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TRANSCRIPT OF DAY 2 – PUBLIC HEARINGS

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

**TUESDAY, 26<sup>TH</sup> OF MARCH 2024 AT 10.56 AM (AEDT)**

**DAY 2**

**MR TONY MCAVOY SC, Counsel Assisting**  
**MR TIM GOODWIN, Counsel Assisting**  
**MS GEMMA CAFARELLA, State of Victoria**

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**<THE HEARING COMMENCED AT 10.56 AM**

**CHAIR:** Good morning. Welcome to today's hearing of the Yoorrook Justice Commission. This is the first day of the Hearing Block 6 focused on land injustice  
5 in our hearing room. I would like to invite Commissioner Hunter to do Welcome to Country.

**COMMISSIONER HUNTER:** Thank you, Chair. I would like to acknowledge  
10 that we are in the lands or the sky of Wurundjeri, we are in Wurru Wurru Biik, Sky Country, and acknowledge my ancestors, all those that come before us but particularly going into land injustice, I would like to acknowledge all those caretakers of lands across Victoria. All those that took care of it, so we are able to walk it with dignity and pride today. I also want to acknowledge all the Elders in the room, and particularly those watching who are First Peoples, acknowledge the  
15 lands you are on, your people, and the struggle that you face every day in this country. So, Wominjeka, welcome to the lands of the Wurundjeri.

**CHAIR:** Thank you, Commissioner Hunter. I also would like to acknowledge the  
20 Traditional Owners of the land - upon whose land we are meeting today. I would also like to acknowledge the Traditional Owners, those of you who are watching, those of you who are present today and fellow Commissioners' ancestors as well. Could I have appearances, please.

**MR McAVOY:** May it please the Commission, my name is Tony McAvoy,  
25 appear as Co-Senior Counsel assisting the Commission together with Fiona McLeod SC and Tim Goodwin. Thank you.

**CHAIR:** I would like to acknowledge and introduce my fellow Commissioners:  
30 Commissioner Hunter, who is leading the Commission's Health inquiry; Commissioner Lovett, who is leading the Commission's Land Injustice, Housing and Economic inquiry; Commissioner Walter, leading Education and Economic Life inquiry; and Commissioner North, who has recently joined the Commission. I'd like to make a few comments about the Commission's mandate, and then I will  
35 throw to Commissioner Lovett to provide some comments specifically around the land injustice inquiry.

(Audio distortion)

40 **COMMISSIONER LOVETT:** (Indistinct) talking there (crosstalk).

**CHAIR:** We will adjourn momentarily.

45 **<THE HEARING ADJOURNED AT 11.03 AM**

**<THE HEARING RESUMED AT 11.11 AM**

**CHAIR:** Thank you, Commissioner Hunter, for your Welcome to Country. I'd like to take this opportunity to introduce my fellow Commissioners, Commissioner Hunter, Commissioner Lovett, Commissioner Walter and Commissioner North. Due to some technical difficulties, we have had a break and I'm continuing on with my remarks.

I'd like to make some opening observations about the Commission's mandate and then I will ask Commissioner Lovett to make comments about the Yoorrook Land Injustice Inquiry. The history of the State of Victoria, in the main, has been about us and without us.

The absence of Indigenous voices and perspectives offers an incomplete history of this state. The precolonisation history of this land is dwarfed by the celebration of the arrival of Europeans in the 1800s, and the supposed discovery of this beautiful land, our country.

In this version of history, First Peoples are portrayed as savages and racially inferior. This enabled and justified what happened next: The theft of land, the loss of lives, the breaking up of kinship systems and families, and denial of cultural life.

The massacres and the so-called protection legislation introduced by the colonial government ensured control of most First Peoples' movements. First Peoples' perspectives and stories are missing. Some 60 years ago, anthropologist W.H. Stanner called out the Great Australian Silence. He acknowledged the Indigenous perspectives from the historical record of this country.

He also spoke of the cult of forgetfulness that has been perpetrated on a large scale in the telling of history across this country. This cult of forgetfulness has continued to enable the systemic injustice perpetrated upon First Peoples and the denial of our inherent rights. One of the starkest examples of this in Victoria is the outcome of the Yorta Yorta Native Title claim.

Yoorrook has heard the history of the child removal, the walk-off by the Yorta Yorta people from their traditional lands, and the discussion of families and culture. When asked to prove their connection to land as part of their Native Title application, the court concluded that the tide of history had washed away the Yorta Yorta people's traditional lands and customs. At the same time, First Peoples were forcibly removed from their land, family and culture.

Yoorrook has heard how Europeans expanded across Victoria at a rapid rate. In 1856, Edward Curr, himself an early arrival, noted:

*"No body of men ever created so much wealth in so short a time. The squatter founded Melbourne whose history from the first to the last is unprecedented and unequalled in the annals of colonisation."*

Victoria - indeed, Australia - is having difficulty coming to terms with the truth about this true history and the settlement of this country. Yoorrook has the deep responsibilities of truth-telling. For the last three years, the Commission has been gathering the voices, perspectives and stories of hundreds of First Peoples from across Victoria. This week, Yoorrook will hear from Indigenous and non-Indigenous historians who have dedicated themselves to the task of breaking this silence. All these voices and perspectives will form part of the official public record of this State.

10 Later in this hearing block, Yoorrook will also hear from Ministers of the State, descendants of settlers and representatives of the church as they reflect on the injustices facing First Peoples.

15 This evidence will also form a critical part of the public record. It should also form part of the education curriculum and training in the future for professionals working in this State. Truth-telling is a pathway towards justice. It is about creating a shared history, shaping a better future and a new relationship between First Peoples and all Victorians.

20 It is about understanding and healing. I invite you all to listen to the voices of all those who will be giving evidence in the coming weeks. I would like to thank everyone who has already participated and come before Yoorrook and shared their evidence and their stories. I thank all of you who are participating in these upcoming hearings.

25 I will now ask Commissioner Lovett for some further observations on Yoorrook's Land Injustice inquiry.

30 **COMMISSIONER LOVETT:** Thank you, Chair, as well. And I also thank Commissioner Hunter for that Welcome to Country. I think it would be good to give the State an opportunity to articulate their appearance. I think it would be good also as custom.

35 **MS CAFARELLA:** Or later. But I will take the opportunity to acknowledge Country. On behalf of the State of Victoria, I acknowledge that today's hearings are being held on the lands of the Wurundjeri people, and I acknowledge them as the Traditional Owners of this unceded land. The State pays respects to Wurundjeri Elders, past and present, and Aboriginal Elders of other communities who are here today.

40 The State also acknowledged the Gunditjmara who shared their stories, sorry, who hosted yesterday's on Country hearings. And the State acknowledges the Gunditjmara Elders and other witnesses who shared their stories and their Country yesterday. The State acknowledges all First Peoples' enduring and ongoing connection to land, waters and the importance of the Commission's current inquiry into Land Injustice. Thank you.

**COMMISSIONER LOVETT:** (Speaks Dhauwurd Wurrung) I just acknowledged Country, pay my respects to, that we are on the lands of the Wurundjeri people. I acknowledged fellow Commissioners' and Deputy Chair's connection to this Country, I acknowledge my own connection as a proud  
 5 Kerrupmara/Gunditjmarra man to my ancestral lands as well.

Today marks the first days of the live stream public hearings into land, skies and waters. Yesterday, the Commission was privileged to formally commence the Land Injustice hearings on Gunditjmarra Mirring, or Country, in southwest  
 10 Victoria. I would like to thank Gunditjmarra Elders, Gunditj Mirring as an organisation and community for hosting us so graciously. I also wanted to acknowledge the hard work and dedication of my fellow Commissioners and Yoorrook staff in making this hearing block possible.

15 As a proud Kerrupmara/Gunditjmarra man, it was great honour to be on Country and an honour to be on Country, my Country, also the world heritage listed Budj Bim Cultural Landscape as part of Victoria's historic truth-telling process. Gunditjmarra Mirring was selected by the Commission to start Yoorrook Land  
 20 Injustice hearings because it tells Victorians an important history about where European colonisation started in this State and the impact it has had on First Peoples. It marks the beginning of an unbroken line of injustice which continues here in Victoria today.

25 As part of yesterday's ceremonial session, we were taken to World Heritage listed site of Budj Bim Cultural Landscape. There is where the volcano erupted more than 30,000 years ago, revealing our ancestral creation being in the landscape. It's important to note that our people were there long before that. The lava flow  
 30 created the patchwork of waterways and wetlands which our ancestors used to develop one of the most sophisticated and complex aquaculture systems in the world, older than Stonehenge and the pyramids.

The system supplied enough food to sustain our community year-round, in permanent settlements, that's houses, and allowed us to trade with other Aboriginal  
 35 clans and nations. Caring for Country, or Mirring in my language, was at the heart of everything for our people. It still is. As a result, Country was healthy. Our people were self-sufficient.

40 Then just 200 years ago, the Europeans came. Yoorrook heard how early European families illegally and forcibly took the land, the water and the resources under the false doctrine of terra nullius. We were told how colonial laws were imposed upon First Peoples, who were denied the ability to practise culture and their traditions, to hold ceremony, to speak language as I did before.

45 We were also taken to the site of the first recorded massacre in Victoria at the Convincing Ground on Kilcarer Country, again, on Gunditjmarra Country. We heard how almost an entire clan was destroyed and how the perpetrators went unpunished. Aunty Donna Wright put it best. She told us in this part of our

Country there is a glorification of colonisers who stole our land, the massacres, the murders, the frontier violence, violence against our women, and violence against our children as well. Yoorrook has received evidence about the rapid colonial expansion across Victoria, and while the land was taken quickly, the journey for land rights for First Peoples has been slow, slow, and arduous.

Yoorrook has heard evidence about how, after World War II, the government gave land on the former mission sites, including Lake Condah on Gunditjmara Country, to return war veterans as part of soldier settlements. All but two Aboriginal men who fought for Australia, of which there were many, were excluded from that scheme. Traditional Owners told us how they've been denied land rights at every step by a system that was not designed for First Peoples.

We have heard of how debilitating it can be for our people to establish their rights through Western legal concepts. They must engage lawyers to bring their cases in court, which can take years and years. Traditional Owners must engage historians, anthropologists and linguists to prove they are who they say they are. They sometimes face hundreds of defendants trying to stop them from realising their rights.

Led by Elders and other community leaders, First Peoples have spent decades fighting for change, particularly around land rights. This has seen the introduction of legislation in relation to land rights in Victoria including Acts such as the Aboriginal Lands Right Act in 1970, the Aboriginal Heritage Act in 2006 and the Traditional Owners Settlement Act here in Victoria, 2010. Yoorrook has heard how these laws and policies, while important steps forward, have only resulted in the return of small pieces of land and management back to Traditional Owners.

We have also heard how these rights come with a range of restrictions and conditions and the layers of control by government. Traditional Owners have spent years fighting for the crumbs. We have heard that. Throughout the State of Victoria, we have heard that over and over again. First Peoples across the State have repeatedly told Yoorrook that this system is not working and that it must change.

I want to take a moment to acknowledge the immense and ongoing fight of First Peoples across Victoria to achieve their achievements so far in land injustice. This is about more than just land rights. It's about Country which means everything to our people. It's also about restoring culture, tradition, language and caring for Country. As we saw yesterday, when First Peoples can care for Country, everyone benefits. Everyone.

This hearing block will book in Yoorrook's investigation into land, skies and waters. Over the past five months, Yoorrook Commissioners and staff have spoken to 850 Traditional Owners, including dozens of Traditional Owner roundtables and information sessions held across 30 locations across the State of

Victoria. We have travelled the State extensively. We have received numerous submissions, thousands of documents of evidence through notices to produce.

5 And we will now hold hearings, public hearings, for 12 days. Over the coming weeks, we will hear more evidence about how the theft of land, water and resources has impacted and continues to impact First Peoples today. We will also hear about the diversity, strength, but also the resistance of First Peoples here in Victoria. Witnesses will include First Peoples, historians, organisations and associations and representatives of government.

10 Some hearings will be held and live streamed on Country. Over the past 200 years, justice has traditionally been delivered in court rooms in the cities, in a language which was once foreign to our people and by judges who came here long after us and ignored our law.

15 Yoorrook's truth-telling hearings mark a turning point for justice in this country. We will hear evidence on First Peoples' Country, using First Peoples' language in the way they articulate themselves, using First Peoples' law and lore. It is an opportunity to learn about Country and to listen to Country.

20 On 24 April, Minister for Water, Harriet Shing MP will give evidence in Robinvale by the Murray. Then on 29 April, the Premier Jacinta Allan will give evidence on the land of the old Coranderrk Aboriginal mission near Healesville on Wurundjeri Country. I hope all Victorians will take the time to hear the evidence, to listen, to learn our shared history in this State. Thank you.

25 **CHAIR:** Thank you, Commissioner Lovett. Counsel.

**MR McAVOY:** Thank you, Chair. Thank you, Commissioner Lovett. And thank you to Commissioner Hunter for the Welcome to Country. On behalf of Co-Senior  
30 Counsel and Counsel Assisting and Solicitors in the inquiry, we too acknowledge the Wurundjeri people and all the First Nations of the State of Victoria who are looking to the work of this Commission to aid their dealings with the State of Victoria and ensure that truth is told in this place.

35 As you have noted, Chair and Commissioners, this week the Yoorrook Justice Commission commences a three-week block of hearings focused on Land Injustice. Today we are hearing from a panel of experienced academics and historians on the early colonisation processes and the circumstances that existed  
40 prior to the arrival of the British on these shores in the south of Australia, and within the State of Victoria and the impacts on First Peoples.

45 Today's panellists are Professor Julie Andrews, Emeritus Professor Richard Broome, Associate Professor Katherine Ellinghaus and Dr Bill Pascoe. Tomorrow we will move on to take on evidence from another panel on the further post-colonisation period, including matters of segregation and assimilation laws and policies, and the mission and reserve systems within Victoria and the Aborigines Protection Act, commonly known as the Half Caste Act. These are matters about

which the Commissioners have heard throughout the course of the hearings from individuals, but we will hear additional evidence from our expert panel tomorrow.

5 Yoorrook will also receive individual evidence this week from a number of Elders, and this will hopefully set the scene for the hearings to follow the Easter period, when hearings resume on 15 April 2024.

10 Over that two-week hearing period, we will be hearing from a number of State witnesses on land injustice, including the Premier Jacinta Allan; the Minister for Treaty and First Peoples, Natalie Hutchins MP; the Minister for Environment, Steve Dimopoulos MP; the Minister for Water, Harriet Shing MP; and the  
15 Minister for Climate Action, Energy and Resources, Lily D'Ambrosio MP. We will also hear from the First Peoples' Assembly of Victoria, the Federation of Victorian Traditional Owner Corporations, Victorian Elders and experts on the topic of Land Injustice.

20 And, as Commissioner Lovett has just said, the evidence of the Premier and the Minister for Water will be taken on Country in Coranderrk and Robinvale respectively. Commissioners, we might seek a short adjournment in order to assemble the panel of witnesses and continue with the witness and continue with the evidence.

**CHAIR:** We will adjourn briefly.

25 **MR McAVOY:** Thank you.

**<THE HEARING ADJOURNED AT 11.33 AM**

**<THE HEARING RESUMED AT 11.36 AM**

30 **MR McAVOY:** Thank you, Chair. We have now assembled the panel of witnesses proposed to give evidence today. I will administer the oath to each and then we will deal with introductions. Firstly, Professor Andrews, could you tell the Commission your full name.

35 **PROFESSOR ANDREWS:** Certainly, my name is Professor Julie Andrews.

**MR McAVOY:** Thank you. And your occupation?

40 **PROFESSOR ANDREWS:** I'm an anthropologist, a black anthropologist. I'm an academic and I'm Director of Indigenous Research at La Trobe University.

**MR McAVOY:** And the evidence that you will give today will be the truth to the best of your knowledge?

45 **PROFESSOR ANDREWS:** Yes, it will be.



