determination? What do you think it's going to take?

15 **THE HON. LILY D'AMBROSIO:** Ultimately, I see Treaty or Treaties as that really critical significant turnaround point. However, what we do between now and then, we need to be measured by, and we need to be held accountable for. What I will say is that every single day, we will work.

20 **MS McLEOD SC:** And those issues around resourcing - that - sorry, you are -

THE HON. LILY D'AMBROSIO: No, it is okay.

25 **MS McLEOD SC:** Sorry, Minister, I was not observing there. Issues that are raised constantly around resourcing, financial, staffing, organisational capacity, competing commitments, they don't have to wait, do they?

30 **THE HON. LILY D'AMBROSIO:** No, they don't have to wait, and that is why I qualify my comments around Treaty is that right now, we are being asked and expected to live up on things that look like Treaty. That's what we have got to do. I apologise.

35 **MS McLEOD SC:** Minister, in this document on page 11, there's a reference towards a pathway towards Indigenous data sovereignty policy.

THE HON. LILY D'AMBROSIO: Yes, yes.

40 **MS McLEOD SC:** This is a precursor to a policy around self-determination; correct?

THE HON. LILY D'AMBROSIO: Yes, it is, yes.

45 **MS McLEOD SC:** And commencement of implementation of this pathway has lagged?

THE HON. LILY D'AMBROSIO: Correct.

MS McLEOD SC: So in terms of Indigenous data sovereignty within the Department, within your area of responsibility, we do not even have a pathway to a policy yet?

5

THE HON. LILY D'AMBROSIO: That's correct.

COMMISSIONER WALTER: Can you explain to me, Minister, what has caused the lag?

10

THE HON. LILY D'AMBROSIO: I can say to you, but, you know, it won't be anywhere near enough an explanation, but it's - it's - I think it is not for want of - wanting to do one. I think that Departments and governments generally do what they can with the resources that they have. That's not an excuse, and I make that really clear, except it's a reality at some points in time. That's why it's always incumbent on people such as myself as Ministers who go to budgets every year and go through the sausage machine of budgets and how they're made and what gets allocated over the forward estimates, that, you know, it's heard loud and clear that - that we are behind on certain things and we've got to fix that and we've got to move on. So other than that Commissioner, they are my genuine sentiments on that.

15

COMMISSIONER WALTER: You'd know that under Closing the Gap Pillar 4, and especially with the recent scathing Productivity Commission review around how those pillars are being implemented, that there were recommendations made very clearly around Indigenous data sovereignty and Indigenous data governance.

25

THE HON. LILY D'AMBROSIO: Absolutely. And I know that DEECA has - is turning its mind to the lack of transparency and real-time sharing of information. And ultimately, whilst that - that data sovereignty is so critical because of - it is almost a response to the dispossession, and having control and ownership of what is yours and that has been taken away, is absolutely essential to be delivered.

30

MS McLEOD SC: If one of those essential elements is empowered genuine participation by First Nations people in the pathway towards sovereignty -

35

THE HON. LILY D'AMBROSIO: Yes.

MS McLEOD SC: - can we just look for a moment at what the current state of affairs is in terms of that participation. The Department currently employs two employees to undertake assessment of mineral, quarry and petroleum tenements against the Future Acts regime of the Native Title and TOS Act. Are you familiar with that number?

40

THE HON. LILY D'AMBROSIO: Yes.

45

MS McLEOD SC: And you've listed, or the Department has listed, the grants programs, the extent of the grants programs currently available to them, assuming they have secured RAPs. Correct?

5 **THE HON. LILY D'AMBROSIO:** Yes.

MS McLEOD SC: Only GLaWAC and DJAARA have Land Use Aboriginal Agreements at the moment; is that correct?

10 **THE HON. LILY D'AMBROSIO:** Correct.

MS McLEOD SC: Is that number sufficient, Minister, in terms of internal employees?

15 **THE HON. LILY D'AMBROSIO:** No, and the tracking of - of DEECA towards the employment commitment as a minimum, I think it is at three per cent, I believe we are not near to achieving that, no, but certainly in resources, that is a very small number.

20 **MS McLEOD SC:** I want to jump for a moment, unless Commissioners have other questions on that annexure, on climate change if I may, and the State and Commonwealth both have responsibility for delivering action on climate change; correct?

25 **THE HON. LILY D'AMBROSIO:** That's correct, yes.

MS McLEOD SC: Minister, I take it that you would accept that the Intergovernmental Panel on Climate Change sixth synthesis report, the sixth assessment report delivered in March last year, is the authoritative statement of climate change impacts globally and an important guide for government to determine action?

THE HON. LILY D'AMBROSIO: Absolutely, and the urgency is only increasing.

35 **MS McLEOD SC:** I take it that you would accept that the IPCC report AR6 says the world is on track for catastrophic climate changes by the end of the century, representing a catastrophic threat on human wellbeing and planetary health.

THE HON. LILY D'AMBROSIO: Yes.

40 **MS McLEOD SC:** In Australia, those risks are known - well-known and well understood. In a broad sense, do you agree that global warming and the impacts of global warming have a particularly severe impact on First Nations peoples across the country?

45 **THE HON. LILY D'AMBROSIO:** More so than any other peoples, yes.

MS McLEOD SC: You'd be familiar with the Commonwealth first annual statement on climate change which acknowledged that fact?

THE HON. LILY D'AMBROSIO: Yes.

5

MS McLEOD SC: The Climate Change Minister - Commonwealth Climate Change Minister noted in that statement:

10 "First Nations people are disproportionately affected by climate change because of their relationship to the environment and to Country. Climate impacts can threaten cultural knowledge, heritage, traditional practices, and potentially further displace First Nations people from their homes and affect their ability to access Country. This includes a loss of access to traditional lands, waters and natural resources that - he said - could only be described as catastrophic. The loss of ancestral, spiritual, totemic and language connections to land and associated areas has major implications for the human rights of affected peoples as well as their physical and mental wellbeing. Extreme events are also contributing to the damage of First Nations places and cultural sites."

15
20 So I take it that you would agree with those comments by the Commonwealth minister?

THE HON. LILY D'AMBROSIO: Yes, I do.

25 **MS McLEOD SC:** Turning to action on climate, you would agree, Minister, climate change will likely have a significant impact on Country?

THE HON. LILY D'AMBROSIO: Absolutely, and it is now.

30 **MS McLEOD SC:** In your witness statement at paragraph 73, you state that:

"The Victorian Government has provided \$1.1 million in grants to assist Traditional Owners to initiate their own responses to climate change"

35 and that:

"The grants are for 11 Traditional Owner Corporations – "

Sorry, I will wait until you get that up.

40

THE HON. LILY D'AMBROSIO: I'm sorry, what was the number of that -

MS McLEOD SC: 73. It's up on the screen if you need to -

45 **THE HON. LILY D'AMBROSIO:** Thank you.

MS McLEOD SC: So 1.1 million in grants to assist Traditional Owners to initiate their own responses to climate change, and that the grants are for 11 Traditional Owner Corporations to build their capacity to care for Country and meet a variety of on the ground needs.

5

So does that mean that, to date, the Victorian Government has given each of the 11 Traditional Owner corporations \$100,000 to respond to climate change?

THE HON. LILY D'AMBROSIO: Through that fund, yes.

10

MS McLEOD SC: And is that the totality of the contribution to Traditional Owner Corporations in terms of the response to climate change?

THE HON. LILY D'AMBROSIO: Yes.

15

MS McLEOD SC: So \$100,000, as we understand it would pay for, say an average salary for one public servant in 2017, seven years ago. So my question is how can \$100,000 meaningfully enable a Traditional Owner Corporation to respond to climate change?

20

THE HON. LILY D'AMBROSIO: It can't.

MS McLEOD SC: There is no other funding at this time to enable them to meaningfully respond to climate change?

25

THE HON. LILY D'AMBROSIO: That's correct.

MS McLEOD SC: There is no - yes. Sorry.

30

COMMISSIONER WALTER: Is that the same dollars we were talking about earlier?

MS McLEOD SC: Different dollars, Commissioner.

35

COMMISSIONER HUNTER: There's only \$100,000 for Traditional Owner to Traditional Owner groups to respond to the decimation of their colony from what colonisation and the State have done, and private as well?

THE HON. LILY D'AMBROSIO: Yes.

40

COMMISSIONER HUNTER: Why?

THE HON. LILY D'AMBROSIO: Commissioner, I - I can say to you I personally have sought for the funds and not achieved those, but that's - that's not the answer. It's an explanation of why we are here, but it's nowhere - it's nowhere near enough. It is an acknowledgment, and that is all that it is really.

45

COMMISSIONER HUNTER: I just don't understand how we can respond to that with \$100,000, given the fact of exactly what I said before, that - and Counsel has said, you know, it is catastrophic, and we have this small amount in the bucket to respond when it's actually going to disconnect us even further from Country. I am
5 just baffled at the millions of dollars we have previously spoken about, then \$100,000, which probably do they have to - do they have to apply for this or is it just -

THE HON. LILY D'AMBROSIO: There is an application process, although I
10 believe the - the statewide - I'm sorry, the forum - my apologies, the -

COMMISSIONER LOVETT: The Caring for Country Partnership Forum, Minister?

THE HON. LILY D'AMBROSIO: I apologise Commissioner Lovett - were
15 engaged to provide their criteria. The other thing, I would - perhaps, Commissioner, if I may, I can't speak on behalf of the water portfolio, but I know that there's been some more - a value much greater than \$1.1 million that has gone towards it. I understand your point and I am not trying to distract from your - the voracity and
20 validity.

COMMISSIONER HUNTER: If there is water, they have to apply for that separately as well?

THE HON. LILY D'AMBROSIO: I - I think there may be allocations or rights
25 around that. I don't profess to know the details, I apologise, but I'm able to look - we're able to find further info. But I take your point that this is just - it doesn't go anywhere near where - where it needs to go.

COMMISSIONER HUNTER: You did say in your - I think something in the
30 words of:

"When Country is healthy, people are healthy".

THE HON. LILY D'AMBROSIO: How do we keep healthy when we can't even - we get \$100,000 with decimated
35 land - sorry, I'm struggling with this in my head, so I am trying to get some answers around how - it says, "Keeping with self-determination principles". Can I ask what are the self-determination principles?

THE HON. LILY D'AMBROSIO: Well, for me, what - my understanding of it.
40

COMMISSIONER HUNTER: It is your portfolio, what are they?

THE HON. LILY D'AMBROSIO: They are about empowering, shifting power
45 from where it is now, from people like myself and Departments and governments, to First Peoples, to Traditional Owners, and the resources they need to be able to do something with that power. That is - for me, that is what it is, but it's about them

being able - for them to make the choices about what their future should look like and to determine that for themselves.

5 **COMMISSIONER HUNTER:** So do you believe that's happening under your portfolios or has been happening, because -

THE HON. LILY D'AMBROSIO: We've been inching towards it, but we have not achieved it and we are nowhere near achieving it.

10 **COMMISSIONER HUNTER:** Thank you. Yes.

15 **COMMISSIONER LOVETT:** Minister, the last couple of funding - sorry renewable energy funding was \$100,000. This fund is \$100,000 directly targeted to Registered Aboriginal Parties. Now we have heard loud and clear from our mob about these, you know, hard-fought games they have to go through, also it is a very broken colonial system that makes our people - and trades our people off against each other. We haven't heard much today, Minister, about the non-recognised, in a colonial context, Aboriginal groups who are Traditional Owners. Is there any work happening in these two streams, or more broadly in the Department, with making
20 sure that all our people are not even falling further behind?

THE HON. LILY D'AMBROSIO: Thank you. Yes, and I acknowledge that there are many Traditional Owners who still aspire and have yet to achieve formal recognition under (indistinct). I know that DEECA takes steps to engage with
25 non-formally recognised Traditional Owners, but we - we - it's - again, we are behind on that, so - so that's the extent that I can answer that Commissioner, truthfully.

COMMISSIONER NORTH: Minister, does the State fund other bodies other than
30 Traditional Owners for climate change advocacy?

THE HON. LILY D'AMBROSIO: Yes. Yes, it does. We - there was a period of time where - and these funds - these programs are no longer active, the funds have been spent, where we had community climate fund - program, and I think from
35 memory and I will double-check this, that I think the action on climate allocation of funds derived from that broader program. So there have been. Whether there are any that have remained active in terms of non-Indigenous organisations receiving funds, I don't believe so. If they are, they're at the point of still undertaking the particular activities that have been funded for.

40 **COMMISSIONER NORTH:** Do you know amounts that were expended on them and what organisations received that funding?