**\*\*<JULIE ANDREWS, AFFIRMED**

**MR McAVOY:** Thank you. Next, Emeritus Professor Broome, could you tell the Commission your full name, please?

5

**EMERITUS PROFESSOR BROOME:** My name is Richard Laurence Broome.

**MR McAVOY:** And your current position?

10 **EMERITUS PROFESSOR BROOME:** I'm associated with La Trobe still. I'm retired but I'm still actively involved in research and involved in research projects.

**MR McAVOY:** Thank you and the evidence that you will give today will be the truth to the best of your knowledge?

15

**EMERITUS PROFESSOR BROOME:** Yes, it will.

**\*\*<RICHARD LAURENCE BROOME, AFFIRMED**

20 **MR McAVOY:** Associate Professor Ellinghaus, could you tell the Commissioners your full name, please.

**ASSOCIATE PROFESSOR ELLINGHAUS:** Katherine Jillian Ellinghaus.

25 **MR McAVOY:** Your position?

**ASSOCIATE PROFESSOR ELLINGHAUS:** Associate Professor of History at La Trobe University.

30 **MR McAVOY:** And the evidence you will give to the Commission today will be the truth to the best of your knowledge.

**ASSOCIATE PROFESSOR ELLINGHAUS:** Yes, it will.

35 **\*\*<KATHERINE JILLIAN ELLINGHAUS, AFFIRMED**

**MR McAVOY:** Dr Bill Pascoe, could you tell the Commission your full name.

**DR PASCOE:** I'm William Pascoe, known as Bill Pascoe.

40

**MR McAVOY:** And your position?

**DR PASCOE:** I work in Digital Humanities at the University of Melbourne and the University of Newcastle.

45

**MR McAVOY:** And the evidence that you will give today to the Commission, that evidence will be the truth to the best of your knowledge. Thank you.

**\*\*<WILLIAM PASCOE, AFFIRMED**

5 **MR McAVOY:** Commissioners, I now propose to invite the witnesses to individually introduce themselves, noting their relevant work or study. Yes, and I understand that Professor Andrews will make an Acknowledgement on behalf of the whole panel. Professor Andrews. I should say, before you start, the Commissioners each received a copy of each of your CVs.

10 **PROFESSOR ANDREWS:** On behalf the panel here, I'd like to pay my respects to the Wurundjeri Woi Wurrung people of the Kulin nation on whose lands we meet here today. On behalf of my ancestors and Elders in the room, I pay my respects to Commissioner Hunter, Commissioner Walter, Commissioner Lovett, Commissioner North and our Chair, Eleanor Bourke, Aunty.

15 I also pay my respects to all Aboriginal people here today in the room and online. I acknowledge my mother, Leah Briggs Andrews. I acknowledge my La Trobe University colleagues here with me today and Bill Pascoe.

20 **MR McAVOY:** If you could just give an introduction as to your relevant work or study experience.

**PROFESSOR ANDREWS:** Yes. So I work at La Trobe University. I've been working there for over 30 years now as an academic. I teach Aboriginal studies; I lead Aboriginal studies and I lead Indigenous research at La Trobe University. I'm Director of our first inaugural research centre at La Trobe. I'm a Yorta Yorta, Wurundjeri Woi Wurrung and Wiradjuri. That's because of all the movements because of colonisation and policies that, you know, made our people shift around and placed us onto government reserves.

30 My PhD thesis was on Aboriginal Melbourne. It was comparison with another anthropologist's work by the name of Diane Barwick and I revisited Diane Barwick's thesis that was on regional affiliation of Aboriginal people once they left the missions and moved in to make a community here in Melbourne. So my thesis was a revisitation to Barwick's data, and I compared my data, from 35 an Aboriginal perspective growing up in Aboriginal Melbourne over 50 years, in comparison with her research that was published in 1962.

40 I've since gone on to do more research as well. It's expanded into other areas of Aboriginal health. It's expanded into gender issues for our people. It's expanded into working with colleagues such as Katherine Ellinghaus here and Richard on history. It's talking about the impact of colonisation, and I teach that to La Trobe University students across all our campuses, which are Bendigo, Mildura, Shepparton, Albury-Wodonga and Melbourne. Over a period of 15 years, I've 45 taught thousands of students.

I also teach an on Country subject on Yorta Yorta Country, and that attracts a lot of people, and I take the classroom into the bush and on the water, which is an amazing place to learn. As we all know, as Aboriginal people, that's where we do most of our teaching.

5

My expertise is on Aboriginal identity construction, and that's in particular within the home, within the family and within the community, and the benefits of having that opportunity to be with your people, to identify as Aboriginal.

10 **MR McAVOY:** Thank you very much. I will now turn to Emeritus Professor Richard Broome. If you could give the Commissioners a brief introduction to your work.

15 **EMERITUS PROFESSOR BROOME:** Yes. Look, I am a non--Indigenous Australian. I moved to Melbourne in my mid--20s, and I began teaching at La Trobe University in 1977. I inherited a course in Aboriginal history from John Hirst, who had taught it for several years, and I continued to teach that course in many iterations until 2012.

20 I began also researching Aboriginal history at that time. I published a book, *Aboriginal Australians*, in 1982 which was the first overview history of colonisation since 1788. I then, in the 1990s, began to work on Victorian history and finally published *Aboriginal Victorians* in 2005, which I have just brought into a second edition this year. *Aboriginal Australians* is now in its fifth edition.  
25 I also published a book on the Aboriginal Advancement League called *Fighting Hard* and other articles as well.

30 So I have done a lot of historical work in Aboriginal history in Victoria, and I am still working in that area. I'm also currently President of the Royal Historical Society of Victoria and working very hard with others to move historical societies into a more diverse approach to history. Thank you.

35 **MR McAVOY:** Thank you. Was there something that you wished to say in relation to the use of names and -

40 **EMERITUS PROFESSOR BROOME:** Yes, I do. All of the panel will at times be forced to make comments that may be offensive because we will be dealing with ethnocentric and racial ideas. I think it's important we have the freedom to use some of these terms, because without that freedom, people in the present cannot understand attitudes in the past, and they cannot understand the hurt that was caused over many generations to Aboriginal people. So we are deeply sorry if we cause offence, but that's what needs to be said in this truth-telling Commission.

45 **COMMISSIONER HUNTER:** If I may, Chair. I'd just like to say thank you for that disclaimer, but I think as a Commission we understand if we don't make that link with the past, we can't understand the present and the wording you use is of

the past. So, I hopefully can speak on behalf of my fellow Commissioners in welcoming you to speak freely in this space.

5 **MR McAVOY:** Thank you, Commissioner Hunter. I now turn to Associate Professor Katherine Ellinghaus. If you could briefly introduce yourself to the Commission.

10 **ASSOCIATE PROFESSOR ELLINGHAUS:** My name is Katherine Ellinghaus and I was born here in Melbourne and grew up in Corhanwarrabul, or the Dandenong Ranges. I'm a woman of German, Scottish and Irish descent, and my historical work has been focused largely on assimilation policies inflicted on Aboriginal people, and Torres Strait Islander people in this country and also Native American people in the United States.

15 I now teach the subject that Richard referred to, which continues a long tradition of trying to truth tell at La Trobe University, teaching generations of students about the crimes of the settler state in this country, and also about the long history of First Peoples' resistance and activism.

20 As part of that, we're trying to, I guess, contribute also to the fantastic Aboriginal studies program that Julie runs. I would like to acknowledge something that Commissioner Bourke raised earlier today, which is that much of the history of this State of Victoria has been written without First Nations peoples' involvement, and I would also like to acknowledge the discipline of history that I sit in has been  
25 implicated in that.

I want to acknowledge that the non-Indigenous people here today to speak to you, Commissioners, are not experts in the lived experience of Aboriginal people, or in their culture or traditions; we are experts in historical documents. And I would  
30 also like to acknowledge all the Indigenous teachers, students and colleagues that I have had that have helped me understand better what is in those documents and the best ways that I can use them as a historian to truth-tell.

35 **CHAIR:** Thank you very much.

**MR McAVOY:** Professor Ellinghaus, was there also some observation that you wanted to make about speaking about people in their absence?

40 **ASSOCIATE PROFESSOR ELLINGHAUS:** Thank you. I should also add that part of what we are going to be doing today is speaking about people whose ancestors are not ours, whose Country is not ours and who are not here and that is also, as Richard says, as part of the thing we need to do in order to uncover the history of this State.

45 **MR McAVOY:** Dr Pascoe, could you, in turn, introduce yourself to the Commissioners in terms of your relevant work.

**DR PASCOE:** Yes. Thanks. And thanks, Julie, for the acknowledgement. I'd also like to thank (indistinct) for his Wominjeka when I first came here two years ago and for his support for our research. Also, Professor Lyndall Ryan sends her apologies. I'm here because she couldn't make it today. I'm a white fella, but my  
 5 great grandmother was a Murri woman, probably Kabi Kabi. That's our best guess. We don't know anything about it beyond that except that my grandmother used to speak to people at a certain fringe camp and that's why we guess she is where she is from.

10 I grew up mainly in Jagera Country which is the western suburbs of Brisbane. For the last 20 years or so, I've been working in Awabakal Country at the University of Newcastle, much of that time working part time and, more recently, on a volunteer basis, has been on the Colonial Frontiers Massacres Map and database, led by Professor Ryan and contributed to by many historians.

15 My PhD was in English, but it involved a lot of the historical research into colonial violence and global commodity trade. So my role working at universities on many different projects is as a digital humanities specialist, which in short means doing humanities with computers but it involves thorough knowledge of  
 20 humanities subjects theory, the philosophy, how to build websites that reliably inform the public, especially on this controversial issue. Thanks.

**MR McAVOY:** Thank you, Dr Pascoe. I just ask you to keep your voice up when you are speaking.

25

**DR PASCOE:** Okay.

**MR McAVOY:** Thank you. I'm going to ask a number of questions before we get into the business of the arrival of the British on the shores and lands of the area  
 30 now known as Victoria, I'm going to ask about the existence of the First Nations, the Aboriginal people, who resided and owned these lands in that period.

The evidence which I'm going to take you through, we understand to be  
 35 non-controversial in that it's been heard many times in relation to Native Title matters and cultural heritage matters and, indeed, there are often government acknowledgements of the existence of these spirits and ancestors of the present day First Nations people.

40 But I will ask you some questions. Firstly, in terms of the spiritual dimension of Aboriginal people in south-eastern Australia, if I can put it that way, there's a belief system that involves the landscape and environment being created by ancestor spirits. Does that accord with everybody's understanding of the origins of Aboriginal people in this country?

45 **EMERITUS PROFESSOR BROOME:** Yes, that's correct, Mr McAvoy, that there was a set of beliefs that Country was created by great ancestors who are still powerful and the Country is still alive with their power at particularly sacred sites.

**MR McAVOY:** And did those ancestors have any role in the placement of people in the landscape, the Traditional Owners of these Countries?

5 **EMERITUS PROFESSOR BROOME:** Well, Aboriginal beliefs are that they were creators not only of landscape but of people, and they have many stories about how that creation happened, whether it be breathing life into a bark figure and bringing it alive, but there are many, many stories across different groups about creation of land and people.

10

**MR McAVOY:** Is there something that you would like to add?

**PROFESSOR ANDREWS:** Yes. I think creation stories are about birthing, and it's about how life and how it came to be, but we're also connected to land and  
15 Country and animals as well. We have totems. So all these kind of connections to Country come from our birthing stories and what we have inherited from our ancestors. So the stars, are our, also our astronomy tells a story, and that they guide us while we are travelling as well. So all of that connection to our dreamtime stories for land and water is very important in the makeup of  
20 Aboriginal identity and culture as we know it here today, even in Victoria.

So that's what our history tells us. We come from the stars. We come from places where people don't come from. We're unique. So these kind of ways of origins and stories and birthing and so forth is very, very big in women, because we're the  
25 givers of life. So we have birthing trees and so forth, and that's all connected to your Country and your family and your identity, and to the midwifery that exists inside our communities as well.

So I always place women and birthing with all the dreamtime stories, and, you  
30 know, a lot of our ancestral ways of telling these stories are about creation stories.

**MR McAVOY:** In those communities that existed before the British got here, we have today referred to them as "nations", but in those communities it's generally understood that those communities were governed by systems of laws and ritual  
35 and ceremony?

**PROFESSOR ANDREWS:** As an anthropologist, that's what we do. We study cultural patterns. So we don't just wipe people out. We have a responsibility to show the unique systems within a society. So Aboriginal people certainly did have  
40 a governance system that was governed by - it's almost like, when we see the history, we call them chief this, chief that but they were senior men and senior women that were the lore people of that particular clan or group or tribe.

Now, when we look at the way the naming of the structure of Aboriginal families and society has been, it's been such a big change and you've probably documented that, Richard, you know, like how people came to know and call Aboriginal  
45

people and society. That's a problem in itself, in my view, because no one knows what a clan is, you know.

5 So these were all terminologies that were imposed upon Aboriginal society and structure by anthropologists, so-called anthropologists. A lot of them weren't anthropologists; a lot of them were settlers. So it was their way of bringing their British kind of knowledge about other cultural societies around the world and imposing that on our structure.

10 So our chief people inside our society would be the lawmakers, the lore holders, and they decide the punishment, who could marry, where, and you had to seek approval and permission to enter through these, so we had a governance structure of law that was very, very important to social control. And that's what this whole thing about traditional lore, Aboriginal lore, is about, social control inside and  
15 that's what was prior to British arrival.

**MR McAVOY:** You mentioned the role of senior men in particular and the role of the lore holders. Is that a reference to Elders in the community? Or is that a different concept?  
20

**PROFESSOR ANDREWS:** Well, if you're looking at it from today, there are kinds of parallels within identifying and giving that name to that kind of role inside a society. So, yes, Elders would be the equivalent. The only thing is that the history books didn't interview the women. They only interviewed the men. So the  
25 women have had to, you know, they've always been a cultural part of the makeup and role of the society. So women have their own lore as well. Men aren't the only lore makers, the lore keepers. The women have responsibilities as well and that came through initiation. So we don't have the initiation that we had back then. So we hear today that football is initiation. You know, break an arm, break a leg, you  
30 know that kind of thing. But there's parallels always within Aboriginal people's spirituality with their past.

**MR McAVOY:** Any of the other panel members like to comment on this topic?

35 **ASSOCIATE PROFESSOR ELLINGHAUS:** Just from the perspective of historical records, if you read the writings of early invaders, settlers, explorers and also the early protections, it's very clear that they recognised also that there were complex systems of law, that there was complex religion and spiritual beliefs that and that there were, you know, other - a very complex society that involved, you  
40 know, agriculture, buildings, all of those things in the early records.

**MR McAVOY:** And that includes evidence of aquaculture?

**ASSOCIATE PROFESSOR ELLINGHAUS:** Yes, aquaculture also.  
45

**MR McAVOY:** When we speak of aquaculture, we're particularly speaking about, in particular, the eel traps which the Commissioners saw yesterday, but agriculture in terms of - in what sense?

5 **ASSOCIATE PROFESSOR ELLINGHAUS:** Sorry, did you say aquaculture or agriculture?

**MR McAVOY:** Agriculture.

10 **ASSOCIATE PROFESSOR ELLINGHAUS:** I'm talking about, I guess, animal husbandry. This isn't my area so I'm happy to throw over to Richard if he's got more on this.

15 **EMERITUS PROFESSOR BROOME:** I think Aboriginal people manage landscape in a way that all humans manage their local landscape, and they did that by fire, particularly, creating templates across Country that would encourage animals to move to, but also have places of refuge nearby. So it was a well thought out system over many thousands of years, and the same with the aquaculture that created eeling, not only at Budj Bim and places like that but also at eeling grounds  
20 in places like Lake Bolac and whatever.

So it was a sophisticated system that worked. It was sustainable over many thousands of years. And, therefore, like any other culture, it adapted to its unique environments and created what I like to call a great tradition. People often talk  
25 about civilisations. You know, I think those words have various European resonances but in terms of a holistic culture that worked, they had it.