THE HON. LILY D'AMBROSIO: If I may, Commissioner, I will attempt to see if I have that in my portfolio. Off the top of my head, I don't know. If I can't locate it, I
45 commit to making sure that I bring back that information. Is that okay if I can do that? Yep.

COMMISSIONER LOVETT: Minister, one other point I made a little bit earlier around the grants and Traditional Owners having to apply, can we get any commitment from you here today about making sure, under your authority as a Minister, directing the Department, around streamlining some of those funding agreements and making it easier for Traditional Owners to access these grants in the future?

THE HON. LILY D'AMBROSIO: I - I commit to that, Commissioner.

COMMISSIONER LOVETT: You agree to doing that?

THE HON. LILY D'AMBROSIO: I - I agree, yes, to doing just that.

MS McLEOD SC: So, Minister, I want to bring you to the latter part of your witness statement just to finish up here with some broad questions. In your witness statement, you discuss the Victorian transmission investment framework reforms and offshore wind sector and some areas of reform. So can I ask you these questions broadly. In terms of transmission, the transmission projects, is the intention to avoid new areas of land where Traditional Owners raise concerns about exclusion?

THE HON. LILY D'AMBROSIO: I'm sorry, can you say that -

MS McLEOD SC: I will reframe it. Perhaps I tried to abbreviate it too quickly. The transmission networks process should identify areas of land where there are culturally heritage - cultural areas of cultural sensitivity or significance, that is a key input into the choice of lands for the development of the new transmission network. Correct?

THE HON. LILY D'AMBROSIO: Yes, absolutely.

MS McLEOD SC: And are there any guarantees to ensure that cultural heritage will not be impacted by the development of the transmission network or is that just any input that can be overridden?

THE HON. LILY D'AMBROSIO: No it won't be just an input. What - what the Victorian transmission framework reforms include, if you like, front-ending a lot of the investigations and the appreciation of all of the values that people ascribe to a potential route for a transmission infrastructure reserve, if you like, easement, whether it is non-traditional communities or others, farming land and the rest. Understanding what those - in - for the respect - in respect of Traditional Owners, us understanding early on what those cultural values are and spiritual values is important to inform, ultimately, decisions that need to be made around where the ultimate route is of a transmission infrastructure project.

So it is intended to be meaningful to that degree, so that - it also includes geospatial data inputs. And again, I know that the question is not just about an input, but the VicGrid is spend - investing a lot of effort to make sure that we flush out all of the

values, and in particular Traditional Owner values, so we hold ourselves to account for ultimately decisions to be made that need to be made about what is the - the final route of a transmission project, for example.

5 **MS McLEOD SC:** Is there an intention to financially compensate Traditional Owners for transmission projects that traverse their lands?

10 **THE HON. LILY D'AMBROSIO:** What - yes. So if I may describe it in two parts. Because you mentioned the word "compensation". In a legislative sense, in terms of compensation that is recognised legally for the purposes of the Crown coming on to land, there is a compensation regime that exists in one of the Land Acts - I apologise for that, I will find that out for you, that is direct compensation, and effectively it applies to farming communities. I don't believe it extends to Traditional Owners, but I will get that confirmed if I may. What the intention of the government is and myself is that we will change the understanding of - what we will be seeking to do is 15 two things. One is create that community benefit-sharing framework that will afford Traditional Owners of lands that these projects are built on a right to a particular revenue stream. That will also apply to the Renewable Energy Zones that our government will be responsible to determine, and any new renewable energy projects 20 that are built. Again, that will be looked at equally and treated equally. So - so I'm - I'm not sure if I have totally answered that question, but if I have left something out, please let me know.

25 **MS McLEOD SC:** You go on to talk about the offshore wind sector and the GLaWAC publications. Do you agree in the broad that Traditional Owners should be able to realise economic investment and passive income opportunities in renewable energy?

30 **THE HON. LILY D'AMBROSIO:** Absolutely. If I may just point to - you mentioned offshore wind.

MS McLEOD SC: Yes.

35 **THE HON. LILY D'AMBROSIO:** The government has released three what we call offshore wind energy implementation statements, and they are an iterative document, if you like, about the steps that we are taking over a period of time towards getting to the first offshore renewable energy projects delivered. The last implementation statement, I think there was a very clear statement made in terms of intention of government, which will be factored into our tender process for the first offshore wind 40 energy projects, that we would expect that proponents that wish to participate in a tender process that we'll be opening up in the next few months, that they will need to come forward having permanent struck agreements with the relevant Traditional Owner communities in terms of what benefit-sharing they wish to achieve from that proponent if they were to go ahead to build the project. That is separate. That's a 45 separate expectation and requirement that we will have for our tender process, separate to the other architecture I have been talking quite a bit about, that

community benefit-sharing which will develop up as framework. They are two separate, and one does not cancel the other out.

5 **MS McLEOD SC:** I take it from that that the Victorian Government supports benefit-sharing arrangements such as revenue streams from renewable energy projects?

10 **THE HON. LILY D'AMBROSIO:** Yes, definitely, and we are actively - our intent is to actively establish those.

MS McLEOD SC: There wasn't anything I wanted to ask particularly about the resources sector, but Commissioners may have questions in relation to those paragraphs of reform and the way forward. Can I ask you this question, broadly, do you - is it your view that First Nations people should have the authority to decide who and how resources are extracted from their lands and the terms on which they should - they do so?

20 **THE HON. LILY D'AMBROSIO:** That's a hard question to answer. Yes, I - I agree. How we achieve that is one that is - is - must be worked on, because your question was about should they - sorry, who - decide; is that correct?

MS McLEOD SC: Did they - the authority -

25 **THE HON. LILY D'AMBROSIO:** I want to make sure I answer the question.

MS McLEOD SC: They have the authority to decide who and how resources are extracted - who may, and how resources are extracted from their lands?

30 **THE HON. LILY D'AMBROSIO:** So - so they - that is something that I imagine will be determined through a Treaty process. I - I can understand and accept that Traditional Owners would want to seek that. I have a personal view on that. I - I don't believe the government has made any - I don't believe, has made any public statements to support that.

35 **MS McLEOD SC:** I take it your personal view would be to support that?

THE HON. LILY D'AMBROSIO: Well, I think I - I could certainly say that.

40 **MS McLEOD SC:** And how do we create the wherewithal, First Nations people to ask for that, and know what to ask for in the Treaty process?

45 **THE HON. LILY D'AMBROSIO:** Well, a lot has to happen between now and - I mean, I know Treaty process is one that is determined and there is a pathway there. What needs to happen, a lot of building blocks need to be put and set so that Traditional Owners can be on the best - in the best position possible to extract a Treaty or Treaties from government on behalf of the - all the people of Victoria, to the best way that helps them to achieve self-determination.

5 What those building blocks like, a lot of it will be about the system we're going through right now. You know, they're part of truth-telling and just having the facts and having the facts for everyone to know and understand, and - and to be very clear about the harms that have been caused but continue to be perpetuated, and - and what those building blocks look like are ones that we will need to take guidance from Traditional Owners.

10 **MS McLEOD SC:** There's clearly an information asymmetry here that it requires a truth-telling Commission to extract this information. Do you commit to providing updates to this information when it comes to Treaty negotiations?

THE HON. LILY D'AMBROSIO: Absolutely.

15 **COMMISSIONER NORTH:** Minister, there was a - this criticism about the declaration of the southern ocean and offshore wind zone.

THE HON. LILY D'AMBROSIO: Yes.

20 **COMMISSIONER NORTH:** And the crux of the criticism was a failure by government to consult Guditjmarra people. So can you explain what the position was in relation to that?

25 **THE HON. LILY D'AMBROSIO:** Yes, thank you. The nature of where offshore wind energy will be built is in Commonwealth waters, where the actual wind farms will be situated. Hence - not just because of that, because there are also environmental and, prior to this, approvals frameworks that need to be satisfied. Hence there are a number of areas where State and Commonwealth permission and processing is - is required. I am fully aware that for the southern ocean offshore wind energy zone that the Commonwealth has announced, they had a consultation process, and that consultation process heard from many communities, including of course Eastern Maar and Guditjmarra people, and - who were very clear that they were disappointed and opposed to the process undertaken, and had been very clear about the fact that they do not accept the outcome.

35 I understand that there were two key areas of disappointment. One is the process undertaken, and we can all do processes better, but it doesn't necessarily mean that it satisfies the concerns raised, so - and I personally made representations to the Commonwealth seeking for a better approach and a better way to listen and better appreciate Traditional Owner community views on it.

40 However, the fact remains that both Eastern Maar and the Guditjmarra peoples remain very much opposed to offshore wind energy, primarily, not only, because of the spiritual values of sea Country, in particular Eastern Maar, and that remains a very, very - I will say, from a perspective of myself as the Minister, a very, very difficult matter to - to work through. So I'm hoping that that goes -

COMMISSIONER NORTH: Eastern Maar was excised, wasn't it, from the -

THE HON. LILY D'AMBROSIO: I think so.

5 **COMMISSIONER NORTH:** It seems almost incredible, knowing the significance of the island, that it was ever included, wasn't it?

10 **THE HON. LILY D'AMBROSIO:** I think there were - I think there were - there were conversations had between DEECA and the Commonwealth department very early on in the - the first, if you like, drafting of the zone to be declared by the Commonwealth, through that - and I - and I accept what you were saying, that should have been a known at the beginning.

15 **COMMISSIONER NORTH:** I think it was part of the Native Title determination.

THE HON. LILY D'AMBROSIO: I believe so, yes, and there is also, I think, another Commonwealth architecture around sea Country also that that offended, so certainly - and I think that is where, administratively, that there were many steps taken from day 1 around that should not have occurred, notwithstanding the fact that it remains an area of - of concern to the Traditional Owner communities.

COMMISSIONER NORTH: Was that the first declaration of a wind zone?

25 **THE HON. LILY D'AMBROSIO:** No. In fact, Commissioner, the first - the first declaration of an offshore wind energy zone by the Commonwealth was the offshore Gippsland region. There, we have - if you like, we have a different sentiment of the Gunaikurnai people, the Corporation there, regarding - for their own reasons, good reasons, they see offshore wind energy potentially through an economic wealth sharing opportunity, and we have GLaWAC that is working very strongly for their own purposes to achieve the economic values that they wish to achieve from the offshore wind development on the Gippsland site. So that is the first one. The second one was an offshore wind energy in New South Wales, and the third one or fourth one is here, southern ocean.

35 **COMMISSIONER LOVETT:** Minister, do you make commitments to continuously raise with the Federal Government what you are continuously hearing from Traditional Owners?

40 **THE HON. LILY D'AMBROSIO:** Yes, so -

COMMISSIONER LOVETT: There are opportunities but also barriers around what their needs and wants are, particularly when they are opposing?

45 **THE HON. LILY D'AMBROSIO:** Absolutely, Commissioner, I will say to you that in that period, in a manner of engagement the Commonwealth undertook with Traditional Owners around the southern oceans draft zone, DEECA very much took a really front-footed approach to engaging with the Commonwealth department

and - and really offering them advice and what we were hearing from Traditional Owners, and - and to the point of offering advice about this is how you came to a better - we don't do it perfectly, what you are doing is not working and is actually causing more harm and more distress. I - I've always been very keen around offshore
5 wind energy for us to strike a formal arrangement with the Commonwealth, to have a better integrated approach between at least the two departments, Commonwealth and State, around how we develop up this industry, and that would also have included, you know, a much - a much more healthy and responsive approach to the needs of Traditional Owner communities.

10
COMMISSIONER LOVETT: And any opportunities for future community benefits as well, that the Traditional Owner wants that.

15
THE HON. LILY D'AMBROSIO: Absolutely, that is absolutely correct, yes.

COMMISSIONER LOVETT: We talk a lot today about Country, our Country. Are you a proud Victorian, Minister, would you say?

20
THE HON. LILY D'AMBROSIO: In a lot of ways, I'm a bit of an internationalist, but anyway, we'll put that aside. But yes, I am a proud Victorian.

COMMISSIONER LOVETT: Can you articulate to the people here, listening in or in this room here, how important is Aboriginal cultural heritage to all Victorians?