**MR McAVOY:** The system of land ownership that existed prior to the British arrival is not controversial. It's been recognised in many senses in the Native Title determinations in this State and in other places. But it's one in which groups had  
30 identified territories over which they exercised control and ownership. Would you agree with that statement?

35 **EMERITUS PROFESSOR BROOME:** Yes, definitely. Yes.

**MR McAVOY:** And that control and ownership was exercised communally; it's not the case that people had individual parcels of land?

40 **PROFESSOR ANDREWS:** We are an egalitarian society and we had our boundaries that we didn't cross without permission. So you wouldn't be able to venture into another tribe's area without permission. And we also had our seasonal celebrations around agricultural seasons. And with the landscape we knew how to not just do the bushfire, but we knew what animals were going to be burnt and we knew what the, you know, bush tucker was going to be. That kind of thing.  
45

But yeah, we had some big laws around travelling on to for trade. So we know that in the archaeological record with the Mount William sanctuary, that's where the



prize green stone on Wurundjeri land was used for trading. But we can track that around all parts of tribal areas that showed the value of particular items. And wooden artefacts don't last as long as stone tools and bone artefacts. So they're the kind of things that we can track back to, but something that is also important is our burials. And our burials and traditional burials show us, tell us a lot of things about our people.

**MR McAVOY:** Thank you for that. One further question on that issue. It's often said that Aboriginal connection, First Nations connection to land is inalienable. Do you understand what is meant by it being inalienable, the ownership and control over land? Professor Broome, you are nodding your head. Can you just explain to the Commission what the general understanding of inalienability of rights and land are from your understanding.

**EMERITUS PROFESSOR BROOME:** I think it comes from Aboriginal religious views and beliefs about the way Country was created. And if Country is created by a great ancestor who remained powerful into the current lives of Aboriginal people of the day, then that means there is a connection that should not be broken because it is a religious connection. It's a belief system about that culture in relationship to their own land and landscape.

**MR McAVOY:** Professor Andrews, do you want to add anything to that?

**PROFESSOR ANDREWS:** No, I think that was a good answer.

**MR McAVOY:** Any other panellists? No. Thank you, Professor Broome. I want to ask you some questions now to give the Commission some sense of what is understood to be the size of the Aboriginal population in Victoria at around the turn of the 1700s into the 1800s.

**COMMISSIONER NORTH:** Before you move on to that, could I ask the panel, what's the essential sources of knowledge from which the understanding about pre-colonial Aboriginal society and outlooks comes from?

**EMERITUS PROFESSOR BROOME:** Fortunately, some settlers were curious. Many were not. But some settlers were curious, and they asked questions of Aboriginal people. And also, later into the 19th century, there was a group of amateur ethnographers, not yet anthropologists like Julie, but amateurs who also had an interest in the lives of the people still around them, and they questioned them. Also, we will be talking later about the Aboriginal Protectorate and there were four Aboriginal protectors and a chief protector, and one of their job descriptions was to maintain a journal.

And so, journals were kept. We have an extremely extensive collection of the journals of protectors: Weekly, monthly journals, annual reports. And they often noted down what they heard Aboriginal people say or what their responses to questions were. Missionaries also were apt to keep daily journals. So missionaries

at Buntingdale, the government mission, later at Coranderrk, they kept records. So we have a wealth of material. The irony is that these were colonisers, but they were also recorders. And I suppose we can only be thankful that some of them had this curiosity.

5

**MR McAVOY:** Thank you, Commissioner North. Following on from that question, in addition to the recorded information from ethnographers and amateur anthropologists, there's also a great wealth of information that comes through oral histories. Is that correct?

10

**EMERITUS PROFESSOR BROOME:** Yes, that's correct. Perhaps Julie.

**PROFESSOR ANDREWS:** I agree with that. A lot of our Aboriginal families keep their sacred stories private as well. They were taught to do that as part of their lore. The Aboriginal women and men had their own sacred ways of teaching each other. And men hunt together, so the men learn how to do things. Oral history is very powerful. The stories don't disappear. And the land doesn't disappear. So Aboriginal people are very connected to their Country. So they will adapt to whatever they're doing on their Country as well.

20

They're the kind of cultural practices that non-Aboriginal people are amazed at because they don't have that feeling or connection to, and the spirituality to their country, and a lot of that comes from oral history.

Just going back to those early settlers. They weren't allowed to speak to women so that's why we got so many men's stories. So we have big gaps in our anthropological record for women. But they were coming with a different kind of mindset when they arrived here and documented things. They were interested in language. They were interested in geography. They were interested in, you know, things to do with economics and the future for the Crown.

30

So they had to document certain parts of the history before they moved the people off. And don't forget they were already living on their land. So they had people working for them. So they were probably interviewing them and getting those stories off them while they were working for them.

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**COMMISSIONER NORTH:** I guess there are physical archaeological remains which tell us something about that precolonial period. Is there some information you can give us about that material?

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**PROFESSOR ANDREWS:** None of us are archaeologists, but I'm on some research projects that are archaeology. So - and they are famous, famous cases like the Bark Bay or Dja Dja Wurrung. We are doing research on Lake Boort at the moment which is all like archaeological sites and stone tools. But the main ones are around stone tools and new trees, because Lake Boort was a huge, huge aqua area, two or three lakes. Lake Mungo, huge. That's connected to La Trobe University as well. Lake Mungo Man, Mungo Lady. There's so much involved

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when you start looking at archaeology, and the problems about that is a lot of things have been destroyed as well.

5 You know, you get your dreamtime stories on Gariwerd in the rock art and so forth. I'm sure you've been there already. That's the dingo story there, the dingo dreamtime. So there's so many kinds of ways that you can read the Country that are connected to oral history. And, yes, expertise, knowledge in the Aboriginal community is just as good as archaeologists and anthropologists, because they also have the oral history to go with it. But now we have so much research partnership  
10 with non-Aboriginal people and Aboriginal people, it's coming out really a block of knowledge that matches and is very strong around, what would you say, consistency and time travel and telling where we are today, yeah.

**EMERITUS PROFESSOR BROOME:** If I might just add, there's potentially  
15 immense record as well because if occupation in Victoria is upwards of 50,000 across Australia, upwards of 60,000, we are dealing with about 2,000 generations of humanity who have left records. Of course, a lot has been destroyed by winds, by floods, etcetera, but at Lake Mungo, Mungo Man and Mungo Lady have taught us a lot of the cultural ideas of, say, life and death by the way burials happened  
20 and that gypsum hats were worn by women in mourning up along the Murray River. So, so much can be told but from just the archaeological record.

**PROFESSOR ANDREWS:** Can I add, repatriation has been a huge part of  
25 Victoria at the Museum. And the amount of collections they have there is just amazing, and they have all been taken by non-Aboriginal people. And we're talking about bones and the - and hands, the cultural practices of Aboriginal people around ceremony and funeral.

**MR McAVOY:** Thank you. In one of your answers a few moments ago, you also  
30 talked about the tool site where axe heads were made, that travelled all around the region. That's another archaeological site that's very well-known?

**PROFESSOR ANDREWS:** Yes, it's on Wurundjeri country, Mount William, and  
35 it's an amazing site. It tells so much stories there. That was a man site, I think, Commissioner Hunter, would you agree? Yeah. So, you know, they're the kind of things that we talk about gender sites as well, you know, where women's lore was and where men's roles were and that kind of thing. But, yeah, it's quite a famous, very big and archaeological record, and a lot of men know about the green stone  
40 axe. I've seen so many people pick up and say that's green stone. It's a prize. It's a prized tool.

**MR McAVOY:** Thank you. I just want to take you back to something that you  
45 said a few moments ago about the feeling for Country. This is a subject that's often difficult to explain for Aboriginal people, but in your work as anthropologist, are you aware that it's something that you hear often from Aboriginal people speaking about their feelings that they have on Country or for Country?

**PROFESSOR ANDREWS:** Yes. Yes, especially when they're sad, especially when they can't go home, especially when they have got trauma, they don't know their Country. We are talking about people who, you know, with the forced removal or once they were able to freely move off the missions, they migrated to Melbourne for work, housing, to escape racism. But then we see a new transition of people being born here in Melbourne, who haven't been on Country but they know who they are. And that's the whole thing about, you know, Aboriginal identity. We never lose our cultural connection to what our identity is and the stories for that land.

10

And, you know, we now have people living inside Melbourne, but they go home to Country. So that's where they go and sit and find peace, right. That's where they go and fish. That's where they go and swim in the ocean. That's where they go and try and catch an eel. So they're practising hunting and then the stories of bush tucker, you know, eating bush tucker, you know, having a go and not getting poisoned and all that kind of thing. It's about learning, but you go with the people that are still living on Country, your family. So that family connection is still strong.

20 **MR McAVOY:** Listening to your answer, is it the case that access to Country is a matter of health, physical and mental health?

**PROFESSOR ANDREWS:** Absolutely. Access to Country is imperative to a healthy mind and a healthy body.

25

**MR McAVOY:** Now, in trying to reach some estimate of the population of the area known - now known as Victoria - prior to the arrival of the British, I will prompt you with some information that has been published by a Mr Butlin in which he estimates the population to be something in the order of 60,000 people prior to the arrival of the British. Would any of you make any comment about that estimate?

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**EMERITUS PROFESSOR BROOME:** Well, I think all estimates are estimates. We can't know any more than that. But Butlin did a great deal of sophisticated work on the carrying capacity of Country and the foraging for traditional foods and found that there would be enough food on the Country to sustain more than that number. So it seems to be a credible ballpark figure.

35

But, of course, what happened was that we know that there was a smallpox impact in the 1790s, which spread down from Sydney. It didn't go in every area of Victoria, particularly not the Gunaikurnai Country. But in other parts there have been evidence when the Europeans first arrived, the seafarers in the early 1800s, 1801, '02, '03, that they saw individuals with pock marks on their faces, and that's the telltale sign of a survivor of smallpox. And smallpox, the evidence that people have from studying smallpox across the world is possibly 50 to 80 per cent death rate from smallpox could have occurred. So, in the areas that it got to, it could have been devastating, and then there was a further outbreak in 1830.

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5 So that eroded that population estimate, those two disease impacts, and the early protectors in Victoria were trying to work out what the size of the population would have been at 1834, '35 when Europeans arrived. And I think they think maybe around 10,000. That's what they were estimating in the late 1830s when they were trying to work out how many there would have been. So possibly those early populations through disease impacts went down to possibly 10,000.

10 **MR McAVOY:** And you're aware of some estimates that say perhaps half of the population was lost in each wave of the smallpox which might reduce that number of 60,000 to, say, 15,000, after the second wave of the smallpox.

**EMERITUS PROFESSOR BROOME:** Correct.

15 **MR McAVOY:** Are you aware of any estimates of the population of the Aboriginal people in Victoria at its lowest point post the arrival of the British, the British people?

20 **EMERITUS PROFESSOR BROOME:** Its lowest point, well, I mean once Europeans are here, there is more exact counting, and they're no longer estimates. And by the early 1850s, it had reduced to about 1900, under 2000. The lowest point probably was in the 1920s, but that's difficult because the counting then ran into the problems of how Europeans saw people of mixed descent. But they were counting very small numbers of people they called full per cent, or blood, if you like, to use the terminology of the day. So there was probably an 80 per cent loss once settlement occurred.

30 **MR McAVOY:** Now, I just want to move on now to the period of European arrival. Perhaps if we could have document 1, please, operator, on the screen. This document is a 1960s school map of Australia showing the routes taken by the explorers. The map when it arrives will show us the path of Abel Tasman in 1642 coming across the south of the continent to what he then named - there we go. If we could enlarge that, please. It shows Abel Tasman passed went to the south coast of Tasmania only in 1642.

35 The next visit by Europeans was then understood to be Lieutenant James Cook in 1770 at Point Hicks, near Cann River, near the border, what is now the border with New South Wales. From Point Hicks, he then headed north. Then in 1788, Phillips arrived at Botany Bay, then Port Jackson and there was the establishment of the penal settlement there.

40 It is then, in 1797 and 1798, that the east coast of Victoria into Bass Strait around Phillip Island and Wilsons Promontory but not to Port Philip Bay occurred. And it was at this stage it was understood Tasmania was not connected to the mainland. Before that it was thought so. Please pull me up if you have got anything to add whilst I take you through this.

Is it possible to zoom in, please, operator, to the south-eastern corner. I'm not sure whether you can see that, but the next trip is the circumnavigation of Van Diemen's Land in 1798 to 1799 by George Bass and Matthew Flinders. They come down the east coast of what is now Victoria.

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Then in 1801 and 1802, Flinders, on return from England, traverses the southern coast of Australia around through the Victorian coast and up to Sydney. Then Flinders does a - in 1802 and 1803, a circumnavigation of Terra Australis of (indistinct) or New Holland, including through Bass Strait. Then at 1802 to 1803, we see the first attempt at a settlement at effectively a second settlement away from the Port Jackson, near what is known as Sorrento. And that's the first attempt at settlement in Victoria. Do you agree with that brief summary of what occurred?

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So before that attempted settlement in 1802, there hadn't been much in the way of contact between Europeans and First Nations people. Do you agree with that?

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**EMERITUS PROFESSOR BROOME:** In Victoria, yes.

**MR McAVOY:** Victoria, yes, sorry. The penal settlement, or the settlement attempted to be set up at Sorrento failed after seven, eight months, a short period of time. And the reasons for that are well documented but understood to be a lack of suitable water in the area, and a particularly strong resistance from the Traditional Owners. That Country, that part of Victoria in terms of the First Nations owners of that Country, whose Country is that area?

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**EMERITUS PROFESSOR BROOME:** Well, that would be Bunurong.

**MR McAVOY:** And it was then after approximately seven months that the settlement was relocated to Tasmania or Van Diemen's Land. There were two settlements established in Van Diemen's Land, one in the Derwent River and one in the Tamar River. Now, after the period in which the Sorrento settlement was evacuated, are you aware of any records of sealers or whalers being in the area at or about that time?

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**EMERITUS PROFESSOR BROOME:** That happened shortly after, yes, as knowledge filtered out about the southern coast of the mainland.

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**MR McAVOY:** And those sealing and whaling camps, can you just give a brief description of the nature of those camps?

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**EMERITUS PROFESSOR BROOME:** Well, they were temporary. There were also efforts later to cut bark to make - to use in the making of skins and tanning. But those camps would have been temporary because most of their bases were in Tasmania or Van Diemen's Land, as it was then called, but they would have visited the southern coast on a temporary basis. And at that stage they all - many of the sealing men had formed liaisons, forced cooperative accommodating with Aboriginal women who helped in the enterprise.

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**MR McAVOY:** Was the impact of those whalers or sealers, did it travel very far inland, to your knowledge, or was it mainly confined to the coast?

5 **EMERITUS PROFESSOR BROOME:** Well, in my knowledge, it was a coastal enterprise.

**MR McAVOY:** Any other additions to those comments that you would like to make?

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**PROFESSOR ANDREWS:** I know there was a ship that took some Palawa people over to New Zealand, and that they are actually still recognising the heritage as Palawa, and one of them is one of my students doing a PhD. So I also know – I have a couple of Palawa PhD students, and they're researching  
15 Mannalargenna and their connection to Australia mainland.

But one of the interesting things is those sealing and whalers - ex-convicts, in my eyes, they also went as far as South Australia, with travelling and taking women. So my Auntie Hyllus Maris wrote *Women of the Sun*, and that was in the first  
20 episode, that was in the second episode of the whaling sealing camps where they had Aboriginal women as slaves.

**MR McAVOY:** The Commissioners will recall that there was evidence from  
25 Uncle Jack Charles in the very first session about his ancestors being taken from Tasmania. Now, the land tenure system that existed in Port Jackson and in the Tasmanian colonies, we understand, is very similar in that there were grants made to re-settlers and, in some cases, released convicts who had finished their term by the governor, and that those land grants were made in areas where land had been identified for release for the particular settlement. Do you have any quibble with  
30 that description or is there anything that you would like to add to that very short summary of the system?

**EMERITUS PROFESSOR BROOME:** I think the Crown had assumed  
35 ownership at the act of possession, and then the Crown started to divest land it was interested in progressing settlement, and so many people gained land. Convicts gained small parcels because they wanted them to stay in the colony and not come home. And people, the officers of the first military detachment, they received land and they were the only ones with money to do trading with incoming ships.

40 Then from about 1813, there was a system where people that had money who came to the colony would be given a grant of land, and that grant system lasted until 1830. And then we shift to a different system of lease, leaseholds to squatters of large parcels of land, and the beginnings of selling land at a pound an acre near settlements and towns.

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**MR McAVOY:** We will come to the pastoral lease holdings a little bit later, but, in general, the system that existed and the very early stages of the colony was not

one where members of the settlers or other people were encouraged to simply go out and take land of their own accord. Is it fair to say that?

5 **EMERITUS PROFESSOR BROOME:** It is fair to say that because the government was interested in controlling settlement, and they didn't want to get – let it get out of control. And until 1829 they had a limit of location that no one was supposed to go beyond, and, of course, the southern part of Australia was not supposed to be settled either.

10 **MR McAVOY:** We will come to that. I just want to – I might ask whether the Commissioners are happy to proceed or whether we might take a short break?

**CHAIR:** Lunch was due 1 o'clock; is that right?

15 **MR McAVOY:** It is at 1, but I just note that because of the delays, we have been with these witnesses a little while in the witness box. If we might take a five minute break, then, Commissioners.

**CHAIR:** Thank you. Adjourn for five minutes. Thank you.

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<THE HEARING ADJOURNED AT 12.36 PM

<THE HEARING RESUMED AT 12.48 PM

25 **MR MCAVOY:** Thank you, Chair. Chair, I can indicate that given of the technical difficulties this morning and the time we have available with these witnesses, it's Counsel Assisting's preference that we sit on until 1.15, if possible, today and resume at 2, thereby gaining back 15 minutes. Is that possible?

30 **CHAIR:** Yes, Counsel, thank you.

**MR McAVOY:** Thank you for that indulgence, Chair. Now, witnesses, I'm going to ask you some questions now about what was then known as Van Diemen's Land, is now known as Tasmania. You're here today to give evidence about what  
35 happened about the State of Victoria and land injustices in Victoria. But I want you to give evidence to the best of your ability about your knowledge of what occurred in Tasmania. Now, I'm just going to put a couple of matters to you which I would like you to accept, unless you feel you have other information.

40 The first is that the estimated Palawa and Aboriginal population of Tasmania, or at 1788, the estimates that are currently available say that the population was between 3,000 and 15,000. So that's quite a wide variance in estimates. But is that something that accords with your knowledge or do you think that that's incorrect?  
Any views?

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**EMERITUS PROFESSOR BROOME:** I think it's a wide estimate, but it is correct.



**MR McAVOY:** Thank you. And it's notorious, I think, that the remaining population that was known to have survived the years following the arrival of the British on those shores by 1835, when people were removed to Flinders Island and the Bass Strait, was 100 people. You don't have any disagreement with that?

Now, the population decline, I suggest to you, has been attributed in the various historical writings on the subject to, I'll summarise it as three different types of matter. One is the introduced disease, particularly smallpox. The second is indiscriminate killing of Aboriginal people. But the third is largescale massacres as a separate category of death. Are there – would you agree that the population decline in Tasmania can be attributed to those three factors?

**ASSOCIATE PROFESSOR ELLINGHAUS:** Can I add one more factor. And that is the limitation of Palawa people's mobility. So as settler settlements encroach, settler governments and police and militia are very concerned with making sure that Aboriginal people don't move around, which impacts on their ability to hunt, to care for Country and so, you know, it really doesn't – does make an impact on the population in terms of them being able to live as they've needed to live at that time.

**DR PASCOE:** Also the dispossession from land.

**ASSOCIATE PROFESSOR ELLINGHAUS:** Correct.

**MR McAVOY:** Any other additions to that list?

**DR PASCOE:** Yeah, also the impact that those things have on culture. If you have a group of people and six of them are killed, the knowledge holders, they hold certain information about where to find food, even, or the right way to go about that so that has an impact as well.

**MR McAVOY:** Any further additions to that list?

**EMERITUS PROFESSOR BROOME:** Well, population recovery didn't happen because of the existence of venereal diseases.

**MR McAVOY:** The conception rates were low?

**EMERITUS PROFESSOR BROOME:** Certainly, yes.

**MR McAVOY:** And is it also the case that the infant mortality rates where there was conception increased?

**EMERITUS PROFESSOR BROOME:** Well, certainly, given what has been said earlier about being dispossessed and being moved around, it doesn't make for settled family life and child raising.

**MR McAVOY:** Yes. Now, if I could have document number 2, please, operator. The slide that you are now being shown is the *Convention on the Prevention and Punishment of the Crime of Genocide*. Article 2. I will just take you through that document. That Convention, article II provides:

10        *"In the present convention genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; and I forcibly transferring children of the group to another group."*

15        Now, with that definition in mind, you would accept the proposition that Aboriginal people even at that early stage were understood to be subject to the laws of England from the time of annexation, and that under British law the crimes of murder or unlawful killing were well known at 1803 when the British arrived in Van Die'en's Land?

20        **DR PASCOE:** According to the British.

**MR McAVOY:** Two propositions there. Firstly, that Aboriginal people were understood to be subject to the laws of England; and, second, that the crimes of murder and unlawful killing were well known under British law in 1803.

**DR PASCOE:** Yes, according to the British, t'at's the case.

**MR McAVOY:** According to the British, yes. T'at's the formal position?

30        **DR PASCOE:** Yep.

**MR McAVOY:** Now, is it also fair to say, or accurate to say I should put it, that the various governors in the New South Wales colony knew what was happening in Van Die'en's Land by reason of the reports from the colonel at the time, Colonel George Arthur, who was the lieutenant governor of the Van Die'en's Land settlements. It was well known at the time that there was large scale conflict and substantial deaths of Aboriginal people; correct?

40        **DR PASCOE:** Yep.

**MR McAVOY:** You all agree with that? Are each of you aware of a book by Tom Lawson from 2014 titled *The Last Man: A British Genocide in Tasmania*. Are you aware of that book?

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**EMERITUS PROFESSOR BROOME:** I'm supposed to be in retirement, Mr McAvoy. I 'on't keep up with everything. But I have heard the title, but I ha'en't read the book.

5 **ASSOCIATE PROFESSOR ELLINGHAUS:** I have heard of the book but 'an't recall actually reading it.

10 **MR McAVOY:** Th're's a book in 2017, Nick Bro'ie's book called *The Vandemonian War: The secret history of Brit'in's Tasmanian invasion*, another book on the same subject. Th're's also some material that has been made publicly available as late as 2020 from Professor Pam Sharpe from Tasmania who was researching in the Irish national records where she found the diary of a soldier named Private McNally with an entry for 1827 which reads as follows“

15 *"A man of the name of Shaw came to me with information that he had killed six of the natives, two of which was woman. I advised him to say no about it but to keep it as a secret as he would be called to account before a justice. He took me to the place where I saw him make a bonfire of these bodi"s."*

20 That type of record, is that something t'at's unusual in the records that you find for early colonial settlements? You are shaking your head, Dr Pascoe.

**DR PASCOE:** T'at's a common scenario.

25 **MR McAVOY:** So are you saying the common scenario, it's' one in which a soldier, so an officer of the State, Private McNally, becomes aware and complicit in the hiding of evidence of Aboriginal deaths?

**DR PASCOE:** Yes, t'at's right.

30

**MR McAVOY:** And you say that t'at's common?

35 **DR PASCOE:** Yes, I say t'at's common. Both in terms of the code of silence where the settlers were doing this without government collaboration, or with a combined group of settlers and government forces, or whether'it's just government forces, that they commit these massacres and then attempt to cover them up.

40 **MR McAVOY:** Both the books I referred you to make the case relying largely on Colonel George Art'ur's letters, the lieutenant governor of the colony, the settlements, that the extermination or the extirpation, which were the words in favour at the time, of Aboriginal people from Van Die'en's Land was highly orchestrated and deliberately hidden. In your knowledge of what occurred in Tasmania, is that an appropriate or apt description?

45 **DR PASCOE:** Yes, it is, especially in terms of the so-called black line where the government issued an order, Government Order Number 10, I think'it's called, where they requested because of the shortages of men and of colonists, they

requested settlers to participate in an attempt to surround all Aboriginal people in the southeast of the colony and herd them into a small peninsula, killing them on the way. That w'sn't entirely successful, but massacres occurred consistently after that.

5

**MR McAVOY:** And is it your understanding, Dr Pascoe, that these killings occurred with some degree of government knowledge? Are you able to say that?

**DR PASCOE:** Yeah, Government Order Number 10 came from the government and it was a request for the settlers to help them form the black line.

10

**MR McAVOY:** And so both books make the case that tho—e - the actions of the government with respect to Van Die'en's Land, were acts which would be now regarded as acts of genocide in breach of the genocide convention. Are you aware of those claims about the nature and character of government acts against Aboriginal people in Tasmania?

15

**DR PASCOE:** I'm aware of those claims generally' I'm not aware of those two particular books. But according to those criteria, yes, t'ey're acts of genocide.

20

**MR McAVOY:** So particularly in the description - an' I'm not asking to you give a legal opinion here.

**DR PASCOE:** Yes' I'm not a lawyer.

25

**MR McAVOY:** But in the description of genocide as set out in Article II, there are acts that can —e - are you saying that they are acts that can be understood to have been committed with the intent to destroy in whole or in part the Aboriginal people?

30

**DR PASCOE:** Yes. Yep.

**ASSOCIATE PROFESSOR ELLINGHAUS:** Can I add something to that?

35

**MR McAVOY:** Certainly.

**ASSOCIATE PROFESSOR ELLINGHAUS:** The lawyer, Raphael Lemkin, who came up with the definition of genocide actually used Tasmania as an example in his thinking, what happened in Tasmania.

40

**MR McAVOY:** So that definition came up in the period shortly before the convention on genocide. It was a newly created term by Mr Lemkin?

**ASSOCIATE PROFESSOR ELLINGHAUS:** Correct. Yes.

45

**MR McAVOY:** And whilst the term d'dn't exist, the treatment of civilians in that manner was understood at that time to be against international law, is that your understanding?

5 **ASSOCIATE PROFESSOR ELLINGHAUS:** T'at's my understanding, it was part of the post-war attempt to, I guess, reckon with the Holocaust, and Lemkin was very aware that this was not the first time this kind of attempt to eradicate a particular group had taken place.

10 **CHAIR:** Could I ask a question about the date of that definition?

**ASSOCIATE PROFESSOR ELLINGHAUS:** I believe it was 1944 but I could be wrong. I need to check that. No, that 'an't be right.

15 **MR McAVOY:** We might put that to the witnesses again after the lunch break, but'it's a definition that arose at or about the time that the Convention on Genocide was adopted in the UN, which is understood to be 1942 or 1944. And I note that Professor Ellinghaus and Professor Broome were both nodding their head as I said that.

20 **MR McAVOY'** I'll come back to the situation in Tasmania a little bit later. While this was all going on in Tasmania and the land was being released and people were taking leases and allocations of grants, there was, for some period of time, very little action in terms of contact with Aboriginal people in mainland Victoria. Is that correct? Do you agree with that?

25 **EMERITUS PROFESSOR BROOME:** Yes, only a small number of sealers, bark cutters and others made occasional visits to the southern coast. And it was illegal to do so because, as I said earlier, the government in New South Wales had tried to limit settlement and there were boundaries beyond which you could not go and they were about 150 miles from Sydney.

30 **MR McAVOY:** And, again, could you describe the reasons, as you understand them, for the limitations on movement?

35 **EMERITUS PROFESSOR BROOME:** It was about controlling settlement. Those who were attempting to go beyond the bounds were seen as law breakers by the government. They would have been encroaching on so-called Crown land without payment and using resources without payment to the government. So the government tried to prevent that.

40 **MR McAVOY:** And, really, the next incursion that we see across Country is the 1824 expedition from Hume and Hovell from Lake George through to Port Phillip Bay. They 'on't stay, though:'it's a drive by, if I can put it that way. After that, the first then real intrusion into mainland, the mainland in Victoria, what was to become Victoria, was in 1834 with the Henty broth'rs' arrival in Portland. You agree with that summary? The Henty brothers are known to the Commission as a

result of some of the evidence that was given yesterday in Portland. But is it possible for someone to give just a potted version of the Henty broth'rs' background?

5 **EMERITUS PROFESSOR BROOME:** I could. They were sort of middle ranking farmers in southern England, and they made the decision to emigrate to Australia because they, with a growing family, said that their fortune could not accommodate all the children. So, to better their position, they decided to pull up stakes and emigrate to Australia. They went to Western Australia first where the  
10 the land grant system was still operating but then one of them decided to move and attempt settlement at Portland. So it was land hunger that drove them and it was the desire to better the situation of their family because they saw opportunities were limited for them in England.

15 **MR McAVOY:** And do you know whether they sought to obtain a land grant in Van Die'en's Land at all?

**EMERITUS PROFESSOR BROOME'** I'm just trying to rack my memory. I know they tried to, and I think they just missed out on the system closing down  
20 giving land grants, because land in Tasmania had basically been all taken up. All the pastoral land was occupied by people who got there first, the Europeans. So they were looking to further afield but there were other people in Tasmania who could see that the economy was stalling and they were looking for other opportunities as well.

25 **MR McAVOY:** So the Henty brothers then went to Portland and t'at's known through the historical records, particularly of the family. Does any of the panellists know who the Traditional Owners, the First Nation was at that part of Victoria? I ask whether the panel are aware of whether the Gunditjmara had at that time  
30 what we would understand as ownership of the lands and waters and the soil and all of the landscape. I can see Dr Pascoe and Professor Broome nodding their heads, as with the rest of the panellists.

35 It sounds like a strange question bu' I'm just seeking to establish that from you that'it's your understanding that the Country was already owned by the time that the Hentys' arrived there in 1834.

**ASSOCIATE PROFESSOR ELLINGHAUS:** Yes.

40 **MR McAVOY:** You are all in agreement - by the Gunditjmara people?

**COMMISSIONER NORTH:** Do you know what drew the Hentys particularly to Portland?

45 **EMERITUS PROFESSOR BROOME:** Well, I think whalers had been there and they were operating on knowledge, as was the latest settlement of Melbourne, operating on knowledge, of those who had made occasional visits to the coast.

**MR McAVOY:** I might ask the operator to put up document 3, which is a map showing the early occupation of Portland Bay, and on that map, I don't know if the Commissioners can see it but on that map you can see above the word "north" in the centre of the diagram, the words "Convincing Ground". And I understand the Commissioners went there yesterday. And then to the left of the Convincing Ground, you can see the reference to the Hentys' Whaling Station.

You can see the names of other people, references to whaling stations and landings, and in the top right there, "Wreck Julia". It's dated 1863. Are you familiar with that diagram, any of the panellists? No.

**PROFESSOR ANDREWS:** I'm familiar with the Convincing Ground and the history of it.

**MR McAVOY:** I suggest to you that that shows circumstances where there was an existing whaling community living very close to the shores of Portland Bay, and an access point for the Henty family. You would agree with that summary?

**EMERITUS PROFESSOR BROOME:** Yes.

**MR McAVOY:** Thank you. Now, the Commissioners heard yesterday of the Convincing Ground massacres, of massacre and visited the site. You agree with me that the site itself and the story attached to that site is significant as the first recorded massacre site in Victoria?

**EMERITUS PROFESSOR BROOME:** Yes.

**MR McAVOY:** Yes. And it's also significant, I suggest to you, in that there are living descendants of survivors of that massacre who are able to retell the story. You would agree with that?