25
THE HON. LILY D'AMBROSIO: I think it is absolutely - for those of us to realise and acknowledge it is important. Hopefully, those who are awakening to it and hopefully those who eventually will come along to accept in this - you know, we can't be proud of a State where the damage that has been done and continues to be done, the legacies of that in the face of a very resilient community, set of
30 communities, we can't really be proud at all without this truth-telling process. Healing is something for Traditional Owner communities to judge whether they can achieve that and hopefully get to it, but reparation, that - that's when it will be -

35
COMMISSIONER LOVETT: Thanks, Minister. I mean, we've heard some evidence from Uncle Robbie Thorpe who described, you know, our culture, our practices, our language, you know, is a true gift to the nation, you know, we contribute a lot but we always have wanting to share, and contribute and wanting people to embrace our culture, embrace us as a people, rather than to go to my point earlier around regulating us and making us further impoverished in poverty in the
40 justice system and the child protection system and so forth. So I guess, you know, we are always seen as a barrier or a blocker, so forth. All we have always wanted to do is contribute, and our people have always fought for equality. That's what our Elders have always fought for, equal, to be equal in society, equality.

45
CHAIR: I just want to ask a question. I don't want to open something up, but my question is, do you think you have the right model within the public service to do the business we need to do now? Because clearly, since Treaty is on the table, we've

5 moved beyond Aboriginal Affairs being a welfare issue or a service delivery
program. We're moving into a totally different space. Do you think departments are
structured with the right kinds of structures to move into this next space, where we
are talking reparations, sharing Country and sharing things culturally, which we have
10 always done, as Commissioner Lovett's just mentioned, but going beyond and
working together in a way that we haven't before. Because if it's a service-delivery
model, we're still in the welfare headspace, and that won't - nothing will change if
people have got that attitude. And we were sort of impressed at the beginning of the
Commission when all of the people that belonged to the Victorian Aboriginal Affairs
15 Framework came along with their teams and their departments, you know, up to 20
teams with - 20 members of the team with the police, thinking, oh, here's a whole lot
of people who can help us.

15 But if they continue on in the same program style, we're not going to have a change
at all, and that's what we are grappling with I think a little bit today about how there's
got to be a shift in the delivery of what we are expecting. And it has got to come
halfway at least to us, not us go all the way just because we are a minority. And I just
question that about in terms of people that continue to be employed in that space and
20 in the future, that there is a thinking about the changes that are needed. This is a
statement more than - but I do make that a question about staffing in the future, truly.

THE HON. LILY D'AMBROSIO: Yeah. Thank you. And I - I totally agree that
the structure of DEECA and all departments must be reshaped to embed - to embed
self-determination. Sorry, what I meant by that, to enable self-determination by
25 Traditional Owner communities. One important way and a vital way that the
representation amongst staff of Traditional Owners is - is vital for us to achieve that.
We have set targets certainly, you know, of employing certain number of people. We
have, what, 5,700-odd people in DEECA. We have a target of three per cent and I
think we are around two point something - no, less than that, I think, and we have
30 got - and we've got a long way to go. We have not done anywhere near enough,
because when you include people within the departmental structures, that is when
you start to get real cultural change, and cultural change and attitudinal change is
ultimately - we're at the start of that and a lot more needs to be done to get to that.

35 So I acknowledge that, because otherwise we remain in a relationship where it's a
controlling relationship, and often it's the controller who does the harm and it's the
same controller who says, "Here, I'll give you a hand, and here's a bit of welfare,
here's a bit of, you know, something that makes you feel better." That has got to be
40 broken open and replaced.

MS McLEOD SC: Thank you, Commissioners. That is the evidence of the Minister.
Is that a convenient time for a break? We are due to resume at 3.30pm for the next
panel; it's an extended lunch break.

45 **COMMISSIONER LOVETT:** I have more questions, if I can.

MS McLEOD SC: Yes, sorry, Commissioner.

COMMISSIONER LOVETT: Minister, what does a shared future look like in your view? So you've talked about Treaty, you talked about hand - transferring power and resources, sorry. What does a shared future look like?

5

THE HON. LILY D'AMBROSIO: A shared future is one where Traditional Owner communities can finally have recognised - not just an attachment to land, because some have that, others don't, so we need to - that business needs to be finished, but that have control in terms of that reconnection fully to - to land and - land Country, sea Country, that spiritual connection, and the choices, ultimately, I think it needs to be - can only be demonstrated once we achieve a point in time where Traditional Owners actually have that free choice to determine what their future looks like, and it's one that has to close a lot of gaps, close a lot of gaps and make a lot of amends. That's when we'll have a truly shared future.

15

COMMISSIONER LOVETT: Minister, as well, we had Minister for Treaty and First Peoples come before us, and we heard a lot about time constraints and we asked a lot of questions about time constraints and heard a lot of barriers to time. But another thing that came up that resonated for me was leadership. What kind of - what leadership will you demonstrate now and into the future to ensure self-determination, whether it be through the Treaty process or just enabling self-determination to happen? What leadership will you demonstrate?

20

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THE HON. LILY D'AMBROSIO: First critical one is listening. Listening, acknowledging, and - and informing the decision making that I have the privilege to hold. And - and I - and that needs to be done in - in everything, all the choices that I have the privilege of holding within my portfolios, but leadership is also about not settling for what you can get. It's about what - what is that gap and how do we - how do we not take - how do I not take what is on offer as - as the only thing to strive for. It's about building on that. But also doing it in a public way. Certainly I can do that within a department, and I do do that, and I will strive to do more within government, within the parameters of Cabinet confidentiality, I commit to doing that.

30

35

Because if we don't - if we don't hold and appreciate the ambition that Traditional Owners have, knowing that we still have the power to turn that on or off - sadly, we still do - then very little is going to change. So it's a requirement on me that I put on myself to not only - it is about opening that door and then empowering Traditional Owners to be able to take power and resources ultimately to do it - to be able to make the choices for yourself. But - but we need to do that publicly too. People do look to leaders. And there are many leaders across all walks of life, you know. There is the parent who will stand up and say something about what the school's doing, that that's not right, for example. We can all think of leaders and family in paid jobs and in volunteer organisations. I want to try to set an example, whether it's within my portfolios but also as a better citizen.

40

45

COMMISSIONER LOVETT: And touching upon that, what drives you to be successful?

THE HON. LILY D'AMBROSIO: I think it's for others to determine that, but I - I choose to judge - what drives me to be successful is where the success can be seen in the eyes of the other people for themselves.

5

COMMISSIONER LOVETT: Thanks.

COMMISSIONER NORTH: Minister, maybe finally, can - there's been an unfortunate, fairly common theme in a lot of the evidence of very laudable and genuine statements of intent to do things better. But do you accept that there is a real urgency about doing that that maybe this Commission has thrown a light on?

THE HON. LILY D'AMBROSIO: Yes, absolutely. And it's quite starkly evident in the state of the natural environment and the harms that have been done to the natural environment, and how the job has been made all the more harder by past wrongs and impact on climate and dispossession. Things are just getting harder, and - and the impacts are getting harder, so the urgency needs to be - surpass that so that we actually start to pull back and - in fact, absolutely.

COMMISSIONER NORTH: I am thinking more of the impact on Indigenous people which has become very evident here, that this is not a historical thing, this is today and now and this evening, and we're sitting down having dinner, there are others sitting down having dinner on whom these issues impact daily.

THE HON. LILY D'AMBROSIO: Yes.

COMMISSIONER NORTH: And I'm not sure whether that urgency is really understood when grand policy statements are made. I mean, of course it's laudable that there are commitments made, but I wonder to what extent - I'm asking whether in your case you understand that that's against a background of urgency.

THE HON. LILY D'AMBROSIO: I - I do understand that, but can I just say that here today, I understand that far better, absolutely, and - and it's a - it's becoming thus only because we have failed for so long and have been very slow in coming to terms with the last 200-odd years.

COMMISSIONER LOVETT: Minister, you got quite emotional several times today. Do you want to give some sentiment out there about what - why you are so emotional today in coming before the Commission, but also listening to some of your responses, I think you're welcome - to hear from you on that.

THE HON. LILY D'AMBROSIO: Commissioner, you are going challenge me now, I think. Because it is wrong, what has happened is absolutely wrong. We all have to take responsibility for it and fix it.

45

COMMISSIONER LOVETT: Mmm-hmm.

THE HON. LILY D'AMBROSIO: That's what being human is. That's the most I think you will be able to get out of me without really breaking down, I'm sorry.

COMMISSIONER LOVETT: Thanks, Minister.

5

MS McLEOD SC: Thank you, Minister, it remains to thank the minister for her time this morning and for her evidence, and to resume at 3.30 this afternoon.

CHAIR: So we will take a break until 3.30, Commissioners.

10

<THE HEARING ADJOURNED AT 1.38 PM

<THE HEARING RESUMED AT 3.33 PM

15 **MR McAVOY SC:** (Audio begins just after recording starts) this afternoon in relation to the evidence that is about to be given in relation to clean energy. The evidence that is to be given this afternoon is in the form of a presentation which will take approximately 20 minutes, and we will have some time for questions after the presentation. Then after that, we will hear evidence from members of a panel, two of
20 whom are present in the hearing room, and two are on the screen coming remotely from various locations including Ms Nolan from Rotterdam. So, Commissioners, I will deal with the presentation - those that are making the presentation first, and they are on behalf of the Barngarla Determination Aboriginal Corporation, Sonja Dare and Jason Bilney, and they are on the screen, as you can see, on the top-left panel.
25 And Nick Llewellyn-Jones, their lawyer is with them. Is Jason there, Nick?

MR LLEWELLYN-JONES: I think he's on a separate panel.

30 **MR McAVOY SC:** Yes, I can see him. Okay. Now, I will firstly swear these witnesses in, and I will start with Jason. Jason, could you tell the Commissioners your full name, please. No. He's trying to, I think. Can you unmute, Jason? Can you – if you can do that while I am speaking to Sonja. Sonja, can you tell the Commissioners your full name, please.

35 **MS DARE:** Sonja Lee Dare.

MR McAVOY SC: And you're here on behalf of the Barngarla Determination Aboriginal Corporation?

40 **MS DARE:** That's correct.

MR McAVOY SC: And the evidence you will give to this Commission will be the truth?

45 **MS DARE:** Yes.

MR McAVOY SC: Thank you. Jason, can you hear me?

MR BILNEY: Yes, I can hear you. Can you tell the Commissioners, please your full name.

5 **MR BILNEY:** Jason James William Bilney.

MR McAVOY SC: And you're appearing at the Commission on behalf of the Barngarla Determination Aboriginal Corporation?

10 **MR BILNEY:** Yes.

MR McAVOY SC: And the evidence that you will give to this Commission will be the truth?

15 **MR BILNEY:** Yes.

MR McAVOY SC: Thank you. I will now turn to their legal advisor, Nick Llewellyn-Jones. Nick, will you tell the Commission your full name, please.

20 **MR LLEWELLYN-JONES:** Nicholas Llewellyn-Jones.

MR McAVOY SC: Your firm is Norman Waterhouse?

MR LLEWELLYN-JONES: That's right.

25

MR McAVOY SC: And you're the lawyer for the Barngarla Determination Aboriginal Corporation?

30 **MR LLEWELLYN-JONES:** Yes, I run the Native Title Resources team and we collectively represent the Barngarla Determination Aboriginal Corporation.

MR McAVOY SC: Thank you. And the evidence you will give to the Commission today will be the truth?

35 **MR LLEWELLYN-JONES:** Yes, absolutely.

MR McAVOY SC: Thank you. I will turn to our other witnesses and deal with those in the hearing room first, Commissioners. Mr Paul Paton, could you - we know that you have been here just last week and you're returning, but could you tell the
40 Commissioners your full name again.

MR PATON: My name is Paul William Paton.

45 **MR McAVOY SC:** Sorry, Paul. And could you tell the Commission which organisation you are here representing today.

MR PATON: I am the CEO of the Federation of Victorian Traditional Owner Corporations.

5 **MR McAVOY SC:** Thank you. And the evidence you are about to give today will be the truth?

MR PATON: Yes, it is.

10 **MR McAVOY SC:** Okay, thank you. And Mr Kneebone, could you tell the Commissioners your full name, please.

MR KNEEBONE: Jonathan Kneebone.

15 **MR McAVOY SC:** And you're here representing which organisation?

MR KNEEBONE: First Nations Clean Energy Network.

MR McAVOY SC: And the evidence you give to this Commission will be the truth?

20 **MR KNEEBONE:** Yes.

MR McAVOY SC: Thank you. Now, turning back to the screen and following on from Mr Kneebone, Karrina Nolan, could you tell the Commission your full name, please.

25 **MS NOLAN:** Karrina Nolan.

MR McAVOY SC: And you're here on behalf of the First Nations Clean Energy Network as well?

30 **MS NOLAN:** I am.

MR McAVOY SC: And the evidence that you will give to this Commission will be the truth?

35 **MS NOLAN:** Yes.