**EMERITUS PROFESSOR BROOME:** Yes.

**MR McAVOY:** As historians, you've heard that there have been attempts in the past to cast the story in a different light; to say that the Convincing Ground had a different meaning to the one that's given to it by the Gunditjmara people? Yes? Do you as historians, do you have any doubt as to the correctness of the story that the massacre site was given the name that Convincing Ground by reason of its intention that the site be a warning to Aboriginal people not to fight or engage with the whalers that were there?

**EMERITUS PROFESSOR BROOME:** Correct.

**MR McAVOY:** After the Henty brothers arrived in 1834, were you aware of whether they, what they brought with them or what they set up in the time that followed? Any of you able to comment on that?

**EMERITUS PROFESSOR BROOME:** Well, I think they just started settlement. I'm not exactly sure whether they brought pre-fabricated houses, as some settlers did, but they started to, I think, look to moving away from whaling  
5 and doing wider work on the land in sheep.

**MR McAVOY:** So you are aware, some of you may be aware that in 1836, Thomas Mitchell, as the Surveyor-General travelled to Portland across country and made some comment in relation to the broad open pastures that he saw, or  
10 what he called broad open pastures, and gave the area a particular name.

**EMERITUS PROFESSOR BROOME:** Well, on his travels through southern New South Wales and northern Victoria, he was astonished at the pasture land which had been created by Aboriginal fire stick farming, as we now know, and he  
15 called it Australia Felix, Australia the happy south land, but was astonished when he got to Portland because he didn't know there was a settlement there. In fact, you know, in the British terms it was illegal. In the British terms, it would have been an illegal settlement because no one was supposed to be on the southern coast.

**MR McAVOY:** But there hadn't been any proclamation opening that part of the country for any settlement?  
20

**EMERITUS PROFESSOR BROOME:** No.

**MR McAVOY:** So the process of creating settlements in Tasmania, in Van Diemen's Land, allowed then the grant of Country to settlers or former convicts, and that that hadn't yet occurred on the south coast of the mainland in any place.  
25

**EMERITUS PROFESSOR BROOME:** Not at that time.  
30

**MR McAVOY:** And so with Sir Thomas Mitchell's observation that, of this great vast area of pastoral land and calling it Australia Felix, did that have any consequences with respect to the settlers and -

**EMERITUS PROFESSOR BROOME:** Certainly, because his account was later published, not too long afterwards, and so it told settlers of the prospects of good land. And by then, the pastoral industry had started to push out beyond the boundaries, beyond the limits of legal settlement. They were known as squatters. They were illegal in terms of the government. And their pressure pushing  
35 outwards, and Mitchell and other accounts fuelled that, meant that the government really had to do something and brought in leases for pastoral properties in 1836.  
40

**COMMISSIONER HUNTER:** Can I just ask, there was a law around the limits of location. Is that what you are talking about?  
45

**EMERITUS PROFESSOR BROOME:** Yep. Yes.



**COMMISSIONER HUNTER:** Can you explain that a bit more for me?

5 **EMERITUS PROFESSOR BROOME:** The British government was into orderly progress. And so they didn't want the settlement getting out of hand in terms of its extent. They couldn't police it. They couldn't govern it properly. And so they made this declaration that you couldn't go beyond the boundaries set in 1829, which were about 150 miles from Sydney. But of course, the economic pressure, wool had become a viable staple in 1820. So people saw they could make money from running sheep on Country. And so the land around Sydney was  
10 occupied so they wanted to push out, and this was the pressure.

The government, in the end, had to, that was a fait accompli. They couldn't do anything about that. So they thought, well, we've got to get some, if we are going to have to police this area, we are going to have to pay for it, so we're going to  
15 make these squatters pay a pound, a 10 pound licence for as much as they could hold, which might be 5,000 or 10,000 acres.

**DR PASCOE:** I would add about the squatters, that from the squatters' point of view, they were keen to point out to the government that they were the ones  
20 generating the fabulous wealth of the colony and that they were doing the hard work of expanding the frontier, from their perspective.

**COMMISSIONER HUNTER:** So if they took over this land and there was no legal, in British terms, rights or they were disobeying the law, so if we go back to what Mr McAvoy said before about the letters, that would be documenting what  
25 happened on that land, am I correct, in letters like, you know, for instance massacres or taking over the land. There would be the killing of our people to be able to take that land, and it all be illegal, the whole, I mean it's all illegal but let's be real.

30

**DR PASCOE:** Yeah, illegal, a kind of open secret, I suppose.

**EMERITUS PROFESSOR BROOME:** Once they brought in a leasehold system, they created Crown Land Commissioners to lease the leaseholds to make  
35 sure people were paying their 10 pounds and that if they were having border disputes with other squatters, they would come in and settle the matter on the spot.

**COMMISSIONER HUNTER:** So they had this limitation you could go to, but they couldn't police it so then they gained money off it. Is that -  
40

**EMERITUS PROFESSOR BROOME:** Well, once the squatters pushed out beyond the boundaries, yes, they couldn't stop it, so they thought, well, we'll have leases and we can try and police it through Crown Land Commissioners.

45 **COMMISSIONER LOVETT:** (Indistinct) dates prior to (indistinct)

**EMERITUS PROFESSOR BROOME:** From 1836, when they put the leaseholds in place, then the government was trying to enforce those leaseholds to get a return. So there was an enormous battle going on and because the squatters were exerting economic pressure and the governors - and Governor Gibbs in particular had incredible fights in the 1840s in the Legislative Council where there was a squatter lobby wanting longer leaseholds, wanting control of the land, and the governor trying to contain that because he wanted to keep land for the future as well. He didn't want to close it all off in the 1840s.

10 **COMMISSIONER LOVETT:** Arrived in 1834?

**EMERITUS PROFESSOR BROOME:** Yes.

15 **MR McAVOY:** Commissioners and Chair, I think it's a convenient point at which to take the lunch break. We have gone past 1.15 a little. Is it possible that we still return at 2 pm and at that time, Commissioners, just for your indication, occasion it's proposed to take the witnesses to the Batman Treaty and matters relating to that treaty and the consequences of that action. Are you happy to break for lunch now?

20 **CHAIR:** Thank you. We will adjourn until 2 o'clock.

<THE HEARING ADJOURNED AT 1.25 PM

25 <THE HEARING RESUMED AT 2.09 PM

**CHAIR:** Thank you, Counsel. Apologies for the slight delay.

30 **MR McAVOY:** Thank you, Chair. I can confirm that the documents that have been referred to and the documents shown on the screen will be tendered later in the week as a bundle in respect of - that should gather in all of the documents that are referred to this week. We propose to do it as a tender at the end of the week. As I indicated.

35 **CHAIR:** Counsel, could I just make people aware that the ABC is in the room doing some filming for a very short time. So just people are aware. Thank you.

40 **MR McAVOY:** Thank you, Commissioner. As I indicated before the lunch break, I propose to ask the witnesses some questions now about the document which is referred to as the Batman Treaty. You are all familiar with the Batman Treaty?

**ASSOCIATE PROFESSOR ELLINGHAUS:** Yes.

45 **MR McAVOY:** And you might be aware that, in January 1827, John Batman and Joseph Gellibrand applied for a grant of land at Port Phillip, which of course at that time was part of the colony of New South Wales, and that application was refused. From your view, and taking into account the things that you've said earlier

today, does that tell us anything about the views or intentions of the colonial government in New South Wales in Port Jackson regarding settlement in Victoria, the fact that they were refused their lease or grant?

5 **EMERITUS PROFESSOR BROOME:** Well, I think as I said earlier, government in Sydney was trying to confine settlement to control it, and they didn't want anything happening on the southern coast of Australia. And so that's the reason why, I think, that Batman's attempt to get land was refused in 1827.

10 **MR McAVOY:** The application for a grant of land by Batman and Gellibrand at the time indicates that at least they thought the land around Port Phillip was valuable. That's a fair assumption, would you agree? And it's the type of lands that are similar in type to the lands that Sir Thomas Mitchell had observed when he gave the southern part of Australia the name Australia Felix; yes?

15 Thank you. Now, is it correct, to your understanding, that in 1832, at least, there were Tasmanian pastoralists who already had granted lands in the Tasmanian settlements who were looking to move to, or open up other operations in Victoria, by way of a settlement there? You are nodding your head.

20 **ASSOCIATE PROFESSOR ELLINGHAUS:** Yes, there was a number of businessmen and farmers in Tasmania who had their eye on the south coast of Victoria, and they got together eventually in June 1835 and established something called the Port Phillip Association with the intention of coming to Port Phillip and finding good farming country.

25 **MR McAVOY:** Was the association simply a group of farmers or did they do more than that?

30 **ASSOCIATE PROFESSOR ELLINGHAUS:** They were businessmen. They were colonists. John Batman, whose name ended up on the treaty, was also an entrepreneur, a grazier, an explorer. He also he was involved in the violence that had happened in Tasmania. He led an attack on Palawa people. His party killed an estimated 15 people and captured some, including keeping a two-year-old boy.

35 **MR McAVOY:** So it appears that not only by 1835 that not only were the Henty brothers trying to push into the land north of Portland, but also there was another group of pastoralists who were trying to acquire land in the Port Phillip area?

40 **ASSOCIATE PROFESSOR ELLINGHAUS:** That's correct.

**MR McAVOY:** And the resistance, as Professor Broome has told us, is that the colonial government were concerned at their ability to control these areas once they opened them up; that is understood to be the case. So was it entirely to acquire resources or pastoral land that they were seeking to open up? There wasn't any greater purpose or objective?

**ASSOCIATE PROFESSOR ELLINGHAUS:** No, that's the reason behind it.

**MR McAVOY:** It was entirely an economic commercial venture. Now, the advocates of this opening up of Country, did any of you observe that they had particular regard for the Aboriginal owners and occupiers of the land?

**ASSOCIATE PROFESSOR ELLINGHAUS:** I think they made the case that they wanted - I think that they understood that the world was watching what was happening in Tasmania, and that the colonial government was very concerned about the violence happening there, and I think that they were clever enough to realise that they needed to at least appear that way. I wouldn't know whether that was actually what was in their minds, and I suspect that it wasn't. But they certainly made noises about treating with Aboriginal people, with being more humanitarian about the way in which Country was taken.

**MR McAVOY:** Are you aware of any inquiry being conducted in the UK Parliament about this time in relation to Aboriginal peoples in the British empire?

**ASSOCIATE PROFESSOR ELLINGHAUS:** Yes, that - exactly what you just said was happening. A Select Committee in London was investigating what was happening in many of Britain's colonies, really coming from the perspective that there was too much violence and there was a big humanitarian push and a movement to rein in what was happening in British colonies. And they were taking evidence from what was happening in Australia as well as in many other places in the world.

**MR McAVOY:** Thank you. I'll come back to the UK Parliament Select Committee report in a moment, but is it the case that Batman represented the Port Phillip Association to travel to the Bellarine Peninsula?

**ASSOCIATE PROFESSOR ELLINGHAUS:** Yes, that's correct. I believe that was 1835, in May, they sailed across Bass Strait and landed in Indented Head on the Bellarine Peninsula.

**MR McAVOY:** Is there anything we know about what Batman had intended to do?

**ASSOCIATE PROFESSOR ELLINGHAUS:** I'm not sure if we know about his intentions, but we do know what he did when he got there.

**MR McAVOY:** And what did he do when he got there?

**ASSOCIATE PROFESSOR ELLINGHAUS:** They travelled around the area around Port Phillip Bay and then during that time they met with people from the Kulin nations a number of times, and when they did so, they gave them gifts like blankets, handkerchiefs, sugar and apples and other items, and also received things in exchange like baskets and spears.

**MR McAVOY:** What were those gifts and items being exchanged for?

5 **ASSOCIATE PROFESSOR ELLINGHAUS:** Well, at that point, I'm not sure what their intentions were, but I'm guessing it was in order to create some kind of exchange. Perhaps also the Kulin people were bringing Batman and his party into their own ways of doing things.

10 **MR McAVOY:** If I suggest to you that on 6 June, Batman met with some Kulin Elders and signed two deeds on the banks of the Yarra River?

**ASSOCIATE PROFESSOR ELLINGHAUS:** Yes, it's disputed where it took place, but that's correct, yep.

15 **MR McAVOY:** And is it known whether Batman wrote those agreements on the spot or he brought them with him?

20 **ASSOCIATE PROFESSOR ELLINGHAUS:** I'm not sure. Richard, do you know that one?

**EMERITUS PROFESSOR BROOME:** I think that they were brought with him. So the intention was to purchase land and, therefore, to make it seem like a legal transaction in the eyes of the British, and particularly in the eyes of the evangelicals. As Kate Ellinghaus has said, they were playing to the evangelical  
25 lobby to show that they were good colonists, they were willing to purchase land, and I think that the Select Committee had said that Aboriginal people were Traditional Owners of land.

30 **MR McAVOY:** So are you aware of the size of the land that was purported to have been acquired through those deeds?

**EMERITUS PROFESSOR BROOME:** Well, it was supposed to stretch from Melbourne to Geelong.

35 **MR McAVOY:** I suggest to you that one of the deeds related to 500,000 acres of Melbourne. Does that ring a bell?

**EMERITUS PROFESSOR BROOME:** Yes, it does.

40 **MR McAVOY:** And the other one, the Geelong deed, related to over 100,000 acres of land around Geelong and Indented Head?

**EMERITUS PROFESSOR BROOME:** That's correct.

45 **MR McAVOY:** You recognise those figures? So the fact that he came with the - you recall that he came with the deeds, indicates that he came there with the intention of entering those agreements; the fact that he entered agreements with

the Aboriginal people of those places and Kulin Elders is some form of recognition of ownership of those lands?

**EMERITUS PROFESSOR BROOME:** Yes, correct.

5

**MR McAVOY:** The value, or the consideration paid for those lands, amounts to a very small amount of blankets and axes and a number of other consumable items. It doesn't appear that the value exists in the items that were said to be traded for the title to those lands, if I can put it that way. Do you agree?

10

**EMERITUS PROFESSOR BROOME:** Well, Aboriginal people didn't have monetary value on things. So I don't think you can make that direct connection. But certainly, in our views, it doesn't seem a particularly good bargain.

15 **MR McAVOY:** The other issue that might arise from that is whether, in a society that doesn't believe in their capacity to alienate lands in any event, what Batman and the deed might have indicated he was acquiring, it may not have been the same thing that the Kulin Elders were intending to give. Would you agree with that?

20

**ASSOCIATE PROFESSOR ELLINGHAUS:** There's some people believe that what the Kulin Elders was doing was some kind of Tanderrum ceremony, which allowed Batman and his party passage across the land, rather than giving the land away. Did you want to say something?

25

**PROFESSOR ANDREWS:** It's kind of along the same - that's our cultural way. You welcome people on to your land and then you do an exchange. So what was being exchanged there were not, were different, you know, ideologies and kind of thoughts happening there. And I'm not sure culturally what was happening there could have happened by law, in Aboriginal lore.

30

**MR McAVOY:** Thank you. Do you have any information on which you can offer any thoughts as to what Batman was - why Batman thought it might be important to sign a treaty with the Kulin nation?

35

**ASSOCIATE PROFESSOR ELLINGHAUS:** I think he was trying to play a game to force the colonial government into opening up that land. I think that he was pulling on the kind of international custom of treaties that he would have known about that took place in other places like New Zealand and United States of America to create a legal document to force the government's hand.

40

**EMERITUS PROFESSOR BROOME:** I think adding to that was he was very well aware that the government in Britain at the time was run by an evangelical lobby group that had been important in ending the slavery in the British empire, so they were sympathetic to the rights of Indigenous peoples, and so by posturing as a land agreement, then he was hoping that that might even stick and he might be able to keep this land.