MR McAVOY SC: And finally, but not least, Rebecca Halliday, could you tell the Commission your full name, please.

40 **MS HALLIDAY:** Yes, Rebecca Halliday.

MR McAVOY SC: And the organisation you are representing today?

45 **MS HALLIDAY:** GIRA consultancy.

MR McAVOY SC: The evidence that you will give to this Commission today will be the truth?

MS HALLIDAY: Yes.

5

MR McAVOY SC: All right. Thank you. Commissioners, the format that we are proposing for today's evidence is to have a presentation from the Barngarla Determination Aboriginal Corporation group in relation to certain clean energy deals that they've been involved in in recent times, and after that presentation is completed, there will be an opportunity for questions from Commissioners. I might invite the Barngarla representatives to deliver their presentation.

10

MR LLEWELLYN-JONES: Yes, thank you. Do you have that on the screen? Is - is that something that can be shown or walked through?

15

MR McAVOY SC: Yes, I understand we will have it in just a - here it is, thank you. So can you see the presentation on the screen, Mr Llewellyn-Jones?

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MR LLEWELLYN-JONES: I can. I can't change the slide, though, sorry. So maybe when we've got through a slide if I can say the word slide and whoever is coordinating it to move to the next slide.

MR McAVOY SC: Thank you.

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MR LLEWELLYN-JONES: Okay. Well, you could probably move to the next slide and start the presentation. And we have gone through the introductions; maybe we can move through the next slide. Did you want to talk about the history of your Native Title fight - or, Jason, do you want to talk about the history of your Native Title fight briefly?

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MR BILNEY: I suppose I'll start it off and then Jonas can jump in anytime. So we're one of two Native Title groups in South Australia that's been through the Federal Court, and I've been through court, and only one of two groups has won a full determination, not a consent determination, so we have fought long and hard as a community, as an organisation to win our Native Title after 21 years. And bear in mind it took us another two years to win - to win Port Augusta. So it's taken us 25 years of fighting for our rights to be recognised as Traditional Owners of Eyre Peninsula. And, you know, since coming out of that, people were knocking on our door, and then after coming out of Native Title normally you set up structure one. But we sort of jumped straight into up to two, three, and then up to four, basically doing a lot of - a lot of negotiations with companies. So I'll let Jonas to take over if she wants to add anything.

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MS DARE: Yeah. Sorry, Jonas is my nickname, just for everyone. Jason was absolutely correct; it did take us a long time to win our determination. And the first one we won was about 21 years. What is interesting about that one is we were advised by our lawyers, by Nick, not to have a whole of ILUA claim over our

determination - so that's a whole of Indigenous Land Use Agreement over the determination with the South Australian government. So when mining companies or multi-national companies or energy companies want to start a business on Barngarla country, there's not a whole of ILUA claim over that; they have to negotiate with us,
5 the Traditional Owners. So that was really fantastic advice we were given by Norman Waterhouse, by Nick, which has enabled us to - I think we've done nearly half the ILUAs in Australia now.

MR LLEWELLYN-JONES: You've done about 85% of all the ILUAs in South
10 Australia, and you've done maybe a third of, about a third of all of the ones being negotiated in Australia. I might - just a few things if I could note. Firstly, I might ask you to (indistinct) the air-conditioning behind us has become very loud. The - the second thing is, just to give some context on that, because the situation is different in each state, in South Australia, what often happens is there is a consent determination
15 process for Native Title. And as part of that consent determination process, the State Government will often try to create Indigenous Land Use Agreements which apply over all of the residual Native Title land in the determination and create what they call a streamlined process in order to approve future acts. That often creates situations where they can issue leases or easements without further negotiations. That
20 is not always the case in other states. It is the case in South Australia, what's proposed. So the advice that Sonja's referring to is that when the Barngarla won their Native Title trial, they had no reason to engage in a watering down of that right to negotiate process for a settlement because they had already won their Native Title at trial. And it might have been a different determination had the State sought to settle
25 their Native Title through a consent determination and asked for an ILUA, which, I suppose, weakened some of the rights to negotiate the provisions.

But because the Barngarla had won a trial they were in a position where they didn't have to agree to some kind of compromise like that. And so as a consequence we
30 advised them they shouldn't agree to any ILUA which weakened their Native Title negotiation process rights, and they didn't. That is the context of that. It should be noted, though, it might be different in every state. It may well be the fact that Victoria would not require such provisions in their determinations and ILUAs. We don't have the context of that; it's a specific South Australia issue. Maybe if we move
35 to the next slide. Do you want to add anything else to that? Do you want to talk about the area quickly, or do we move on?

MS DARE: So we - in our Native Title determination, we have the three main rural towns of South Australia. So down the bottom of the peninsula, we've got Port
40 Lincoln and up towards the top we have Whyalla then Port Augusta.

MR BINLEY: And bear in mind they're the three biggest regional towns, but bear in mind a lot of our - a lot of the projects that are happening are happening in the top
45 end of our Country where, you know, you get more daylight and sunlight in Port Augusta, Whyalla, across the top end. And so, you know, it's like, we've known for a while all roads lead to Barngarla Country, especially in that top end; it's on the cusp of decarbonisation.

MR LLEWELLYN-JONES: All right. We might move on to the next slide, and I might just quickly talk on this one. So even without a determination - ILUA weakening the Barnjarla's - well, creating a framework for negotiation which might remove the Barnjarla's rights in those negotiations, and I can give examples of that if that's of any interest to anybody. But we will move on and just accept that for now. Even without that, there is still a lot of extinguishment within the Barnjarla Determination. You can see on this map, the areas in the orange are extinguished areas, in the green is where Native Title exists. There are little bits of Native Title throughout that orange, I should be clear; it is not homogenous. There's sort of a heterogeneity to it. But it is obviously the further south you go in the determination area, the bigger levels of extinguishment you get.

I know this is relevant to point out to this Commission because, of course, in Victoria you have such extensive levels of extinguishment. So it's probably useful just to show, when dealing with Barnjarla, or using Barnjarla as evidence potentially for the exercise you are undertaking, this is not a group which has Native Title throughout the entirety of its determination area. It struggled with this - the injustice, I suppose, the extinguishment throughout South Australia where obviously you can win a determination and then have a whole bunch of tenure which removes your Native Title framework. So that's that map. Do you guys want to talk to that at all, or -

MR BINLEY: Then I suppose you'll have it on the next map where the - where the pink snake runs, even though extinguished, the more south you get, the more extinguished land. But the - that strip runs right along the coastline right from the top of our determination down to the bottom, which gives us more negotiations like what we have done with the three - with the three ports.

MR LLEWELLYN-JONES: Yeah. That's on the next slide, in fact, so we can move to the next slide. So we did - so there's - in context, and we're kind of probably coming around this backwards, and we'll get possibly to a more - this will all come together in the end in this presentation, if people can bear with us. But one of the issues when Barnjarla won their Native Title was that they claimed they wanted to have proper resources to negotiate with companies because they were very concerned about the terms the companies were providing. The - the effect of that was that they took a very strong position on their negotiation approach.

One of the things that we discovered in all of this was that there is often going to be projects which are built on freehold land but where they still cover Native Title through some critical infrastructure corridor. The classic example with Barnjarla were the ports, where a lot of port projects needed to get access to the sea. Barnjarla was still able to negotiate large shareholdings with the ports, because there was no way to access the sea without going through a 5 metre line of Native Title. The reason why we have raised this early is, I think, to try and show some comparison with the Victorian situation. This isn't a core part of the presentation. We want to talk about the renewable energy industry and our experience with business, and the

Barngarla will talk about their experience dealing with these companies and how they can behave, and the good and the bad.

5 But I think it's useful to show there have been some negotiations which have been done entirely on projects where there's been only one per cent of Native Title, the project footprint's been affected, there's been critical land, next to a substation or to a coastal area. So we grapple with these issues, Barngarla have grappled with all of these issues. It makes it very difficult, because you can have one project which provides very good benefits, and another project which is almost identical next door
10 which provides very bad benefits. But the Barngarla's position has been to try to be strong negotiators through all of these projects, and we are sort of trying to give some context into the challenges.

15 Did you want to add anything to that, Jason, particularly you have dealt with that in terms of the struggles of dealing with companies. I mean, Sonja has too, I should apologise; but I know it's been an issue we've all had to grapple with. Do either of you want to add anything?

20 **MR BILNEY:** No, just with the ports, just like anything, being First Nations, you tend to - tend to be lowballed from the start, you know, and basically they'll bring in - they'll bring in more lawyers or advisors and, you know, belittle you. And then that's where you - we've gone down the angle of being entitled to the same number of lawyers and advisors but also making the proponents pay for it. And, you know, you sit down at the table and negotiate, and basically, you lock - you know, you negotiate
25 then lock them into - lock them into an agreement, and basically from there whatever money - some of the proponents are hard to deal with at the start, but over time a lot of the proponents have become very aware how to deal with BDAC. But you'll still get some that will still come along and try to label you.

30 But with those ports, those ports are really a good example where, basically, one of them was a renegotiation, and that was being hard at the start, but then basically the CEO of T-Ports basically come to the table and really want to sort it out and basically sorted it out. And that's where we got, you know, like, through-put output for a Grain corp, you know, whatever grain goes out from a low year, a drought year,
35 to a high year. That's helped us with our other deal with the other port then, and also down in Port Spencer. So basically used the same model to negotiate, so we, you know, have examples of the ports basically, example for another port. One is a full grain; another one is a commodity port. And then the third was another commodity port to renegotiate that as well. So, you know, it's - yeah, you learn to deal with
40 companies, but some of them outnumber you, but what don't make you weaker sort of makes you stronger to be empowered to take it to the next level and negotiate and push that envelope.

45 **MR LLEWELLYN-JONES:** Are you happy, Sonja if we -

MS DARE: Yes.

MR LLEWELLYN-JONES: So we might go ahead a few slide if that's okay, because the next slide is just a map showing the Native Title breakdown, where blue is Native Title and the red is extinguished land, just to show you similarities with problems in Victoria. And the next one is just a list of examples of where Barngarla has successfully negotiated. We can move ahead with that, and maybe the presentation can be submitted. But what I would like to do is go to the next slide and move forward to - well, to this slide. And a table would be good. The table that's there but the next slide will be good. Thank you. I think this shows where the fundamental problem is. Are you happy for me to talk to this one first?

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MS DARE: Yes.

MR LLEWELLYN-JONES: Jason, are you happy for me to talk to this one first?

15 **MR BILNEY:** Yep. Yep.

MR LLEWELLYN-JONES: We have done a number of negotiations with Barngarla who have got a very sort of educated Board of Directors. So we're a large firm in Adelaide. By Adelaide standards, we're one of the top five law firms by size here. And we've finalised around 10 large project agreements, some renewable energy - a lot are renewable energy, in fact, and we will get to those because that is obviously the topic of today's evidence, but also some infrastructure, some in desalination et cetera. Looking at those 10 or so negotiations, it might be - and the reason why I can't be totally precise on that is some of them are in MOA stages, some are finalised; there's a note in this presentation which explains that.

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But taking those negotiations as a whole, maybe eight or 10, we have discovered that effectively in most instances companies will come along and their first offer will be about one tenth of what we will finally settle on, while there are multiple companies which are proposing projects on overlapping land so you might have, like, owners wanting to build something on the same Native Title land. If there are multiple bids put forward, there will ultimately be a divergence in price from one tenth to ten times. Obviously there's other factors which are important in these negotiations. Heritage protection is paramount. I don't want to talk to that; it is not my role to do so. I will leave Jason and Sonja to talk about that cultural respect and so forth. What there is, which I will talk to, is evidence of pretty significant price divergence, compensation divergence, and - and probably what could ultimately be argued as low balling by industry. Now, some of that will be, in fairness, legitimate debate about price in circumstances where it is really hard to assess price. With change of use in projects and so forth; there are really difficult economics with that. That is okay, they come as quite genuine. Some of it's just an awareness of how to deal with Native Title, so some of it's - some of it's more genuinely low balling.

But in any event, what there is not one price which comes forward with these projects. To a tee, almost every single one has come in with an offer which has been one fifth or one tenth. The worst one was one we renegotiated - Jason just referred to it - not the port he referred to, although that one was a renegotiation as well. But it

was one renegotiation where it went up from about \$50,000 a year to \$1.5 million a year in benefits, a 3,000 per cent increase in terms of price.

5 So the main thing we have discovered I think in dealing with this work for Barngarla, they have discovered, is there's a lot of companies which talk the talk, a lot of engagement and trying to be relationship building, but actually when it comes to getting an economic stake in the project and a reasonable share, there's a lot of work done to prevent that from happening, and groups need to be very prepared to be able to say no to projects or to stand up to negotiations in order to get a proper stake.
10 Most companies come in and offer about .5 per cent - not five per cent, 0.5 per cent, and after quite difficult negotiations, they can get up to about five per cent, in some instances much more. There is one project we will talk to you about which is very different. But the reality is the companies come in in a very low range.

15 And that is not to blame the companies. Part of that is the fact that they have a limited amount of market data. You know, ILUAs are confidential, companies don't know what other companies are paying. Aboriginal groups don't know what our companies are paying. It's not a - it's not a - you know, any time that Native Title is enlivened in a legal sense is when there is probably going to be a property developed
20 unless it is past that, a compensation claim, therefore you have difficulties about how do you value land. You have two bits of parcel land, they might both be worth a million dollars each. One might be eight kilometres from a substation; one might be right next to a substation. If someone is building a solar farm on that land, there - and this is all proximate - to be fair, this is an approximate back-of-the-envelope
25 calculation, the land next to a substation is likely to be \$8 million more valuable than the land eight kilometres away, it costs a million dollars a kilometre to do a power line. You've got these issues where the project changes the value in the land. In any event, what we have discovered there is a significant level in divergence of price depending on the bargaining approach the groups take. Sonja, did you want -

30 **MS DARE:** At the lower end as well.

MR LLEWELLYN-JONES: Sorry, that was my little legal take on it, but I am really conscious of not wanting to take away from the Barngarla's experience of this,
35 because it is not -

MR BILNEY: I will jump in there, Nick. It is like a - what they call a Cultana estate, where, you know, you get companies who come in and really low ball you, so - just with the EPS thing was about 750 - you know, it was 750 hectares and the
40 other land was about equally the same. The company come along and they offered us probably - it was around about 130, 150 for both those parcels of land, and they also had Aboriginal people being the face of their company to try and build that relationship. And we said no, and we went through a competitive bid. We have the right as Native Title groups to put it - you know, put it to bid with other companies.
45 That was the lowest of the lowest. And basically we got right next to them, we got tenfold with just one piece of that land and following on from the second piece of land, you know.

So some companies will come across and lowball you, some companies will get Aboriginal people to push that agenda and get that land. And then we've lost out as Native Title groups, it's just about us as Native Title groups taking real share - you know, share ownership and let alone taking real term income of that projects. That project was a big eye opener for us, where, you know, other companies that were coming along, some will just lowball, some were meeting in some places and not with others. Some of them basically had to - basically had to educate them, reschool them that, you know, we are not going to go with this. This is what it is actually worth. You know, times X-amount. Basically with that project and another project which is built on non-compensable land, basically engaged with and got a - we're the only Native Title group that's got an electrical engineer, so we know the constraints of power lines of solar and wind farms. We have that expertise, that's helped us to negotiate other and wind and solar projects that are coming along at the moment, let alone dealing with big companies which are basically government but not government being, I suppose, ElectraNet where they - we've wasted three years of our time basically trying to negotiate a whole easement. In the end, they didn't have the right lawyers. So there's lawyers who don't understand Native Title which makes it easy for our lawyers that do understand Native Title. And basically within 12 months, we had that project wrapped up to build the 260 k worth of power line as well, but they low balled us in compensation, you know, it wasn't about the money, it was about, you know, (indistinct) but there was also that many sites which were done back in the old days, back in the - probably back in the 90s, so it was going through and getting that all documented and changing it to relevant male and female sites, but then also having a multi-million dollar program which was, you know, was meant to last for nine months. It ended up lasting for three years. We didn't allow - we didn't permit them to demolish the old power line where it was never part of the agreement. So, you know, it was a three-year project which is only meant to last nine months. It was about having 90 members of our - on our - as in BDAC being out there, old and young, monitoring on a three-week roster, 36 people on a given three-week roster basically going along where they did any ground disturbance, drilling or ground works in that easement, we basically had monitors out there, basically thinking the bigger picture but also negotiating but having the right, you know, having the right lawyers and advisors; that is the best thing a Native Title group could.

35 **MR McAVOY SC:** Jason, it's Tony. Can I ask you, just in the interests of time to tell the Commissioners about the two projects involving renewable energy that BDAC has received Premier's Energy Awards for?

40 **MR BILNEY:** The two projects where I just talked about was the EPS project. So even though we negotiated that project, negotiated it was worth X-amount, when the government changed basically we become landlords, so we become 100 per cent landlord, rented back to the company, tenfolded them, we got an energy award for the EPS project, part of EPS, and AMP and we also got an energy project for the biggest monitoring project - one of the - 260k easement from Cultana and Whyalla
45 down to Port Lincoln.

MR LLEWELLYN-JONES: If we move to slide 17 - sorry Jason, I just wanted to get the slide up for you.

MR McAVOY SC: Is that the slide there? Is that slide 17?

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MR LLEWELLYN-JONES: Yes. That's 17. The next one is slide 18, is the EPS project, and then slide 19 is the ElectraNet project.

MR McAVOY SC: If we can just stop on the EPS project, can you just explain to the Commissioners how it is that BDAC negotiated equity in the project company.

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MR LLEWELLYN-JONES: I was going to do that. Jason, are you going to do that? Is that okay? Jason may have disappeared. Are you happy for me to answer that?

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MS DARE: Yes. Thank you.

MR LLEWELLYN-JONES: All right. So that project was a project where there were multiple companies seeking to build a project on that land, and ultimately as a result of that, the Barngarla were in a position to get a fair proposal from those companies which included, in this instance, a mechanism for the land to be handed back to Barngarla in fee simple and in equity stake in this - it is actually a very topical issue, because one of the issues that policy makers try to do, is they try to select who the Aboriginal parties will deal with and create a monopoly or monopoly power. This is what happens in the mining industry after this happens; they get a claim after it happens, but the Aboriginal parties get in the negotiation process.

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In this instance, the Barngarla were very fortunate because they were able to actually negotiate with multiple companies who were all competing for the same land, basically putting it through an open tender kind of process. So as a result of that - and there's a long history to this, but I will streamline it. As a result of that, the companies put forward much better proposals than they would have done had not they been competing against each other. So the Barngarla were able to leverage that internal competition between companies.

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Now, it turns out that the company the Barngarla ended up going with was, by and large, also very good. I should be clear, EPS particularly had a very strong history of good engagement, the company we were dealing with. But in fact, there's no surprise that there is a correlation between the first commercial deal that Barngarla had with an equity stake and land being handed back and a situation where that was a project where there was competition between the proponents to gain access to that land. The reality is that for Aboriginal groups, being able to ensure the companies can put forward honest proposals for this - making a competition between them, you will end up with a much better solution than when a company has monopolies, kind of, negotiation. That is how it came about. Sorry, Jason, the question it was you and -

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MR BILNEY: You're right, you summed it all up.

MR LLEWELLYN-JONES: Do you want to add anything?

5 **MR BILNEY:** You summed it all up. Basically the process of getting that land, and change of government, and then getting - basically becoming the landlord with the new government and becoming 100 per cent and giving Native Title up and the government giving their 50 per cent stakes in becoming the full landlord of that project.

10 **MR LLEWELLYN-JONES:** There is actually one other point we should make on this because it might be useful for the Commission. The model for EPS and the BDAC project for EPS is a model that could be applied more broadly, because it is actually a model which enables Aboriginal groups to gain better benefits without really increasing costs to industry. What happened here was there was Native Title
15 land, the government had rights over it and the Barngarla had rights over it, and unless both groups agreed as to what would happen - it was sort of 50/50 in terms of property interests, so there had to be sort of an alignment. Rather than the government trying to extract 50 per cent of the mental payment it agreed to transfer the land to Barngarla in fee simple.

20 Now, that means the company rents the land from Barngarla. We talked about multiple companies competing and that's how the shareholding happens, but actually the other level to that project is the fact that this is a very good way of First Nations groups getting access to benefits, because the reality is the company has to rent the
25 land from someone. If the Victorian Government, for example, hypothetically has land that, you know, could be handed back to First Nations groups to develop projects like this where they become the landlords and their rights as landlords and agreement for leases are done as part of the land transfer, then this is actually a very effective mechanism where, effectively, land which might not otherwise be able to
30 be used, especially in the case of Native Title land where you need both parties to agree, and an agreement might be able to reach, where that land can actually be unlocked to make projects more efficient and where the First Nations groups can benefit.

35 So in this case, just to finish this point off, what we had was land, in fact, which by the stage Barngarla agreed - reaching agreement was very difficult. Therefore this very productive land of the Barngarla had - was culturally appropriate to be used as a project was being locked down and unable to be used. In fact, the processes of the State getting out of the way and removing its interests and going for a process within
40 ILUA to transfer the land in fee simple so the Barngarla become the sole owners of the land, not only does that mean the project can be built on it but it meant the totality of the benefits were provided to the First Nations group. So it's actually a very neat proposal because the land became productive from a renewable energy perspective, whereas it wasn't beforehand, and the First Nations groups got the
45 benefit. It is an actually useful model for other land banks around Victoria.

MR BILNEY: And - and then - and following on from that, and - Nick, it's like taking, say, 20 per cent, 25 per cent of the overall income per year, but also applying that to share ownership, chose to take equity and take share ownership in that project.

5 **MR LLEWELLYN-JONES:** I agree. There is one final point - I know we are out of time, so I will be very quick. But it's topical about the issue with - issues with
10 companies, because we've got issues in South Australia at the moment with new legislation where the government is trying to create a situation where you can select through the Barngarla deal bid through a preliminary process of selecting a company before it issues a licence. Now, leaving aside the fact that it means a lot of projects
15 may not be constructed, it actually significantly damages the Barngarla's capacity to negotiate effectively with industry. But it's been couched as a "come and talk to the Native Title holders first" model. So it's being put forward as something which is benevolent, actually, in my experience with EPS, it's not.

MS DARE: We specifically said at the renewable energy workshops we didn't want that to occur. We didn't want the government telling us who we could do negotiations with, and they went ahead and put it in the new legislation.

20 **MR McAVOY SC:** Look, thank you, Jason and Sonja and Nick. We are subject to some time limits. I might ask if the Commissioners have any questions to ask before we move on to the next panellists. Are there any questions that the Commissioners would like to ask at this point? No. Okay. Thank you. I just might turn to Karrina
25 Nolan and Jonathan Kneebone from the Clean Energy - First Nations Clean Energy Network. Can you describe your role - sorry, the role of the First Nations Clean Energy Network.

MS NOLAN: Sure. Hello, thanks everyone for having us. So we set up the network in 2021 and, really, it is got over 600 First Nations members now and thousands of
30 supporters. But the main aim was really to bring our communities and First Nations voices into the clean energy revolution. It was very clear to us talking with our Canadian counterparts that we're a couple of decades behind, and I'm happy to provide some examples of some of the work that has been going on in Canada.

35 But it was really obvious to us that projects - and I think the example Nick and Jason and Sonja just talked about has been really incredible, but a couple of years ago we weren't even there. So we haven't been at the table designing the largescale projects. Lots of our communities, as we all know, including in Victoria, are experiencing
40 impacts of climate change, which means lots of our mob aren't able to stay on Country. We've got thousands and thousands of households living on diesel, on dirty - kind of dirty power.

45 So it was very clear what we needed was a collective platform to come together to advocate both on a federal level but also jurisdictionally to deal with some of the policy barriers, to lift the aspirations of our community, but also to shift, I think, the thinking the industry had when it came to working with us. And we all know there's been a, you know, long experience of industry doing to us, not with us. So there's

a - there's a range of areas I can get into, but that's it in a nutshell, being looking at the energy access issue, First Nations capacity, and, you know, the potential to have ownership and equity in - in projects, but also this issue of what does genuine engagement and consent look like.

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MR McAVOY SC: And is it possible to describe in summary form the position nationally with respect to First Peoples' participation in the renewable energy industry?

10 **MS NOLAN:** Yeah, look, I think again it's very mixed. There's no one experience. And as I've said, we have communities living off-grid, we've got communities who aren't connected to the national electricity market. So people are having very different experiences. We were talking to communities who said to us the first time they'd heard about a largescale development proposed in their Country was a notice
15 in the local service station. You know, completely unacceptable engagement when we think about the principles of free informed consent.

Again, those issues around people in rentals where there is no scope to have rooftop solar, people aren't able to get the rebates. There's complications around who owns
20 the asset. We've done a lot of work, particularly in the Northern Territory, what it looks like for people in social housing and rental property, what are the policy barriers we need to change at that jurisdictional level.