45

**MR McAVOY:** As a result of entry into that agreement, what did the New South Wales colonial - the Governor do?

5 **ASSOCIATE PROFESSOR ELLINGHAUS:** So they actually thought about it for a few months and discussed it with the colonial government in the UK, but eventually Governor Richard Bourke declared the treaty null and void in August 1835. He declared that the settlement that Batman had undertaken on the lands that would become Victoria was illegal. He called the men trespassers and said  
10 that they should be dealt with as if they were intruders on vacant lands of the Crown.

**MR McAVOY:** That declaration by the Governor Bourke in 1835, did it say anything with respect to the lands in the colony, the whole of the colony outside of  
15 the settled areas?

**ASSOCIATE PROFESSOR ELLINGHAUS:** So basically they treated the lands outside the settled area as part of New South Wales. It upheld the doctrine of terra nullius in saying that Aboriginal people had no ownership over those lands.  
20

**MR McAVOY:** The longer-term consequence of that declaration for Aboriginal people all over eastern Australia but particularly in Victoria was what, can you say?

25 **EMERITUS PROFESSOR BROOME:** I guess it was a reaffirmation of the Crown's claim over the whole of the land, and that Aboriginal people had no rights to land. And, I mean, I think it's important to note that despite the nefarious objectives of the Port Phillip Association, they are still, to this day, the only group offering land, offering a treaty, to Aboriginal people, and actually this was quite  
30 valued at times by Aboriginal people. I remember Sir Doug Nicholls in the 1940s, they held annual commemorations of the Batman Treaty and saying that, "We want this honoured." So it has got this ironic twist to it.

**ASSOCIATE PROFESSOR ELLINGHAUS:** If it had been acknowledged, then it would have acknowledged that Aboriginal people had right to dispose of the lands and thus that they had ownership of the land.  
35

**MR McAVOY:** Do you have, as historians, any difficulty with the Bourke proclamation of ownership of the whole of the eastern Australia, as it then was, by  
40 way of proclamation?

**EMERITUS PROFESSOR BROOME:** Well, it was a big claim, wasn't it, because a lot of the land was still unoccupied at that time. But it - I suppose it went - it was in the logic of Cook's act of possession in 1770, which had claimed  
45 the whole of the east coast. So it was true to that earlier declaration.

**MR McAVOY:** Now, I just want to ask you some questions about what might be referred to as colonist or settler and First Nations relationships. Professor Broome, you, in your book, *Aboriginal Victorians*, you devote some of, I think, chapter 4, to this particular study in terms of the nuanced relationships that existed, are  
5 known to exist, from the records. Are you able to just expand on that for the Commissioners?

**EMERITUS PROFESSOR BROOME:** Well, I think chapter 4, from my memory, was talking about how pastoralists and squatters interacted with  
10 Aboriginal people that they found on the pastoral runs that they had established. And there's a great mixture of relations, as we would expect in all human interactions. They, Aboriginal people, often showed them Country, bits of Country; helped them establish their stations by cutting bark; helping them get sheep across rivers, et cetera; and then performed work for pastorals on the station  
15 in exchange for tea and tobacco and perhaps also some mutton and sheep.

So there were, you know - and, of course, the squatters wanted to create good relations at first because they were isolated themselves. You know, pastoral runs, you were five or 10 miles from your nearest neighbour. You might have two or  
20 three workers. So they were small groups of men trying to occupy large amounts of Country that wasn't theirs. And, of course, as we might discuss later, they had particular views of Aboriginal people that created their fear.

Sometimes it was good relations when there were families and when there were  
25 children present. There were quite human interactions going - I remember, in one instance, a squatter shaved himself in the open and Aboriginal men were quite intrigued, and he shaved one of them. So there were these sorts of human interactions going on.

30 But, of course, some others, especially as the frontier developed and the struggle over land between two groups who both thought they had absolute rights to the lands. The squatters thought it was theirs because they had a licence from the government; Aboriginal people, it was theirs through perpetuity. Then tensions started to arise, and some men were harder than others in the way they interacted.  
35

There's always a spectrum of people willing, some not willing, to enact violence and other people willing to do so to defend what they thought was theirs. And, of course, at this time, I think until about the, some time in 1820s, to take a sheep was a capital offence in England. So this is the framework. They were defending  
40 property. They thought they had the right to be there. And on the other side, Aboriginal people were defending the land that was their birthright, in that sense.

**MR McAVOY:** Thank you. Now, in the period following the Batman Treaty and the Bourke declaration, if I can use that shorthand, there was an opening up of the  
45 Port Phillip settlement and Portland as well; that's correct? And in chapter 5 of your book, which you title *Dangerous Frontiers*, you write of trouble that occurred in Geelong in 1836, the Ovens and Goulburn Rivers in 1838, the western districts



in 1839, the Gippsland area in 1840, and the Murray Valley and the Wimmera Mallee from 1842. And if we were to map those places, we would see that's the frontier of the settlement opening up and where the conflict is occurring with the Aboriginal owners of the land. Is that correct?

5

**EMERITUS PROFESSOR BROOME:** It is correct, and it was probably the swiftest expansion within the British empire of any occupation of land. Because of the nature of the countryside that had been created by fire stick farming, it was perfect sheep country. And the expansion, particularly in Central Victoria, was

10 rapid. The Mallee and the Gippsland took longer, of course. But Central Victoria probably was under sheep within five to seven years of first settlement.

**MR McAVOY:** And you might have heard the Chair's opening comments about - from Curr - to the effect that never have a body with men become rich so quickly

15 as those who took up land in Victoria. And that's the same process that you're speaking of in terms of the taking up of land?

**EMERITUS PROFESSOR BROOME:** Yes. There are ups and downs. There was a depression in 1842/43 where sheep were worth nothing and were boiled

20 down for soap. But, generally, money was to be made in pastoral work in those 1838 and 40s period.

**MR McAVOY:** I might at this point, Commissioners, ask Dr Pascoe if he might deliver his presentation in relation to the massacres and the work of the University

25 of Newcastle and the La Trobe University in relation to the massacre map. If we can see, operator, document 4, which is a PowerPoint presentation.

**DR PASCOE:** Will I have control of that? How does that work, going to the next slide and so on?

30

**MR McAVOY:** If you can just ask the operators to move it to the next slide.

**DR PASCOE:** Okay. That's not it.

**MR McAVOY:** Document 4. Document 5, sorry. This is your presentation which has been prepared by you, Dr Pascoe?

**DR PASCOE:** Yes, that's right.

**MR McAVOY:** And it's been prepared from the study and research that you've done particularly with Dr Lyndall Ryan?

40

**DR PASCOE:** Yes.

**MR McAVOY:** And it has resulted in a fairly public massacre map that's available online?

45

**DR PASCOE:** That's right.

**MR McAVOY:** If we can go to the next slide. Not the next document; the next slide in this PowerPoint, please. Dr Pascoe, the page that's showing at the moment  
5 is your acknowledgements. Do you wish to make them orally?

**DR PASCOE:** That's right. We have already been through the acknowledgements at the beginning so I just wanted to acknowledge Wurundjeri Woi Wurrung and the Kulin nation, whose lands and waters we are on today. Most of this work was  
10 done in Awabakal and Worimi Country. And I grew up in Jagera Country with - and my great grandmother is Kabi Kabi, probably.

**MR McAVOY:** Next slide, please.

**DR PASCOE:** So, firstly, a warning. So I'm going to talk about extreme cases of historical violence, but I will try to avoid any graphic details. And that's why we're here. So I will just be very straightforward about what we're discussing. So, firstly, a bit of background about the project. It was, well it is a project led by Professor Lyndall Ryan, starting in 2014 with an ARC grant. It has, it's been a collaborative  
15 20 work of many historians and other workers, such as myself.

And more recently it's been a volunteer effort to try and finish the work, and we do hope to be concluding the project in the coming months.

**MR McAVOY:** Next slide, please.

**DR PASCOE:** Okay. And, again, we can probably move on fairly quickly here because, yep. So, yes, the project has involved consultation and collaboration in various forms. That includes Professor Ryan's lifetime of experience and her  
30 contacts, sessions held at Wollotuka at the University of Newcastle, meetings with AIATSIS, Indigenous advisors and Indigenous staff, visits to community, speaking at conferences, ordinary conversations with people, and through the online feedback form that's available on the website.

**DR PASCOE:** So this is the online map of massacres across the whole of the country. The project was to create a database and map of known massacres of six or more people across the whole of Australia, starting with the first one in the Hawkesbury in 1794 and ending with the last one at Coniston in 1928. So we only have, on this map, massacres for which there is documented evidence, but it does include oral  
35 40 histories of Indigenous people but only where they've appeared in print.

Considering the code of silence around massacres, it's reasonable to think that there are many more massacres occurred than this, and certainly many more killings of less than six people on the frontier. These locations shouldn't be  
45 regarded as precise or exact for a few reasons. One of them is that historical records are often pretty vague about where they occurred. They might say it was three miles right north of the river or something like that.

And another reason is that massacres aren't, well, sometimes they are but sometimes they aren't, confined to a very specific spot. People might be camped in a very spread-out manner, and there might be a pursuit involved from, say, the campsite to the reeds or up the creek. In one case, there was a pursuit over about 5 30 kilometres, I think. The other reason is that, in a few cases, the exact location has been purposefully obscured to prevent desecration of the site.

10 So some of the findings - I think if we go to the next slide. So there were around 426 known massacres across the Country, in which at least 11,206 men, women and children were killed. Those are conservative estimates. If we think, you know, the historians estimate perhaps 20 to 30 people were killed, we will use the number 20.

15 And this is over a period of 134 years. In that whole period of 134 years, there were only 29 years in which no known massacre occurred. There was a period of 74 years from 1823 to 1897 in which there's only two years where a massacre didn't occur, that we know of. So that's massacres occurring consistently across that whole period. 51 per cent of massacres in Australia involved agents of the State, by which we mean government employees or people acting on behalf of the 20 government, such as police, government surveyors, and so on.

The 1840s were the most intense decade of massacres, and much of this occurred in Victoria where massacres occurred from 1834 to 1854. So if we look at this graph, you can see that, well, on the left is the total number of massacres, and on 25 the right is the number of victims in massacres. The blue section is those occurring in Victoria. So you can see the 1840s, that's the tallest bar, and the largest area making up that bar is Victoria.

In Victoria, there were 49 known massacres in which 1,045 people were killed. 30 Sorry, these are some of the statistics on the screen there. Though, that doesn't include some that happened on the Murray which would affect people of the Millewa Mallee, because they are just across the border in New South Wales. One of the massacres in Victoria was a massacre of colonists in which eight colonists were killed, and out of these massacres in Victoria, 16 per cent, or eight of them, 35 involved agents of the State, mainly the native police.

**MR McAVOY:** If I could just interrupt there for a second. So is that figure - that figure is lower than the national average?

40 **DR PASCOE:** Yep.

**MR McAVOY:** And it indicates that there was a high degree of action by non-State parties, obviously?

45 **DR PASCOE:** Yes, it does. And I think some of the events that happened in Victoria in around 1838 kind of changed the way massacres were carried out for the rest of the history. But I'll get to that.

**MR McAVOY:** Thank you.

**DR PASCOE:** Yes.

5

**COMMISSIONER NORTH:** Can that be explained by some circumstance?

**DR PASCOE:** It seems to be the general pattern of frontier expansion, that the government, we were talking about the difference between squatting and what the government actually has under control, that the government will have the first area of settlement under control such as Sydney, and beyond that, they declared the limits of location. And then in Victoria, the first areas of settlement, such as like around Melbourne, came under government control in the sense that they had police there who could monitor what people were doing, and determine who owned which parts of the land and that sort of thing.

Then there is - it's very hard to pinpoint where the frontier is and when it was in Australia, because so much happens in such a spread out way, and often it's roads and waterholes that are important. It's not like they just decide to enclose an area and that suddenly, within the frontier. The frontier isn't a very sharp line. It's more like a broad area and the way I would define that broad area is between the first contact of Europeans, such as through exploration, and the time at which government gains control. And between that time, it's the frontier with squatting, Aboriginal resistance and so on.

25

So by the end of the 1850s, I suppose, you might say that the government had gained control of Victoria in the sense that they could monitor and control who was where, who owned what piece of land. They could control Indigenous insurgents. It doesn't mean that resistance stopped or that conflict stopped. It just means the government at least considered itself able to police it.

30

**COMMISSIONER WALTER:** What was the population drop between that time, do you think?

**DR PASCOE:** To be honest, I'm really not sure. Population estimates are quite controversial, and they vary widely. I kind of leave that debate to other people. But it is part of the project I'm working on now on historical frontier violence at Melbourne University to revise population estimates for Australia. And that's being done by Boyd but we don't have the result of that yet.

40

**COMMISSIONER WALTER:** The point I was getting to is that, to Commissioner North, is one of the reasons why massacres reduced was because a lot of people were already dead by this time?

**DR PASCOE:** Yes, that's probably fair to say.

**COMMISSIONER WALTER:** (Crosstalk).

**DR PASCOE:** Yes. Many had been killed and so what follows after that is that -

5 **MR McAVOY:** If I might interrupt for a second, are any of the other historians able to help on that?

10 **EMERITUS PROFESSOR BROOME:** Well, I think I gave evidence earlier that we think the population at 1835 was 10, possibly 15 thousand, but we certainly know, because the government was able to count the population by the 1850s, that it was under 2,000. And I guess the general answer to the question that  
15 Commissioner North asked was the settlers might say the country was settled down, and I think that's what you were saying; that there's government control, resistance has been squashed and settler violence has also been squashed. Would that be a good way of putting it? The country was settled down?

**COMMISSIONER WALTER:** I don't think we agree with "settling down".

20 **MR McAVOY:** I might just add, Commissioner Walter, there is evidence that hopefully we will come to from the 1858-1859 Legislative Council Select Committee Inquiry which has reference to the figures that Professor Broome has just mentioned of approximately 2,000. That was the estimate at that time. So we have a reasonable estimate. If you might continue, please, Dr Pascoe.

25 **DR PASCOE:** And also the movements of Aboriginal people could be controlled. They could be moved forcibly to missions and so on, yes. So the next slide, please. Sorry, this is just a list of the eight massacres in Victoria that involved people acting on behalf of the government, one by the mounted police, six by the native police and one by a government surveyor. The next slide.

30 **COMMISSIONER WALTER:** Can I ask another question. I guess often when they talk about frontier violence, there is the idea that somehow both sides were violent. By this reckoning here, and we know that any massacres of colonists would most definitely be known, 98 per cent of the victims of massacres in Victoria were First Peoples.

35 **DR PASCOE:** I didn't calculate that statistic but it makes sense.

**COMMISSIONER WALTER:** It would be nine and one, so -

40 **DR PASCOE:** Exactly. Yes. It's very, very disproportionate. Yep.

**MR McAVOY:** Before we leave this slide, Dr Pascoe, the first event is said to have been carried out by the mounted police as opposed to the next six which are said to be native police. Is there a distinction intended by those figures?

45 **DR PASCOE:** Yes. I'm just wondering if perhaps I get to that later. No, all right. We'll talk about it now. So, yeah, the role of the police in this is quite important.

Police were, sorry, the police force in New South Wales - Victoria was part of New South Wales, the colony of New South Wales at the time - was established, I think it was the 1820s. And at the time, there were two models for the police to be based on. One was the London Bobbies, who were working with a friendly  
5 civilian population and their role is to protect the civilians from incidents of crime in an urban context. The other model was the Irish mounted police, and their role was to suppress a hostile population that was largely rural.

10 So, in Australia, the main concerns of the government or the main risks that they saw at the time were convict insurrection, bush ranging, and both of those involved Irish politics, and Indigenous insurgents. And obviously it's not an urban population. So clearly the model they were following was the Irish mounted police designed to suppress. So there's that to bear in mind.

15 Now, when the Faithfull massacre - that's the massacre of colonists - happened, there was other - that was part of a kind of mass insurrection across the whole southeast of Australia of Indigenous people, and colonists described it at the time, and thanks to Ray Kerkhove for pointing a certain article out to me about this. There was a colonist trying to put down for the country's history a record of the  
20 fact that there was an Indigenous insurgence at the time and the Faithfull massacre was one of the incidents that sparked a response from the government.