I think in Victoria, there's been a range of additional challenges. We're talking about
25 10,000 kilometres of transition line right across the country, a lot of that in Victoria, so I don't think those transmission companies nor other State and Federal Governments thinking about the cumulative cultural impact what that will look like, what that footprint will look like across the landscape. Again in Victoria, there is
30 been a range of issues around offshore winds, that classic, you know, proponents dividing and conquering our nations or even within families that's happening in Victoria but also happening nationally.

And there's been a missed opportunity, I think, by the Federal Government particularly on offshore wind to do this better. And we can come back to later the
35 First Nations Clean Energy Strategy, trying to get the government to look at what their role is in ensuring there is free and informed consent throughout the design stage and that project.

40 **MR McAVOY SC:** Sorry.

MS NOLAN: Go on.

MR McAVOY SC: Is there a national policy framework or regulatory framework for renewable energy nationally?
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MS NOLAN: So this is the thing - and I think if, you know, Jonathan wants to add to this. It's really complicated with a range of different policies. They have put out

\$20 million - I think it is billion, actually - in the Rewiring the Nation. There's billions of dollars going to critical minerals, billions going to hydrogen. And they've only just announced a federal mechanism which is a Future Made in Australia Act to actually think about what that policy looks like. Up until this point, there haven't

5 been any particular mechanisms to deal with and support the First Nations engagement. So the First Nations Clean Energy Strategy, which will be out this year and there will be money in the Federal budget for it, the first time in this renewable energy transmission there has been specific policy levers to think about how we might engage.

10 And all of those pieces that I just mentioned, those billions of dollars going to the industry and others, there's been only one bit that is earmarked and that's under the hydrogen, and they got 2 billion to the hydrogen industry and 2 million for Traditional Owner engagement. We are in this moment of time if we don't do the

15 work both federally and in each jurisdiction to change those policy barriers but also ensure we are in all of the separate policy pieces but also we're part of the First Nations Clean Energy Strategy. Does that answer that?

MR McAVOY SC: Yes, thank you. In terms of funding of large projects does the

20 CFC fund many of them?

MS NOLAN: So they've got a role going into the clean energy sector, and they're also supposed to think about, you know, new technologies. They will receive some of the money, the 20 billion that's from Rewiring the Nation, but they don't have a

25 specific mandate around First Nations. There is a little bit in there that is about guidelines and they've got a screening process. But at the moment there is no federal fund or jurisdictional fund that says we will support First Nations community to set up microgrids, to be part of the massive decarbonisation process. Some of the big companies in WA are saying 60 billion dollars' worth of decarbonisation. So the

30 CFC and ARENA has the First Nations microgrid piece; there is 100 million. There is not a significant fund yet that actually just focuses on First Nations. It is probably just useful - I will do this briefly and I don't know whether Jonathan wants to add some things. In Canada, 20 years' worth of work, they talked about three phases. The first phase was around local projects, First Nations owned local projects, but it was

35 about being backed about legal recognition rights and treaties. That is what they did 20 years ago that meant the first phase of renewables was really First Nations driven.

The second phase, this is also significant for us, it is where people actually really - and this is our mob - realise that there was economic development

40 opportunity of the scale that Jason and Sonja and Nick have talked about. So people had that shift. There was policy reform that then incentivised proponents doing the right thing, which is First Nations jobs and benefits and procurement.

The third phase which is now seeing First Nations in Canada own 20 per cent of the

45 electricity-generating infrastructure which is significant, including transmission lines being jointly run by mob. That bit's consolidated largescale projects, and they've got

200 First Nations owned, and in Australia less than 10 and none are fully built yet. You can see we are a really long way behind.

5 **MR McAVOY SC:** Do we take it that you would characterise Australia as being at that first stage or perhaps not even -

10 **MS NOLAN:** Yeah, perhaps not even, but I think that there is - I think we have changed the story, and there is a recognition that if we change policy and we resource properly, that actually this revolution can be done differently. I also think the government federally - and I think we are now seeing in different jurisdictions - realise it can't be done without us, couldn't be done without our cultural knowledge, our leadership and also our Traditional Owner groups being resourced. That is a change. So I think while we are at that first phase, I think this is a critical moment to make sure we back it in.

15 **MR McAVOY SC:** Thank you. Would any of the other panellists like to make any comment on that which we have just heard from Karrina? No. No. Any questions from the Commissioners.

20 **COMMISSIONER NORTH:** Karrina, I'd be interested to know if there are any Indigenous-involved wind farm operations that you know of.

MS NOLAN: In Australia?

25 **COMMISSIONER NORTH:** Yes.

MS NOLAN: Not yet, that are First Nations owned and run, no.

30 **COMMISSIONER NORTH:** Or even involvement, like some sort of agreement about revenue stream or some payment for use of land?

35 **MS NOLAN:** I'm not sure if Jonathan wants to take that up, but my understanding is there are - there are some projects nationally at the agreement stage, the Indigenous Land Use Agreement stage, the Sun Cable project which is primarily solar is now looking at a wind development as well, and that land use agreement is actually looking quite good. But again, the commercial-in-confidence means we haven't seen the agreements underway. I don't know whether Jonathan wants to talk about the Victorian examples where people actually feel they are negotiating something quite good?

40 **MR LLEWELLYN-JONES:** If that is of any use, we are finalising (indistinct) if that is useful.

45 **MR McAVOY SC:** Thank you, Mr Llewellyn-Jones, Nick. Jonathan.

MR KNEEBONE: There is a range of, I guess, negotiations underway at the moment. I am actually reflecting on a conversation I had with an Elder from

Gunditjmara Country, and she talked about 25 years of engagement with wind farms, and the best they got was I think - they funded a women's barbecue at one point. And so there is that kind of legacy we have to overcome in renewables. You know, we've got this new industry that is coming along, and it thinks it is doing the right thing, but actually there's a lot of legacy issues to overcome and people haven't been compensated for infrastructure on Country or received promises of jobs and businesses in the past. So why should it be any different right now, I think is the sense that we are getting.

10 **MR McAVOY SC:** So taking on Commissioner North's question, do I understand from your response, Karrina, that there might be some Indigenous Land Use Agreements where there are some payments made to First Nations or Traditional Owner groups, but are you aware of any in which First Nations have an equity position in relation to wind farms?

15 **MS NOLAN:** I - there is one that is in relation to hydrogen, and again I want to be careful about what we disclose in terms of commercial-in-confidence. But we understand there is some equity in one of those projects. But I think one of the things about equity, you know, there are great examples from South Africa about 12 per cent, Canada have got different - 10 per cent right through to British Columbia looking at 25 per cent for hydrogen projects. I think it's about when the equity comes in and making sure we are not setting Traditional Owners up with equity in risk of the project as well. There is some detail to think about. But there are examples from WA and South Australia/WA border where there is equity in the project.

25 **MR McAVOY SC:** Thank you. Did you want to add anything, Rebecca?

MS HALLIDAY: I just thought I could add there, Tony, there are agreements that we are aware of at GIRA where there is equity, within the ILUA. Northern Queensland is one that we can speak to. And secondly where we are piloting some work with Traditional Owner and developers prior to a REZ actually being announced which has progressing since then, it is very much on the table as an upfront first three negotiating points as we speak.

35 **MR McAVOY SC:** Thank you. I might just turn now to Paul. Can you just explain for the Commissioners the Federation's role in respect of representation of Traditional Owners as regards the renewables industry.

40 **MR PATON:** Well, our involvement dates back to 2019 where we advocated to the State Government for a renewable energy roadmap which didn't eventuate, which recognised the impact of renewable energy projects on Country and the requirement for Traditional Owners to be able to have a say in the planning process and ensuring that that is underpinned by UNDRIP and free, prior and informed consent, to ensure that there is ability for Traditional Owners to - to not consent to work when there's significant impacts on Country, and through a recognition of the opportunities for the Traditional Owners to, I guess - and for government to right the wrongs of the past of the energy sector and the opportunities that have been missed by Traditional Owners

to be able to benefit from those - those activities that are extracting resources from Country. So we have been advocating since - since then, and there hasn't been a joined up approach for Traditional Owners supported by government to undertake that, and ensure that that process is underpinned by those principles. And we've
5 continued to - to advocate, to make submissions, to meet with government over that time without any - any support and resources to be able to do that because we recognise the importance of - of this transition and the need for Traditional Owners to be able to be part of that transition in a culturally appropriate - and, again, underpinned by UNDRIP, and we have been doing that since then, and even to the
10 extent that only - the most recent meeting of Traditional Owners coming together early this year in February, supported by the Commonwealth, not by the State, to be able to - for Traditional Owners to be able to come together and look at the issues as well as share those experiences and to be able to learn from that and - and plan - plan their way forward.

15 **MR McAVOY SC:** This is Victorian Traditional Owners or nationally?

MR PATON: Victorian Traditional Owners.

20 **MR McAVOY SC:** So the Commonwealth funded a meeting of Victorian Traditional Owners to come together to discuss matters of the renewable industry?

MR PATON: That's correct.

25 **MR McAVOY SC:** And so is the Federation able to make a further submission to the Commission about the proceeds of that meeting and what it would like to see happen in Victoria?

30 **MR PATON:** Yes we are prepared to do that. We have prepared many materials in partnership with the Clean Energy Network and the ILOC and First Nations Legal and Research Services to be able to support Traditional Owners in their decision making and to build their capacity, and we will certainly be able to provide those documents to the Commission.

35 **MR McAVOY SC:** Thank you. Now, we've heard from Jason and Sonja and Nick in relation to the Barngarla developments. They are all premised upon their Native Title. It's a different situation in Victoria, isn't it, in terms of using Native Title as the point from which to leverage agreements?

40 **MR PATON:** That's correct. Victoria has been heavily impacted by colonisation and the extinguishment of Native Title. 60 per cent of land in Victoria is freehold, a further 20 per cent of Crown land has formerly been freehold, therefore Native Title has been extinguished, and the remaining 20 per cent has strict management regimes that make it inappropriate for - for the renewable developments and I think, you
45 know those areas that have been acquired through Native Title and TOSA are very few and far between, and therefore, you know, not appropriate for any opportunities as well.

MR McAVOY SC: And you can take it from me that the Commission has heard about the very small areas of freehold land made available under the Traditional Owner Settlement Act. So in - what you're saying is that there is, in terms of land ownership, or possession of rights in respect of land in Victoria, it is very, very difficult for Traditional Owners to have a foundation from which to commence negotiations. Is that correct?

MR PATON: That's correct. As per my evidence to the Commission recently, the - the procedural rights afforded through Native Title and TOSA don't typically apply in this case, due to - to that low - low number of land that's been, you know, acquired through those processes.

MR McAVOY SC: Most of the projects are done on private lands?

MR PATON: That's correct.

MR McAVOY SC: And the proponents chose not to speak to Traditional Owners?

MR PATON: Well, they are not required to - to speak to Traditional Owners. The government has recognised the need to be able to - for Traditional Owners to be involved and has started to establish processes such as benefit sharing through the Victorian Transmission Investment Framework that will see benefits flow to Traditional Owners. However, we're concerned that that might disincentivise any direct negotiations with Traditional Owners and - and also have the view that that process hasn't been self-determining. It hasn't been designed by Traditional Owners, and - and that - that needs to - I guess, the - the final details are not there yet, so it's hard for us to fully comment on that until those - those processes are revealed.

MR McAVOY SC: Can you just explain for the Commissioners your understanding of what the Transitional Investment Fund is intended to do, though?

MR PATON: The investment fund is there to recognise the impacts of the transmission on Country, to Traditional Owners, to landholders, to communities and adjacent landholders, to provide some sort of compensation to those - those affected communities and individuals.

MR McAVOY SC: Should the development of this renewables industry be an opportunity that government can see - can contribute significantly to First Nations - Traditional Owner economic independence?

MR PATON: I think with the right - with the right settings and with the requirement through planning and procurement and the like that - underpinned by legislation, and then those negotiations can be had, similar to the Barnagarla situation and experience, so that Traditional Owners can negotiate outcomes according to their own needs and priorities, and therefore establish strong and economic base off - off those

agreements to be able to, you know, create that - those economic prosperity as they all seek.

5 **MR McAVOY SC:** To your knowledge, has there been any commitment to developing those frameworks or that legislative structure for participation in the renewables industry?

MR PATON: I'm not sure at this stage. I can -

10 **MR McAVOY SC:** Would anybody else like to answer that question, or perhaps it's too early to say.

MR KNEEBONE: I can - I can jump in and have a - have a stab. Look, I think, you know the energy system, as a general comment, is obviously enormous and it touches us in different ways, from when we wake up in the morning and whether our house is cool or hot and comfortable, to how our business operates as to whether we can run the economy. And it's obviously an enormous vector for change and has the ability to do these differently. Each state and territory is doing things slightly differently, and nationally we have the Commonwealth coordinating the whole system with its levers of political power and funding.

As a general statement, I think there is a long way to go, and we haven't got the policy settings right. When it comes to Victoria, there are initiatives here that could be done far better, for example, when it comes to the release of areas in what are called Renewable Energy Zones which essentially are areas of high prospectivity for wind or solar designed on engineer's desktops, you'd say, in distant areas. There is little input from those - into those areas by local communities, by Traditional Owners. And so of course, when people find out about them they are surprised, to start with.

30 And then the way that renewable energy companies are allowed to develop projects within them. The government sets the rules essentially within those. In New South Wales, for example, they have incorporated for a number of years Aboriginal outcomes into those, so there is percentage targets for employment and business involvement, not for ownership which we would say at the network is a distraction. But we haven't done that in Victoria, and other jurisdictions similarly haven't taken those steps. So there is a range of, you would say, fairly vanilla policy tools that governments could take to really incentivise better outcomes that are quite simple that could be incorporated that haven't been taken yet.

40 **MR McAVOY SC:** So if I understand something you said a few moments ago, there's no input by Traditional Owners into the development of or the decisions around declaring REZs or Renewable Energy Zones; is that correct?

45 **MR KNEEBONE:** Correct.

MR McAVOY SC: And obviously it can't be said then that the declaration of those Renewable Energy Zones are consistent with the principles of free, prior and informed consent or of any self-determination?

5 **MR KNEEBONE:** Correct.

MR PATON: I might add that through those Renewable Energy Zones that the VTF includes a strategic land use assessment process, which will - which will identify areas within those Renewable Energy Zones that can include Traditional Owners to be able to inform those processes.

MR McAVOY SC: So are you saying that there are works in the planning to try and remediate that situation?

15 **MR PATON:** My understanding is that there is an opportunity for Traditional Owners, through those strategic land use assessments, to inform the final results of where those REZs ultimately lie.

MR McAVOY SC: Thank you. Any comments on those matters from any of the other panellists?

MR LLEWELLYN-JONES: If I could, just quickly, given I've negotiated a lot of renewable energy agreements for Barngarla and in other contexts as well, I would say, for what it's worth, that there is no current legal regime which would assist effective, robust negotiations for First Nations groups outside of Native Title in Australia. Native Title is hard enough. We need to get proper economic stakes in projects. I can say, having, you know, negotiated over a dozen of these agreements for half a billion dollar projects now, with MOUs and I would struggle to find any regulatory regime set out in Australia which would properly enable a proper stake by First Nations groups running these projects outside of the Native Title regime.

MR McAVOY SC: Thank you, Nick. Any questions from the Commissioners for the panellists before I move on?

35 **COMMISSIONER WALTER:** Just a comment, really. I mean, we heard from the minister this morning telling us that there was hope for future in this area, and I have to say what I have heard now dims those hopes quite a bit.

COMMISSIONER NORTH: Can I just ask, Paul, the Minister spoke about community benefit funds in the future, potentially in relation to - you know, offshore renewable wind projects. Do you know about them or have any information about progress or potential outcomes?

45 **MR PATON:** I'm - I'm not aware of them. I would - I would think that knowing that offshore wind occurs in Commonwealth jurisdiction, then there may be something that is being arranged, but it's not to my knowledge that there - in regards to a

community benefits program in regards to offshore wind or terrestrial - on land, as well.

5 **COMMISSIONER HUNTER:** You mentioned the benefits sharing, so that's in the future again.

MR PATON: It's being designed at this stage. So the detail is not there as far as the benefit sharing but it has identified four main areas for benefit sharing, for landholders, adjacent landholders, communities and Traditional Owners, it's identified as a separate part of that benefit-sharing arrangement.

COMMISSIONER HUNTER: That is not in place yet?

15 **MR PATON:** Not in place yet; the detail hasn't been revealed for us to comment on.

COMMISSIONER HUNTER: Who has written the detail?

MR PATON: VicGrid, I think it is.

20 **COMMISSIONER HUNTER:** Thank you. Sorry.

MR McAVOY SC: Thank you. I just propose now to turn to Rebecca Halliday. Can you just describe for the Commissioners your experience, or the experience of GIRA, consulting in the area of renewables development in Victoria in particular, but elsewhere?

25 **MS HALLIDAY:** Sure. Thank you. So I should start with a little bit of context. So I'm a former Commonwealth Government senior exec for a period of time, in - primarily in Indigenous cultural heritage protection and administering the Aboriginal and Torres Strait Islander Heritage Protection Act. I've recently been appointed to the EPPC Indigenous Advisory Committee and I'm proudly associated with the First Nations Clean Energy Network since 2003. I've been fortunate enough to be putting together some rights-based principles, cooperative agreement making, in the Pilbara since 2017, and that's the closest thing I have seen to any other kind of structures which are being determined by Traditional Owners.

30 GIRA works with the current - currently with 27 Traditional Owner groups and more than 12 different renewable energy companies who have anywhere between one and 10 projects on the go, as we speak. We work closely at the coal-face of renewable energy transformation and its cross-sector capability. Lots of hands-on support, to be honest: First Peoples culture and heritage, supporting agreement making, particularly where Native Title does not exist, and very much looking to support community, industry and developers find both the perspectives, values, and to bring the voices of Australia's First Peoples to the forefront.

45 The structures in the environment aren't yet culturally appropriate or inclusive and nor do we see that they are sustainable. So we're working very hard to create and

build values-based partnerships for the benefit of Country, people and their communities.

5 **MR McAVOY SC:** Thank you. Now, we've had some discussion with Paul Paton around the Renewable Energy Zones. Do you have a view as to whether there's a fundamental problem with the location of those zones?

10 **MS HALLIDAY:** I do. I do believe that there is a fundamental flaw in the way in which the Renewable Energy Zones are planned and then proposed and then declared. We consider that the role - there's a role of government, both Local, State
15 contractual, procurement, incentivisation of public good outcomes, government as the client. We would argue that government has not yet fully explored how these powerful levers could be used to work in the service of genuine self-determination for Australia's First Peoples.

20 **MR McAVOY SC:** And so you're aware of the Indigenous procurement policy that has been in place for a number of years. Is that something that might be brought to effect in the renewables industry?

25 **MS HALLIDAY:** Absolutely. My business partner has been supporting both the IPP development and - and reform work both - and also at the State level in New South Wales in the Aboriginal Procurement Policy where it has at least some teeth, where if developers don't meet the targets or the commitments that they agree to, that there is a financial penalty to that. I would like to see that enacted on a Federal level. But I
30 also see it is a holistic solution, that looking at engaging and partnering with First Peoples both in equity and ownership of renewable energy goes far beyond the infrastructure and the contractual arrangements. It's around what are their strategic goals, what are the opportunities both in education, employment and procurement supply chain that go beyond the life of a renewable energy construction phase into operations and maintenance, rehabilitation and repatriation. And in some cases, we're
35 working really hard to look at divestment of freehold lands back to Traditional Owners. So yes, it certainly can feature, but it is one of what should be a holistic approach.

40 **MR McAVOY SC:** And is timing of First Peoples' involvement in renewable projects an issue? We heard from the Barngarla people about their ability to manage the process by being able to call for expressions of interest or tenders. Is that - is the ability to be controlled early, for the process to be better catered for in the frameworks?

45 **MS HALLIDAY:** Definitely. Ideally, government would engage in a collaborative design and participatory decision-making process with First Peoples before pre-feasibility, pre-proposal stages for the Renewable Energy Zone to first and

foremost identify - and map where needed and - understand the significance of these important cultural landscapes and seek to find, you know, mutually suitable outcomes to do that mapping together to take into account animal species, sacred sites, both tangible and intangible cultural values, and to actually think about and offer the opportunity for First Peoples to be the - the first at the table for equity, ownership and - and development.

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10 **MR McAVOY SC:** Is their failure to provide for that opportunity really a failure of free, prior and informed consent?

MS HALLIDAY: Definitely. It's not only understood by government or - it's not fully understood, I should say, by government or developers, in our opinion, what free, prior, informed consent actually means, that it's not more than a once-off process, and how that fits into the entirety of the principles of UNDRIP, and we've witnessed some really counterproductive behaviours and actions, despite Traditional Owners' best endeavours to communicate and engage in a meaningful way in Victoria. And we have seen that really hamper where we have got developers who are working to - to support, and have in some cases written into both State and Federal Government, declared their support for Traditional Owners' rights and assertions.

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25 **MR McAVOY SC:** Is there a risk that in Victoria and elsewhere, without making provision for Traditional Owners to be the first at the table, that we will see a repeat of the mistakes of the mining sector where groups are only approached with a fait accompli once the - everybody else's interests have been ticked off? Is there that sort of risk in Victoria?

MS HALLIDAY: We do believe so. Look, it should be said in some cases, Traditional Owners and their representative bodies are rapidly developing capability and capacity and know their rights. They assert their rights and - and - both under Australian and international law. But the - the challenge is the poor behaviours and decisions of government and the industry to support where that is working well.

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45 What we are seeing, though, is in some cases, there is a need for First Nations communities to actually have a greater opportunity to information, to education and communication, and an equal understanding of the rules of - of the game at that point in time. The current behaviours in the sector are often confusing because they're not cohesive from state to state or region to region, or even REZ to REZ, and - and within sometimes. They are not replicable, so they might understand one particular process, and then all of a sudden there is a different set of rules being played out. And at the project level, there is a real level of not knowing what their roles and their responsibilities are. Today's example that's been talked to is a really fantastic example, but unfortunately there's not enough of those.

MR McAVOY SC: Can I ask the other panellists if they wanted to comment on any of Rebecca's observations just at that point. No?

MS DARE: I -

MR BILNEY: I would, yeah, do you - I suppose it is different over in Victoria. Do -
you don't have heritage rights as well?

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MR McAVOY SC: Yes, Jason, there is heritage rights here.

MR BILNEY: Yeah, well, it's like, we need to be involved from the start, so, like,
you know, we are going out to some places they want to put a wind farm or solar
10 farm, and fair enough, but there are some places they can't build it, where you know,
there is that tangible and intangible connection to Country, those storylines, those
songlines and burial sites and sites of significance. First Nations people need to be
involved from the start so they can protect and preserve those - preserve those areas.
And I fully agree with, you know, the process what you spoke about, you know
15 needs to be involved from the start, it's about unlocking land, it's different without
that Native Title, but unlocking land and giving, you know, land back to the
Traditional Owners is a way of moving forward, should make real term benefits for
us First Nations people to come into the next - you know to take that next step. There
needs to be something, you know. It is about working with First Nations people to
20 transition to this new era.

MR McAVOY SC: Yes. That, I think, leads into the next topic which is, you know,
there doesn't seem to be a lot of general understanding in the community about the
renewables industry, and it has a significant amount of its own language, if I can put
25 it that way. Is there a lot - any education or communications work that needs to be
done within the First Nations communities to be able to participate in these processes
or understand the effects of these processes better?

MS DARE: Sorry, just before we go forward, I just wanted - can people hear me?
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MR McAVOY SC: Yes.

MS DARE: Yeah. I just wanted to speak about what Rebecca was talking about, the
free, prior and informed consent. There has been an incident with Barngarla where
35 we had negotiations. We had tenders - we put out for tenders, we had quotes come
in, and then the government got involved and tried - that was before my time as the
chairperson, but then the government got involved and they tried to determine or tell
us who we were actually going to deal with, even though we had already gone
through the tender process.

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MR LLEWELLYN-JONES: Yes.

MS DARE: So even when you are there at the start, there are instances where the
government comes along and tries to determine who you are actually going to be
45 negotiating with, and I don't know the reasons for those. Maybe there's some
back-door dealings going on with pretty big Australian companies, but yeah, we'd
gone through the whole tender process and then we were told - I mean, we came out

in the end really well, because we got the land back, but yeah, so even - even if you are there at the start -

MR McAVOY SC: Thank you.

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MR BILNEY: I agree with Sonja. It's that competitive bid process you can go through, but the government tries to step in and try to, you know, seeing as - in South Australia, it's different, it's they call a (indistinct) seen as a conflict of interest. It's not a conflict of interest for us; it is a conflict of interest for the government to change hands, but it would be a conflict of interest for us to go through the process, the government tried to force us, because logically we would pick the first company. But the government seems to interfere with the whole process, it's about staying true to yourself as an industry and as a board, standing up to the government: if you want to fix this, give us the land. But that is Native Title - that is where we had that process, we basically became the landlord of that property.