25 Squatters petitioned the government to step in and do something to protect them because they were British subjects and threatened that if the government didn't do something, they would form a militia, basically, and take matters into their own hands. If the government wouldn't declare war, then they would do it themselves.

30 At the time, as was discussed earlier, the government in Britain was a reformist government, committed to humanitarian causes like ending slavery and so on. So the British government told Gibbs that he was not allowed to declare war on Aboriginal people because they were British subjects, according to the British, and that instead he should police the violence and stop Aboriginal people and settlers from killing each other. Those were the instructions from the British government.

35 So Gibbs found himself in a difficult situation with squatters, and the harsh realities of the Australian frontier on the one hand and demands issued from the other side of the world that didn't really appreciate what was happening here. So his solution to this was to increase the police force and establish more police bases on the overland route between Sydney and Port Phillip, and those police were  
40 recruited direct from active military or retired military.

45 So this was a kind of beginning as well of another aspect of the code of silence, where they're called police but, in fact, they're military personnel in this first instance. And they - their role is to protect people on the frontier, basically, beyond the limits of settlement.

**MR McAVOY:** Can I just interrupt there. You say "to protect people". Is it correct to say that to protect some people rather than people generally?

5 **DR PASCOE:** Well, I'll go back to a sort of a point I should have made earlier, which is, in Australian history, you should always bear in mind the difference between de jure and de facto, which I'm sure you understand, but that's basically the difference between what is written down or declared, for example, by the government, and what is, in fact, reality, what is the true case of what's happening.

10 And the obvious example is, from the very beginning, is Britain declared Australia to be governed by Britain, the whole continent, but, in fact, there was only a tiny amount of people in Sydney. So they are not really governing the whole of Australia, and that's important for the limits of location and so on. In reality they're not governing anywhere beyond the limits of location. So, similarly, with the  
15 police, on paper, they exist to protect everybody from violence, but in reality, what happens is that they massacre Aboriginal people. And -

**MR McAVOY:** Sorry for interrupting, are there any, this may sound like a strange question but, are there any recorded instances of the police massacring  
20 non-Aboriginal people?

**DR PASCOE:** The Eureka Stockade, I think. I don't know how many people died in the Eureka Stockade (indistinct) yes, okay. So that may be a rare exceptional case. But also related to the Britain's fear of insurrection. I think that's a colonial  
25 issue. Yes.

**MR McAVOY:** Thank you. Are we able to move on?

**DR PASCOE:** Yes. Okay. So there is that difference. So it seems to me what  
30 Gibbs' solution to this dilemma was to establish a de jure police force and a de facto military force. And I think the motivation behind this was to control violence. Now, at the same time, the British were afraid of another American revolution. They did not want the squatters to organise and arm themselves as a military force.

35 So I think what was happening is that, under the Gibbs government, the government was taking control of the killing. They're saying don't let the squatters kill people; we'll be the ones doing the killing. So these massacres occur.

40 And there is plenty of letters and newspaper articles of squatters complaining the government is doing nothing, please send the native police, and the native police had a reputation for resolving the situation once and for all.

**MR McAVOY:** By that you mean by - how would they resolve it?  
45

**DR PASCOE:** Killing people.

**MR McAVOY:** Are we able to - is there anything else on this page that you wish to draw the Commissioners' attention to?

**DR PASCOE:** We have discussed the limits of location. That was Governor  
 5 Gibbs' dilemma. There is a textbook called *Small Wars*. The translation of  
 "guerilla" means small war. That's where the word guerilla comes from, from wars  
 in Spain, and the Frontier Wars in Australia are often referred to as guerilla wars.  
 They were carried out in a guerilla style by both sides. Now, there's a book called  
 10 *Small Wars* by Callwell, published in 1896, which is some time after this, but it  
 was based on Britain's colonial experience from the previous 100 years throughout  
 the 1800s.

If you are familiar with the massacres, there's almost every page rings true, even  
 though he never mentions Australia. All the strategies there sound like what  
 15 happened in Australia and, in particular, one of the strategies there is to  
 purposefully attack villages and to kill women and children in order to provoke the  
 fighting men, who normally have the advantage of stealth and hiding in the  
 country that they know well, into an open confrontation in which they commit all  
 their men so they can all be killed in that confrontation and the resistance and the  
 20 insurrection ended. So not specifically about Australia, but the tactics and  
 strategies described there sound very familiar.

One more point in terms of government culpability. Again, perhaps you should not  
 just look at what government policy was and that sort of thing, but vested interests  
 25 of people in Parliament or in the colonial government, whether they had private  
 ownership or were profiting also from squatting or any of this killing happening  
 on lands that they might have owned, or they may have been shareholders in  
 companies.

30 And the example I'm thinking of which is not Victoria but New South Wales is the  
 Australian Agricultural Company, which is a company that still exists today,  
 where parliamentarians in Britain granted massive amounts of land in New South  
 Wales to the Australian Agricultural Company whilst also being themselves  
 shareholders in that company.

35 **MR McAVOY:** Are there more slides?

**DR PASCOE:** Yes. How are we with the time?

40 **MR McAVOY:** If we can just briefly cover this, I'd be grateful.

**DR PASCOE:** Very quickly, yep, okay. I thought I would point out a few things  
 that kind of escalate to war in a typical frontier encounter. There's obviously the  
 occupation and exploitation of resources, the destruction of lands and waters that  
 45 people depend on for food. Sexual violence is a common story. Violation of sacred  
 sites, and we already discussed the Draconian British law.



When settlers said, "Do something or we will have to take the law into our own hands", the law in Britain in the early 1800s said that, or the punishment for stock theft, which was a common resistance strategy, was death. So what they meant by taking the law into their own hands was to kill people.

5

The next slide. Various forms of Indigenous resistance. Economic warfare. They knew the reason settlers were there was because of their sheep and other livestock, so they regularly attacked those, stealing a thousand at a time. Targeted killing of particular individuals who had broken their laws or were causing too much trouble. Strategic use of lands and waters, which you would have heard about in Budj Bim. Some of the hideouts, I guess, were in very rocky Country because they knew horses couldn't go there.

10

They were coordinating strategic actions across great distances. They had spies employed by colonists. And they had various tactical advantages like knowing the Country and how to get food and so on. So next slide.

15

This is a - just focusing in on what happened in Victoria. Pattern of warfare in Victoria starts on the, well, it starts with the Convincing Ground massacre near Port Fairy in Gunditjmara Country, but mainly there is a - the way it progresses is on the overland route from Sydney to Melbourne, going through Yorta Yorta, Taungurung and Wurundjeri Kulin nation Country. And that's where the Faithfull massacre occurred. Then it progresses to the west with the Eumeralla Wars and, following that, the Gippsland Wars and the Murray River.

20

25

Next slide. I've already discussed that, so we can go to the next slide. This is just to point out that people could coordinate resistance across very large areas. These are some of the main journeyways, songlines or trade routes in traditional society in the southeast of Australia. So the point is that at that time in the 1840s, the

30

insurgence was happening from just north of Brisbane all the way down to Gunditjmara Country. That indicates that, I mean, they weren't coordinating specific actions, probably, across that vast area, but it's certainly quite possible that people would have known that this was the time that everyone was to rise up.

Next slide. We don't really have time for this but this was just to go into some of the detail of specifically the South Road War showing mounted police stations where Governor Gibbs deployed those extra troops and so on, but perhaps we can move on. Maybe we can come back later if people want to know specifically. Sorry, I've already talked about that. My slides might be out of order.

35

40

So just to wrap it up. The legacy of violence on our current projects, Jiman Elder Judy Atkinson points out that intergenerational trauma often doesn't fade away with time, but gets worse with each generation, especially considering what happens after the massacres and all of the things that have happened between then

45

Each generation has a new form of violence against it, and they develop new forms of resistance to it. After the massacres, women are abducted. Children worked as domestics on farms. People get sent to missions. There's the eugenics phase. There's dog licences and segregation, and all of the other things that you've  
5 been hearing about and will hear about. So the point is that it's still with us.

And speaking with one Elder, who I won't name at the moment, but this Elder has seen his friends killed, shot, and he's been a witness to deaths in custody inquiries, and, for him, these massacres are still happening in that form. And he won't visit  
10 any massacre sites because it's too much for him. And he says to look inside what happened, not only that it happened, but what happened during the massacre, these massacres are not, well, massacres themselves are inhuman, but it's not just the massacre; it's the way that is done that is beyond inhumanity, is what he says.

15 And some of the things I've encountered in this research are the worst things I have ever heard of anyone ever doing to anyone in human history.

**MR McAVOY:** Thank you, Dr Pascoe.

20 **DR PASCOE:** Thanks.

**MR McAVOY:** Is there anything - were you going to say something?

**DR PASCOE:** No, that's all. That will do.  
25

**MR McAVOY:** Thank you. Now, I just wanted to ask you some questions. Firstly, earlier, we discussed in brief form but, the well-known massacres and events that occurred in Tasmania or Van Diemen's Land in the early 1800s and the rapid population decline there, and also the characterisation of the action in  
30 Tasmania as what are now understood to be acts of genocide. Are there any circumstances which have occurred in Victoria which are, in your view, in your individual views, similar in nature to what occurred in Tasmania? Anybody?

**PROFESSOR ANDREWS:** This culture of forgetfulness and the silence that  
35 Stanner's spoke about, which is quite big in anthropology, where we feel more comfortable to forget, I think that's the same all over Australia. But I think the persecution of children in Tasmania and, in Victoria, the murder of children, that's not known enough.

40 We talk about massacre sites as if, you know, there were children in there too as well as adults, but the horror that the children had to endure, that's the worst thing for parents. And we talk about trauma. That kind of stuff is traumatic to listen to, what they did to the children.

45 And I was, this warfare that you're talking about, I didn't hear anyone talk about poisoning the water holes where our people had to drink and hide. We needed

water. So poisoning the water holes is very big in the history books for our people, and no doubt it was everywhere around Australia.

5 But in terms of Tasmania, the biggest - when I grew up I always heard about Truganini, but if you go to school, she was the last Tasmanian. And that silence that Stanner talked about, you can connect to what's going in terms of the history of Tasmania.

10 Now, I was not long there in Tasmania, and I visited the convict women's prison. And there was a young girl all dressed up as a convict and I said, "But what about the Black Line?" And she says, "Oh, we don't know if that actually happened." So here we have this disregard for history in Tasmania. And the tourism of Tasmania is a culture of forgetfulness, and it doesn't include Tasmania, so, the true Tasmanian history.

15 I went to South Australia a couple of years ago, and they're proud because they got no convicts. There's no history of convicts over there. So, you know, this convict line that seems to be going all around the south-east coast of Australia has caused so many problems for Aboriginal people. We're not the problems. They are the  
20 problem.

But it's when they start to own up to what their ancestors have done to our people, that's when we'll get true justice. But if we look at what's going on in Tasmania, there's so many massacre sites there, it's, you know, and what they did to the  
25 young children there, turning men, adopting them for goodness knows what.

It is horror as well, and I tip my hat off to you, Commissioners and Chair, because you have to sit through all this. And it's our people, you know, and it comes back to us acknowledging our family and our ancestors and what's happened to them.  
30

And I know we are an honourable race of people. We have gone through so much trauma and suffering, and we're still respectful to people, and we're still welcoming other cultures that are coming with trauma. We're doing all that and yet we're also trying to get people to acknowledge the trauma that our ancestors  
35 and those that have come and walked, that we're walking in their footsteps, trying to honour that. So I really do appreciate the work that you're doing for all of our people.

40 **MR McAVOY:** Thank you. You want to say something?

**EMERITUS PROFESSOR BROOME:** Yeah, look, I guess I've got four things to say about the situation between Tasmania and Victoria. And it revolves around the word "genocide". I think we haven't really talked about the Aboriginal Protectorate, but its purpose was to change and to control as well as protect. So I  
45 think there's no doubt that cultural genocide existed in Victoria, and I said as much in a book in 1982.

As for government, I think there was no intention to commit genocide, but the nature of the frontier, as Bill has talked, has meant that government became implicated in some of those events from the military police and also the creation of the native police, which was supposed to be a civilising force but also it took  
 5 advantage of intergroup enmities that were played out on the frontier because Aboriginal people were only were friendly with close groups in proximity and distant groups were aliens like the whitefellas.

10 So the government, because of the pressures on the frontier, gets involved in actions that are unlawful. And so I think one way of thinking about it, a colleague of mine, Tony Barta, once talked about relations of genocide, which shows that, over time, things get out of control and out of hand, and it's really about colonisation. The relations of genocide are about what happens in colonisation. You've got two people struggling over the one piece of land. You've got two  
 15 people with different understandings of the world and each other, and, inevitably, that leads to what the outcome was, in my view. But I don't know whether -

**COMMISSIONER WALTER:** Professor Broome, it seems very predictable, then. So the tension mightn't be there but the predictability is that that will happen  
 20 (crosstalk).

**EMERITUS PROFESSOR BROOME:** Yes, it's not inevitable, because nothing is inevitable in human affairs or history, but all the dots started to fall in line. Colonisation inevitably leads to situations like this. Not all the time, but in many  
 25 cases. But I don't know at what -

**MR McAVOY:** I want to just follow up on Commissioner Walter's question, Professor Broome. It is the case that the New South Wales Government or the lieutenant governor for the Port Phillip colony understood that, with the expansion  
 30 of the pastoralism, there would be deaths at the hands of the squatters. Do you accept that they would have understood that?

**EMERITUS PROFESSOR BROOME:** Yes, and the governor warned the squatters about this, but by letting colonisation proceed, it was inevitably going to  
 35 happen. Deaths would happen.

**MR McAVOY:** You wanted to say something.

**ASSOCIATE PROFESSOR ELLINGHAUS:** I've got a slightly different view  
 40 on genocide to Richard. I think that the tool that Raphael Lemkin gave us is a really useful one. Words matter. And I think that if you look at the five clauses, you can absolutely see all of those things happening in Tasmania and in Victoria. I think getting caught up in the issue of intention is a tricky road to go down.

45 You know, right now, we are thinking about the concept of the bystander, what does it mean for us to stand by when we know terrible things are happening in the world. There would have been many bystanders at this time knowing what was

going on, understanding the atmospheric violence, as to quote Tracey Banivanua-Mar, a historian also from La Trobe, that would have been, I guess, the vibe of Victoria or what was to become Victoria.

5 So I think that if we get caught up in intention, we need to think about the bystanders too. I think we need to think about the fact that the colonial government in New South Wales would have known and perhaps even assumed that settlers would undertake this violence and that it would help them control the Indigenous population.

10

**MR McAVOY:** Thank you. I might ask the operator to put document 2 back on the screen. Dr Pascoe, you appear to want to add something?

15 **DR PASCOE:** Yes, that's right. There's just a few points. If you look at the Warrigal Creek massacres, that's a collection of massacres where a group of colonists got together and called themselves the Highland Brigade. They weren't actually the Highland Brigade, but that name indicates they saw themselves as being a war party on behalf of the empire. That's sort of their mindset.

20 And they went around from camp site to camp site massacring anyone that they could find. Their intention was to wipe out everyone, which is an act of genocide. And it seems to be that, in the colony at the time, there were two sides or more to settler politics, but the prevailing and dominant side seems to have been the one in favour of violent empirical conquest, and squatters saw themselves playing their

25 part in that.

You know, some squatters had skulls mounted above their door as trophies. So, yeah, there is a general attitude in the colony. Some of the more extreme, but not an uncommon view was that everyone should be exterminated.

30

**MR McAVOY:** I will ask you this question, Dr Pascoe: Were the activities of the Highland Brigade known to the government? Can you answer that?

35 **DR PASCOE:** I'm not sure, but as the - I think it would have been hard for them not to have been known. I don't know about before the fact, but certainly after the fact.