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MR LLEWELLYN-JONES: To put some context on that very quickly, I think early engagement can sometimes be a shadow process for the government to take control of decision making if there is a Native Title decision-making context. Now, that's obviously the case with Barngarla; it may not be with Victoria. Barngarla had had situations where the government had come in and said we want to try to get you involved early. What is clear, they wanted to take control of who Barngarla can deal with and side step that process. There is - there can be a nuance to early engagement. Sometimes early engagement can be about control, and it can also be very healthy. I am not against it, but the devil is in the detail.

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MR McAVOY SC: Thank you, Nick, Sonja and Jason. I just want to deal quickly with the - the question of whether there is any information or capacity, sort of development needs within the community to understand what the renewables industry is about.

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MS NOLAN: Can I jump in, Tony?

MR McAVOY SC: Yes, yes, please.

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MS NOLAN: So I think one of the things the network advocated for early on was almost like these SWAT teams to the hotspots to talk about Country planning and really resource people. So that was one of the things we talked about, the government doing the resourcing. The other thing we have done as a network is produce a number of guides and toolkits. And obviously, given the land tenure arrangements, the negotiation guide that we - it applies to different people but some basic principles, resources to experts. The other toolkit we did was a community energy kind of how-to guide. That is for people who want to do their own community energy projects. And then the other one was best practice principles targeting industry, and then they went away - the Clean Energy Council went to KPMG and actually did, "What does it take to implement this?"

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There are a number of resources around - we also ran a program and brought the Canadians over for five days to do Power Makers. But that was, you know, really to support people in, you know, everything from community energy planning, business management, energy systems, how to access finance. But I think to acknowledge that work is great, but there is so much more that needs to be done, and then what is the role of government and industry in all of that resourcing and making sure people understand a very complicated system.

MR McAVOY SC: Commissioners, do you have any questions at this point? No. Okay.

COMMISSIONER HUNTER: I have an observation, though, that every time the government needs to keep pushing back or putting their hand in where they are not really required to. I just notice that on everyone who is speaking, the government keep coming back saying hang on, what about this? Or we will do it this way. The Victorian Government has a self-determination strategy which obviously isn't really working, but I've noticed that everybody has spoken about that, which isn't helpful.

MR McAVOY SC: Thank you, Commissioner. The other topic I wanted to touch on this afternoon with the panel is the other benefits that are available to communities besides simply a share in the project or compensation. We know from the international experience that communities can benefit significantly from community-scale solar and other side, I suppose, or less - away from the large end of the renewables industry. Is there any comments that the panel might have about the other benefits that community might get from - the First Nations communities might get from the renewable sector?

MS HALLIDAY: I might - while I have got the floor, Tony, I might just cover a few of the smaller end things that we're witnessing and seeing as positive impact for First Peoples' communities, particularly things like where studies, and both technical and nontechnical, are being commissioned for renewable energy projects, zones and the like. We are obviously often seeing where they're shared freely as part of these partnerships between proponents then and communities and their representative organisations, that they're actually using those to align the strategic goals, they are informing them around various elements and changes in Country, and we are even seeing where artificial intelligences and traditional knowledge are being brought together to actually map and improve Country, and in some cases provide rehab and healing Country activities occurring both with a range of programs and outside of that. So there is a number of different ways in which knowledge when shared is actually providing benefit.

And secondly, we are also seeing opportunities where there is that early engagement and there is alignment to the broader aspirations and needs of Traditional Owners and their communities where things like river ranger programs and - and other, you know, ecological projects improving water and riparian zones, working with not only the Local, the State and tapping into Federal grants and funding is providing longitudinal economic benefits with things like fee for service. You know they've got

major programs becoming established and becoming sustainable. There is a number of different smaller end things that are really more beneficial outside of the project itself.

5 **MR McAVOY SC:** Thank you. And those smaller end things are often the things that the community can see and feel and be involved in. Are there any observations that any of the other panellists might make in that regard? Any other comments?

10 **MS NOLAN:** I think probably just - I agree with all of that, but, you know, setting up First Nations businesses and ensuring that the job opportunities are really genuinely there, you know, we need to be doing the work now. Like, some of the larger-scale export projects aren't thinking about the workforce that's going to be required to build. You know, we are talking about 500,000 jobs here. I think
15 that - that local training capacity building, but also making sure there is long-term safe, permanent, reliable jobs, really that there is a lot of work those large-scale businesses aren't really thinking about.

And probably just the other thing is around this access to clean affordable power. We are also seeing some of the large projects at this point propose to export power past
20 communities that need it the most, and they are not including those in the negotiations that actually those small towns and communities should have power themselves. So I think there is still a bit of - there is still a little bit of work to do here in changing the story, yes, there is money, and revenue sharing and equity, although I don't think that we are there either, but there is also this local - really building
25 businesses making sure that there are actual jobs, not one-off construction jobs and I think the energy access is really critical as well.

MR McAVOY SC: Jonathan or Paul, was there anything you would like to add?

30 **MR KNEEBONE:** Yeah, again from a systems level, these are lessons that can be drawn on from overseas. It was, I think, in 2011 in South Africa, they developed an amazing scheme which was all about black empowerment through renewables. Again, a country going through a transition, they were trying to get off coal and onto renewables, and they created a scheme that really incentivised black ownership, local
35 black outcomes, black jobs from renewables projects, and again really simple policy tools that can be put into schemes about how government allocates funding and spends it - taxpayers' dollars to get these sorts of outcomes. We've done a piece of work around jobs and we will be releasing that soon. I guess what we have found in these Renewable Energy Zones, the First People's population is typically really quite
40 high; it's more than three or four per cent. And so the targets should be higher than three or four per cent if we want to get the good job outcomes.

But targets are just one thing. It needs to be this whole systemic approach. People
45 need to be talked to about what a career opportunity looks like. They need to be given career pathways, not just kind of trained and trained and trained with no outcomes. And then I guess in terms of business opportunities, I haven't seen, in my time with the network, which is nearing on two years, any government department

come up with a First Nations business support program that's specifically directed towards business opportunities and renewables. And this is where Australia's economy is heading. This is, you know, going to be billions and billions of dollars' worth of expenditure that is happening right now, and there is no support mechanism to get First Nations businesses those opportunities.

MR McAVOY SC: Thank you. Paul?

MR PATON: Not much more to add, just building on the business, I think, drawing on the expertise that sits within these - these large companies to identify potentially ventures that, you know, that would perhaps start out as a joint venture but with a transitioning out as the expertise grows, so those types of arrangements could be initiated as well to be able to - to be able to, you know, transfer knowledge and technical knowledge into those businesses and maintain a relationship and partnership that ultimately ends in 100 per cent business ownership by Traditional Owners or Aboriginal people.

MR McAVOY SC: Thank you. Somebody from one of the remote locations - Sonja?

MS DARE: Yes. So in regards to real jobs in the renewable energy industry, we just - our common law holders and Barngarla members approved an ILUA about two weeks ago with a company - a graphite company who wanted a desalination plant which crossed five metres of our Native Title. Now, the whole mine is on extinguished land, but because they needed that water and it crossed our Native Title, they approached us and we did an ILUA with them. So within that, we've got KPIs, so, Jason, and you Steve and Uncle AJ talked about KPIs many years ago, so we've got built-in KPIs that we will hold the company accountable to. There is also a position for an Indigenous communications officer which we request that be an identified Barngarla position.

And also they're - because where they are actually building it, in an area that is not highly populated, there is about 100 jobs going just in that, and they are really looking to employ Barngarla people. But with that comes a lot of other problems because there's not housing there and that kind of stuff. We would need to work out how to get around that. But we are trying to hold renewable energy companies that we are in negotiations with to KPIs that are built into the ILUAs, and they are accountable for achieving those - those goals in there. Have you got -

MR LLEWELLYN-JONES: I think that's right.

MR BILNEY: I'll jump in first, Nick, and that's like Sonja just said, having the key performance indicators in there, but it's, you know. It is about writing it in the ILUA, and having the protection, and the protection, let alone with the renewable energy, so it protects not just us but it protects our next generation after, so real-time employment for school-based apprenticeships. So kids that are coming through school to get into these jobs, gearing up for it, let alone for reskilling of our

community as well. So it is putting these things in there and holding the companies accountable, let alone the solar wind farm companies are going into all of these energy projects, so we need to be a step ahead of them, make sure we have real achievable incomes or employment jobs for our communities, as well as the wider community, but looking after Barnagarla primarily and getting - you know, breaking our cycle and empowering our next generation.

MR LLEWELLYN-JONES: See, the evidence overwhelmingly, at least today, suggests it won't happen automatically. I think that is the fundamental position. There has been research done I think in New South Wales with the University of Sydney that local communities with renewable energy projects don't seem to have an upswing in jobs, or the broader community benefits through those alternative, from those kind of economic growth kind of notions or your kind of trickle-down economic notions. And so, yeah, I think as Sonja said and Jason said, they tried to incorporate them into the specific contractual arrangements, which existed in the mining industry previously as well. Whether or not it is successful, we will have to wait and see, but the evidence definitely suggests it won't happen automatically.

MR McAVOY SC: Thank you.

MR BILNEY: And it's all about time to engage our communities to start up their business. You know, you need - not being an old grounds person, people might want a civil business to do the earthworks, to employ people. Might be a (audio distortion) and stuff working in there. It's about pushing the community to think about starting their own business as well to engage, to actually do these projects good for the community as well.

MR McAVOY SC: Thank you, Jason. Commissioners, I note the time, and it's - we had set aside time until 5 pm this afternoon for this panel. They - I've completed the questions I wish to ask of the panel members. Are there any further questions from the Commissioners in relation to these matters?

COMMISSIONER LOVETT: I just want to thank everyone, and not to take the limited questions that we have asked as kind of - there is lots to process in this space, and new opportunities for our people, but also, yes, I just want to thank the panel for coming forward and sharing quite a lot of detailed information about the fight, the struggle and the resistance, but also your achievements as well. It is really important to highlight, so, yeah, I just want to thank you for coming forward.

MR McAVOY SC: Thank you, Commissioner.

CHAIR: Thank you.

MR McAVOY SC: Chair, that concludes the evidence for this afternoon. The Commission will next convene in Robinvale on Wednesday 24 April at an onsite location of which the Commission is aware, and with evidence from Mr Brendan

Kennedy, followed by evidence from the Minister Helen Shing in Robinvale later that morning.

COMMISSIONER LOVETT: Harriet Shing, Counsel.

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MR McAVOY SC: Harriet Shing; I apologise to the Minister. And, Commissioners, I think it's appropriate to adjourn at this stage. Sorry, there are some matters of tenders that I will deal with while I am here, Commissioners. There is a - tenders in relation to the witnesses today, Monday 22 April, there is the witness statement of
10 the Minister, Lily D'Ambrosio MP, that was tendered this morning. The First Nations Clean Energy Network Best Practice Principles for Clean Energy Projects, the GLaWAC Renewable Energy Strategy Objectives, the Gunaikurnai Lands and Waters Aboriginal Commission Submission for Offshore Renewable Energy Infrastructure Area Proposal, Bass Strait off Gippsland. Document 5 is the Victorian
15 Government's Offshore Wind Energy Implementation Statement No. 3. And then with respect to - sorry, then document number 6 is The Australian newspaper online, Gunditjmarra Traditional Owners Slam Energy Minister Chris Bowen Over Offshore Wind Zone. Number 7 is First Nations Clean Energy Network summary of key legislation applying to offshore renewable development areas. And then from this
20 afternoon's panel, the presentation from the Barngarla Determination Aboriginal Corporation and - document number 8, and document number 9 is the independent expert panel on interim emissions, reductions targets for Victoria 2021 to 2030.

In addition to that, Commissioners, there's a general tender list for hearing block
25 number 6 on land injustice week 2, which is the week commencing last week. There are - there is a bundle - tender bundle comprising 93 documents which has been handed up to Commissioners, and I don't need to take the Commissioners through each of those documents, but I tender the documents contained in the tender bundle.

30 **CHAIR:** All of which will be entered into the record, thank you.

MR McAVOY SC: Thank you, Commissioner.

35 **MR LLEWELLYN-JONES:** Because this is an unusual format to give evidence, I just would like to know that we're excused, I assume, as witnesses now?

MR McAVOY SC: You are just about to be. Thank you. Thank you, Chair.

40 **CHAIR:** You are excused as we adjourn. Thank you very much again.

MR BILNEY: Thank you.

<THE HEARING ADJOURNED AT 5.07 PM