40 **MR McAVOY:** And were any of the so-called Highland Brigade ever charged with any of the offences, brought before the -

45 **DR PASCOE:** I don't know about the Highland Brigade but, in some cases, there's only one case of colonists being found guilty and punished for their crimes is the Myall Creek massacre. It's quite famous because of it. They were convicts, which matched the British people's view that convicts were responsible for the low levels of morality in the colony. They were the only ones found guilty and punished, and they were hung. That contributed to the code of silence in that colonists forever after thought if anyone found out, they might themselves be

hung. But that never happened. Some people sometimes were brought to court but they always got off.

5 **COMMISSIONER HUNTER:** So they were the only ones, the convicts, were found guilty of a massacre? Is that, in all those massacres that you've mapped, is that -

10 **DR PASCOE:** Out of all of those 426 massacres, that's the only one that ever resulted in a conviction of colonists.

**CHAIR:** Can I just ask a question if anyone on the panel is aware of the Neil Black statement about taking land where somebody already committed murders?

15 **EMERITUS PROFESSOR BROOME:** Yes, I am aware of that, Commissioner. And I think Neil Black is expressing the relief that he didn't have to be involved in any sort of violence to clear his run, and so that shows again the spectrum. There were some people that maybe wouldn't have done it but were happy that someone else had.

20 **CHAIR:** At the same time, he acknowledged that there were others who had no qualms about doing those killings.

25 **EMERITUS PROFESSOR BROOME:** That's correct. And another man, Henry Meyrick, was also quite forthcoming, and I think also George Robinson in the Western District were quite forthcoming about the hard men who would push on to action.

30 **MR McAVOY:** Could we put document 7 on the screen, please. I just want to take you to what is an extract from the 1837 report from the United Kingdom Select Committee, United Kingdom Parliament Select Committee on Aboriginal Tribes, and we want page 13, please. In this paragraph from the report, there is - I will read it to you. It says:

35 *"It is true, that to remain passive under actual outrages, would encourage savages in their perpetration, but we regret that in any instance, punishment, which appears disproportionate, should have been inflicted. We find the natives on the Murray River mentioned as amongst the most troublesome in this quarter; and in the summer of 1834 they murdered a British soldier, having in the course of the previous five years killed three other persons. In the month of October 1834 Sir*  
40 *James Stirling, the governor, proceeded with a party of horse to the Murray River, in search of the tribe in question. On coming up with them, it appears that the British horse charged this tribe without any parley, and killed fifteen of them, not, as it seems, confining their vengeance to the actual murderers. After the rout, the women who had been taken prisoners were dismissed, having been informed,*  
45 *"that the punishment had been inflicted because of the misconduct of the tribe; that the white men never forget to punish murder; that on this occasion the women*

*and children had been spared; but if any other person should be killed by them, not one would be allowed to remain on this side of the mountains."*

5 Now, that is clearly the dispensation of arbitrary justice and execution of people without trial, and is consistent with an absence of law and order in the way in which the colony operated. And this was carried out by the governor of the day. Would you agree with me that if it's known that the governor of the day is acting in this way, that it would be open slather for any other members of the colony to also act in that way?

10

**ASSOCIATE PROFESSOR ELLINGHAUS:** I agree.

15 **EMERITUS PROFESSOR BROOME:** As we are getting to the very truth of this. That, I think, was in Western Australia. Notice the date was 1834. Victoria was not settled by the Hentys till '34 and Melbourne '35. But it actually, you know, it could be representative of some government officials, because Bill talked about the number of actions that were taken by military forces or by the police forces.

20 But I had to correct that. It is a Western Australian, Governor Stirling was a Western Australian. It actually, while it's not about Victoria, it's pertaining in the sense that we know from the work done on the massacre map, that there were actions taken by government forces. Now, whether the governor knew about them is another matter, but certainly police forces were either not properly briefed, trained or directed not to take action.

25

30 **MR McAVOY:** I just want to briefly deal with the time that we have left with the reference to the use of pejorative terms such as "savages" to describe Aboriginal people in a way that may have permitted this degree of inhumanity and the brutality against the Aboriginal people. In your book, Professor Broome, you discuss this, the use of the term "savages", and identify that there appeared to be two main bases for that, the use of that term. It was used to describe people on the basis that they engaged in cannibalism and infanticide.

35 **EMERITUS PROFESSOR BROOME:** Well, of course, there are great rumours fluctuating in the colony. All groups have a view of another group that's not true. It's a stereotype. And so these were part of fears, the anxieties, the moral outrage of settlers, that they thought that Aboriginal people were like this. And, of course, there was a whole range of other tropes about the savage, that they were unreliable, they were feckless, they were likely to change on the moment, and they were just stereotypes.

40

45 But they did create fear in people's minds, created a determination that these were aliens, they mightn't be able to incorporate. So I'm sure it plays out in the minds of people in the Highland Brigade or elsewhere that are riding against, in a bush whacking situation, riding against a group of people that they think that they are not quite human.

**MR McAVOY:** You were looking to say something, Dr Pascoe?

**DR PASCOE:** Yes. I think in the minds of people doing this sort of thing, if they want to do it or if they feel compelled to do it to protect their fortune or whatever  
5 it might be, it just helps them in their own mind to deal with the guilt of it, if they keep telling themselves that they're not really people or that they're, you know, bad people.

**MR McAVOY:** Dr Ellinghaus.  
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**ASSOCIATE PROFESSOR ELLINGHAUS:** Add that, you know, in this period, that certainly wasn't the only way in which people thought about First Nations people. That there are plenty of examples of absolute human contact, of relationships being built, of respect, of learning about the culture, particularly in  
15 the William Thomas papers. So I think both of those things existed at the same time. But that the idea of the "savage" was a reason, it was a convenient mistruth that people wanted to believe at that time, and it was an available narrative to them.

**EMERITUS PROFESSOR BROOME:** I think a helpful way of thinking about it, Albert Memmi, who was a Tunisian who thought a lot about colonialism, said that in colonial situations, there is a usurper complex, that if you take someone's possessions or land, you have to explain it to the world and to yourself. So the way  
20 you do it is to create a stereotype that you're a noble pioneer creating wealth from the land and the original owners are, have never made anything of the place, they are possibly savages, and so this is a way of rationalising, as Bill Pascoe said, a way of rationalising what's going on. So they are using these racial ideas to confirm in their own minds what they're doing.  
25

**MR McAVOY:** Yes, and to relieve what sometimes is referred to as perpetrator's guilt?  
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**EMERITUS PROFESSOR BROOME:** Yes, I would think so.

**MR McAVOY:** You are looking to say something?  
35

**PROFESSOR ANDREWS:** Yes. Just from an anthropological point of view here, we're talking about culture, so, and the Darwin evolution theory, okay, of races around the world. And when, when all of this colonisation was occurring,  
40 they brought with that theory of evolution, and Aboriginal people were down the bottom. So this is where we started getting Melanesia, Micronesia, Polynesia, and then Aboriginal people were down the bottom. We didn't invent the wheel. You know, so that's the other thing that was also weighing against us. But also because we were developing and living on stone tools. Okay. So we weren't a society that  
45 had evolved. Okay. But we were actually living in a community where we weren't changing the environment.



We weren't manipulating the environment. That came later after colonisation. But we lived in harmony and we knew how to live on our Country and not put our Country under duress. But we were in competition with people like Polynesians, who were the warm friendly hula dancers and welcoming smiling people. We were in competition with Micronesia. We were in competition with Melanesia. But, you know, our knowledge of our Country is now celebrated today.

So this is where we weren't respected, and our, this term "savage" and "the noble savage" and all that kind of stuff that was actually, and hunters and gatherers, we were also branded as that as well. So, you know, our knowledge today is celebrated and sought after so much today. That's a difference.

**CHAIR:** In that vein, if I may say, a former Vice-Chancellor of Monash University, Sir Richard Eccleston, and I don't know if your family remember Elizabeth Eccleston, he wrote or made a statement to the press that Aboriginal people walked so gently across this land, they never left a footprint. That says everything.

**MR McAVOY:** I'd ask that document 6 be placed on the screen. Now, that document is titled *The Pastoral Holdings of the Port Phillip District in Victoria from 1830s to 1851*. And you can see on that map which shows those holdings up until 1851, the intense occupation of the south-west, from what might be called the Portland district, and the observation can be made that, throughout Central Victoria, excluding the Wimmera district and parts of the Gippsland district, there doesn't appear any land left whatsoever that hasn't been disposed of by 1851.

So I'm wondering whether the observations that can be made about the prevalence and number of parcels in the Portland district and their recorded massacres that existed in that area. Is there any observation that can be made about that?

**DR PASCOE:** The massacres in that area, the Eumeralla Wars, are one of the most dense clusters in the whole of Australia. And just generally speaking, the distribution of that map matches the distribution of massacres, some down in the south-west in Gippsland - sorry, south-east in Gunaikurnai Country and a high density in Portland, the ones on the overland route up through what is called the Murray District on that map and those few ones that are besides the Murray River up in the north-west, also massacres up there.

**MR McAVOY:** I can tell you that on that map, if we were to zoom in, in the area above Portland, there are two properties, namely, Merino Downs and Muntham, that are the properties of the Henty brothers. So it would appear that they eventually got their pastoral leases. And it's recorded, I ask you to accept from me that it's recorded that, the - those pastoral leases that were issued up to that point were owned by some 246 men, and they owned all of those leases between them. So it demonstrates a centralisation of wealth within a relatively small group of people.

We are very close to, perhaps exceeded, our time today. However, it will come to the Commissioners' attention in examination of the report from the Victorian Legislative Council Select Committee on Indigenous People from 1857 that one of the members of the committee was a Mr J. Henty.

5

So we heard - so the properties that I spoke of are, on the map that we can see on the screen, to the left and slightly below the letter P in Portland. If we might attempt to zoom in a little. But the description from Professor Broome of the Henty family earlier today as being a family who were finding it difficult  
 10 breeding, raising sheep in rural England, leaving that place and coming to Australia and becoming part of what might be understood as the landed gentry, and then rising to the position of legislators in the Parliament, I suggest to you that, just taking that family as an example and I don't say, apart from their role in coming to Portland first, there's necessarily anything different about that family to  
 15 the other families but I suggest to you that it's possible to understand what has occurred in this way: That the Gunditjmara people were wealthy in their own Country and lands.

They were wealthy and rich in their lands and their waters and their culture, and at  
 20 the point of the grant of their lands to the Henty brothers and others, that wealth was given to other people, to those people. And their wealth was then lost and hasn't been returned. Would you agree with that description or characterisation of a transfer of wealth?

25 **DR PASCOE:** Yep.

**ASSOCIATE PROFESSOR ELLINGHAUS:** Yes.

**MR McAVOY:** Now, today we haven't had the chance to speak about the role of  
 30 the Protectorate, the Aboriginal Protectorate, nor have we had the chance to go into detail about the Select Committee's processes and findings. That matter, Commissioners, will be covered tomorrow, by the panel tomorrow, and the -

**COMMISSIONER LOVETT:** (Indistinct) in the context of that, you were going  
 35 somewhere before about the Henty family members being on that committee?

**MR McAVOY:** The point - perhaps only the irony of it, Commissioner Lovett, that one of the people who was at the forefront of the dispossession and the transfer of wealth from Aboriginal people to the new owners then gets to sit on  
 40 a committee that examines what's happened to these poor Aboriginal people and make recommendations about what happens next.

**CHAIR:** Made a pattern for the history, didn't it.

45 **MR McAVOY:** So the suggestion will be, Commissioners, that that occurred 246 times over at the expense of the Aboriginal people of this State. And there has been no accounting for that. I suggest to our witnesses that there has been no

accounting for that to date, that transfer of wealth. Would anybody argue with that proposition?

5 **EMERITUS PROFESSOR BROOME:** No, I would not.

**DR PASCOE:** No.

10 **PROFESSOR ANDREWS:** I can extend it to Edward Curr. So Edward Curr's father was from Tasmania and he was born there, and then he was educated in England. He's a wealthy family and then he relocated to Victoria and he became very, very prominent in the Yorta Yorta land. But I also notice in those Board of Protection, he, that he was on the board for Victoria, the Aboriginal Protection Board. So that's Edward Curr, so.

15 **MR McAVOY:** So what can be noted about the Protectorate Board, before we close for the afternoon, is that the Protectorate Board was in operation in Victoria at the very time at which the massacres peaked. That's correct? So the massacre diagram that Dr Pascoe showed us with the peak in the 1940s is the very period when the Aboriginal Protectorate was supposed to be ensuring the protection of  
20 Aboriginal people and fulfilling their other function of keeping Aboriginal people out of Melbourne. But their main job was intended to be protecting Aboriginal people, and, of course, we know from the statistics that the population declined at such a rapid rate, perhaps in a match of the rapid rise in wealth of the pastoralists which the Chair spoke of in her opening comments.

25 **ASSOCIATE PROFESSOR ELLINGHAUS:** Perhaps another story that is relevant there is the way in which the colonial government really did not support that early Protectorate; that those protectors were undermined at every moment by the colonial government and were unable to do the job of protecting for various  
30 reasons. But one of the reasons was, is, that colonial - they withhold the rations that they were supposed to be giving. They would give them orders that they couldn't fulfil. They would move people around. So, in a sense, those Protectors which were sent from Britain to do some protecting were not able to do that job because of the people like Charles La Trobe.

35 **EMERITUS PROFESSOR BROOME:** And also the squatters and pastoralists absolutely hated them because sale of land was paying for the cost of the Protectorate. So they didn't agree with it and they didn't agree with the way it was funded. So they undermined it massively as well and were always on the  
40 governor's back "Get rid of this mob. They're harbouring Aboriginal sheep stealers, et cetera". So it was undermined from many quarters.

45 **MR McAVOY:** In the two books they took you to with relation to the Tasmanian situation, both those authors formed the view that there was a pretence of caring for Aboriginal people that never, ever came to fruition. And the question is, the question that might properly arise on the basis of the evidence just given by Associate Professor Ellinghaus is whether, on the back of the recommendations

that came out of the UK Parliamentary Select Committee in 1837 about the need for greater protection of Aboriginal people, that there's the potential, at least, that the process of creation of a Protectorate for Aboriginal people was perhaps a pretence to allow the other activities that were going on in terms of the  
5 wholesale dispossession of the land to occur unabated.

**ASSOCIATE PROFESSOR ELLINGHAUS:** I would agree with that.

10 **MR McAVOY:** Thank you. I'm conscious of the time. Our witnesses have all stayed on longer than they were asked to and made other arrangements. The matters which are left to deal with in this early period are all available to be dealt with on the documents, Commissioners. Unless there are specific questions from the witnesses, I don't propose to ask them any other questions at this point.

15 **CHAIR:** Full day, very thoughtful and I think that's enough for today. So thank you.

**MR McAVOY:** In that case, Commissioner, I would ask that the witnesses be released and if we might adjourn to resume tomorrow.

20 **COMMISSIONER HUNTER:** I'd like to thank the witnesses for the hard topic, for leaning in and being honest and open and knowing that a majority of Aboriginal people that you were telling it to were in the room and online, so thank you for your honesty and thank you for just saying it as it needs to be said. Thank  
25 you.

**CHAIR:** I'd like to add to that, I didn't want to say I believe that Protectorate was a failed experience. That first 10 years never was fulfilled. Halfway through that, that's when the rot set in. I didn't really want to say that, but I think it's part of the  
30 story. But thank you very much for your -

**MR McAVOY:** Thank you, Chair.

35 **COMMISSIONER LOVETT:** Can I also say something. Also, as mob listening in as well, we do have a social and emotional wellbeing team here so please do reach out to us, if you do, particularly given today's evidence as well, particularly the traumatic subjects that we're talking about here. We are dealing with our ancestors and our lives and Country as well. So I just want to make sure that that sentiment is expressed to our people as well. And, further, to our panel members  
40 here today, thank you very much for your time as well.

**CHAIR:** We will adjourn until tomorrow morning. Thank you.

45 **<THE WITNESSES WITHDREW**

**<THE HEARING ADJOURNED AT 3.49 PM**